



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 28
2600 N CENTRAL AVE STE 1400
PHOENIX, AZ 85004-3099

Agency Website: www.nlr.gov
Telephone: (602)640-2160
Fax: (602)640-2178

September 14, 2012



Re: A.W. Farrell & Son, Inc.
Case 28-CA-085434

[REDACTED]

We have carefully investigated and considered your charge that A.W. Farrell & Son, Inc. (the Employer) has violated the National Labor Relations Act.

Decision to Dismiss: The charge, as amended, alleges that the Employer has refused to bargain in good faith by insisting as a condition of bargaining that the Union provide information that is not relevant or necessary for bargaining, by insisting that there are no members of the bargaining unit, by conditioning bargaining further upon proof that the Union represents the employees, by dealing directly with the employees, and by refusing to provide information to the Union that is necessary and relevant to bargaining. The amended charge also alleges that the Employer violated Section 8(a)(3) of the Act by discriminating against employees on account of their Union and protected activity.

The investigation disclosed that the Union has represented a unit of the Employer's roofers (the Unit) working in Las Vegas, Nevada, since around 2007. The Employer has sought to bargain with the Union and sought to obtain information from the Union since around January 2012. The Union's alleged conduct in such bargaining is the subject of a consolidated complaint in Cases 28-CB-080496 and 28-CB-085690. The parties met at a bargaining session on July 14, 2012. Shortly before this session, the Employer provided the Union information that it had signed a collective-bargaining agreement with the Sheet Metal Workers Union on May 1, 2011, that covered work performed by the Unit. The Union provided no evidence of direct dealing or discrimination against Unit members as a result of signing this agreement. Further, the evidence is insufficient to establish that the Employer conditioned bargaining with the Union as alleged or that the Employer refused to provide requested information. I am, therefore, refusing to issue complaint on these aspects of the charge.

The foregoing does not affect the remainder of the charge concerning certain of the Employer's Code of Conduct rules and its actions in signing the collective-bargaining agreement with the Sheet Metal Workers which are pending and about which the parties have been advised.

Your Right to Appeal: You may appeal my decision to the Acting General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlr.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision to dismiss your charge was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, or by delivery service. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax. To file an appeal electronically, go to the Agency's website at www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the Acting General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street NW, Washington DC 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on **September 28, 2012**. If you file the appeal electronically, we will consider it timely filed if you send the appeal together with any other documents you want us to consider through the Agency's website so the transmission is completed by **no later than 11:59 p.m. Eastern Time** on the due date. If you mail the appeal or send it by a delivery service, it must be received by the Office of Appeals in Washington, DC by the close of business at **5:00 p.m. Eastern Time** or be postmarked or given to the delivery service no later than **September 27, 2012**.

Extension of Time to File Appeal: Upon good cause shown, the Acting General Counsel may grant you an extension of time to file the appeal. A request for an extension of time may be filed electronically, by fax, by mail, or by delivery service. To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number and follow the detailed instructions. The fax number is (202) 273-4283. A request for an extension of time to file an appeal **must be received on or before September 27, 2012**. A request for an extension of time that is mailed or given to the delivery service and is postmarked or delivered to the service before the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption

such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/ Cornele A. Overstreet

Cornele A. Overstreet
Regional Director

Enclosure

cc:

[REDACTED]

[REDACTED]

[REDACTED]

ACTING GENERAL COUNSEL
OFFICE OF APPEALS
FRANKLIN COURT BUILDING
NATIONAL LABOR RELATIONS BOARD
1099 14TH ST NW
WASHINGTON, DC 20570

CAO/SEW/dmm

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: Acting General Counsel
Attn: Office of Appeals
National Labor Relations Board
Room 8820, 1099 - 14th Street NW
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the Acting General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

Case Name(s).

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(Signature)