



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 9
550 MAIN ST
RM 3003
CINCINNATI, OH 45202-3271

Agency Website: www.nlr.gov
Telephone: (513)684-3686
Fax: (513)684-3946

August 27, 2015



Re: AP Green Industries Inc.
Case 09-CA-151919

Dear [REDACTED]:

We have carefully investigated and considered your charge that AP Green Industries Inc. has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have decided to dismiss your charge for the reasons discussed below.

The charge alleges that, during the 6 months preceding the filing of the charge, the Employer failed and refused to provide the Union with requested information relevant to its performance as collective-bargaining representative. The investigation disclosed that, on at least several occasions during the parties' contract negotiations, the Union asked the Employer to "open its books," allegedly in response to the Employer's claims that it was seeking concessions to recoup a \$600,000 loss. An employer is not obligated to open its financial records to general access by a union unless the employer has claimed an inability to pay. The Union does not assert, and the investigation disclosed no evidence, that the Employer has claimed an inability to pay. While an employer may render certain financial records relevant by backing its proposals with claims of loss and other financial conditions, only requests for specific information tailored to evaluate the claims trigger an obligation to produce such records. The evidence established that the Union did not request specific information but rather sought general access to the Employer's financial records. The evidence failed to otherwise establish that the Employer failed and/or refused to provide requested information to the Union during the 6-month period preceding the filing of the charge. In this regard, the evidence shows that when the Union requested to know the cost savings associated with some of the Employer's economic proposal the Employer provided the information. Insofar as the Union alleges that the Employer failed to fully comply with its January 26, 2015, request for, inter alia, "Copies of all incentive/profit sharing/bonus plan documents and summaries of quarterly payouts and yields by plan," i.e., gain

share information, the investigation revealed that, about March 4, the Employer provided documents in response to this request. While it appears that the Union may have raised questions about these documents sometime in May, after the charge was filed, there was no credible evidence establishing that the Union notified the Employer of any non-compliance or need for additional information pertaining to the documents at any time prior to filing the instant charge.

Your Right to Appeal: You may appeal my decision to the 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.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax or email. To file an appeal electronically, go to the Agency's website at www.nlrb.gov, click on **E-File 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 **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, 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 10, 2015**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than September 9, 2015. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before September 10, 2015**. The request may be filed electronically through the *E-File Documents* link on our website www.nlrb.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after September 10, 2015, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also 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/ Garey E. Lindsay

Garey Edward Lindsay
Regional Director

Enclosure

cc:

[REDACTED]

AP GREEN INDUSTRIES INC.
1305 CHERRINGTON PKWY SUITE 100
CORAOPOLIS, PA 15108-4355

[REDACTED]

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the 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)