

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE**

**EMERALD GREEN BUILDING SERVICES, LLC**

**And**

**Cases 01-CA-147341  
01-CA-147345**

**SERVICE EMPLOYEES INTERNATIONAL  
UNION, LOCAL 32BJ**

**And**

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS LOCAL UNION NO. 25  
(Party to the contract)**

*Colleen Fleming Esq., and  
Laura Paul Esq., for  
General Counsel.*

*James I. Grosso Esq., counsel for  
the Respondent.*

*Ingrid Nava Esq., counsel for Local  
32BJ.*

*Renee J. Bushey Esq., and Nicholas  
M. Chalupa Esq., counsel for  
Teamsters Local No. 25.*

**Decision**

**Statement of the Case**

Raymond P. Green, Administrative Law Judge. I heard this case on July 6, 7, and 8, 2015, in Boston, Massachusetts. The charges in this proceeding were filed on March 2 and 3, 2015. The complaint that was issued on May 29, alleged as follows:

1. That prior to February 21, 2015, the janitorial work performed at a facility located in Cross Point, Lowell, Massachusetts, was performed by Peace Plus Maintenance, a company that had a collective-bargaining agreement with Local 32BJ. That contract ran from October 1, 2012, through October 30, 2016.

2. That on or about February 21, 2015, the Respondent assumed the janitorial functions at the Cross Point facility and has continued to perform such services in basically an unchanged form.

3. That in February 2015, the Respondent refused to hire various employees of Peace Plus because they were members of or represented by Local 32BJ.

4. That but for the discriminatory refusal to hire employees represented by Local 32BJ, a majority of the work force at Cross Point would have consisted of former employees of Peace

Plus and therefore the Respondent incurred an obligation to recognize and bargain with Local 32BJ.

5 5. That since February 21, 2015, the Respondent, without affording Local 32BJ an opportunity to bargain, established rates of pay, benefits and other terms of employment that vary from the terms set forth in the contract between Local 32BJ and Peace.

10 6. That on or about February 4, 2015, the Respondent by its agent, Lorelei Deloge, gave assistance to Teamsters Union No. 25 by supplying employees with Teamster application packages.

15 7. That on or about February 21, 2015, the Respondent recognized Teamsters Union No. 25 notwithstanding that this union did not represent an uncoerced majority of the employees in the Cross Point unit.

15 8. That on or about February 21, 2015, the Respondent entered into a contract with Teamsters Union No. 25 covering the Cross Point employees containing a union-security provision.

20 9. That prior to February 28, 2015, the janitorial work performed at a facility located at, Nagog Park, Massachusetts, was performed by Peace Plus Maintenance, which had a collective-bargaining agreement with Local 32BJ. That contract ran from October 1, 2012, through September 30, 2016.

25 10. That on or about February 28, 2015, the Respondent assumed the janitorial functions at the Nagog Park facility and continued to perform such services in basically an unchanged form.

30 11. That in February 2015, the Respondent refused to hire various employees of Peace Plus because they were members of or represented by Local 32BJ.

35 12. That but for the discriminatory refusal to hire employees represented by Local 32BJ, a majority of the work force at Nagog Park would have consisted of the former employees of Peace Plus and therefore, the Respondent incurred an obligation to recognize and bargain with Local 32BJ.

40 13. That since February 28, 2015, the Respondent, without affording Local 32BJ an opportunity to bargain, established rates of pay, benefits and other terms of employment that vary from the terms set forth in the contract between Local 32BJ and Peace.

45 14. That in mid-February 2015, the Respondent by its agents, Deloge and Gary Perrin, assisted the Teamsters by telling the employees at Nagog Park that they were represented by the Teamsters and by distributing to them, Teamster application packets.

45 15. That on or about February 28, 2015, the Respondent recognized Teamsters Union No. 25 notwithstanding that this union did not represent an uncoerced majority of the employees in the Nagog Park unit.

50 16. That on or about February 28, 2015, the Respondent entered into a contract with Teamsters Union No. 25 covering the employees at Nagog Park containing a union-security provision.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs, I make the following

5

## Findings and Conclusions

### I. Jurisdiction

10 It is admitted and I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I also find that the Unions are labor organizations within the meaning of Section 2(5) of the Act.

### II. The alleged unfair labor practices

15 Prior to February 2015, a company called Peace Plus performed janitorial functions for various customers including one that was located at Cross Point, in Lowell, Massachusetts, and the other located at Nagog Park, Massachusetts. The employees at each facility had, for a long time, been represented by the Charging Party, Local 32BJ. The last collective-bargaining agreement covering these employees ran for a term from October 1, 2012, through October 30,  
20 2016. The contract covered employees at both locations as part of a single bargaining unit.<sup>1</sup> At Cross Point, Peace Plus employed about 19 to 20 employees. The facility at Nagog Park was somewhat smaller and Peace Plus employed about 9 employees at that location.

25 Emerald Green is also engaged in the business of providing janitorial services for commercial customers. Its primary area of business includes Massachusetts and New Hampshire. It has long recognized Teamsters Local 25 as the representative of its employees and they are covered by a single company-wide collective-bargaining agreement. This collective-bargaining agreement is somewhat similar in terms of wages and benefits as the contract between Peace Plus and Local 32BJ. There are differences, but the economic cost per  
30 employee seems to be roughly comparable.

35 There is no dispute regarding the fact that the Respondent and Teamsters Local 25 applied their existing collective-bargaining agreement to the employees working at both Cross Point and Nagog park and agreed to do so even before any employees were hired by Emerald Green for those locations. The rationale for doing so is the claim that these two facilities constituted accretions to the existing bargaining unit represented by Teamsters Local 25. The evidence in this case establishes that Emerald Green extended its existing labor agreement to the employees at these two locations without any showing that employees at these locations voluntarily chose to be represented by Teamster Local 25. Thus, unless the Respondent can  
40 establish that the employees at these two locations have little or no separate group identity and share an overwhelming community of interest to the preexisting unit to which they are claimed to be an accretion, then the Respondent will have violated Section 8(a)(1), (2), and (3) of the Act.

45 Both collective-bargaining agreements contain union-security and dues-checkoff authorization clauses.

---

<sup>1</sup> In fact, the bargaining unit in the Local 32BJ contract covered all locations of Peace Plus within the States of Massachusetts, Rhode Island, and New Hampshire.

The principle managerial people for Emerald Green involved in this case are Paul McAleer, its president; Gary Perrin, its regional operations manager; Lorelle Deloge, an area manager; Luis Mejia, another area manager; and Jon DoCarmo the operations manager.

5 On or about January 30, 2015, CBRE Management after receiving bids, awarded a contract for cleaning services at the Cross Point facility to Emerald Green.

10 At about the same time, a company called CRE Management awarded a contract for cleaning services to Emerald Green at a facility located at Nagog Park.

For purposes of this decision, the facts although complementary for each location, will be treated separately in order to avoid confusion.

### 15 **The Cross Point Location**

15 Prior to taking over the cleaning services at this location, the predecessor company, (Peace Plus), at the time that it ceased performing services, employed 17 full time employees and two other employees who worked on an “on call” basis. The 17 full time employees were covered by the collective-bargaining agreement with the Charging Party, Local 32BJ.<sup>2</sup> The  
20 record also shows that prior to losing the contract, Peace Plus, employed two additional employees who worked on a part-time basis. Of these two, Dolores Feliz, who had been laid off by Peace Plus in August 2014, was brought back as an “on call” employee, who by the time that Peace Plus lost the contract, was working sufficient hours per week to be part of the bargaining unit. The other employee, Marianela Santana, worked fewer hours than Feliz and may not have  
25 worked the 15 hour per week minimum that would place her in the category of a contractually covered employee.

30 Between the time that Emerald Green was awarded the contract and the time that it began work at Cross Point, it solicited job applications from the Peace Plus employees who worked at this location. In this regard, these employees were given a package of documents that included applications, I-9 forms, W-4 forms, direct-deposit forms and more significantly for our purposes, Teamster Local 25 membership applications and dues-checkoff forms. In relation to its hiring plans, the evidence shows that Emerald Green intended to hire, on a permanent basis, a complement of about 18 employees for the Cross Point facility.

35 The evidence shows that on February 3, 2015, representatives of Emerald Green went to Cross Point for the purpose of meeting with the employees, but the employees did not show up for the meeting. Nevertheless, they did meet with a few employees and handed out the aforementioned job application packages.

40

---

<sup>2</sup> The General Counsel noted that although an employee named Alejandra Vivas Rojas appeared on the Cross Point payroll for a short time, the evidence strongly suggests that she had worked at both Cross Point and Nagog Park at different times and that in the final week before Peace Plus lost the contract at Cross Point, she was not employed at that location. In any event, she did not apply for a job with the Respondent and therefore cannot be construed as a discriminate. The General Counsel also noted that Hector Bentacur Arango, another person who was employed by Peace Plus at Cross Point, was considered to be a supervisor and was not covered by the collective-bargaining agreement. After Peace Plus lost the contract, he was hired by Emerald Green for that location.

On February 4, 2015, representatives of Emerald Green met with about 15 of the employees. Gary Perrin, Emerald Green’s regional operations manager, explained that the Company had a contract with Teamsters Local 25. Thereafter, Deloge told the employees that Emerald Green was taking over the cleaning work from Peace Plus and she handed out job application packages containing the materials described above. Also at the meeting, Mejia, speaking in Spanish, told the employees to fill out the applications and return them the following day. He also told the employees that Emerald Green had its own union, which was different from Local 32BJ.

On February 6, the employees of Peace Plus gave the completed applications to Silvia Clark, their former shop steward, who then handed them over to Deloge. It is noted that among the people who submitted job applications was Maria Gonsalves, an individual who was, and still is, employed by Local 32BJ as a union representative. She was not an employee of Peace Plus.

Another meeting at Cross Point was held on February 13, where among other things, employee documents such as social security cards, licenses, or other photo IDs were copied.

Documents subpoenaed by and offered into evidence by the General Counsel establish that job application packages were submitted to Emerald Green by the following 17 people who had been employed by Peace Plus in bargaining unit jobs:

Gloria Guerra	Robert Mieses
Orlando De Jesu Parra	Cesar Cedano Presinal
Adalberto Mendez Quezada	Monica Mendez
Francisco Tapia Lagrange	Silvia Clark
Arcelia Curiel	Ruth Marquez
Dorca Marquez	Salvador Velasquez
Martina Jimenez	Carmen Hernandez-Vasquez
Laura Vivas Rojas	Dolores Feliz <sup>3</sup>
Marianela Santana <sup>4</sup>	

In addition, the evidence supports the conclusion that Francisco Velasquez Allende submitted a job application through Silvia Clark. Clark testified that she filled out his application inasmuch as this employee was not literate and only spoke Spanish.

Thus, of the 19 full-time and part-time nonsupervisory persons employed by Peace Plus at the Cross Point facility immediately prior to the work being taken over by Emerald Green, 17 applied for jobs at the Respondent.

In addition to receiving job applications and supporting documents from the Peace Plus employees, the Respondent also received job applications from a number of other persons, many of whom, according to their job applications, had no prior experience in this industry.

<sup>3</sup> As noted above, Dolores Feliz worked as a part-time employee while at Peace Plus and was covered by the collective-bargaining agreement.

<sup>4</sup> As noted above, Marianela Santana worked in a job classification that was covered by the Local 32BJ contract but may not have worked sufficient hours per week to have been part of the unit. She nevertheless, worked under the same terms and conditions of employment and performed the same job duties as the other employees.

5 Between February 13 and February 21, the job applications were reviewed by Perrin. In this regard, Perrin testified that he consulted with Maria Elena Toro who had previously worked for Peace Plus at Nagog Park and essentially asked her opinion about the employees at Cross Point. His testimony was that although she did not tell him that any of these employees were unqualified or no good, she indicated her disapproval by a shrug of her shoulders. This is, to my mind, a slim thread upon which to base a defense and I note that neither he nor she testified that she expressed, in any verbal way, her disapproval of any of the employees who were then working at Cross Point.

10 On February 20, 2015, Perrin contacted various individuals and asked them to attend an orientation meeting on February 21.

15 On February 21, Emerald Green began working at the site. But before doing so, former employees of Peace Plus showed up that morning. Nevertheless, only six were allowed to attend the orientation meeting. DoCarmo told the remainder that they were not on the list but that Emerald Green had jobs at other locations and that they might be called later.

20 At the orientation meeting held on February 21, Robert Augier, a representative of Teamsters Local 25, was introduced to the newly hired employees who were told that Local 25 had a contract with the Respondent. Augier then handed out union membership and dues-checkoff cards to the employees who were informed that they had to fill out these documents.

25 As noted above, the Respondent hired Maria Gonsolvo not knowing that she was a Local 32BJ union representative. She testified that on February 25, 2015, she asked John DoCarmo why the Respondent did not hire all of the employees who had worked at Cross Point. He responded that Emerald Green could not have a majority of the previous workers because it had its own union. DoCarmo also stated that not all of the previous employees had all of their documents and she countered that they did. Gonsolvo testified that DoCarmo stated that he could not give them jobs at this location at this time, but that he might be able to find jobs for them at other locations. DoCarmo denied that he had such a conversation with any employee. Nevertheless, as the testimony of Gonsolvo is consistent with the testimony of two other individuals described below in relation to the Nagog Park location, I am going to credit her version.

35 The evidence shows that the normal complement of employees doing work on a permanent basis at the Cross Point location has numbered about 17 or 18. However, during the first week of its operations, the Respondent employed a group of five people who were classified as "flood" employees; the latter being brought in from other locations in order to get the facility in sparkling good shape. The flood group employees consisted of Ramon Alcantaro, Bai Bangura, Franklin Genao, Matthew Perris, and Layla Saad. This group of employees had been brought into this location only on a temporary basis; were on a separate payroll; and were not intended to be assigned to this location on a regular basis. Also, during the second week of operations when there were 23 people on the payroll, this number was above normal because some of the employees initially hired on February 21, left and replacements were hired during the same week.

Among the initial group hired by Emerald Green for Cross Point, were the following Peace Plus employees who had been employed at Cross Point: <sup>5</sup>

5	Silvia Clark Carmen Hernandez Martina Jimenez	Francisco Tapia Lagrange Salvador Velasquez Laura Vivas Rojas <sup>6</sup>
---	---	--

During the pay period from March 1 to 7, the payroll records show that the following former Peace Plus employees were working at Cross Point.

10	Silvia Clark Arcella Curiel Gloria Guerra Carmen Hernandez	Martina Jimenez Francisco Tapia Lagrange Salvador Velasquez
----	---	---

15 The payroll records show that for the next pay periods through the end of March 2015, Dolores Feliz was hired and there were eight former Peace Plus employees working at Cross Point.

20 Thus, although the Respondent ultimately hired about 10 former Peace Plus employees for the Cross Point location, it nevertheless kept the number of former Peace Plus employees just below 50 percent at any given time.

**The Nagog Park Location**

25 Before Emerald Green took over the janitorial work at this location, the work had been done by Peace Plus employees in a unit of about nine people. <sup>7</sup> These were Evelyn Ramos, Nelson Mercado, Jorge Restrepo Vanegas, Ledy Ramirez, Margarita Rivera, Josean Isaac Rivera, Paula Morcelo, Maria Elena Toro, and Daniel Berrio Naranjo. All of these individuals were members of Local 32BJ and covered by the collective-bargaining agreement between that union and Peace Plus.

35 The Respondent asserts that for this location it intended to hire between 10 and 11 employees. In early February 2015, its representatives, Perrin and Deloge, visited the site and spoke to Maria Toro who was the day porter and night lead-person.

Thereafter, on or about February 17, Respondent's representatives met with the employees and distributed employment applications along with the related materials including Teamster Local 25 membership and dues authorization forms.

---

<sup>5</sup> The Respondent hired Maria Gonzalvo without knowing that she was a representative of Local 32BJ. She was not an employee of Peace Plus.

<sup>6</sup> Her twin sister Alejandra Vivas Rojas had been employed previously by Peace Plus, but not at the Cross Point facility at the time that the Respondent took over operations.

<sup>7</sup> The General Counsel points out that Esvin Gonzales, who was employed by Peace Plus at this location, resigned at the end of January 2015 and was therefore not an employee in that unit immediately before the operation was taken over by the Respondent. She also notes that another employee of Peace Plus, Alejandra Vivas Rojas, may or may not have been an employee of Peace Plus at the time of the transition. However, this person did not apply for a job at the Respondent at either the Nagog Park or the Cross Point location and she is not alleged to have been a discriminatee.

On or about February 19, Perrin went back to the site and collected the applications with the accompanying I-9 forms and copies of identification documents. The evidence shows that the nine Peace Plus employees submitted employment applications to the Respondent.<sup>8</sup>

5

The Respondent set up an orientation meeting for February 28 at Nagog Park, and except for five of the former Peace Plus, the others were told to leave. The five that were hired were Nelson Mercado, Paula Morcelo, Maria Elena Toro, Margarita Rivera, and Ledy Ramirez.

10

The Respondent asserted that Perrin consulted with Toro regarding the relative strengths and weaknesses of the Peace Plus employees and made his decision based on her advice. I don't believe this to be the case and it is not, in my opinion, supported by the testimony of either Perrin or Toro.

15

In addition to hiring these five former Peace Plus employees, the Respondent hired additional individuals as permanent employees for the Nagog Park location. As in the case of Cross Point, the Company brought in for the initial phase, two individuals as "flood" employees, Trinayan Bora and Erin Deloge, who did not remain at this location. There also was one additional person hired, this being Donna Madamba, who was employed as a "temporary" employee with part-time hours.

20

The evidence shows that after commencing work at this location and up through the last week of March 2015, the complement of workers started out at 13 and then, because of turnover, reduced itself to 11 and finally to 10 permanent employees. During this entire period, the Respondent employed five former Peace Plus workers, thereby keeping their number at or just below 50 percent of the total complement.

25

On or about February 27, 2015, Local 32BJ began leafleting at Nagog Park. Upon discovering this activity, Thomas McComiskey and Robert Brown, two managers for CRE contacted Perrin to find out why Local 32BJ was handing out leaflets to the public. Thereafter, a meeting was arranged and the credible testimony of both McComiskey and Brown was that Perrin said that the Company was only allowed to hire 49 percent of the former Peace Plus employees so that they could not be accused of raiding Local 32BJ.

30

35

McComiskey and Brown also testified that at another meeting held on March 3, Perrin repeated that Emerald Green, having a different union than Peace Plus, could hire only 49 percent of the former Peace Plus employees otherwise it would be considered a raid. He said that after 30 days, the former Peace Plus employees who hadn't been hired, could reapply for jobs.<sup>9</sup>

40

Although the description of these meetings by McComiskey and Brown was denied by the Respondent, I am going to credit their testimony. These individuals, as far as I can see,

---

<sup>8</sup> Although the Respondent did not seem to have an application from Daniel Berrio Naranjo, this individual credibly testified that he did, in fact, fill out and submit an employment application.

<sup>9</sup> This statement, at first blush, seems somewhat puzzling. But what I think it means that Perrin believed that if Emerald Green hired more than 51 percent of the employees, it would give Local 32BJ a legitimate claim to represent the employees and therefore an extension of the Teamster Local 25 contract to these employees could be construed as a raid by the Teamsters on Local 32BJ.

have no interest in the outcome of this case and as persons representing a third party, having no relationship to Local 32BJ, had no reason to make up such a story.

5 As in the case of Cross Park, there is no dispute about the fact that the Respondent applied its collective-bargaining agreement with Teamster Local 25 and required employees to become members of that Union as a condition of continued employment.

### III. Analysis

10 I understand why a company like Emerald Green would seek to expand its business by bidding for cleaning contracts at places where the existing contractors either have or don't have relationships with other labor organizations.

15 I also understand why the Respondent, having a company-wide collective-bargaining agreement with Teamsters Local 25, would want to have dealings with only one, instead of two unions. The overall expenditure of time, effort and money in dealing with one union would be doubled if an employer was required to deal with two unions for different sets of employees. That this is a rational consideration does not mean that any and all efforts to achieve that goal would be legal.

20 Basically, the Respondent contends that it had a legal right to accrete the people that it hired to perform the cleaning work at Cross Point and Nagog Park to its existing company-wide contract with Teamsters Local 25. It contends that it had the right to do this even notwithstanding the fact that those employees had been historically represented by Local 32BJ. 25 The Respondent contends that it also had the right to hire those employees it chose without an obligation to hire the employees who were employed by the predecessor employer. It asserts that having hired less than 50 percent of the predecessor's employees at each of these locations, it cannot be construed as a Burns successor and therefore it is not bound to bargain with Local 32BJ. Finally, the Respondent asserts that even if it is deemed to be a successor, it 30 had the right to establish its own initial terms and conditions of employment.

#### (a) The 8(a)(2) Allegations

35 The Respondent has a collective-bargaining agreement with Teamsters Local 25 which covers is cleaning employees on a company-wide basis. That contract's recognition clause could be read to require Emerald Green to apply the contract to any newly acquired facilities and this is what happened in the present case. The fact that the Company may have acted in accordance with its contract with Teamsters Local 25 does not, however, make its action legal, unless the employees in the newly acquired facilities are deemed to constitute an accretion to 40 the existing bargaining unit.

In cases involving accretion issues, the Board balances two competing interests. One is the interest of employees to have their own choice in selecting whether or not they wish to be represented by a labor organization. The other is the interest in stability wherein not every minor 45 change in the bargaining unit will require a new election. But the interest in industrial stability is limited. Thus, in *Gitano Group*, 308 NLRB 1172, 1174 (1992), the Board stated:

[W]e emphasize that the Board has followed a restrictive policy in finding accretion because it is reluctant to deprive employees of their basic right to

select their own bargaining representative. Consequently, we will find a valid accretion “only when the additional employees have little or no separate group identity... and when the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted.”<sup>10</sup>

5

Given the facts in this case, I do not believe that the Respondent has proven that the employees at Cross Point and Nagog Park should be construed as being accretions to the larger unit contained in the contract with Teamsters Local 25.

10

For one thing, the Board has a presumption that a single facility unit is appropriate. *North Hills Office Services*, 342 NLRB 437, 444 (2004); *Sierra Realty Corp.*, 317 NLRB 832, 836 (1995). Thus, even though the employees at the two locations were part of a larger unit when employed by Peace Plus, that larger unit was fractured when Peace Plus lost its contracts with the property owners. Accordingly, when that occurred, the Peace Plus multilocation unit, insofar as the Cross Point and Nagog Park locations, reverted to single facility units, which are presumptively appropriate.

15

I also note that the employees at the two locations, consisted respectively of about 17 and 9 employees. This is not an insignificant number of employees and does not, in my opinion, amount to a mere minor change in the existing bargaining unit. It is a relatively large number of individuals whose right to choose their own representative would be disregarded if an accretion were to be found.

20

The record show that although there is some degree of interchange of employees at the various Emerald Green locations, I don't think that the degree of cross facility interchange is more than minimal. Moreover, the testimony of DoCarmo was that all transfers from one location to another are voluntary and are not mandated by the Employer. I note that the locations are physically separate and that the local day-to-day supervision is separate.

25

In short, I conclude that the two locations involved in this case cannot be construed as accretions to the exiting collective-bargaining agreement between Emerald Green and Teamsters Local 25. *Dean Transportation Inc.*, 350 NLRB 48, 59 (2007).

30

Accordingly, because the Respondent extended its contract with Teamsters Local 25 to these employees on the premise that the employees constituted an accretion (and not on the basis of majority support within the local units), I conclude that the Respondent violated Section 8(a)(1) and (2) of the Act. *Int'l Ladies' Garment Workers Union v. NLRB*, 366 U.S. 731, 738 (1961); *Dean Transportation Inc.*, supra.

35

Additionally, I conclude that the Respondent, violated Section 8(a)(1) and (2) when its representatives (a) told employees that they would be represented by Teamsters Local 25 at meetings held in February 2015; (b) solicited employees to sign union authorization cards and dues-checkoff forms for Teamsters Local 25; and (c) by allowing a representative of Teamsters Local 25 to tell new employees at an orientation meeting that they would have to become members as a condition of their employment. *Planned Building Services*, 347 NLRB 670, 676 (2006).

40

45

---

<sup>10</sup> See also *Towne Ford Sales*, 270 NLRB 311 (1984), and *E.I. Du Pont De Nemours Inc.*, 341 NLRB 607, 608 (2004).

Because the collective-bargaining agreement with Teamsters Local 25 contains a union security clause that requires membership as a condition of employment, I also conclude that the Respondent has violated Section 8(a)(3) of the Act. *Dean Transportation Inc.*, supra, slip op. at 60.

5

### (b) The Refusal-to-Hire Allegations

The next question is whether the Respondent discriminated against the employees of Peace Plus when it considered them for hire and when it chose to hire some but not all of those who applied for jobs.

10

The bottom line here is that I credit the testimony of McComiskey and Brown who essentially testified that they were told by Perrin on two occasions that the Respondent could only hire 49 percent of the former Peace Plus employees because Emerald Green had its own union and if they hired more than 49 percent this would be a raid. In my opinion, this meant that Perrin believed that if the Company hired more than 51 percent of the predecessor's employees, it would create a legal claim by Local 32BJ to represent the employees and any claim by Teamsters Local 25 would be considered a raid on the former union.

15

I also credit the testimony of Gonzolvo who testified that John DoCarmo told her that that the Company could not hire a majority of the former employees at Cross Point because it had its own union.

20

McComiskey and Brown were representatives of a third party that had no interest in the outcome of this case and had no reason to favor Local 32BJ over the Respondent or Teamster Local 25. I therefore construe their testimony as being more reliable than the testimony of the Respondent's witnesses. Moreover, the testimony of McComiskey, Brown, and Gonzolvo makes sense. The single most important factor in determining whether a company has an obligation to bargain with a union that represented the employees of a predecessor, is whether the workforce of the new employer, when it reaches a representative complement, is composed of at least 51 percent of the predecessor's employees. *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27 (1987). And since I have already concluded that the Respondent and Teamsters Local 25 extended their collective-bargaining agreement to these employees, it seems obvious to me that the Respondent intended to wind up with only one union representing its employees and to avoid, if possible, an obligation of having to deal with two unions.

25

30

35

In the brief, the General Counsel posited a number of additional factors that would tend to show that the Respondent's refusal to hire the former Peace Plus employees was motivated by a desire to avoid becoming a *Burns* successor.<sup>11</sup> Those factors are, in my opinion, valid. Nevertheless, I am going to rely principally on the testimony described above which, in my view, establishes by direct evidence, a discriminatory motive.

40

In view of the above, it is concluded that the Respondent at Cross Point, refused to initially hire 12 of the former Peace Plus employees for discriminatory reasons. It is also concluded that at Nagog Park, the Respondent initially refused to hire four of the former Peace Plus employees for discriminatory reasons.

45

---

<sup>11</sup> Referring to *NLRB v. Burns Int'l Sec. Services, Inc.*, 406 U.S. 272 (1972).

### (c) The Successorship Allegations

5 The Supreme Court in *Fall River Dyeing & Finishing Corp. v. NLRB*, supra, concluded that whether a company that acquires or takes over the operations of a predecessor, is a “successor” having an obligation to recognize and bargain with an incumbent union, depends upon whether there is a “substantial continuity” of operations and whether a majority of the new work force, in an appropriate unit, consists of the predecessor’s employees when the new employer has reached a “substantial and representative complement.”

10 In this case, there is no question that Emerald Green is engaged in essentially the same industry as Peace Plus. It provides comparable services, using comparable employees, doing comparable jobs. There is no doubt that when Emerald Green took over the cleaning of the two facilities, that there was a “substantial continuity” of operations. In *School Bus Services, Inc.*, 312 NLRB 1 (1993), the Board held regarding continuity, that the questions are (1) whether the business of both employers was essentially the same; (2) whether the employees of the new company are doing the same jobs in the same working conditions, under the same supervisors; and (3) whether the new entity has the same production process, produces the same products and basically has the same customers. See also *Sierra Realty Corp.* 317 NLRB 832, 836 (1995); *Systems Management*, 292 NLRB 1075 (1989), enf’d in part 901 F.2d 279 (3d Cir. 1990); *Steward Granite Enterprises*, 255 NLRB 569, 573 (1991); and *Spruce-Up Corp.*, 209 NLRB 194 (1974).

25 I conclude that the cleaning employees working at each location would constitute an appropriate unit.<sup>12</sup> The problem is that less than 51 percent of the Respondent’s employees at either location consisted of the former Peace Plus employees who were working at these locations immediately before Emerald Green took over.

30 Nevertheless, having determined that the Respondent refused to hire some of the former Peace Plus employees in order to keep their number under a majority, it is concluded that absent such discrimination, the complements at each location would have been composed of more than 51 percent of the predecessor’s employees. As such, I find that but for the illegal refusals to hire, the Respondents would have been a successor employer having an obligation to bargain with Local 32BJ. *CNN America, Inc.*, 361 NLRB No. 47, slip op. at 18 (2014); *Planned Building Services, Inc.*, 347 NLRB 670, 673–674 (2006); *U.S. Marine Corp.* 293 NLRB 669 (1989).

40 Moreover, having concluded that the Respondent attempted to avoid bargaining with Local 32BJ by discriminatorily refusing to hire former employees of Peace Plus, I conclude that the Respondent violated Section 8(a)(1) and (5) of the Act by unilaterally changing the terms and conditions of employment as they existed when these workers were employed by Peace Plus. *CNN America, Inc.*, supra; *Pressroom Cleaners*, 361 NLRB Nos. 57 and 133. For example, in *U.S. Marine Corp.* 293 NLRB 669 (1989), the Board ordered the Respondent to rescind all detrimental unilateral changes that occurred upon the takeover. It stated:

45 We have found that the Respondents unlawfully discriminated against 34 of the predecessor’s former employees by refusing to hire them. Accordingly, we conclude that absent their unlawful purpose, the Respondents would have

<sup>12</sup> This does not mean that each location could constitute the *only* appropriate unit.

retained substantially all the predecessor's employees, and therefore the Respondents were not entitled to set initial terms of employment without first consulting with the Union. (citations omitted).

5

### Conclusions of Law

1. The Respondent, Emerald Green Building Services LLC is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

10

2. Service Employees International Union Local 32BJ and International Brotherhood of Teamsters Local Union No. 25 are labor organizations within the meaning of Section 2(5) of the Act.

15

3. The Respondent is a successor having an obligation to recognize and bargain with Local 32BJ for the cleaning employees located at Cross Point in Lowell Massachusetts and at Nagog Park Massachusetts.

20

4. That the Respondent violated Section 8(a)(1) and (5) by refusing to recognize and bargain with Local 32BJ for the cleaning employees at the foregoing locations.

25

5. The Respondent, by unilaterally changing wages, hours, and other terms and conditions of employment of the employees in the above described units, without first giving notice to and bargaining with Local 32BJ, violated Section 8(a)(1) and (5) of the Act.

30

6. The Respondent by refusing to hire employees who had been employed by its predecessor, Peace Plus, in order to avoid an obligation to bargain with Local 32BJ, violated Section 8(a)(1) and (3) of the Act.<sup>13</sup>

7. The Respondent, by assisting Teamsters Local 25 in soliciting membership applications from newly hired employees at the foregoing locations, violated Section 8(a)(1) and (2) of the Act.

35

8. The Respondent by recognizing and entering into a contract with Teamsters Local 25, without that union representing an uncoerced majority of the employees at the respective locations, violated Section 8(a)(1) and (2) of the Act.

40

9. The Respondent, by entering into and maintaining a collective-bargaining agreement with Teamsters Local 25 that contains provisions requiring membership in that union as a condition of employment, violated Section 8(a)(1) and (3) of the Act.

---

<sup>13</sup> At Cross Point, I conclude that the Company illegally refused to hire the following employees. Gloria Guerra; Robert Mises; Orlando De Jesu Parra; Cesar Cedano Presinal; Adalberto Mendez Quezada; Monica Mendez; Franciso Velasquez Allende; Arcelia Curiel, Ruth Marquez; Dorca Marquez, Dolores Feliz; and Marianela Santana.

At Nagog Park, I conclude that the Company illegally refused to hire the following employees. Daniel Berrio Naranjo; Jorge Restrepo; Josean Isaac Rivera; and Evelyn Ramos.

## Remedy

5 Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

10 Having concluded that the Respondent refused to hire certain employees who formerly were employed by Peace Plus at Cross Point and Nagog Park, it must, to the extent that it has not already done so,<sup>14</sup> offer them employment to their positions of employment at the respective locations where they had previously worked, or if those jobs are no longer available, to substantially equivalent positions of employment. Additionally, it must make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay for this set of employees shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

20 With respect to those employees that Respondent refused to hire, the Respondent shall file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters. The Respondent shall also compensate these employees for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than one year. *Don Chavas, LLC, d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

25 I have also concluded that the Respondent violated the Act by giving illegal assistance to Teamsters Local 25 and by entering into a collective-bargaining agreement with that union in the absence of majority support, for the cleaning employees at the Cross Point and Nagog Park locations. I therefore recommend that the Board issue an Order requiring the Respondent to cease giving effect to that agreement and that the Respondent cease recognizing and bargaining with that union. Also, as that collective-bargaining agreement contains a provision requiring employees to become and remain members of Teamsters Local 25, and contains a dues-checkoff provision, it is recommended that the Respondent reimburse with interest, any employees at either location where it has deducted dues and/or initiation fees from their wages.

35 Having concluded that the Respondent has violated the Act by refusing to recognize and bargain with Local 32BJ, it must offer to bargain with that Union upon request and if an agreement is reached reduce such agreement to writing and execute it. Further, to the extent that the Respondent has adversely affected the wages, hours, and/or terms and conditions of employment by unilaterally changing such terms at the Cross Point and Nagog Park locations, it must reinstate such terms until such time as a new agreement is reached with Local 32BJ, or a valid impasse in bargaining is reached, or in circumstances where Local 32BJ is no longer the 9(a) representative.

45 To the extent that the Respondent's unilateral actions have adversely affected employees at Cross Point or Nagog Park, the Respondent must make them whole, with interest, for the difference between their current wages and benefits and the wages and benefits in existence prior to the unilateral changes. As to this aspect of the Remedy dealing with unilateral

---

<sup>14</sup> There is evidence that some employees of Peace Plus, although not initially hired by the Respondent, were offered jobs at their respective locations after March 2015.

changes, the make-whole remedy shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). As in the case of the employees who were not hired, the Respondent shall file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters. The Respondent shall also compensate these employees for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than one year. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

In addition to the above, the General Counsel seeks a remedy that would require the Respondent to reimburse those employees who were not hired, for any expenses incurred while seeking interim employment. Although I can see the appropriateness of such a remedy, this is not the current law, which treats such expenses as an offset to a discriminatee's interim earning. As the General Counsel is asking that the Board change its current view of the law, I leave it to the Board to make any changes it sees fit.

Finally, as many of these employees speak Spanish as their first language, the Notice should be in English and Spanish.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended <sup>15</sup>

### ORDER

The Respondent, Emerald Green Building Services, LLC, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discouraging activity and support for Service Employees International Union, Local 32BJ by refusing to hire, or in any other manner discriminating against employees with respect to their hours, wages, or other terms and conditions of employment in order to avoid having to recognize and bargain with Local 32BJ or because employees join or support Local 32BJ or any other labor organization.

(b) Refusing to recognize and bargain with Local 32BJ as the exclusive collective-bargaining representative of its cleaning employees at Cross Point, in Lowell, Massachusetts and Nagog Park, Massachusetts.

(c) Unilaterally changing the wages, hours, and other terms and conditions of employment of the employees in the above described units without first giving notice to and bargaining with Local 32BJ.

(d) Providing assistance to and extending its collective-bargaining agreement with International Brotherhood of Teamsters, Local Union No. 25 to the employees in the above

<sup>15</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

described units and maintaining and giving effect to this agreement, including the union-security and dues-checkoff provisions of the contract.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain collectively with Local 32BJ as the exclusive representative of its cleaning employees employed at the Cross Point and Nagog Park facilities with respect to wages, hours, and other terms and conditions of employment, and if an agreement is reached, embody such agreement in a signed document.

(b) Make whole, in the manner set forth in the remedy section of this decision, the unit employees for losses caused by Emerald Green's unilateral changes in the wages and terms and conditions of employment that existed prior to its commencing operations at the Cross Point and Nagog facilities until such time as the parties have reached an agreement, or until a valid impasse in bargaining has occurred, or until such time that Local 32BJ no longer is the legal 9(a) representative for these employees.

(c) Within 14 days from the date of this Order, to the extent that it has not already done so, offer reinstatement to their former jobs, Gloria Guerra; Robert Mieses; Orlando De Jesu Parra; Cesar Cedano Presinal; Adalberto Mendez Quezada; Monica Mendez; Franciso Velasquez Allende; Arcelia Curiel, Ruth Marquez; Dorca Marquez, Dolores Feliz; Marianela Santana; Daniel Berrio Naranjo; Jorge Restrepo; Josean Isaac Rivera; and Evelyn Ramos, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and make them whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the Remedy section of this decision.

(d) Within 14 days from the date of this Order, reimburse any employees at Cross Point or Nagog Park from whose wages, dues or initiation fees for Teamsters Local 25 have been deducted.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facilities at Cross Point and Nagog Park, copies of the attached notice marked "Appendix." <sup>16</sup> Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and

<sup>16</sup> If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, or sold the business or the facilities involved herein, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since February 15, 2015.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. September 10, 2015



---

Raymond P. Green  
Administrative Law Judge

**APPENDIX  
NOTICE TO EMPLOYEES**

**Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

**WE WILL NOT** discourage activity and support for Service Employees International Union, Local 32BJ by refusing to hire them, or in any other manner discriminating against employees with respect to their hours, wages, or other terms and conditions of employment in order to avoid having to recognize and bargain with Local 32BJ or because employees join or support Local 32BJ or any other labor organization.

**WE WILL NOT** refuse to recognize and bargain with Local 32BJ as the exclusive collective-bargaining representative of our cleaning employees at Cross Point, in Lowell, Massachusetts, and Nagog Park, Massachusetts.

**WE WILL NOT** unilaterally change the wages, hours, and other terms and conditions of employment of the employees in the above described units without first giving notice to and bargaining with Local 32BJ.

**WE WILL NOT** provide assistance to and extend our collective-bargaining agreement with International Brotherhood of Teamsters, Local Union No. 25 to the employees in the above described units and maintain and give effect to this agreement, including the union-security and dues-checkoff provisions of the contract.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

**WE WILL** recognize and, on request, bargain collectively with Local 32BJ as the exclusive representative of our cleaning employees employed at the Cross Point and Nagog Park facilities with respect to wages, hours, and other terms and conditions of employment, and if an agreement is reached, embody such agreement in a signed document.

**WE WILL** make whole the bargaining unit employees for any losses caused by our failure to apply the terms and conditions of employment that existed prior to our commencing operations at the Cross Point and Nagog facilities until such time as the parties have reached an agreement or until a valid impasse in bargaining has occurred.

**WE WILL** to the extent that we have not already done so, offer employment to their former jobs, Gloria Guerra; Robert Mieses; Orlando De Jesu Parra; Cesar Cedano Presinal; Adalberto Mendez Quezada; Monica Mendez; Franciso Velasquez Allende; Arcelia Curiel, Ruth Marquez; Dorca Marquez, Dolores Feliz; Marianela Santana; Daniel Berrio Naranjo; Jorge Restrepo; Josean Isaac Rivera; and Evelyn Ramos, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

**WE WILL** make the employees named above, whole with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against them.

**WE WILL** reimburse any employees at Cross Point or Nagog Park from whose wages, dues, or initiation fees for Teamsters Local 25 have been deducted.

**Emerald Green Building Services, LLC**  
**(Employer)**

**Dated** \_\_\_\_\_ **By** \_\_\_\_\_  
**(Representative)** **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

10 Causeway Street, 6th Floor, Boston, MA 02222-1072  
(617) 565-6700, Hours of Operation: 8:30 a.m. to 5:00 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/01-CA-147341](http://www.nlr.gov/case/01-CA-147341) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**  
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 617-565-6701.