



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 4
615 CHESTNUT ST
STE 710
PHILADELPHIA, PA 19106-4413

Agency Website: www.nlr.gov
Telephone: (215)597-7601
Fax: (215)597-7658

October 15, 2015

Gary W. Shinnery, Executive Secretary e-filed
National Labor Relations Board
1099 14th Street, N.W.
Room 5400 East
Washington, DC 20570-0001

Re: SHAWNEE READY-MIX CONCRETE &
 ASPHALT CO., INC.
 Case 04-CA-147344

Dear Executive Secretary Shinnery:

Enclosed please find Counsel for the General Counsel's Motion for Default Judgment in this matter. The Motion is being e-filed, and copies are being sent to the parties at their e-mail addresses listed below.

Very truly yours,

DANIEL E. HALEVY
Counsel for the General Counsel

cc: Scott Kucharski, teamsters401@verizon.net
 George Schall, george.schall@pennsyconcrete.com

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION FOUR**

SHAWNEE READY-MIX CONCRETE
& ASPHALT CO., INC.

and

Case 04-CA-147344

TEAMSTERS LOCAL UNION NO. 401

**COUNSEL FOR THE GENERAL COUNSEL'S
MOTION FOR DEFAULT JUDGMENT**

Pursuant to Sections 102.24 and 102.50 of the Rules and Regulations of the National Labor Relations Board (the Rules and the Board, respectively), Counsel for the General Counsel respectfully moves for a Default Judgment and requests the Board to transfer and continue before the Board the Complaint issued herein and the proceedings related thereto. In support of the Motion, Counsel for the General Counsel states as follows:

1. On March 2, 2015, Teamsters Local Union No. 401 (the Union) filed the charge in the above-captioned matter (Charge) alleging that Shawnee Ready-Mix Concrete & Asphalt Co., Inc. (Respondent), has been violating Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The Charge was duly served upon Respondent by first class mail on March 3, 2015. Copies of the Charge and the letter transmitting the Charge to Respondent are attached as Exhibits 1 and 2, respectively.

2. On June 3, 2015, the Regional Director approved a bilateral informal Settlement Agreement in this matter (Settlement Agreement) resolving the allegations of the Charge. A copy of the fully executed Settlement Agreement, a copy of which is attached as Exhibit 3.

3. The Settlement Agreement and accompanying Notice to Employees required, inter alia, that Respondent: (1) bargain in good faith with the Union; and (2) maintain health insurance coverage for bargaining-unit employees. These requirements were set forth in a letter, a copy of which is attached as Exhibit 4. The provisions in the "Performance" section of the Settlement Agreement described the procedure if Respondent failed to comply with its terms. In that event, and after 14 days notice from the Regional Director of such non-compliance without remedy, the Regional Director would issue a Complaint that included, inter alia, the allegations covered by the Notice to Employees. Other provisions of the Settlement Agreement included that these allegations would be deemed admitted and that Respondent waived its right to file an Answer to the Complaint.

4. After the approval of the Settlement Agreement on June 3, 2015, the Union repeatedly requested that Respondent provide health insurance to bargaining unit employees and schedule bargaining dates. To date, Respondent has not complied with these requests.

5. The Notice of non-compliance (Exhibit 4) was sent to Respondent on August 12, 2015. Respondent has not disputed the facts concerning its non-compliance. Accordingly, a Complaint issued on September 4, 2015 (Complaint), more than 14 days after the letter referred to above in paragraph 3. The Complaint is attached as Exhibit 5.

6. Due to Respondent's refusal to honor its commitments as set forth in the Settlement Agreement, all of the allegations of the issued Complaint in this matter are deemed to be admitted to be true, and they should be so found by the Board.

7. Accordingly, Respondent is in default with respect to the obligations and duties specified in the Settlement Agreement and as set forth in paragraph 3 above.

WHEREFORE, Counsel for the General Counsel, in accordance with Section 102.24 and 102.50 of the Rules requests the following: (1) that a finding be made that Respondent has waived its right to file an Answer to paragraphs 1 through 11 of the Complaint in this matter; (2) Respondent thereby has admitted all allegations contained in the Complaint; (3) without the necessity of trial, a finding be made that all allegations of the Complaint are true; (4) without necessity of trial, a Decision and Order of the Board issue containing findings of fact and conclusions of law consistent with those allegations adverse to Respondent on all issues raised by the pleadings, and that they too be so found; and (5) that a Board Order issue providing a full remedy for the violations found as is customary to remedy such violations, including that bargaining-unit employees be made whole for their losses resulting from Respondent's refusal to maintain health-insurance for the employees.

Signed at Philadelphia, Pennsylvania this 15th day of October, 2015.



DANIEL E. HALEVY

Counsel for the General Counsel
National Labor Relations Board, Region 4
615 Chestnut Street, 7th Floor
Philadelphia, Pennsylvania
(215) 597-7615

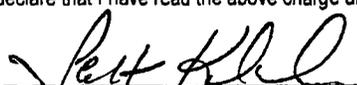
INTERNET
FORM NLRB-501
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 04-CA-147344	Date Filed 3/2/15

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Shawnee Ready Mix Concrete & Asphalt, Inc.	b. Tel. No. 570-779-9586
	c. Cell No.
	f. Fax No. 570-779-9875
d. Address (Street, city, state, and ZIP code) 715 East Main Street Plymouth PA 18651	e. Employer Representative George Schall, President
	g. e-Mail
	h. Number of workers employed 5
i. Type of Establishment (factory, mine, wholesaler, etc.) Concrete & Asphalt Contractor	j. Identify principal product or service Concrete & Asphalt
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 8 (a) 5 _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)	
<p>The employer has failed to fulfill its' obligation under the parties' Collective Bargaining Agreement with regard to maintaining the contractually agreed to health care insurance.</p> <p>As of 2-26-15, covered employees are still not receiving health care benefits as stipulated by the CBA.</p> <p>The company has stated to the employees that they cannot afford to reinstate the coverage.</p>	
3. Full name of party filing charge (if labor organization, give full name, including local name and number)	
Teamsters Local Union No. 401	
4a. Address (Street and number, city, state, and ZIP code) 260 South Washington Street P.O. Box 1420 Wilkes-Barre PA 18703-1420	4b. Tel. No. 570-823-3121
	4c. Cell No.
	4d. Fax No. 570-823-5131
	4e. e-Mail teamsters401@verizon.net
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) International Brotherhood of Teamsters	
6. DECLARATION	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By  (signature of representative or person making charge)	Scott Kucharski, Business Agent (Print/type name and title or office, if any)
260 S. Washington St, P.O. Box 1420, Wilkes-Barre PA 18703	
02-26-2015 (date)	
Tel. No. 570-823-3121	
Office, if any, Cell No.	
Fax No. 570-823-5131	
e-Mail teamsters401@verizon.net	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Exhibit 1



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 4
615 Chestnut St Ste 710
Philadelphia, PA 19106-4413

Agency Website: www.nlr.gov
Telephone: (215)597-7601
Fax: (215)597-7658



Download
NLRB
Mobile App

March 3, 2015

GEORGE SCHALL, PRESIDENT
SHAWNEE READY MIX CONCRETE
AND ASPHALT, INC.
715 EAST MAIN STREET
PLYMOUTH, PA 18651-3205

Re: Shawnee Ready Mix Concrete & Asphalt,
Inc.
Case 04-CA-147344

Dear Mr. Schall:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Examiner JOSHUA D. ROSENBERG whose telephone number is (215)597-9711. If this Board agent is not available, you may contact Supervisory Attorney EMILY DESA whose telephone number is (215)597-7626.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Exhibit 2

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Procedures: We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



DENNIS P. WALSH
Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

**SHAWNEE READY MIX CONCRETE &
ASPHALT, INC.**

Charged Party

and

TEAMSTERS LOCAL 401

Charging Party

Case 04-CA-147344

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on March 3, 2015, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

GEORGE SCHALL, PRESIDENT
SHAWNEE READY MIX CONCRETE
AND ASPHALT, INC.
715 EAST MAIN STREET
PLYMOUTH, PA 18651-3205

March 3, 2015

Date

Edward P. Canavan
Designated Agent of NLRB

Name

/s/ Edward P. Canavan

Signature



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 4
615 Chestnut St Ste 710
Philadelphia, PA 19106-4413

Agency Website: www.nlr.gov
Telephone: (215) 597-7601
Fax: (215) 597-7658

August 12, 2015

George Schall, President
Shawnee Ready Mix Concrete
715 East Main Street
Plymouth, PA 18651-3205

Re: Shawnee Ready Mix Concrete & Asphalt
Co., Inc.
Case 04-CA-147344

Dear Mr. Schall:

On May 19, 2015, the Employer entered into an informal settlement agreement in this case that was approved by the Regional Director on June 3. The settlement agreement and accompanying Notice to Employees require, inter alia, that the Employer: (1) bargain in good faith with the Union, and (2) maintain health insurance coverage for bargaining-unit employees. Since the approval of the settlement agreement, the Union has repeatedly contacted the Employer to request that the Employer provide health insurance to unit employees and to schedule bargaining dates. To date, the Employer has not complied with these requests.

The settlement agreement contains a provision stating that in the event of non-compliance with any of its terms by the Employer, and after 14 days notice from the Regional Director of such non-compliance without remedy, the Regional Director will issue a Complaint that includes, inter alia, the allegations covered by the Notice to Employees. This letter is to notify you of the Employer's non-compliance with the settlement agreement. Please contact Field Examiner Joshua Rosenberg to discuss the steps the Employer will need to take to remedy its non-compliance or if you have questions concerning this letter.

Very truly yours,

/s/ Harold A. Maier

HAROLD MAIER
Acting Regional Director

cc:

Scott Kucharski, Business Agent
Teamsters Local 401
260 South Washington Street
Wilkes-Barre, PA 18701-2801

Exhibit 3

/

— Girls

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party Shawnee Ready Mix Concrete and Asphalt, Inc.		Charging Party Teamsters Local Union No. 401	
By: Name and Title <i>George J. Hall</i> owner	Date 5-15-15	By: Name and Title <i>Scott Kuebel</i> President / Business Agent	Date 6/3/15
Recommended By:  JOSHUA D. ROSENBERG, Field Examiner	Date May 4, 2015	Approved By: <i>Donna P. Wall</i> Regional Director, Region 4	Date 6/3/15

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative 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 do anything to prevent you from exercising the above rights.

WE WILL NOT refuse to bargain collectively and in good faith with Teamsters Local Union No. 401 (the "Union") as the exclusive collective-bargaining representative of our Unit employees.

WE WILL NOT fail and refuse to recognize and adhere to the collective-bargaining agreement, dated May 1, 2013, through April 30, 2015, by failing to maintain health insurance for Unit employees.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL notify and, on request, bargain with the Union as the exclusive collective bargaining representative of our Unit employees before implementing any changes in their wages, hours, or other terms and conditions of employment.

WE WILL, upon request by the Union, rescind changes to the terms and conditions of employment of our Unit employees that we made by failing to maintain their health insurance, and **WE WILL** reinstate health insurance for those employees as required by the collective-bargaining agreement.

WE WILL make whole any Unit employee for losses incurred as a result of our failure to maintain a health insurance plan.

Shawnee Ready Mix Concrete and Asphalt, Inc.

(Employer)

Dated: _____ **By:** _____

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 4**

SHAWNEE READY-MIX CONCRETE &
ASPHALT CO., INC.

and

Case 04-CA-147344

TEAMSTERS LOCAL UNION NO. 401

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based upon a charge filed by Teamsters Local Union No. 401 (the Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 *et seq.* (the Act), and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Shawnee Ready-Mix Concrete & Asphalt Co., Inc. (Respondent) has violated the Act as described below:

1. The charge in this proceeding was filed by the Union on March 2, 2015, and a copy was served by first class mail on Respondent on March 3, 2015.

2. (a) At all material times, Respondent, a Pennsylvania corporation with a facility in Plymouth, Pennsylvania (the Office), has been engaged as a concrete and asphalt contractor in the construction industry.

(b) During the past year, Respondent, in conducting its business operations described above in subparagraph (a), purchased and received at the Office goods valued in excess of \$50,000 from enterprises within the Commonwealth of Pennsylvania, which enterprises are directly involved in interstate commerce.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, George Schall has been Respondent's President, a supervisor of Respondent within the meaning of Section 2(11) of the Act, and an agent of Respondent within the meaning of Section 2(13) of the Act.

5. (a) At all material times, Respondent and the Union have been parties to a series of collective-bargaining agreements, the most recent of which (the Agreement) was effective by its term from May 1, 2013 to April 30, 2015. Pursuant to the Agreement

Respondent has recognized the Union as the exclusive collective-bargaining representative of its Dump Truck, Concrete and Ready-Mix operators (the Unit).

(b) At all material times, the Unit has been appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

(c) At all times since at least May 1, 2013, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

6. At all material times, the Agreement has included, inter alia, the following terms:

Article VI:

1. The Company shall select and pay the premiums as stated herein for a Health and Welfare Plan equal to the plan in place as of May 1, 2007, in which some of the deductible may be self-insured by the Company in order to provide a net \$250 deductible to the employee. The Company will pay for dental and vision coverage.
 2. For all employees on the Company payroll as of April 30, 2001, (names listed on last page), the Company agrees to contribute into the Health and Welfare Plan to completely cover the employee, either as single or family coverage.
 3. The Company will pay a maximum of \$425.00 per month into the Health and Welfare plan for anyone hired after 05/01/01.
 4. If an employee with five (5) or more years of service is off for sickness or accident, the Company shall pay six (6) months premium while employee is off.
 5. It is agreed and understood in order to qualify for the Health and Welfare Plan, the employee must work sixty (60) hours or more the previous month.
 6. An employee shall not be entitled to Health and Welfare Benefits until after ninety (90) days of employment.
 8. Any employee choosing to opt out of the Health and Welfare plan will receive a monthly stipend as listed.
7. The subjects set forth above in paragraph 6 relate to the wages, hours and other terms or conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.
8. Since on or about October 3, 2014, Respondent has failed and refused to pay the premiums and to make other contributions to provide the benefits referred to above in paragraph 6 as required by the Agreement, thereby causing Blue Cross Blue Shield, the health insurer, to cancel the health insurance benefits and coverage for certain Unit employees.

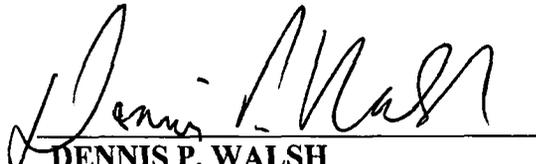
9. Respondent engaged in the conduct described above in paragraph 8: (a) when the Agreement was in effect (i.e. until April 30, 2015) without the Union's consent; and (b) after the Agreement expired on April 30, 2015, without giving the Union notice and an opportunity to bargain with Respondent concerning its failure and refusal to pay the premiums, to make contributions to the Health and Welfare plan, and to pay stipends to Unit employees.

10. By the conduct described above in paragraphs 7, 8 and 9, Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

11. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

Because Respondent has previously agreed, by executing the Settlement Agreement in this case which I approved on June 3, 2015, that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to the Complaint, no Answer is required and no hearing is necessary.

Signed at Philadelphia, Pennsylvania, this 4th day of September 2015.


DENNIS P. WALSH
Regional Director, Region 4
National Labor Relations Board