



United States Government

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

February 12, 2016

Michael E. Gans, Clerk
U.S. Court of Appeals
for the 8th Circuit
Thomas F. Eagleton Courthouse, Room 24.329
111 South 10th Street
St. Louis, MO 63102

Re: *NLRB v. Missouri Red Quarries, Inc.*
Board Case No. 14-CA-165057

Dear Mr. Gans:

I am enclosing an original and four copies of the National Labor Relations Board's application for enforcement of its order in this case. Within 40 days of the Court's docketing of this application, I will file the agency record and a certified list of its contents.

Please serve a copy of this application on the Respondent, Missouri Red Quarries, Inc., whose address appears on the service list. I have served a copy of the application on each party admitted to participate in the Board proceedings, and their names and addresses also appear on the service list.

I am counsel of record for the Board, and all correspondence should be addressed to me. I would appreciate your furnishing the Board's Regional Director, whose name and address also appear on the service list, with a copy of any correspondence the Court sends to counsel in this case.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Linda Dreeben".

Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, D.C. 20570

Encls.

SERVICE LIST

NLRB v. Missouri Red Quarries, Inc.
Board Case No. 14-CA-165057

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Respondent

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Charging Party's Counsel

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Charging Party

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Regional Director

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NATIONAL LABOR RELATIONS)
BOARD)
) Petitioner)
))
) v.)
))
MISSOURI RED QUARRIES, INC.)
) Respondent

APPLICATION FOR ENFORCEMENT
OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board hereby applies to the Court for enforcement of its Order issued against Missouri Red Quarries, Inc., on February 1, 2016, in Board Case No. 14-CA-165057, reported at 363 NLRB No102. The Board seeks enforcement of its Order in full.

The Court has jurisdiction over this application pursuant to Section 10(e) of the National Labor Relations Act, as amended (29 U.S.C. § 151, 160(e)). Venue is proper in this Circuit because the unfair labor practice(s) occurred in Ironton, Missouri.



Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, D.C. 20570
(202) 273-2960

Dated at Washington, D.C.
this 12th day of February 2016

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NATIONAL LABOR RELATIONS)
BOARD)
) Petitioner)
))
) v.)
))
MISSOURI RED QUARRIES, INC.)
) Respondent)

CERTIFICATE OF SERVICE

The undersigned certifies that one copy of the Board's application for enforcement of its order in this case is being served today by UPS next day air mail upon the following counsel:

Rick E. Temple, Esquire
Law Offices of Rick E. Temple , LLC
1358 E Kingsley Street
Suite D
Springfield, MO 65804-7222



Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, D.C. 20570

Dated at Washington, D.C.
this 12th day of February 2016

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Missouri Red Quarries, Inc. and Eastern Missouri Laborers' District Council. Case 14-CA-165057

February 1, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND MCFERRAN

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on November 30, 2015, by Eastern Missouri Laborers' Council (the Union), the General Counsel issued the complaint on December 7, 2015, alleging Missouri Red Quarries, Inc. (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain following the Union's certification in Case 14-RC-151115. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On December 21, 2015, the General Counsel filed a Motion for Summary Judgment. On December 22, 2015, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the certification of representative on the basis of its contention in the underlying representation proceeding that the Regional Director and the Board improperly found an employee to be a statutory supervisor and erroneously sustained the Union's challenge to his determinative ballot.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We

therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with its principal offices located in Elberton, Georgia and a facility located in Ironton, Missouri (the Respondent's facility) and has been engaged in the production and nonretail sale of granite.

In conducting its operations during the 12-month period ending November 30, 2015, the Respondent sold and shipped from its Ironton, Missouri facility goods valued in excess of 50,000 directly to points outside the State of Missouri.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held on May 19, 2015, the Union was certified on August 5, 2015, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees employed at the Employer's Ironton, Missouri facility, excluding, office clerical and professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

By letters dated August 7 and November 20, 2015, the Union requested that the Respondent meet and bargain collectively with the Union as the exclusive collective-bargaining representative of the unit employees. Since about August 7, 2015, the Respondent has failed and refused to do so.

We find that this failure and refusal constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about August 7, 2015, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, Missouri Red Quarries, Inc., Ironton, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Eastern Missouri Laborers' Council as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) 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) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production and maintenance employees employed at the Employer's Ironton, Missouri facility, excluding, office clerical and professional employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Ironton, Missouri, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, 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 Respondent at any time since August 7, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 14 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 1, 2016

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

¹ If this Order is enforced by a judgment of a 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."

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey 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 fail and refuse to recognize and bargain with Eastern Missouri Laborers' Council as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time production and maintenance employees employed at our Ironton, Missouri facility, excluding, office clerical and professional employees, guards and supervisors as defined in the Act.

MISSOURI RED QUARRIES, INC.

The Board's decision can be found at www.nlr.gov/case/14-CA-165057 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.

