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Emerald Green Building Services, LLC and Service Employees International Union, Local 32BJ and International Brotherhood of Teamsters Local Union No. 25. Cases 01–CA–147341 and 01–CA–147345

August 26, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND HIROZAWA

On September 10, 2015, Administrative Law Judge Raymond P. Green issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief. The General Counsel filed cross-exceptions and a supporting brief, the Respondent filed an answering brief, and the General Counsel filed a reply.

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

The Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the judge's rulings, findings,¹

¹ In his decision, the judge inadvertently stated that a collective-bargaining agreement that the Respondent's predecessor has with SEIU Local 32BJ (SEIU) will expire on October 30, 2016. That agreement expires on September 30, 2016. This error does not affect our disposition of this case.

We adopt the judge's finding that the Respondent violated Sec. 8(a)(5) and (1) by unilaterally changing employees' terms and conditions of employment. In doing so, we rely on the holding of *Love's Barbeque Restaurant No. 62* that a successor employer forfeits its right to set its own initial terms when it unlawfully refuses to hire the predecessor's employees. 245 NLRB 78, 82 (1979), *enfd.* in relevant part sub nom. *Kallmann v. NLRB*, 640 F.2d 1094 (9th Cir. 1981). Our dissenting colleague contends that *Love's Barbeque* was wrongly decided. We disagree and adhere to the findings and rationale in *Love's Barbeque*, which "has not been questioned by any Board or judicial decision" in the 35 years since it was decided. *Pressroom Cleaners*, 361 NLRB No. 57, slip op. at 2 fn. 5 (2014).

Member Miscimarra agrees that the Respondent was a legal successor obligated to recognize and bargain with SEIU, and that it unlawfully failed to do so. He believes, however, that the Respondent still had a right to unilaterally set different initial terms and conditions of employment. He recognizes that the Board in *Love's Barbeque*, above, held that a successor employer forfeits its right to set its own initial terms when it engages in discrimination in its hiring process. However, as explained in his partial dissent in *CNN America, Inc.*, 361 NLRB No. 47, slip op. at 43–44 (2014), he disagrees with the holding in *Love's Barbeque* because, in his view, it inappropriately deviates from the Supreme Court's holdings in *NLRB v. Burns Security Services, Inc.*, 406 U.S. 272 (1972), and *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27 (1987), that a predecessor's contractual obligations do not bind a legal successor. If an employer engages in discriminatory

and conclusions,² to amend the remedy,³ and to adopt his recommended Order as modified and set forth in full below.⁴

hiring to defeat legal successor status, the appropriate remedy is to order the employer to hire the discriminatees and make them whole and to require it to recognize and bargain with the union recognized by the predecessor. See *Pacific Custom Materials, Inc.*, 327 NLRB 75, 75–76 (1998) (Member Hurtgen, dissenting). Regarding these issues, he believes that the Board is constrained by *Burns* and *Fall River Dyeing*, in addition to Sec. 8(d) of the Act, from imposing substantive contract terms on the successor. See also *H. K. Porter Co. v. NLRB*, 397 U.S. 99, 107–108 (1970). To the extent that the Board continues to apply *Love's Barbeque*, he would permit a respondent to limit its make-whole liability by proving at the compliance stage that it would not have agreed to the monetary provisions of its predecessor's collective-bargaining agreement and the date when and terms on which it would have bargained either to an agreement or impasse. See *Pressroom Cleaners*, above, 361 NLRB No. 57, slip op. at 6–12 (Members Miscimarra and Johnson, dissenting).

² We have amended the judge's conclusions of law to conform to the violations found.

³ We find merit in the General Counsel's exception to the judge's failure to recommend that the notice be read aloud to employees by the Respondent's Regional Operations Manager Gary Perrin. Specifically, we observe that the Respondent's managers, including Perrin, met with the predecessor's employees at the outset of the application process, informed them that the new work force would be represented by Teamsters Local 25, and solicited them to join that union. In these circumstances, we find that a public reading of our remedial notice is appropriate "to dissipate as much as possible any lingering effects of the Respondent's unfair labor practices," and it will allow the employees to "fully perceive that the Respondent and its managers are bound by the requirements of the Act." *Homer D. Bronson Co.*, 349 NLRB 512, 515 (2007), *enfd.* mem. 273 F. Appx. 32 (2d Cir. 2008). Therefore, we will require the Respondent to convene a meeting or meetings for all unit employees, at the two facilities at which the employees affected by these unfair labor practices work, at which the remedial notice shall be read aloud to the Respondent's employees by Perrin in the presence of a Board agent and an agent of SEIU if the Region or SEIU so desires, or, at the Respondent's option, by a Board agent in Perrin's presence and, if SEIU so desires, that of an agent of SEIU. Given that many of the Respondent's employees speak Spanish, we will require the Respondent to provide a Spanish language interpreter, who shall translate aloud for the assembled unit employees the language of the notice.

Member Miscimarra disagrees with his colleagues that a notice-reading remedy is warranted in this case. The Board has recognized that this extraordinary remedy may be warranted "where the violations are so numerous and serious that the reading aloud of a notice is considered necessary to enable employees to exercise their Section 7 rights in an atmosphere free of coercion, or where the violations in a case are egregious." *Postal Service*, 339 NLRB 1162, 1163 (2003). Here, the Respondent's unfair labor practices do not rise to what has traditionally been regarded as an egregious level of misconduct. Accordingly, he would not order notice reading.

In accordance with our recent decision in *King Soopers*, 364 NLRB No. 93 (2016), we amend the remedy to provide that the Respondent shall compensate affected employees for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). For the reasons stated in his separate

AMENDED CONCLUSIONS OF LAW

1. Substitute the following for Conclusion of Law 7.

“7. The Respondent violated Section 8(a)(2) and (1) of the Act by telling employees, at meetings held in February 2015, that they would be represented by Teamsters Local 25; by soliciting employees to sign union authorization cards and dues-checkoff forms for Teamsters Local 25; and by allowing a representative of Teamsters Local 25 to tell new employees at an orientation meeting that they would have to become members of Teamsters Local 25 as a condition of their employment.”

2. Add the following as Conclusion of Law 10.

“10. By the foregoing conduct, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.”

ORDER

The National Labor Relations Board orders that the Respondent, Emerald Green Building Services, LLC, Norwood, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to hire the former employees of P.E.A.C.E. Plus Maintenance Corporation (Peace Plus) because they were members of and supported Employees International Union, Local 32BJ (SEIU).

(b) Refusing, as a successor to Peace Plus, to recognize and bargain with SEIU as the exclusive collective-bargaining representative of its employees at the Cross Point property in Lowell, Massachusetts, and at the Nagog Park property in Acton, Massachusetts.

(c) Unilaterally changing the terms and conditions of employment for employees at the Cross Point and Nagog Park properties.

(d) Providing assistance and support to Teamsters Local Union No. 25 (Teamsters) by telling employees that they would be represented by Teamsters; by soliciting employees to sign union authorization cards and dues-checkoff forms for Teamsters; and by allowing a Teamsters' representative to tell new employees that they would have to become members of Teamsters as a condition of their employment.

opinion in *King Soopers*, supra, slip op. at 9–16, Member Miscimarra would adhere to the Board's former approach, treating search-for-work and interim employment expenses as an offset against interim earnings.

⁴ In accordance with our decision in *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016), we shall modify the judge's recommended tax compensation and Social Security reporting remedy. We shall modify the judge's recommended Order to reflect this remedial change, to include a notice-reading provision, to conform to the violations found and the Board's standard remedial language, and in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996), and *Excel Container, Inc.*, 325 NLRB 17 (1997). We shall substitute a new notice to conform to the Order as modified.

(e) Assisting, recognizing, and bargaining with Teamsters as the collective-bargaining representative of the employees who are employed at the Cross Point and Nagog Park properties when that union did not represent an uncoerced majority of the unit employees.

(f) Extending and giving effect to the terms of its July 1, 2014, to December 31, 2016 collective-bargaining agreement with Teamsters, or any renewal, extension, or modification thereof, to the employees who are employed at the Cross Point and Nagog Park properties.

(g) 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 with SEIU as the exclusive representative of the employees in the following appropriate bargaining units concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All employees, as further defined in Article 3 of the 2012-2016 collective-bargaining agreement between SEIU Local 615 and Maintenance Contractors of New England, employed by the Respondent at the Cross Point property in Lowell, Massachusetts.

All employees, as further defined in Article 3 of the 2012-2016 collective-bargaining agreement between SEIU Local 615 and Maintenance Contractors of New England, employed by the Respondent at the Nagog Park property in Acton, Massachusetts.

(b) Notify SEIU in writing that it recognizes SEIU as the exclusive representative of its unit employees under Section 9(a) of the Act and that it will bargain with the SEIU concerning terms and conditions of employment for employees in the units described above.

(c) On request of SEIU, rescind any departures from terms and conditions of employment that existed immediately prior to the Respondent's takeover of predecessor Peace Plus's operations at the Cross Point and Nagog Park properties, retroactively restoring preexisting terms and conditions of employment, including wage rates and welfare and pension contributions, until it negotiates in good faith with SEIU to agreement or to impasse.

(d) Make the unit employees whole, in the manner set forth in the remedy section of the judge's decision, for any losses caused by the Respondent's failure to apply the terms and conditions of employment that existed immediately prior to its takeover of predecessor Peace

Plus's operations at the Cross Point and Nagog Park properties.

(e) Withdraw and withhold all recognition from Teamsters as the exclusive collective-bargaining representative of its unit employees at the Cross Point and Nagog Park properties unless and until Teamsters has been certified by the National Labor Relations Board as the exclusive collective-bargaining representative of those employees.

(f) Reimburse the unit employees for all initiation fees, dues, and other money paid by them or withheld from their pay pursuant to the terms of the dues-checkoff and union-security clauses in its collective-bargaining agreement with Teamsters, with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily in accordance with *Kentucky River Medical Center*, 356 NLRB 6 (2010).

(g) Within 14 days from the date of this Order, offer employment to the following former unit employees of Peace Plus, who would have been employed by the Respondent but for its unlawful discrimination against them, in their former positions or, if such positions no longer exist, in substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, discharging if necessary any employees hired in their place:

Cross Point

Gloria Guerra	Robert Mieses
Orlando De Jesu Parra	Cesar Cedano Presinal
Adalberto Mendez Quezada	Monica Mendez
Francisco Velasquez Allende	Arcelia Curiel
Ruth Marquez	Dorca Marquez
Dolores Feliz	Marianela Santana

Nagog Park

Daniel Berrio Naranjo	Jorge Restrepo
Josean Isaac Rivera	Evelyn Ramos

(h) Make the employees named in paragraph 2(g) whole for any loss of earnings and other benefits they may have suffered by reason of the Respondent's unlawful refusal to hire them, in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(i) Compensate the employees named in paragraph 2(g) for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 1, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(j) Within 14 days from the date of this Order, remove from its files any reference to the unlawful refusal to hire the employees named in paragraph 2(g) and, within 3

days thereafter, notify them in writing that this has been done and that the refusal to hire them will not be used against them in any way.

(k) 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.

(l) Within 14 days after service by the Region, post at the Cross Point property in Lowell, Massachusetts, and the Nagog Park property in Acton, Massachusetts, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 1, in English and Spanish, 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. 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, 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 February 4, 2015.

(m) Within 14 days after service by the Region, hold a meeting or meetings at the Cross Point property in Lowell, Massachusetts, and the Nagog Park property in Acton, Massachusetts, scheduled to ensure the widest possible attendance, at which the attached notice is to be read to the employees by the Respondent's Regional Operations Manager Garry Perrin in the presence of a Board agent and an agent of SEIU if the Region or SEIU so desires, or, at the Respondent's option, by a Board agent in Perrin's presence and, if SEIU so desires, an agent of

⁵ 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."

SEIU, with translation available for Spanish-speaking employees.

(n) Within 21 days after service by the Region, file with the Regional Director for Region 1 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. August 26, 2016

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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 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 refuse to hire you because you are members of and supported Service Employees International Union Local 32BJ (SEIU).

WE WILL NOT refuse, as a successor to P.E.A.C.E. Plus Maintenance Corporation (Peace Plus), to recognize and bargain with SEIU as your exclusive collective-bargaining representative.

WE WILL NOT unilaterally change your initial terms and conditions of employment without first giving notice to and bargaining with SEIU about those changes.

WE WILL NOT provide assistance and support to Teamsters Local Union No. 25 (Teamsters) by telling you that you would be represented by Teamsters; by soliciting you to sign union authorization cards and dues-checkoff forms for Teamsters; or by allowing a Teamsters' representative to tell you that you would have to become members of Teamsters as a condition of your employment.

WE WILL NOT assist, recognize, or bargain with Teamsters as your collective-bargaining representative when that union does not represent an uncoerced majority of the unit employees.

WE WILL NOT extend or give effect to the terms of our July 1, 2014, to December 31, 2016 collective-bargaining agreement with Teamsters, or any renewal, extension, or modification thereof, to our employees who are employed at the Cross Point and Nagog Park properties.

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 recognize and, on request, bargain with SEIU as the exclusive representative of the employees in the following appropriate bargaining units concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All employees, as further defined in Article 3 of the 2012-2016 collective-bargaining agreement between SEIU Local 615 and Maintenance Contractors of New England, employed by us at the Cross Point property in Lowell, Massachusetts.

All employees, as further defined in Article 3 of the 2012-2016 collective-bargaining agreement between SEIU Local 615 and Maintenance Contractors of New England, employed by us at the Nagog Park property in Acton, Massachusetts.

WE WILL notify SEIU in writing that we recognize it as the exclusive representative of our unit employees under Section 9(a) of the Act and that we will bargain with it concerning the terms and conditions of employment for employees in the units described above.

WE WILL, on request of SEIU, rescind any departures from terms and conditions of employment that existed immediately prior to our takeover of the operations of predecessor Peace Plus, and retroactively restore preexisting terms and conditions of your employment, including wage rates and welfare and pension contributions, until we negotiate in good faith with SEIU to agreement or to impasse.

WE WILL make you whole, with interest, for losses caused by our failure to apply the terms and conditions of employment that existed immediately prior to our takeover of predecessor Peace Plus's operations at the Cross Point and Nagog Park properties, plus reasonable search-for-work and interim employment expenses.

WE WILL withdraw and withhold all recognition from Teamsters as the exclusive collective-bargaining representative of our unit employees at the Cross Point and Nagog Park properties unless and until Teamsters has been certified by the National Labor Relations Board as the exclusive collective-bargaining representative of those employees.

WE WILL reimburse you, with interest, for all initiation fees, dues, and other money paid by you or withheld from your pay pursuant to the terms of the dues-checkoff and union security clauses in our collective-bargaining agreement with Teamsters.

WE WILL, within 14 days from the date of the Board's Order, offer employment to the following former employees of Peace Plus, who would have been employed by us but for our unlawful discrimination against them, in their former positions or, if such positions no longer exist, in substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, discharging if necessary any employees hired in their place:

Cross Point

Gloria Guerra	Robert Mieses
Orlando De Jesu Parra	Cesar Cedano Presinal
Adalberto Mendez Quezada	Monica Mendez
Francisco Velasquez Allende	Arcelia Curiel
Ruth Marquez	Dorca Marquez
Dolores Feliz	Marianela Santana

Nagog Park

Daniel Berrio Naranjo	Jorge Restrepo
Josean Isaac Rivera	Evelyn Ramos

WE WILL make the above-named employees whole for any loss of earnings and other benefits they may have suffered by reason of our unlawful refusal to hire them, less any net interim earnings, plus interest, plus reasonable search-for-work and interim employment expenses.

WE WILL compensate the above-named employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 1, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar quarters for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our unlaw-

ful refusal to hire the above-named employees, and WE WILL, within 3 days thereafter, notify them in writing that we have done so and that we will not use our refusal to hire them against them in any way.

EMERALD GREEN BUILDING SERVICES, LLC

The Board's decision can be found at 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.



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

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

Ingrid Nava, Esq., for Local 32BJ.

Renee J. Bushey, Esq., and Nicholas M. Chalupa, Esq., 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. 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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

FINDINGS AND CONCLUSIONS

I. JURISDICTION

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

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, 2016. The contract covered employees at both locations as part of a single bargaining unit.¹ 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.

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 employee seems to be roughly comparable.

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 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.

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

The principal 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;

¹ 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.

Luis Mejia, another area manager; and John DoCarmo the operations manager.

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.

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.

The Cross Point Location

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.² The 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 worked the 15 hour per week minimum that would place her in the category of a contractually covered employee.

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.

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.

On February 4, 2015, representatives of Emerald Green met

² 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.

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 Clarke, 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 Clarke
Arcelia Curiel	Ruth Marquez
Dorca Marquez	Salvador Velasquez
Martina Jimenez	Carmen Hernandez-Vasquez
Laura Vivas Rojas	Dolores Feliz ³
Marianela Santana ⁴	

In addition, the evidence supports the conclusion that Francisco Velasquez Allende submitted a job application through Silvia Clarke. Clarke 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, 18 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.

Between February 13 and February 21, the job applications were reviewed by Perrin. In this regard, Perrin testified that he

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

⁴ 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.

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.

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

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.

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.

As noted above, the Respondent hired Maria Gonsalves 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. Gonsalves 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 Gonsalves 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.

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:⁵

Silvia Clarke	Francisco Tapia Lagrange
Carmen Hernandez	Salvador Velasquez
Martina Jimenez	Laura Vivas Rojas ⁶

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.

Silvia Clarke	Martina Jimenez
Arcella Curiel	Francisco Tapia Lagrange
Gloria Guerra	Salvador Velasquez
Carmen Hernandez	

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.

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

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.⁷ These were Evelyn Ramos, Nelson Mercado, Jorge Restropo 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.

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.

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

⁵ The Respondent hired Maria Gonsalves without knowing that she was a representative of Local 32BJ. She was not an employee of Peace Plus.

⁶ 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.

⁷ 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.

the nine Peace Plus employees submitted employment applications to the Respondent.⁸

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.

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.

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.

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.

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.

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.⁹

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, 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.

⁸ 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.

⁹ 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.

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

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.

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.

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. 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 had the right to establish its own initial terms and conditions of employment.

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

The Respondent has a collective-bargaining agreement with Teamsters Local 25 which covers its 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 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 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.¹⁰

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.

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.

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.

The record shows 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.

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).

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.

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).

¹⁰ 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 at 60.

(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.

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.

I also credit the testimony of Gonsalves 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.

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 Gonsalves 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.

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.¹¹ 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.

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

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

at Nagog Park, the Respondent initially refused to hire four of the former Peace Plus employees for discriminatory reasons.

(c) The Successorship Allegations

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.”

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), enfd. 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).

I conclude that the cleaning employees working at each location would constitute an appropriate unit.¹² 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.

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 Respondent 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).

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:

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 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).

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.

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.

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.

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.

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.

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.¹³

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.

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.

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.

¹³ At Cross Point, I conclude that the Company illegally refused to hire the following employees. 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; and Mariana 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.

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

REMEDY

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.

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,¹⁴ 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 6 (2010).

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).

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.

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.

To the extent that the Respondent's unilateral actions have adversely affected employees at Cross Point or Nagog Park, the

¹⁴ 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.

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 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 6 (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 recommended¹⁵

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 of 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 de-

¹⁵ 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.

scribed 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."¹⁶ 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 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

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 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 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.

¹⁶ 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."

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