

DEC 20 2016

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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FOR DISTRICT OF COLUMBIA CIRCUIT
DEC 20 2016
CLERK

RECEIVED

EQUINOX HOLDINGS, INC.,

Petitioner,

v.

No. 16-1427

NATIONAL LABOR RELATIONS
BOARD,

Respondent.

ORIGINAL

**PETITION FOR REVIEW OF A DECISION AND ORDER OF
THE NATIONAL LABOR RELATIONS BOARD**

Petitioner Equinox Holdings, Inc. hereby petitions the United States Court of Appeals for the District of Columbia Circuit for review of, and respectfully requests that the Court set aside, the Decision and Order entered by Respondent National Labor Relations Board on December 16, 2016, in Case 20-CA-167342. A copy of the Decision and Order, which is reported at 365 N.L.R.B. No. 3, is attached as Exhibit A.

Dated: December 20, 2016

Respectfully submitted,

EQUINOX HOLDINGS, INC.

By: 
One of Its Attorneys

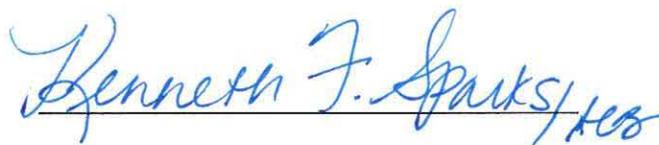
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Review of a Decision and Order of the National Labor Relations Board was placed in the United States mail, postage prepaid, on this date and addressed to:

Linda J. Dreeben
Division of Enforcement Litigation,
Appellate and Supreme Court Litigation
National Labor Relations Board
1015 Half Street S.E.
Washington, D.C. 20570

Dated: December 20, 2016

A handwritten signature in blue ink that reads "Kenneth F. Sparks" with a horizontal line underneath the name.

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EXHIBIT A

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.

Equinox Holdings, Inc. and Service Employees International Union, Local 87. Case 20–CA–167342

December 16, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA
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 January 6, 2016, by Service Employees International Union, Local 87 (the Union), the General Counsel issued the complaint on September 16, 2016, alleging that Equinox Holdings, Inc. (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain with it following the Union's certification in Case 20–RC–153017. (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 October 18, 2016, the General Counsel filed a Motion for Summary Judgment. On October 21, 2016, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. Thereafter, the Respondent filed an opposition to the General Counsel's motion.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain with the Union, but contests the validity of the certification of representative based on its objections to the election in the underlying representation proceeding.

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.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation with offices and places of business located in San Francisco, California, has been engaged in the business of operating sports clubs/fitness centers.

During the calendar year ending December 31, 2015, the Respondent, in conducting its operations described above, derived gross revenues in excess of \$500,000, and purchased and received at its San Francisco, California facilities goods valued in excess of \$5000 that originated from points outside the State of California.

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 June 19, 2015, the Union was certified on November 10, 2015, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time maintenance associates, maintenance MODs, and building ops associates (mechanics) employed by the Employer at its facilities located at 747 Market Street, 301 Pine Street, and 2055 Union Street, San Francisco, California; excluding all other employees, managers, 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

About December 14, 2015, and September 9, 2016, the Union, by letters, requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit. Since about December 14, 2015, the Respondent has failed and refused to recognize and bargain with the Union.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain

¹ Member Miscimarra would have granted review in the underlying representation proceeding as to a portion of the Respondent's Objection 2. He agrees, however, that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice proceeding and that summary judgment is appropriate, with the parties retaining their respective rights to litigate relevant issues on appeal.

with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since December 14, 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, Equinox Holdings, Inc., San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Service Employees International Union, Local 87 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 maintenance associates, maintenance MODs, and building ops associates (mechanics) employed by the Employer at its facilities located at 747 Market Street, 301 Pine Street, and 2055 Union Street, San Francisco, California; excluding all

other employees, managers, guards, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facilities in San Francisco, California, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 20, 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 December 14, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 20 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. December 16, 2016

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

² 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."

EQUINOX HOLDINGS, INC.

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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 fail and refuse to recognize and bargain with Service Employees International Union, Local 87 as the exclusive collective-bargaining representative of our 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 appropriate bargaining unit:

All full-time and regular part-time maintenance associates, maintenance MODs, and building ops associates (mechanics) employed by us at our facilities located at 747 Market Street, 301 Pine Street, and 2055 Union Street, San Francisco, California; excluding all other employees, managers, guards, and supervisors as defined in the Act.

EQUINOX HOLDINGS, INC.

The Board's decision can be found at www.nlr.gov/case/20-CA-167342 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.

