

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

**NOEL CANNING, A DIVISION OF  
THE NOEL CORPORATION**

**and**

**Cases 19-CA-145344  
19-CA-169060**

**TEAMSTERS LOCAL 760**

**DECISION AND ORDER**

**Statement of the Cases**

On July 14, 2016, the National Labor Relations Board issued a decision in Case 19-CA-145344 finding that the Respondent, Noel Canning, A Division of the Noel Corporation, had engaged in certain unfair labor practices.<sup>1</sup> On November 14, 2016, the Board filed in the Ninth Circuit Court of Appeals an application for enforcement of its decision. On March 23, 2017, the court granted the Board's unopposed motion to stay the appellate proceedings pending settlement. The Respondent has agreed that upon the Board's approval of this Formal Settlement Stipulation, it will withdraw, with prejudice, its responsive pleadings pending in the appellate proceedings referenced above.

On May 9, 2016, the Regional Director for Region 19 issued a complaint in Case 19-CA-169060. An evidentiary hearing was convened before Administrative Law Judge Mara-Louise Anzalone, during which the complaint was amended both by oral motion and by issuance of an amendment to the complaint on October 19, 2016, alleging that the Respondent had further violated the Act. The Respondent filed answers to the complaint and the amendment.

On March 27, 2017, the Respondent, Teamsters Local 760 (the Union), and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation regarding both cases, approved by Administrative Law Judge Anzalone as to Case 19-CA-169060 and subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. In Case 19-CA-169060, the parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor. In Case 19-CA-145344, the parties waived any appeal of the Board's Decision; filing of appellate briefs with the Ninth Circuit; oral argument before the Ninth Circuit; the making of findings of fact and conclusions of law by the Ninth Circuit; and all other proceedings to which the parties may be entitled

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<sup>1</sup> 364 NLRB No. 45.

under the Act or the Board's Rules and Regulations or the Rules of Civil and Appellate Procedure, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The Formal Settlement Stipulation is approved and made a part of the record,<sup>2</sup> and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following

### **Findings of Fact**

#### **1. The Respondent's business**

At all material times, the Respondent has been a corporation with an office and place of business in Yakima, Washington (the facility), engaged in the business of bottling and distributing Pepsi-Cola products.

The Respondent, during the 12-month period preceding approval of the Formal Settlement Stipulation, which period is representative of all material times, in conducting its operations described above, derived gross revenues in excess of \$500,000.

The Respondent, during the 12-month period preceding approval of the Formal Settlement Stipulation, which period is representative of all material times, in conducting its business operations described above, purchased and received at the facility goods valued in excess of \$50,000 from points outside the State of Washington.

The Respondent has been at all material times an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act.

#### **2. The labor organization involved**

The Union is a labor organization within the meaning of Section 2(5) of the Act.

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<sup>2</sup> The record in Case 19-CA-145344 consists of the Formal Settlement Stipulation, the administrative law judge's January 28, 2016 decision, the Board's decision, and the application for enforcement. The record in Case 19-CA-169060 consists of the Formal Settlement Stipulation, the charge, the amended charge, the complaint, the amendment to the complaint, and transcript pages 254 line 18, through 258 line 22, which pertain to the oral amendment of the complaint.

## ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, the National Labor Relations Board orders that the Respondent, Noel Canning, A Division of the Noel Corporation, Yakima, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Unilaterally changing the past practice of granting access to Union representatives for the purpose of posting a notice and investigating working conditions.

(b) Abrogating the parties' collective-bargaining agreement by refusing to allow Union representatives access to investigate working conditions.

(c) Refusing to meet and discuss in good faith with the Union regarding any proposed changes in wages, hours, and working conditions, including access by Union business agents.

(d) Restricting the wearing of union hats worn by employees and the granting of employee wage increases.

(e) Making changes to wages, hours, and working conditions without reaching an overall good faith impasse.

(f) Issuing and enforcing policies such that employees are prohibited from wearing hats with union and other non-Respondent insignia in production areas.

(g) Threatening, coercing and disciplining employees for wearing hats with union insignia in the production area.

(h) Retaliating against employees who are subpoenaed to testify in Board proceedings.

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

2. Take the following affirmative actions:

(a) Within 14 days, remove from the Respondent's files all references to the February 4, 2016 verbal warning issued to Dean Berriman and notify him in writing that this has been done and that the verbal warning will not be used against him in any way.

(b) Within 14 days, repeal the Respondent's rule preventing employees from wearing hats with union insignia in the production areas of its facility.

(c) Within 14 days, revise its policies so that they do not restrict Section 7 rights such that employees are permitted to wear hats with union and other non-Respondent insignia in production areas.

(d) Within 14 days, rescind any and all changes to employees' wages, hours, and working conditions if requested by the Union.

(e) Within 14 days, rescind the unilateral change in the parties' practice regarding access to the plant by Union representatives to post union notices and investigate working conditions, and notify the Union in writing that this has been done.

(f) Within 14 days of the Board Order, post at the Respondent's facility copies of the attached Notice to Employees ("Notice") marked Appendix A, on forms provided by Region 19, after being signed by the Respondent's authorized representative. Said Notice shall be posted by the Respondent and maintained for a period of sixty (60) days, in conspicuous places, including all places where notices to its employees are normally posted and which are accessible to employees who work for the Respondent at its facility. The Respondent will take reasonable steps to ensure that the Notices are not altered, defaced, or covered by any other material. The Respondent shall also duplicate and mail, at its own expense, a copy of the Notice to all former employees who have worked for the Respondent at its facility at any time since January 29, 2015.

(g) Within twenty (20) days of the issuance of the Board's Order, file with the Regional Director of Region 19 of the Board, a sworn affidavit from a responsible official describing with specificity the manner in which the Respondent has complied with the terms of the Board's Order, including providing the names and addresses of all former employees the Notice was mailed to, and the locations of the posted documents.

Dated, Washington, D.C., June 20, 2017.

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Philip A. Miscimarra, Chairman

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Mark Gaston Pearce, Member

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Lauren McFerran, Member

(SEAL)

**NATIONAL LABOR RELATIONS BOARD**

**APPENDIX A  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

**PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER  
AND A CONSENT JUDGMENT OF ANY APPROPRIATE  
UNITED STATES COURT OF APPEALS**

**FEDERAL LAW GIVES YOU THE RIGHT TO:**

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

**WE WILL NOT** do anything to prevent you from exercising the above rights.

Teamsters Local 760 (Union) is our employees' representative in dealing with us regarding wages, hours and other working conditions of the employees in the following unit: all our employees working in the job classifications of Lead Production, Industrial Mechanic, Lead Dock/Warehouse, Quality Control/Mixer, Production Employee, Dock/Warehouse, General Maintenance, Electric Mechanic, Construction Worker, Utility Worker, at our Yakima, Washington facility, excluding all other employees, guards, office clerical, owners, and supervisors as defined in the NLRA, as amended.

**WE WILL NOT** deny your Union representatives access to our Yakima, Washington facility for the purpose of posting a meeting notice.

**WE WILL NOT** deny your Union representatives access to our Yakima, Washington facility for any reason set forth in our collective-bargaining agreement with your Union, including to meet with your Union steward in order to investigate working conditions.

**WE WILL NOT** refuse to meet and discuss in good faith with your Union any proposed changes to your wages, hours, and working conditions, including access to our Yakima, Washington facility, wearing hats without our logo in the production areas of the facility, and granting you wage increases, before putting such changes into effect.

**WE WILL NOT** stop you from wearing hats with union insignia in the production areas of our Yakima, Washington facility and **WE WILL** repeal our oral rule preventing you from wearing these hats.

**WE WILL NOT** threaten you with discipline or coerce you for wearing hats with union insignia in the production areas of our Yakima, Washington facility. You have the right to wear union hats while working and **WE WILL NOT** stop you from doing so.

**WE WILL NOT** discipline you because you wear a hat with union insignia in the production area of our Yakima, Washington facility. **WE WILL** remove from our files all references to the verbal warning we issued to Dean Berriman and **WE WILL** notify him in writing that this has been done and that the verbal warning will not be used against him in any way.

**WE WILL NOT** retaliate against you and prevent you from wearing non-Company issued hats in our cafeteria or other non-work areas, because you were subpoenaed to testify in a Board proceeding on behalf of the General Counsel.

**WE WILL NOT** make changes to your wages, hours, and working conditions without first bargaining with the Union and reaching an overall good faith impasse.

**WE WILL**, if requested by the Union, rescind any or all changes to your terms and conditions of employment that we made without first bargaining.

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

**NOEL CANNING, A DIVISION OF  
THE NOEL CORPORATION**

The Board's decision can be found at [www.nlr.gov/case/19-CA-145344](http://www.nlr.gov/case/19-CA-145344) 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.

