

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

CHAUFFEURS, TEAMSTERS AND  
HELPERS LOCAL UNION NO. 414,  
a/w THE INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS

Charging Party

-v-

25-CA-176012  
25-CA-176052

SPEEDWAY REDIMIX, INC. AND  
SPEEDWAY CONSTRUCTION PRODUCTS  
CORP., AS A SINGLE EMPLOYER

Respondent

**CHARGING PARTY'S POST HEARING BRIEF**

The Charging Party, Chauffeurs, Teamsters and Helpers Local Union No. 414, affiliated with the International Brotherhood of Teamsters (the "Union"), submits the following post-hearing brief in support of the charges against Respondents, Speedway RediMix, Inc. ("SRM") and Speedway Construction Products Corp. ("SCPC"), as a single employer.

**I.  
INTRODUCTION**

The Union has been the exclusive bargaining representative of SRM's ready-mix drivers since at least 2000. (JX 1, ¶ 11.) The most recent collective bargaining agreement between the Union and SRM was effective from May 1, 2013 through

March 31, 2016. *Id.* The Union filed the charges in cases 25-CA-176012 and -176052 on May 6, 2016, alleging that Respondent SRM violated the Act when it bargained to impasse in the 2016 contract negotiations over its proposal to alter the scope of the bargaining unit. The Union contends that this was a permissive subject of bargaining under *Antelope Valley Press*, 311 NLRB 459 (1993) and its progeny, and that SRM and SCPC are liable as a single employer for the violation of the Act. An evidentiary hearing was held on both cases in Fort Wayne, Indiana on March 26-27, 2017. Respondents stipulated at the hearing that they have been a single employer since April 19, 2016. (JX 1, ¶¶ 53-54; Tr. 42:14-21.) The record was closed on June 12, 2017. Post-hearing briefs are due June 23, 2017.

## **II. STATEMENT OF THE FACTS**

### **A. Speedway RediMix, Inc. and Speedway Construction Products Corporation**

Respondent SRM is a corporation located in Fort Wayne, Indiana that supplies and delivers ready mix concrete. (JX 1, ¶ 3.) SRM's business satisfies the \$50,000 jurisdictional standard of the Board, and is "engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act." (JX 1, ¶¶ 4-5.) The Union is the exclusive collective-bargaining representative "for all ready mix truck drivers of [SRM] performing work out of permanent or portable plants" in several northern Indiana counties. (GC 5, Article 3.) The Union has been the exclusive collective-bargaining

representative for the Unit “since about at least 2000.” (JX 1, ¶ 11.) General Counsel’s Exhibit 5 is the Union’s most recent collective bargaining agreement with SRM, which was in effect from May 1, 2013 through March 31, 2016.

SCPC is a single employer with SRM. (JX 1, ¶ 53.) SCPC is also located in Fort Wayne, Indiana, and is “engaged in the business of supplying and delivering ready mix concrete and other construction products.” (JX 1, ¶ 6.) SCPC’s business satisfies the \$50,000 jurisdictional standard of the Board, and is “engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.” (JX 1, ¶¶ 6-9.)

### **B. 2015 Unfair Labor Practice Settlement<sup>1</sup>**

On October 5, 2015, SRM, SCPC, the Union, and the Regional Director executed a settlement agreement that resolved “four unfair labor practices from March of 2015 through September of 2015.” (Tr. 86:8-12; RX 2.) Attorney Geoff Lohman testified about two of the charges at the evidentiary hearing. “[T]he charge dated May 29th, 2015 address[ed] the transfer of the eight employees from [SRM] to

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<sup>1</sup> Respondents raised compliance with the settlement agreement discussed in this section as an affirmative defense at the hearing. Following the hearing, and before the record was closed, the Union gathered evidence from its pre-hearing subpoenas to SRM and SCP that the Union believes shows that Respondents did not comply with the settlement agreement, and therefore should not be able to raise it as an affirmative defense. The Union sought to present that evidence at an additional day of hearing. However, in an email dated June 12, 2017, the Judge closed the record before the Union’s evidence could be submitted, stating that the “General Counsel has taken the position that the settlement agreement signed October 1, 2015 is irrelevant to this case.”

[SCPC].” (Tr. 86:24-87:1.) And, “[t]he charge dated September 30th, 2015 says on its face the Employer has transferred work historically performed by [SRM] employees represented by Teamsters Local 414 to its connected company, [SCPC], represented by the Machinists Union, among other things.” (Tr. 87:1-6.) The settlement included a Notice posting that stated that the two companies would “bargain in good faith with [the Union] as the exclusive collective-bargaining representative of our unit employees of [SRM],” and “resume assigning work to the bargaining unit described above as previously done prior to March 16, 2015.” (RX 2.) March 16, 2015 was the date when the companies transferred eight employees from SRM to SCPC. (Tr. 87:19-22.)

### **C. 2016 Negotiations between the Union and Speedway RediMix**

The Union and SRM began bargaining for a successive collective bargaining agreement on March 10, 2016, and held additional sessions on March 22, 24, 29, 31, and April 14, and 19. (JX 1, ¶¶ 16-20.) The various written proposals exchanged between the parties are contained in Joint Exhibits E through M. (JX 1, ¶¶ 21-49.) On March 10, the Company made the first proposal, verbally proposing that the “current collective bargaining agreement be extended for three years and all terms remain the same.” (JX 1, ¶ 22.) The Union rejected that offer with a written counter proposal. (JX E.) Of the numerous proposals made in the Union’s counter, only one impacted the recognition clause in Article 3, which was to delete the reference to Wabash County whose drivers are now represented by a different Teamsters local. (JX E, Tr.

68:5-9.) On March 22 and 24, SRM provided the Union with written counter proposals. (JX F, G.) It accepted the removal of Wabash County from Article 3, and made no other proposals that would affect the recognition clause. *Id.*<sup>2</sup> The Union provided a written counter proposal “to go back to the 2005 contract without the provisions that it deemed to be concessionary and to increase the wages.” (JX 1, ¶ 32; JX H.) Article 1, Section 1.01, Article 2, Section 2.02, and Article 3, Section 3.01 of the 2005 contract, which cover the contract’s purpose, transfer of work, and recognition clauses, were identical to the same provisions in the 2013 contract. (Compare JX A with JX H.)

SRM made written proposals on March 29 and 31, largely over wages and benefits, and again without seeking modifications to Articles 1, 2 or 3. (JX 1, ¶¶ 33-40; JX I; JX J.) The Union made verbal counter proposals at these meetings. *Id.* At the April 14 bargaining session, the parties continued to negotiate wages and benefits. (JX K.) Among SRM’s proposals was a request to resolve “Grievances – Speedway Construction.” *Id.* The Union did not make any written proposals at this session. (JX 1, ¶ 44.) At some point in the negotiations, the Union learned that SCPC had continued to expand its ready-mix supply and delivery business and had continued to hire ready-mix truck drivers. (JX N.)

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<sup>2</sup> The Union made verbal proposals at the March 22 bargaining session. The only proposal relevant to the recognition clause was to delete reference to Wabash County. (Tr. 70:2-5.)

On April 19, the Company proposed the following modifications (in bold) to Articles 1, 2, and 3 of the collective bargaining agreement:

Article 1: Purpose

1:01 It is the intent and purpose of the parties hereto that this Agreement will promote and improve the industrial and economic relationship between the [sic] ~~Employer-Speedway Redimix, Inc.~~ and its employees and set forth herein the basic agreement covering the rates of pay, hours of work, and conditions of employment to be observed between the parties hereto during the life of this Agreement. This Agreement covers only the operation of ready mix trucks ~~owned-by-operated by~~ **Speedway Redimix, Inc.** and such other duties are assigned, from time to time, by ~~the Employer~~ **Speedway Redimix, Inc.** All members of Local No. 414 agree to further the interests of the [sic] ~~Employer-Speedway Redimix, Inc.~~ at all times. **“Employer” as used in this Agreement shall mean Speedway Redimix, Inc. and no other organization or entity whether owned by individuals related to the owners of Speedway Redimix, Inc. or not.**

Article 2: Transfer of Employer, Title or Interest

2:02 The Employer agrees that it will not rent, lease, sublease, or sell equipment to any firm, corporation, partnership or individual to defeat the provisions and terms of this Agreement. **This provision shall not prohibit either Employer or corporations owned by individuals related to the owners of the Employer to continue to operate ready mix trucks as they did prior to March, 2015.**

Article 3: Recognition

3:01 The Employer agrees to recognize, and does hereby recognize the Union, its agents, representatives, or successors, as the exclusive bargaining agency for all ready mix truck drivers of the Employer performing work out of permanent or portable plants in the following counties: Allen, Steuben, DeKalb, Noble, Whitley, Huntingdon, Adams, and Wells. Wages, hours and working conditions shall be maintained and paid according to this contract. **The parties recognize that, in the past, other ready mix companies in the area have loaded out of the same plants as the Employer including Brim Concrete, E&B Paving, Inc., Speedway Construction Products Corporation, Victory Trucking & Supply, Inc., CCI and others. Such loading will continue hereafter and shall not be considered a violation of this Agreement.**

(JX 1, ¶ 49; JX M.) These proposals are also reflected on the last page of Joint Exhibit L, where the Company's original position of "Discuss resolution" regarding the Speedway Construction Grievance has been crossed out and replaced with SRM's proposed modifications to Articles 1, 2, and 3. (JX 1, ¶¶ 47-48; JX L.) The Union made verbal proposals, and the parties eventually agreed to all terms for a new contract except for SRM's proposals to alter Article 1, 2, and 3. (JX 1, ¶ 50.)

SRM's attorney, William T. Hopkins, emailed the Union's attorney, Geoff Lohman, on April 20 confirming that the only outstanding proposals were the

changes to Articles 1, 2, and 3 and explaining the company’s position on those proposals. (JX N.) Mr. Lohman responded on May 3, informing Mr. Hopkins that the three outstanding proposals were permissive subjects and that the Union would not bargain over them. *Id.* Mr. Lohman stated that the proposals were not mandatory subjects of bargaining regarding “transfer of work, outsourcing, and scope of work,” as the company claimed, because the proposals would have precluded the Union from claiming that SCPC’s ready-mix drivers fell within the scope of the recognition clause of the SRM agreement. *Id.* He further conveyed the Union’s concerns that the proposals “[struck] at the heart of who Local 414 represents,” and belief that the companies “violated numerous provision[s] of the CBA, including the recognition clause, by not applying the terms of Local 414’s CBA to the employees of [SCPC] who drive ready-mix trucks.” *Id.*

### **III.** **ARGUMENT**

Through its proposals to alter the purpose, transfer of work, and recognition clauses in the contract, SRM sought to prevent the Union from claiming as members of the bargaining unit the SCPC non-unit employees who were being assigned the same type of work performed by the bargaining unit—driving ready-mix concrete trucks. “Permissive’ subjects of bargaining are those not involving wages, hours, or other terms and conditions of employment. Parties may bargain over those subjects if

they choose to do so.” *Antelope Valley Press*, 311 N.L.R.B. 459, 460 (1993). Since “neither party is required to bargain at all over a permissive subject, a party may not lawfully bargain to impasse over a permissive subject.” *Id.* According to the Seventh Circuit Court of Appeals, “[t]here is no doubt that the scope of the employees’ bargaining unit is a permissive subject of bargaining.” *Hill-Rom Co. v. NLRB*, 957 F.2d 454, 457 (7th Cir. 1992).

In cases like present, the Board has recognized the tension “between permissive and mandatory subjects of bargaining when the unit is defined in terms of job assignments.” *Taylor Warehouse Corp.*, 314 NLRB 516 (1994) (explaining *Antelope Valley Press*, 311 NLRB 459 (1993)). The Board in *Antelope Valley Press* established a test to determine whether the proposal falls on the mandatory or permissive subject side of the line. 311 NLRB at 461. At the outset, an employer may not insist “on a change in the unit description.” *Id.* Further:

If the employer does not insist on changing the unit description, however but seeks an addition to that clause that would grant it the right to transfer work out of the unit, we will find the employer acted lawfully provided that the addition does not attempt to deprive the union of the right to contend that the persons performing the work after the transfer are to be included in the unit. *Id.*

SRM’s proposals to Articles 1, 2, and 3 of the collective bargaining agreement struck at the heart of who the Union represents—i.e., “the scope of the employees’ bargaining unit.” *Hill-Rom Co. v. NLRB*, 957 F.2d 454, 457 (7th Cir. 1992). SRM’s

proposed modification to the recognition clause is an explicit change in the unit description, as it would have expressly excluded SCPC's drivers from the scope of the unit even though they perform the same work and SRM and SCPC are a single employer. But even assuming the proposed modification was not a change in the unit description, SRM's proposals would have undeniably allowed SRM to transfer work from the bargaining unit to SCPC's drivers and precluded the Union from claiming that the SCPC's drivers should be included in the unit .

This case is analogous to *Taylor Warehouse Corp.*, where the employer violated the act by bargaining to impasse over a proposal that would have given it the right to transfer work to non-unit employees of a related company and precluded the union from claiming that those employees were unit members. 314 NLRB 516 (1994). That case involved "warehousing and trucking operations" that the "Taylor family" ran in Cincinnati, Ohio. *Id.* at 519. The operations involved two companies: "Taylor Distributing," which was nonunion, and "Taylor Warehouse," which was union. *Id.* Warehousemen employed by Taylor Warehouse "were wholly responsible for moving all merchandise that entered and left the warehouse, whether it was categorized as 'warehouse' or 'pool' freight." *Id.* Taylor Distributing was essentially an "inactive" company for many years. *Id.* The Taylor family then began assigning "pool freight" work to Taylor Distributing and went on a hiring campaign to recruit nonunion employees to handle the newly assigned work. *Id.* After separating the work into

warehouse and pool freight, the “warehouse freight” business at Taylor Warehouse collapsed and the “pool business” exploded. *Id.* at 521. In contract negotiations, Taylor Warehouse insisted upon excluding the pool freight work performed by Taylor Distributing’s employees from the bargaining unit’s work and also expressly excluding those employees from the scope of the unit. *Id.* at 523-24.

The ALJ concluded, and the Board agreed, that Taylor Warehouse violated Section 8(a)(5) and (1) of the Act. *Id.* at 528. The proposal “was designed to legitimize the transfer of all pool work” to Taylor Distributing’s employees, who were outside the bargaining unit. *Id.* at 527-28. It would have “expressly excluded” that work from the unit and “ensure[d]” that the employees at Taylor Distributing “would never be considered members of the unit.” *Id.* Therefore, “because the . . . bargaining proposal was designed to curtail the represented employees’ jurisdiction and deny the Union the right to assert the individuals to whom unit work was assigned were unit members, . . . the proposal was a permissive subject of bargaining.” *Id.* at 528. As a result, the company “violated Section 8(a)(5) and (1) by bargaining to impasse over it.” *Id.*

Here, SRM and SCPC are a single employer. SRM supplies and delivers ready-mix concrete, and since at least 2000, the Union has represented SRM’s ready-mix concrete truck drivers. (JX 1, ¶¶ 3, 11.) SCPC was later created to supply and deliver construction products and ready-mix concrete. (JX 1, ¶ 6.) As explained in Mr.

Lohman's email, SRM began transferring its union ready-mix drivers to SCPC, which did not have a contract with the Union. (JX N; Tr. 87:19-22.) This resulted in charges with the Board against SRM and SCPC, which the companies settled. (RX 2.) The Union learned in the 2016 contract negotiations that SCPC had continued to expand its ready-mix supply and delivery business and had continued to hire ready-mix truck drivers. (JX N.)

Then came SRM's proposed modifications to Article 1, Section 1.01, Article 2, Section 2.02, and Article 3, Section 3.01. The proposed change to Article 1 was to eliminate any claim that other businesses, "whether owned by individuals related to the owners of Speedway RediMix, Inc. or not," fell within the contract's definition of "Employer." (JX 1, ¶ 48.) In other words, any claim that SRM and SCPC are a single employer. The proposed change to Article 2 would have expressly allowed SCPC to continue operating its ready-mix business, and the proposed change to the recognition clause in Article 3 would have precluded the Union from claiming that SCPC's ready-mix drivers were within the scope of the bargaining unit. *Id.*

Thus, when SRM made these three proposals for the first time at the tail end of the contract negotiations, it was obvious that the company sought to protect SCPC's growing ready-mix operations from any claim by the Union that SCPC's ready-mix drivers are covered by the recognition clause in the collective bargaining agreement. *Id.* This is exactly what the Board deemed unlawful in *Taylor Warehouse Corp.* SRM's

proposals were “designed to legitimize the transfer of” ready-mix concrete work to SCPC’s drivers, whom it wanted expressly excluded from the bargaining unit. 314 NLRB at 527-28. Taken together, the three proposals would have guaranteed that SCPC’s ready-mix drivers “would never be considered members of the unit.” *Id.* As the Board found in *Taylor Warehouse Corp.*, it should be concluded that SRM’s proposals were “designed to curtail the represented employees’ jurisdiction and deny the Union the right to assert the individuals to whom unit work was assigned were unit members.” *Id.* at 528. Accordingly, SRM’s proposals were a permissive subject of bargaining, and it violated Sections 8(a)(5) and (1) of the Act by bargaining to impasse over them.

#### **IV. CONCLUSION**

For the foregoing reasons, the Union respectfully requests that the Administrative Law Judge find and conclude that Speedway RediMix and Speedway Construction Products, as a single employer, violated Sections 8(a)(5) and (1) of the Act by bargaining to impasse over Speedway RediMix’s proposal to alter the scope of the bargaining Unit.

Respectfully submitted,

/s/ Geoffrey S. Lohman  
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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served, via e-mail upon:

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on this 23rd day of June, 2017.

/s/ Geoffrey S. Lohman  
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