

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

**PCMC/PACIFIC CRANE MAINTENANCE
COMPANY, INC. and/or PACIFIC MARINE
MAINTENANCE CO., LLC, a single employer,
and/or PCMC/PACIFIC CRANE MAINTENANCE
COMPANY, LP, their successor**

and

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO, DISTRICT LODGE
190, LOCAL LODGE 1546, and DISTRICT
LODGE 160**

**Cases 32-CA-021925
32-CA-021974
(formerly 19-CA-029645)
32-CA-021977
(formerly 19-CA-029692)
32-CA-023613**

ORDER¹

The Request for Review filed by Rolando Hernandez, Gerardo Serrano, Ricky Voto-Bernales, Jesus Villalpando, Bob Flanagan, and Robert E. Pohl, Jr. (the mechanics) of the General Counsel's dismissal of the mechanics' compliance determination appeal is denied.² The mechanics contend that the General Counsel erred in dismissing their appeal based on their lack of standing. In rejecting the mechanics' attempt to file a compliance determination appeal in this case, the General Counsel found that the National Labor Relations Board's Rules and Regulations,

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. Chairman Miscimarra is recused from consideration of this case.

² Member Kaplan concurs in the result, but would have dismissed the mechanics' request for review because the Board's Rules and Regulations do not permit the filing of an appeal in this matter. Sections 102.52 and 102.53 of the Board's rules provide only for an appeal of a Regional Director's compliance determination. Because the Region did not issue a compliance determination in this case, the mechanics' motion is not properly before the Board. Further, there is no precedent supporting the mechanics' assertion that the Regional Director's approval of the parties' non-Board settlement constitutes a "compliance determination" under the Board's rules.

Section 102.53, provides that only a charging party adversely affected by a compliance determination can appeal a compliance determination. The General Counsel concluded that the mechanics here had no right to appeal the Regional Director's failure to include the mechanics as discriminatees in this matter because the Regional Director did not issue a compliance determination, and the mechanics are not the charging party.

Lack of a compliance determination. The mechanics argue that because the NLRB issued a written acceptance of the terms of the non-Board settlement agreement between the Respondent Employer and the Charging Party Union as fully satisfying any and all compliance obligations imposed on the Respondent Employer, that acceptance was "a determination of full compliance, § 102.53 applies and the mechanics have the right to challenge the Regional Director's actions." Request for Review, p. 6. However, the non-Board settlement provided that the Charging Party Union would receive a lump sum from the Respondent Employer, and the Charging Party Union - not the Board - would determine which employees were entitled to a monetary payment and the amounts they would receive.

Section 102.52 of the Board's Rules states that:

After entry of a Board order directing remedial action, or the entry of a court judgment enforcing such order, the Regional Director will seek compliance from all persons having obligations under the order. As appropriate, the Regional Director will make a compliance determination and notify the parties of that determination. A Charging Party adversely affected by a monetary, make-whole, reinstatement, or other compliance determination will be provided, on request, with a written statement of the basis for that determination.

The provisions of this Section are specific regarding the circumstances in which a regional director will issue a compliance determination letter, and contrary to the mechanics' contention, the fact that the Regional Director here issued a letter stating

that the Region considered the settlement to constitute full compliance by the Respondent Employer does not equate to the issuance of a compliance determination within the meaning of Section 102.52. As noted, the parties' non-Board settlement contemplates no involvement by the Board in the calculation or distribution of the funds. In these circumstances, the Regional Director properly referred the mechanics to the Charging Party Union's attorney to resolve questions about their claims. Regarding the mechanics claim that they may be aggrieved by the actions or inactions of the Charging Party Union in distributing the settlement money, there is no provision in the Board's Rules for the Board to resolve that issue and, to the extent the mechanics believe that they have been improperly denied payments under the settlement agreement, the mechanics should seek relief from the Charging Party Union.

Lack of charging party status. Sections 102.52 and 102.53 of the Board's Rules contain no provision for individuals who are not charging parties to appeal compliance determinations. Nevertheless, as pointed out by the mechanics, the General Counsel and the Board considered an appeal by a non-charging party employee from a regional director's compliance determination in *Seaport Printing & Ad Specialties, Inc.*, 15-CA-017976, 2011 WL 6936390, at *5 (unpublished Order issued Dec. 30, 2011). In *Seaport*, an individual who was a beneficiary under a Board make-whole order challenged the calculations provided in the Region's compliance determination letter. The Board granted the employee's request for review from the General Counsel's denial of his appeal from that letter, and remanded the matter to the Region for further processing. However, although the Board addressed the individual's request for review in *Seaport*, that case does not support the same result here.

In *Seaport*, the employee who appealed the compliance determination was a unit employee included in the make whole remedy in the Board's order, and a compliance determination letter was issued to him regarding the Region's calculation of the amount that he was owed. Here, conversely, there was no Board compliance determination, and it is the Charging Party Union, not the Board, that controls the distribution of the lump sum paid by the Respondent Employer pursuant to the parties' non-Board settlement agreement. Thus, even assuming that *Seaport* establishes that a non-charging party employee may file an appeal to a compliance determination letter in certain circumstances, we find that those circumstances are not present here.

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

MARK GASTON PEARCE, MEMBER

LAUREN McFERRAN, MEMBER

MARVIN KAPLAN, MEMBER