



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

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December 5, 2017

GEORGE BANCI  
PO BOX 912  
DINGMANS FERRY, PA 18328-0912

Re: COVANTA ESSEX CO.  
Case 22-RD-199469

Dear Mr. Banci:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

**Decision to Dismiss:** As a result of the investigation, I find that further proceedings are unwarranted. The investigation disclosed that you filed the instant petition on May 24, 2017, to decertify International Union of Operating Engineers, AFL-CIO, Local 68 (“the Union”) as the bargaining representative of a unit of employees at Covanta Essex Co. (“the Employer”). The investigation further disclosed that the Union prevailed in an election that was previously conducted on May 11, 2016 in Case 22-RC-174556, involving the same bargaining unit of employees sought in the instant case, followed by issuance of a Certification of Representative on May 20, 2016. The investigation disclosed that no question concerning representation could be raised when the instant petition was filed on May 24, 2017, more than a year after issuance of the certification of representative in Case 22-RC-174556. As you know, prior to the filing of this petition, the Union filed unfair labor practice charges in Cases 22-CA-199293 and 22-CA-199296, alleging that the Employer unlawfully failed and refused to bargain in good faith with the Union with respect to the terms and conditions of employment of the unit involved in the instant decertification petition. Following a full investigation, it has been determined that there is reasonable cause to find that the Employer engaged in the unlawful conduct alleged by the Union and a consolidated Complaint and Notice of Hearing issued on October 27, 2017.

Due to the nature of the violations included in the Complaint, the remedies sought will include an affirmative bargaining order for a reasonable period of time to be determined, effectively extending the certification year as to ensure “at least one year of actual bargaining.” *Mar-Jac Poultry Co.*, 136 NLRB 785, 787 (1962). Further, the instant petition was filed during a time when the Employer had been bargaining in bad faith at which time a question concerning representation could not be raised. See *Big Three Industries*, 201 NLRB 197 (1973); *Brannan Sand & Gravel*, 308 NLRB 922 (1992); Board Casehandling Manual Part II, Sections 11730.3(b) and 11733.2(a)(2).

Accordingly, I am dismissing the petition in this matter, subject to a request for reinstatement by the petitioner after final disposition of the unfair labor practice charges. This petition is subject to reinstatement only if the allegations in the unfair labor practice case, which caused the petition to be dismissed, are ultimately found to be without merit. An application for reinstatement under any other circumstances shall be denied. In order to assure notification of the disposition of the unfair labor practice proceeding, you will be made a party in interest in the unfair labor practice proceeding, with an interest limited solely to receipt of a copy of the order or other document that operates to finally dispose of the proceeding.

Accordingly, I am dismissing the petition in this matter.

***Right to Request Review:*** Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review must contain a complete statement of the facts and reasons on which it is based.

***Procedures for Filing Request for Review:*** A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on December 19, 2017, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on December 19, 2017.**

**Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically.** Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at [www.nlrb.gov](http://www.nlrb.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this

proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,

A handwritten signature in black ink, appearing to read "David E. Leach III". The signature is fluid and cursive, with a large initial "D" and a stylized "L".

David E. Leach III  
Regional Director

cc: Office of the Executive Secretary (by e-mail)

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