

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

GREEN JOBWORKS, LLC

and

Case 5-CA-168637

**CONSTRUCTION AND MASTER LABORERS'
LOCAL UNION 11, A/W LABORERS'
INTERNATIONAL UNION OF NORTH
AMERICA (LIUNA)**

**MOTION TO TRANSFER CASE TO THE BOARD
AND FOR SUMMARY JUDGMENT**

Pursuant to Sections 102.24 and 102.50 of the Board's Rules and Regulations and Statement of Standard Procedure, Series 8, as amended, herein called the Rules, counsel for the General Counsel respectfully moves that the National Labor Relations Board ("the Board"): (1) transfer this case and continue the proceedings before the Board; (2) deem the allegations set forth in the Complaint and Notice of Hearing issued on October 25, 2017 ("the Complaint"), as admitted to be true without the taking of evidence supporting the allegations in the Complaint; and (3) grant summary judgment and issue a Decision and Order herein on the basis of the following:

1. On June 22, 2015,¹ Construction and Master Laborers' Local Union 11, a/w Laborers' International Union of North America (LiUNA) ("the Union), filed a Petition in Case 5-RC-154596, seeking to represent a unit consisting of "all full- and regular part-time

¹ Paragraph 5(b) of the Complaint inadvertently alleged that the Union filed the petition for a representation election on June 11, 2015. Respondent admitted the allegation in its Answer. *See* discussion *infra* Paragraph 22. As Exhibit 1 demonstrates, the Union filed the Petition on June 22, 2015, rather than June 11, 2015. An erratum issued, correcting this inadvertent error. *See* Exhibit 27. As Respondent admitted the allegation, there is no material dispute about the fact that the Union filed the petition in Case 5-RC-154596.

laborers, including demolition and asbestos removal workers, employed by the joint employer,” ACECO, LLC (“ACECO”) and Green JobWorks, LLC (“Respondent”). *See* Exhibit 1.

2. On July 1, 2015, Respondent and ACECO filed statements of position contesting the representation election. *See* Exhibits 2 and 3.²

3. As a result of issues raised in Respondent’s and ACECO’s statements of position, a pre-election representation hearing was held on July 2 and July 6, 2015.

4. On October 21, 2015, the Regional Director for Region 5 (“Regional Director”) issued a Decision and Direction of Election.³ *See* Exhibit 4.

5. On November 4, 2015, the Union filed a request for review of the Regional Director’s June 26, 2015 Decision and Direction of Election. *See* Exhibit 5.

6. Region 5 held a mail-ballot election from November 3, 2015 to November 24, 2015. On December 7, 2015, a tally of ballots was conducted.

7. On December 7, 2015, the Tally of Ballots was issued to the parties showing that, of approximately 134 eligible voters, 44 votes were cast for the Union, 15 votes were cast against the Union, and there were 18 challenged ballots. *See* Exhibit 6.

8. On December 16, 2015, the Regional Director issued a Certification of Representative, certifying the Union as the exclusive collective-bargaining representative of following unit (“the Unit”): All full-time and regular part-time laborers, including demolition and asbestos removal workers, and lead employees employed by Green JobWorks, LLC, and assigned to

² Although Respondent’s Statement of Position is dated June 30, 2015, the Region did not receive the statement until July 1, 2015.

³ The Regional Director’s Decision and Direction of Election concluded that the Union had not satisfied its burden of introducing specific, detailed and relevant evidence to find that ACECO was a joint employer of Respondent’s employees in the petitioned-for unit. *See* Exhibit 4 at 8–13. Instead, the Regional Director found that Respondent’s employees working at ACECO sites constituted an appropriate unit. *Ibid.* at 15.

ACECO, LLC work sites, but excluding office clericals, professionals, confidential employees, managerial employees, guards, and supervisors as defined by the Act. *See* Exhibit 7.

9. On December 17, 2015, the Regional Director issued an Order Revoking Certification of Representative, stating that the Certification had been inadvertently issued and that timely objections could be filed until December 18, 2015. *See* Exhibit 8.

10. On December 22, 2015, the Regional Director issued a Certification of Representative, certifying the Union as the exclusive collective-bargaining representative of following unit (“the Unit”): All full-time and regular part-time laborers, including demolition and asbestos removal workers, and lead employees employed by Green JobWorks, LLC, and assigned to ACECO, LLC work sites, but excluding office clericals, professionals, confidential employees, managerial employees, guards, and supervisors as defined by the Act. *See* Exhibit 9.

11. On January 5, 2016, Respondent filed a Request for Review of the Regional Director’s Decision and Direction of Election that resulted in the Certification of Representative on December 22, 2015. *See* Exhibit 10.

12. By letter dated January 8, 2016, addressed to counsel for Respondent and counsel for ACECO, the Union requested that Respondent and ACECO bargain collectively with the Union about terms and conditions of employment of the Unit. *See* Exhibit 11.

13. By letter dated January 18, 2016, Respondent refused to recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit. *See* Exhibit 12.

14. On January 28, 2016, the Union filed a charge in Case 5-CA-168637, alleging that Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act. *See* Exhibit

13. The charge was served on Respondent by U.S. mail on January 29, 2016. *See* Exhibit 14.

15. By e-mail dated February 9, 2016, counsel for Respondent received a copy of the charge in Case 5-CA-168637 via e-mail. *See* Exhibit 15.

16. On March 8, 2016, the Board issued an Order granting the Union's Request for Review and denying Respondent's Request for Review. *See* Exhibit 16.

17. On September 1, 2017, the Union requested to withdraw its Request for Review. *See* Exhibit 17.

18. On September 7, 2017, the Board granted the Union's request to withdraw its Request for Review. *See* Exhibit 18.

19. By e-mail dated October 4, 2017, addressed to counsel for Respondent, the Union requested that Respondent bargain collectively with the Union about terms and conditions of employment of the Unit. *See* Exhibit 19.

20. By e-mail dated October 16, 2017, Respondent refused to recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit. *See* Exhibit 20.

21. On October 25, 2017, the Regional Director issued the Complaint alleging, in pertinent part, that since on or about January 18, 2016, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit. *See* Exhibit 21. The Complaint was served on Respondent on October 25, 2017. *See* Exhibit 22.

22. On November 7, 2017, Respondent filed an Answer to the Complaint ("Answer"), in which it admitted the following: (a) Respondent is a limited liability corporation with an office and place of business in Baltimore, Maryland, and has been a temporary staffing agency engaged in the business of demolition and environmental remediation, including asbestos remediation; (b) in conducting its operations during the 12-month period ending September 30, 2017,

Respondent performed services valued in excess of \$50,000 in States other than the State of Maryland; (c) at all material times, Respondent has been an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act; (d) at all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act; (e) on December 22, 2015, the Union was certified as the exclusive collective-bargaining representative of the Unit; (f) about January 8, 2016, the Union, by letter and e-mail, requested that Respondent bargain collectively with the Union as the collective-bargaining representative of the Unit; (g) about October 4, 2017, the Union, by e-mail, requested that Respondent bargain collectively with the Union as the collective collective-bargaining representative of the Unit; (h) since about January 18, 2016, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit. Respondent denied the following: (a) that the charge in this proceeding was served on Respondent by U.S. mail on January 29, 2016; (b) the Unit constitutes a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act; (c) that the Union has been the exclusive collective-bargaining representative of the Unit, based on Section 9(a) of the Act, at all times since December 22, 2015; (d) by the conduct described in Paragraph 7 of the Complaint, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act; and (h) the unfair labor practices of Respondent described in the Complaint affect commerce within the meaning of Section 2(6) and (7) of the Act. *See Exhibit 23.*

23. Respondent's Answer fails to raise any genuine issues of material fact, as Respondent admits it has failed and refused to recognize and bargain with the Union as the exclusive, collective-bargaining representative of the Unit.

24. Other than its denial regarding the service of the charge in Case 5-CA-168637, Respondent's denials in its Answer reiterate those it presented in the representation proceedings in Case 5-RC-154596; specifically, that the Unit is inappropriate. Respondent's only additional denial claims, without support or explanation, that Respondent was not served with a copy of the charge as alleged in Paragraph 1 of the Complaint. Nevertheless, the January 29, 2017 Affidavit of Service and February 9, 2017 e-mail addressed to Respondent's counsel demonstrate that Respondent received the charge in this case. On January 29, 2017, the Region served the charge upon Respondent through U.S. mail addressed to Larry Lopez at 1531 South Edgewood Street, Suite P, Baltimore, Maryland 21227-1138 ("South Edgewood address"). *See* Exhibit 14. The South Edgewood address matches the address listed on Respondent's Statement of Position in 5-RC-154596.⁴ *See* Exhibit 2. In addition, Respondent has previously admitted that it received a charge through Lopez at the South Edgewood address. *See* Exhibits 24, 25, and 26. Finally, Respondent's counsel acknowledged receipt of the charge on February 9, 2017. *See* Exhibit 15. In this regard, Respondent's Answer fails to raise any genuine issues of material fact as to its receipt of the charge in this case.

25. Respondent's first affirmative defense alleges that the Complaint fails to state a claim upon which relief can be granted. Respondent's second affirmative defense alleges that the violations contained in the Complaint are insufficient to state a violation of the Act. Respondent's third affirmative defense alleges that the Complaint has been issued, in whole or in part, without substantial justification. Respondent's fifth affirmative defense alleges that it did not violate the National Labor Relations Act in any way. Given Respondent's admission that it

⁴ The only difference between the address between the address listed on the Affidavit of Service and the address Respondent provided on its Statement of Position is that Respondent's Statement of Position omits the four-digit extension of Respondent's zip code.

refused to bargain with the certified representative of the Unit, no genuine issues of material fact exist regarding the General Counsel's substantial justification for issuing the Complaint. *Pierce v. Underwood*, 487 U.S. 552, 565 (1988); *Laborers Funds Admin. Office of Northern California*, 302 NLRB 1031, 1031 (1991). Counsel for the General Counsel therefore requests that the Board, after transferring this proceeding to itself, strike Respondent's first, second, third, and fifth defenses, or in the alternative, disregard these defenses.

26. Respondent's fourth affirmative defense alleges issues already presented by Respondent in the representation proceedings in Case 5-RC-154596. Where, as here, a party fails to meet and bargain following certification by the Board, it is the Board's policy that absent newly discovered or previously unavailable evidence or special circumstances, the party is not allowed to relitigate, in a proceeding alleging unfair labor practices, issues that were, or could have been, litigated in a prior representation proceeding. *Westinghouse Broadcasting Co., Inc.*, 218 NLRB 693, 694 (1975); *Keco Industries, Inc.*, 191 NLRB 257, 258 (1971); *see also Retro Environmental, Inc./Green JobWorks, LLC*, 365 NLRB No. 133, slip op. at 1 (2017) (citing *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941)). Here, Respondent does not argue that there is newly discovered or previously unavailable evidence or special circumstances. Counsel for the General Counsel therefore requests that the Board, after transferring this proceeding to itself, strike Respondent's fourth affirmative defense, or in the alternative, disregard this defense.

27. Because no genuine issue of material fact exists in this case and Respondent has not shown that newly discovered, relevant evidence is now available, the Board should transfer this case and continue the proceedings before it; deem the allegations set forth in the Complaint to be true without receiving evidence; grant summary judgment; and issue a Decision and Order. It is

respectfully requested that the Board make its findings of fact based on the allegations in the Complaint and conclude that, as a matter of law, Respondent has violated Section 8(a)(1) and (5) of the Act as alleged in the Complaint and order an appropriate remedy, including an order that the initial certification year shall be deemed to begin on the date Respondent commences to bargain in good faith with the Union as the certified collective-bargaining representative of the employees in the appropriate unit. *Campbell Soup Co.*, 224 NLRB 13, 15 (1976); *see also Retro Environmental, Inc./Green JobWorks, LLC*, 365 NLRB No. 133, slip op. at 2 (2017).

Dated at Washington, DC, this 21st day of December, 2017.

Respectfully Submitted,

/s/ Daniel M. Heltzer
Daniel M. Heltzer, Esq.
Counsel for the General Counsel
National Labor Relations Board, Region 5
Washington Resident Office
1015 Half Street, SE
Suite 6020
Washington, DC 20570-0001
Telephone: 202-208-0124
Email: Daniel.Heltzer@NLRB.gov

CERTIFICATE OF SERVICE

This is to certify that on December 21, 2017, copies of the General Counsel's Motion to Transfer Case to the Board and for Summary Judgment were served by e-mail and U.S. mail to:

Patrick J. Stewart, Esq.
Stewart Law, LLC
P.O. Box 6420
Annapolis, Maryland 21401
pat@patlaw.us
Counsel for Respondent Green JobWorks, LLC

Brian J. Petruska, Esq.
Construction and Master Laborers' Local Union 11
11951 Freedom Drive, Room 310
Reston, Virginia 20190
bpetruska@maliuna.org
Counsel for Union

/s/ Daniel M. Heltzer
Daniel M. Heltzer, Esq.
Counsel for the General Counsel
National Labor Relations Board, Region 5
Washington Resident Office
1015 Half Street, SE
Suite 6020
Washington, DC 20570-0001
Telephone: 202-208-0124
Email: Daniel.Heltzer@NLRB.gov