

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

GREEN JOBWORKS, LLC &

Respondent,

and

Case No. 05-CA-168637

CONSTRUCTION AND MASTER  
LABORERS' LOCAL UNION 11,

Charging Party.

**GREEN JOBWORKS, LLC'S STATEMENT OF CAUSE TO  
DENY GENERAL COUNSEL'S MOTION TO TRANSFER AND FOR  
SUMMARY JUDGMENT**

Respondent Green JobWorks, LLC ("GJW"), by and through its undersigned counsel, submits this Statement of Cause to Deny General Counsel's Motion to Transfer Case to the Board and for Summary Judgment.

This case involves a petition for an election where the union claimed that GJW and ACECO were joint employers and sought to represent GJW employees who worked at ACECO job sites.<sup>1</sup> After a hearing, the Regional Director determined that GJW and ACECO were not joint employers. He also determined, relying on *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), that

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<sup>1</sup> 2. In its position statement, GJW posited as follows with regard to the narrow bargaining unit sought by the union: "The appropriate bargaining unit bargaining unit is all laborers and asbestos removal employees who work for Green JobWorks, LLC at all work locations in the Baltimore/D.C. Metro area and not just those who performed work at ACECO job sites in the District of Columbia and Montgomery County as proposed by the union in the Petition. Those employees petitioned-for by the Union do not share a traditional community of interest separate and distinct from the other Green JobWorks employees who work at its other locations. The unit petitioned for by the Union at the locations sought do not have distinct terms and conditions of employment, and they regularly interchange with other Green JobWorks employees depending on locations, work to be performed and their availability. All of Green JobWorks employees have common supervision and other terms and conditions of employment (e.g. wages, benefits, work rules, etc.)." Exhibit 2.

the narrow unit requested by the union was appropriate despite record evidence which showed that the narrower unit shared a community of interest with other workers who worked for GJW on non-Aceco job sites, concluding that GJW failed to demonstrate that the broader unit shared an “overwhelming” community of interest with the petitioned-for unit as articulated by the Board in *Specialty Healthcare*. Exhibit 4 pp. 15-16

GJW filed a Request for Review of the Regional Director’s determination as to the appropriateness of the unit. The Board denied review with Member Miscimarra dissenting. In his dissent, Member Miscimarra specifically attacked the *Specialty Healthcare* standard relied upon by the Regional Director:

I believe there is a substantial issue regarding Regional Director’s finding that it is appropriate to have a bargaining unit limited to the Green JobWorks demolition and asbestos-removal employees who are assigned to ACECO projects, excluding all other Green JobWorks demolition and asbestos-removal employees. The record indicates that all of these employees perform similar work, have similar skills, are subject to common employment policies, and receive the same benefits. For the reasons I stated in *Macy’s, Inc.*, I would apply the Board’s traditional standards when resolving the unit-appropriateness issue, not the “overwhelming community of interest” standard set forth in *Specialty Healthcare and Rehabilitation Center of Mobile*.

Exhibit 16, citations omitted. Since that time, GJW has refused to bargain with the union, continuing to assert that the Regional Director’s reliance on *Specialty Healthcare* to certify the narrower unit was erroneous. Exhibit 20.

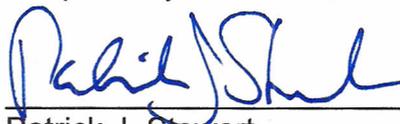
Several weeks ago, the Board abandoned its *Specialty Healthcare* requirement for an “overwhelming community of interest” standard and replaced it with the traditional community of interest standard. In *PCC Structural, Inc.*, 365 NLRB No. 160 (Dec. 15, 2017), the Board concluded that the *Specialty Healthcare* “overwhelming community of

interest” applied in that case (and in the instant case) was “fundamentally flawed.” *Id.* p. 7.

That the Board has now resumed to applying the traditional community of interest standard without the *Specialty Healthcare* “overwhelming community of interest” required showing, the General Counsel’s Motion to Transfer Case to the Board and for Summary Judgment should be denied and the case should be remanded to the Regional Director to determine if the petitioned-for unit is appropriate under the traditional community of interests without consideration of the abolished *Specialty Healthcare* required showing by GJW.

WHEREFORE, Respondent Green JobWorks, LLC requests that the Board deny General Counsel’s Motion to Transfer Case to the Board and for Summary Judgment and remand to the case to the Regional Director to determine if the petitioned-for unit is appropriate under the traditional community of interests without consideration of the abolished *Specialty Healthcare* required showing by GJW.

Respectfully submitted,



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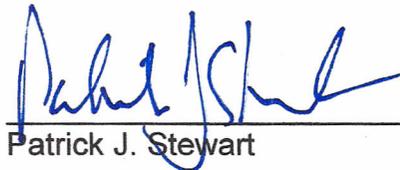
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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of January, 2018, copies of the foregoing Green JobWorks, LLC's Statement of Cause to Deny General Counsel's Motion to Transfer and for Summary Judgment were sent by email, to:

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