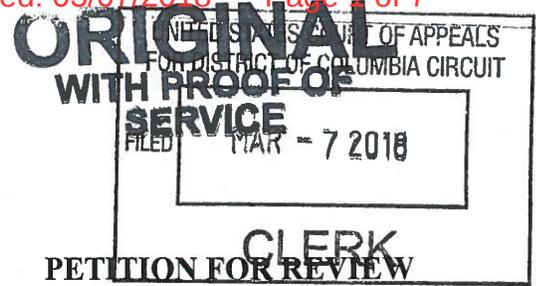


MAR - 7 2018

ORIGINAL



UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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CRANESVILLE BLOCK CO., INC.,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

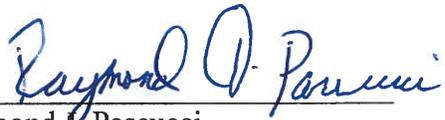
Respondent.

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No. 18-1070

Pursuant to Rule 15(a) of the Federal Rules of Appellate Procedure, Cranesville Block Co., Inc. petitions this court for review of the Decision and Order of the National Labor Relations Board in NLRB Case No. 03-CA-209124, reported at 366 NLRB No. 18 and entered on February 13, 2018, and requests that said Decision and Order be set aside, modified and/or remanded for further proceedings. Petitioner requests that the Court review the Board's Certification of Representative that issued on September 19, 2017 in the underlying representation proceeding in Case No. 03-RC-190952 as part of its review of the Board's February 13, 2018 Decision and Order. The Board's February 13, 2018 Decision and Order is attached hereto as **Exhibit A**.

Dated: March 6, 2018

  
Raymond J. Pascucci  
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**EXHIBIT A**

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

**Cranesville Block Co., Inc. and International Brotherhood of Teamsters, Local 294.** Case 03–CA–209124

February 13, 2018

DECISION AND ORDER

BY CHAIRMAN KAPLAN AND MEMBERS PEARCE  
AND EMANUEL

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed by the International Brotherhood of Teamsters, Local 294 (the Union) on November 2, 2017,<sup>1</sup> the General Counsel issued the complaint on November 17, alleging that Cranesville Block Co., Inc. (the Respondent) has violated Section 8(a)(5) and (1) of the Act by failing and refusing the Union's request to recognize and bargain following the Union's certification in Case 03–RC–190952. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, amended answer, and second amended answer admitting in part and denying in part the allegations in the complaint,<sup>2</sup> and asserting affirmative defenses.

On December 7, the General Counsel filed a Motion for Summary Judgment. On December 11, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed an opposition.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the Union's certification of representative on the basis of its contentions, raised and rejected in the underlying representation proceeding, that a statutory supervisor participated in the vote, and that he engaged in objectionable conduct during the critical period of the election warranting overturning the election results.

<sup>1</sup> All dates are in 2017.

<sup>2</sup> The Respondent neither admitted nor denied the complaint allegation asserting the agency status of an "unnamed legal representative" of the Respondent. This allegation is immaterial to the disposition of the instant motion.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.<sup>3</sup>

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business in Amsterdam, New York, where it has been engaged in the manufacturing and nonretail sale of concrete.

The Respondent, in conducting its business operations described above, annually purchases and receives at its Amsterdam, New York facility, goods and materials valued in excess of \$50,000 directly from points located outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the representation election held by secret ballot on February 8, the Union was certified on September 19<sup>4</sup> as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time truck mechanics employed by the Respondent at its Amsterdam, New York facility excluding guards, professional employees and supervisors as defined in the Act, and all other employees.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

<sup>3</sup> Chairman Kaplan and Member Emanuel did not participate in the underlying representation proceeding.

<sup>4</sup> By unpublished Order dated September 19, the Board denied the Respondent's request for review (former Chairman Miscimarra dissenting).

## DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

*B. Refusal to Bargain*

On October 21, the Union, by letter, requested that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of the unit. Since October 21, and continuing to date, the Respondent has failed and refused to recognize and bargain with the Union as the collective-bargaining representative of the unit.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSION OF LAW

By failing and refusing since October 21 to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to recognize and bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964).

## ORDER

The National Labor Relations Board orders that the Respondent, Cranesville Block Co., Inc., Amsterdam, New York, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Brotherhood of Teamsters, Local 294 (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time truck mechanics employed by the Respondent at its Amsterdam, New York facility excluding guards, professional employees and supervisors as defined in the Act, and all other employees.

(b) Within 14 days after service by the Region, post at its facilities in Amsterdam, New York, copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 21, 2017.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 3 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 13, 2018

\_\_\_\_\_  
Marvin E. Kaplan,

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Mark Gaston Pearce,

\_\_\_\_\_  
Member

<sup>5</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

CRANSEVILLE BLOCK CO.

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William J. Emanuel Member

(SEAL) NATIONAL LABOR RELATIONS BOARD  
APPENDIX  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with International Brotherhood of Teamsters, Local 294

(the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

All full-time and regular part-time truck mechanics employed by the Respondent at its Amsterdam, New York facility excluding guards, professional employees and supervisors as defined in the Act, and all other employees.

CRANESVILLE BLOCK CO., INC.

The Board's decision can be found at <https://www.nlr.gov/case/03-CA-209124> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



**CERTIFICATE OF SERVICE**

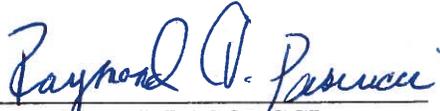
In accordance with Federal Rule of Appellate Procedure 15(c), I hereby certify that a true and correct copy of the foregoing Petition for Review was served on the following parties, as well as the head of the National Labor Relations Board's Appellate and Supreme Court Litigation Branch, via first-class U.S. mail, on this 6th day of March 2018:

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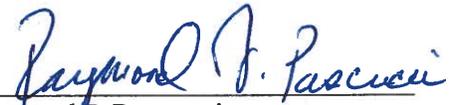
Linda Dreeben  
Appellate and Supreme Court Litigation Branch  
National Labor Relations Board  
1015 Half Street SE  
Washington, D.C. 20570-0001

  
RAYMOND J. PASCUCCI

**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, Petitioner Cranesville Block Co., Inc. discloses that it is not a publicly held corporation, has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

Dated: March 6, 2018



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