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**Retro Environmental, Inc./Green JobWorks, LLC  
and Construction and Master Laborers' Local  
Union 11, a/w Laborers International Union of  
North America (LIUNA). Case 05–CA–199590**

March 26, 2018

DECISION AND ORDER

BY CHAIRMAN KAPLAN AND MEMBERS PEARCE  
AND MCFERRAN

The General Counsel seeks summary judgment in this case on the grounds that there are no genuine issues of material fact as to the allegations in the complaint, and that the Board should find, as a matter of law, that the Respondents—Retro Environmental, Inc. (Retro) and Green JobWorks, LLC (GJW)—failed and refused to bargain with the Union in violation of Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondents' unit employees.

Pursuant to a charge filed on May 26, 2017, by Construction and Master Laborers' Local Union 11, a/w Laborers' International Union of North America (the Union), alleging that the Respondents have violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with requested information, the General Counsel issued the instant complaint on July 31, 2017. The Respondents each filed an answer, admitting in part and denying in part the allegations of the complaint and asserting affirmative defenses.

On September 21, 2017, the Board issued a Decision and Order granting the General Counsel's Motion for Summary Judgment in a related refusal-to-bargain case in which the Respondents contested the Union's certification on the basis of their contentions, raised and rejected in the underlying representation proceeding (Case 05–RC–153468), that they are not joint employers of the unit employees and that the unit is not appropriate. *Retro Environmental, Inc./Green JobWorks, LLC*, 365 NLRB No. 133 (2017) (*Retro I*). In that case, the Board found that since March 1, 2017, the Respondents failed and refused to recognize and bargain with the Union in viola-

tion of Section 8(a)(5) and (1) of the Act.<sup>1</sup> *Id.*, slip op. at 2.

On November 3, 2017, the General Counsel filed a Motion to transfer case to the Board and for Summary Judgment in the current proceeding. On November 7, 2017, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. Neither Respondent filed a response. The allegations in the motion are therefore undisputed.

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

Ruling on Motion for Summary Judgment

The Respondents admit their refusal to furnish the Union with information the Union requested on March 1, 2017, but they contest the validity of the Union's certification, and their obligation to bargain with the Union, on the basis of their contentions, raised and rejected in the underlying representation proceeding, that they are not joint employers of the unit employees and that the unit is not appropriate.<sup>2</sup>

All representation issues raised by the Respondents were or could have been litigated in the prior representation proceeding. The Respondents do not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor do they allege any special circumstances that would require the Board to reexamine the

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<sup>1</sup> On March 5, 2018, the General Counsel filed an application for enforcement of its order in *Retro I* with the United States Court of Appeals for the Fourth Circuit.

<sup>2</sup> In addition, the Respondents have asserted as affirmative defenses that the complaint fails to state a claim upon which relief can be granted; the complaint allegations are insufficient to state a violation of the Act; the complaint was issued, in whole or in part, without substantial justification; some or all of the allegations in the complaint fall outside the scope of the underlying charge; and the complaint is vague and lacking in detail. The Respondents have not offered any explanation or evidence to support these bare assertions. Thus, we find that these affirmative defenses are insufficient to warrant denial of the General Counsel's Motion for Summary Judgment in this proceeding. See *Retro I*, supra, slip op. at 2 fn. 2. Accordingly, we find it unnecessary to pass on the General Counsel's request that we strike the Respondents' affirmative defenses.

Retro also asserts as an affirmative defense that some or all of the complaint allegations are barred by Sec. 10(b) of the Act. However, Retro's answer admits that it has refused to furnish the Union with requested information since March 3, 2017, and that the charge was filed on May 26, 2017. Retro thus admits that the alleged unlawful conduct occurred within 6 months of the filing of the charge. Therefore, we find that Retro's 10(b) defense is without merit.

Finally, Retro asserts as an affirmative defense that it did not purposefully fail or refuse to bargain with the Union. However, Retro admits par. 8 of the complaint, which alleges that Retro failed and refused to furnish the Union with the information it requested. We find that this affirmative defense does not raise an issue of fact warranting a hearing.

decision made in the representation proceeding. We therefore find that the Respondents have 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).

We also find that there are no factual issues warranting a hearing with respect to the Union's information request. The complaint alleges, and the Respondents admit, that since about March 1, 2017, the Union, by letter and email, requested that the Respondents furnish the Union with the following information:

- (1) A copy of any contracts, agreements, or memoranda of understanding between GJW and Retro relating to the provision of temporary labor by GJW to Retro;
- (2) Any written job descriptions for the positions within the bargaining unit;
- (3) Any written training materials related to the positions within the bargaining unit;
- (4) A copy of all employee policies, handbooks, manuals, safety guidelines, or written work rules currently applicable to bargaining unit employees;
- (5) Any documents that set out the regular work hours for employees within the bargaining unit;
- (6) A roster of all full-time and regular part-time bargaining-unit employees, including all employees listed on the Voter Eligibility List that [Respondents] submitted in Case No. 05-RC-153468, that includes their date of hire and current or most recent rate of pay;
- (7) A copy of the summary plan description and summary of benefits for any employer-sponsored health plan(s) for which bargaining-unit employees are eligible to participate;
- (8) A statement of the monthly premium that a bargaining unit employee is responsible for paying either self-only or family coverage by any employer-sponsored health plan(s) for which bargaining unit employees are eligible to participate;
- (9) A statement of the monthly premium that the employer is responsible for paying for an employee with self-only or family coverage by any employer-sponsored health plan(s) for which bargaining unit employees are eligible to participate;
- (10) A copy of the summary plan description for any 401(k) or other form of retirement benefit plan(s) for which bargaining unit employees are eligible to participate; and
- (11) A description of any other benefits that [the Respondents] provide to employees, including but not limited to paid vacation, sick days, or holidays, uniforms, gloves, personal protective equipment, access to cleaning products and job training.

The Respondents deny the allegation that this requested information is relevant to the Union's performance of its functions as the exclusive collective-bargaining representative of the unit employees. It is well established, however, that information of this type is relevant for purposes of collective bargaining and must be furnished, because it concerns terms and conditions of employment of unit employees.<sup>3</sup> We find, therefore, that there are no material issues of fact warranting a hearing.

Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

#### FINDING OF FACT

##### I. JURISDICTION

At all material times, Retro has been a corporation with an office and place of business in Sykesville, Maryland, and has been engaged in the business of providing demolition and environmental services to private and governmental entities, including at sites in Washington, D.C.

At all material times, GJW has been 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.

From about May 1, 2013, through May 1, 2014, Retro and GJW were parties to a contract which provided that GJW was the agent for Retro in connection with hiring employees for its projects located in Washington, D.C., Maryland, and Virginia.

Since about May 1, 2014, Retro and GJW have continued to operate consistent with the contract described above.<sup>4</sup>

<sup>3</sup> See, e.g., *CVS Albany, LLC d/b/a CVS*, 364 NLRB No. 122, slip op. at 1 (2016), *enfd. mem.* 709 Fed. Appx. 10 (D.C. Cir. 2017) (*per curiam*); *Metro Health Foundations, Inc.*, 338 NLRB 802, 803 (2003).

With respect to par. 1, above, the relevance of this information has been established because, as found in the underlying representation proceeding, GJW supplied employees to perform bargaining unit work for Retro. Moreover, the Board found that the Respondents are joint employers and certified the Union as the exclusive collective-bargaining representative of unit employees jointly employed by the Respondents. *Retro Environmental, Inc./Green JobWorks, LLC*, 364 NLRB No. 70, slip op. at 1 (2016).

<sup>4</sup> Although the Respondents deny this allegation, the Board found in the underlying representation proceeding that "[f]rom May 2013 to May 2014, Green JobWorks and Retro operated under a lease of services agreement," and that after the agreement expired, "the two companies continue[d] to operate essentially in the same manner[.]" *Retro Environmental, Inc./Green JobWorks, LLC*, 364 NLRB No. 70, slip op. at 1 (2016). Accordingly, we find that the Respondents' denials do not raise an issue of fact warranting a hearing with respect to this complaint allegation.

At all material times, Retro has possessed control over the labor relations policy of GJW, exercised control over the labor relations policy of GJW, and administered a common labor policy with GJW for the employees of the Respondents.<sup>5</sup>

At all material times, Retro and GJW have been joint employers of the employees of Respondents.

In conducting its operations during the 12-month period ending June 30, 2017, Retro performed services valued in excess of \$50,000 in states other than the State of Maryland.

In conducting its operations during the 12-month period ending June 30, 2017, GJW performed services valued in excess of \$50,000 in states other than the State of Maryland.

We find that the Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We further find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of Respondents (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time laborers, including demolition and asbestos workers, jointly employed by Retro Environmental, Inc. and Green JobWorks, LLC; excluding office clericals, confidential employees, managerial employees, guards, and supervisors as defined in the Act.

On December 2, 2016, the Board certified the Union as the exclusive collective-bargaining representative of the Unit. At all times since December 2, 2016, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

By letter and email dated March 1, 2017, the Union requested that the Respondents furnish the Union with information that is relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since about March 3, 2017, the Respondents have failed and refused to furnish the Union with the requested information. We find

that the Respondents' conduct constitutes an unlawful refusal to bargain collectively with the Union in violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSION OF LAW

By failing and refusing since March 3, 2017, to furnish the Union with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondents' unit employees, the Respondents have 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 Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondents violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondents' unit employees, we shall order the Respondents to furnish the Union with information requested in its letter and email dated March 1, 2017.

## ORDER

The National Labor Relations Board orders that the Respondents, Retro Environmental, Inc., Sykesville, Maryland, and Green JobWorks, LLC, Baltimore, Maryland, joint employers, and their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Construction and Master Laborers' Local Union 11, a/w Laborers' International Union of North America (the Union), by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondents' unit employees.

(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) Furnish to the Union in a timely manner the information requested by the Union on March 1, 2017.

(b) Within 14 days after service by the Region, post at their facilities in Sykesville, Maryland, and Baltimore, Maryland, copies of the attached notice marked "Appen-

<sup>5</sup> The Respondents deny this allegation and the allegation that they are joint employers. As noted above, the Board addressed the joint employer issue in the underlying representation proceeding.

Chairman Kaplan did not participate in the underlying representation proceeding. He agrees that summary judgment is appropriate here, but expresses no opinion on whether the underlying representation issues were correctly decided.

dix.”<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondents’ authorized representative, shall be posted by the Respondents 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 Respondents customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondents have gone out of business or closed the facilities involved in these proceedings, the Respondents shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since March 3, 2017.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 5 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. March 26, 2018

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Marvin E. Kaplan, Chairman

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Mark Gaston Pearce, Member

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Lauren McFerran, 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

<sup>6</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.”

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 refuse to bargain collectively with Construction and Master Laborers’ Local Union 11, a/w Laborers’ International Union of North America (the Union), by failing and refusing to furnish it with requested information that is relevant and necessary to the Union’s performance of its functions as the collective-bargaining representative of our unit employees.

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 furnish to the Union in a timely manner the information requested by the Union on March 1, 2017.

RETRO ENVIRONMENTAL, INC./GREEN  
JOBWORKS, LLC

The Board’s decision can be found at [www.nlr.gov/case/05-CA-199590](http://www.nlr.gov/case/05-CA-199590) 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.

