UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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| NATIONAL LABOR RELATIONS BOARD | : | |
| | : | |
| Petitioner | : | No. 18-2293 |
| v. | : | |
| | : | |
| ENVIRONMENTAL CONTRACTORS, INC. AND | : | Board Case Nos.: |
| KIELCZEWSKI CORP., AND THEIR ALTER EGO, | : | 22-CA-089865 |
| SINGLE EMPLOYER, AND/OR SUCCESSOR, | : | 22-CA-136700 |
| BE CONSTRUCTION CORPORATION | : | 22-CA-145173 |
| | : | 22-CA-172957 |
| Respondents | : | |

JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

Before:

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondents, Environmental Contractors, Inc., Kielczewski Corporation, and BE Construction Corporation, alter egos and a single employer and/or successor, their officers, agents, successors, and assigns, enforcing its order dated February 27, 2014, in Case Nos. 22-CA-089865, 22-CA-136700, 22-CA-145173 and 22-CA-172957, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondents Environmental Contractors, Inc., Kielczewski Corporation, and BE Construction Corporation, alter egos and a single employer and/or successor, their officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Mandate shall issue forthwith.

BY THE COURT

_____
Circuit Judge

DATED:

NATIONAL LABOR RELATIONS BOARD

v.

ENVIRONMENTAL CONTRACTORS, INC. AND KIELCZEWSKI CORP., AND THEIR ALTER EGO, SINGLE EMPLOYER, AND/OR SUCCESSOR, BE CONSTRUCTION CORP.

**ORDER**

Environmental Contractors, Inc., Kielczewski Corporation, and BE Construction Corporation, alter egos, a single employer and/or successor, West Orange, New Jersey, their officers, agents, successors, and assigns, shall

1. Cease and desist from

   (a) Failing and refusing to recognize and bargain collectively and in good faith with Local 78, Laborers International Union of North America (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

   (b) Changing the terms and conditions of employment of its unit employees without first notifying the Union and giving it an opportunity to bargain.

   (c) Refusing to bargain collectively with 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.

   (d) 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 concerning 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 building and construction laborers employed by the Employer in the State of New Jersey, but excluding

all office clerical employees, managers, guards and supervisors as defined in the Act.

(b) Furnish to the Union in a timely manner the information requested by the Union on November 17, 2014.

(c) Rescind the changes in terms and conditions of employment for its unit employees that were unilaterally implemented on or after March 1, 2014.

(d) Remit to the Union's benefit funds all contributions required and due under the collective-bargaining agreement that expired on April 30, 2012, in the amounts set forth in attachment B of the compliance specification, totaling $656,690, plus any additional amounts due the funds as set forth in the remedy section of this decision.

(e) Make the unit employees whole for any loss of earnings suffered as a result of the Respondents' unilateral changes by paying them the amounts listed in attachment A of the compliance specification, totaling $820,190, plus any additional amounts due the employees as set forth in the remedy section of this decision.

(f) Compensate the affected unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards in the manner set forth in the remedy section of this decision, and file with the Regional Director of Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at their facility in Orange, New Jersey, copies in English, Spanish, and Polish of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 22, 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 such 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 facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by the Respondent at any time since June 1, 2012.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 22 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.

## APPENDIX

# NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN 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 collectively and in good faith with Local 78, Laborers International Union of North America (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT make unilateral changes to your terms and conditions of employment without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT refuse to bargain collectively with 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, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning 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 building and construction laborers employed by us in the State of New Jersey, but excluding all office clerical employees,

managers, guards and supervisors as defined in the Act.

WE WILL rescind the changes in terms and conditions of employment of unit employees that were unilaterally implemented on or after March 1, 2014.

WE WILL remit to the Union's benefit funds all contributions required and due under the collective-bargaining agreement that expired on April 30, 2012, totaling $656,690, plus any additional amounts due the funds.

WE WILL make you whole for any loss of earnings attributable to the unilateral changes we have made, totaling $820,190, plus interest.

WE WILL compensate our unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL furnish to the Union in a timely manner the information requested by the Union on November 17, 2014.

ENVIRONMENTAL CONTRACTORS, INC., KIELCZEWSKI CORPORATION AND THEIR ALTER EGO, SINGLE EMPLOYER, AND/OR SUCCESSOR, BE CONSTRUCTION CORPORATION

The Board's decision can be found at www.nlrb.gov/case/22-CA-089865 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.