

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

**PCC STRUCTURALS, INC.**

and

**Cases 19-CA-207792  
19-CA-233690**

**INTERNATIONAL ASSOCIATION  
OF MACHINISTS AND AEROSPACE  
WORKERS, LOCAL LODGE 63**

**GENERAL COUNSEL’S REPLY TO RESPONDENT’S OPPOSITION  
TO THE MOTION FOR SUMMARY JUDGMENT AND RESPONSE  
TO THE NOTICE TO SHOW CAUSE**

Pursuant to § 102.24 of the National Labor Relations Board’s (the “Board”) Rules and Regulations and the Board’s April 10, 2019 Notice to Show Cause, Counsel for the General Counsel respectfully submits this brief replying to PCC Structurals, Inc.’s (“Respondent”) Opposition to the General Counsel’s Motion for Summary Judgment and Response to the Notice to Show Cause (“Opposition”).

Although Respondent admits “its refusal to bargain based on the earlier representation proceeding” (Opposition, p.1), leaving no material issues of fact in dispute, it nonetheless argues that summary judgment is not appropriate in this case due to its “unique” nature. Namely, Respondent would have the Board ignore an admitted refusal to bargain due to the fact that Respondent is still not happy with having a bargaining obligation despite the fact that the Board has set aside the standard set forth in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), *enf’d. sub nom. Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013).

Respondent is mistaken – there are no “special circumstances” arising out of a test-of-certification case where the employer is not pleased with the certification and the bases found by the Board to underpin it. In fact, it is the exact same scenario as every other test-of-certification case that arises. And, in this case, the Board has already examined the certification of the Unit two times – once resulting in a remand due to the Board’s revisitation of the *Specialty Healthcare* standard, and the second time, a comprehensive analysis of the certification as issued post-overruling of *Specialty Healthcare*.

In that comprehensive analysis, set forth in its November 28, 2018 Order, the Board denied the Employer’s Request for Review of the Regional Director’s Supplemental Decision. In denying review, a Board majority found that the petitioned-for unit shares a community of interest sufficiently separate from excluded employees to constitute a unit appropriate for collective bargaining. A separate majority agreed with the Regional Director that the petitioned-for welders are skilled journeymen craftsmen and that the petitioned-for unit is appropriate for collective bargaining as a craft unit. The Board further noted that, although the Regional Director cited several craft-severance cases in his Supplemental Decision, and while the instant matter does not involve severance issues or all of the considerations that those issues raise, several of the cited cases, *Hughes Aircraft Co.*, 117 NLRB 98 (1957) and *C F Braun & Co.*, 120 NLRB 282 (1958), were instructive regarding the distinction between skilled craft and non-craft welders. Thus, there is nothing new for the Board to examine – it has already addressed what Respondent seeks to have it review. Respondent simply wants a different result.

That makes this nothing more than a test-of-certification case in which the Board already considered and rejected Respondent's full arguments considering the underlying certification of representation. When a party refuses to meet and bargain following certification by the Board, it is not the policy of the Board to allow that party to relitigate, in an unfair labor practice proceeding, those issues which that party has already litigated and that the Board decided in a prior representation proceeding, absent newly discovered, relevant evidence not available at the time of the litigation in the prior representation proceeding. See, e.g., *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941); *Washington Beef, Inc.*, 322 NLRB 398 (1996); § 102.67(f) of the Board's Rules and Regulations. Respondent has admitted in its Opposition that there is no newly discovered, relevant information. Accordingly, Respondent should be ordered to bargain with the International Association of Machinists and Aerospace Workers, District Lodge W24 (the "Union"), as the exclusive collective bargaining representative of the bargaining unit that the Board found to be the appropriate unit for the purpose of collective bargaining under the Act.

Additionally, Respondent is further violating the Act by refusing to provide the Union with relevant requested information. The Board applies a broad "liberal, discovery-type standard" to a respondent's obligation to provide requested information; that is, the information simply needs to have some bearing on the issue between the parties and would be of probable use to the requesting party. *NLRB v. Acme Indus. Co.*, 385 U.S. 432, 437 (1967); *Bacardi Corp.*, 296 NLRB 1220, 1222-23 (1989). Information about bargaining unit employees' terms and conditions of employment, such

as the information sought here, is presumptively relevant and clearly needs to be provided. See *International Protective Serv., Inc.*, 339 NLRB 701 (2003).

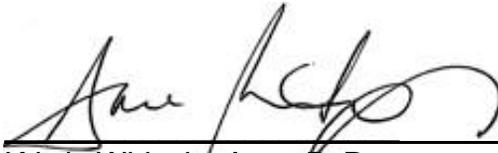
Further, it is well-settled Board law that an employer has a duty to provide information that is relevant to a union in discharging its statutory responsibilities, including its role in preparing for collective bargaining. See, e.g., *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956); *Rockwell Mining LLC*, 367 NLRB No. 46 (December 11, 2018). As set forth in detail in the General Counsel's Motion, the information sought by the Union is clearly presumptively relevant to its role as the newly certified collective bargaining representative as it prepares for bargaining. This is not what Respondent takes issue with.

Rather, Respondent primarily argues that the underlying certification is inappropriate and, therefore, it should not have to provide the information. As discussed in detail above and in the General Counsel's Motion, the Board has already decided the appropriateness of the unit in the prior proceeding and relitigating that issue would be inappropriate here. Accordingly, the General Counsel respectfully requests that Respondent be further ordered to provide the Union with the information it requested in order to fulfill its statutory obligation as the exclusive collective bargaining representative.

In sum, Counsel for the General Counsel respectfully requests that the Board grant the General Counsel's Motion for Summary Judgment and issue an Order finding that Respondent is violating of §§ 8(a)(1) and (5) of the National Labor Relations Act by refusing to bargain with the Union and by refusing to provide the Union with relevant requested information. Counsel for the General Counsel further requests, as set forth in

the Motion, that the Board's Order include a provision that Respondent be required to bargain in good faith with the Union for an extended period as required by *Mar Jac Poultry*, 136 NLRB 785 (1962).

**DATED** at Seattle, Washington, this 1<sup>st</sup> day of May, 2019.

A handwritten signature in black ink, appearing to read "Anne Pomerantz", written over a horizontal line.

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of Counsel for the General Counsel's Reply to Respondent's Opposition to the Motion for Summary Judgment and Response to the Notice to Show Cause was served on the 1<sup>st</sup> day of May, 2019, on the following parties:

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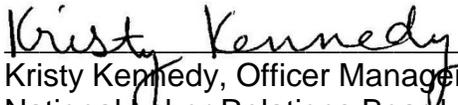
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