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**PCC Structurals, Inc. and International Association of Machinists and Aerospace Workers, Local Lodge 63.** Cases 19–CA–207792 and 19–CA–233690

November 27, 2019

DECISION AND ORDER

BY MEMBERS MCFERRAN, KAPLAN, AND EMANUEL

This is a refusal-to-bargain case in which the Respondent is contesting International Association of Machinists and Aerospace Workers, District Lodge W24's (the Union's) certification as bargaining representative in the underlying representation proceeding. Pursuant to charges filed on October 11, 2017, and January 7, 2019, by International Association of Machinists and Aerospace Workers, Local Lodge 63 (the Charging Party Local Union), the General Counsel issued a consolidated complaint (the complaint) on February 26, 2019, and an amendment to the complaint on March 15, 2019, alleging that PCC Structurals, Inc. (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain with it and to furnish relevant and necessary information following the Union's certification in Case 19–RC–202188.<sup>1</sup> (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 answers to the complaint and the amendment, admitting in part and denying in part the allegations and asserting affirmative defenses.

On April 3, 2019, the General Counsel filed a Motion for Summary Judgment. On April 10, 2019, 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 to the motion and answer to the Notice to Show Cause, the General Counsel filed a reply, and the Charging Party Local Union filed a Joinder to the General Counsel's motion with a request for additional remedies.

<sup>1</sup> We maintain the nomenclature of the complaint by referring to District Lodge W24, which was certified in the representation proceeding, as "the Union" and referring to Local Lodge 63, which filed the unfair labor practice charges at issue here, as "the Charging Party Local Union."

<sup>2</sup> Chairman Ring is recused and took no part in the consideration of this case.

<sup>3</sup> In denying the Respondent's request for review of the amended certification, we unanimously found the petitioned-for unit appropriate for bargaining. Contrary to the Respondent, the overlapping majorities' analyses are neither inconsistent with one another nor mutually exclusive. In addition, the Respondent's discussion of precedent in its brief to

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.<sup>2</sup>

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain and to provide the requested information but contests the validity of the Union's certification on the basis of its contentions, raised and rejected in the underlying representation proceeding, that the certification was improper because the unit is inappropriate.

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).<sup>3</sup>

We also find that there are no factual issues warranting a hearing with respect to the Respondent's refusal to furnish the Union with requested information. The complaint alleges, and the Respondent admits, that by letter dated December 3, 2018, the Union requested the following information pertaining to the bargaining unit:

I. Current data and data for the prior three years showing:

- a. A breakdown for any insurance premiums (such as medical, dental, vision, life, accident, etc.) by type of coverage (such as single, one dependent, family, etc.) and carrier, including details on per employee premium costs (or premium equivalent for self-insured plans), number of employees by type of coverage, and any employee-share of these insurance premiums . . . ;
- b. Information by type of coverage, carrier, enrollment, costs and retiree-share of costs for any insurance for retirees; and

the Board confuses the question of what constitutes a craft unit with the separate question of whether such a unit may be severed from a historical bargaining unit. As stated in our denial of review, the latter question is not before us. Accordingly, the Respondent's bare assertion that we have sub silentio overruled *Mallinckrodt Chemical Works*, 162 NLRB 387 (1966), which clarified the standard for directing a severance election, is meritless. *Mallinckrodt* did not affect the discussions about what constitutes a craft unit or about craft welders in cases the Regional Director and Board majority cited in the underlying representation decisions in these proceedings.

- c. C.O.B.R.A. rates for medical, prescription drug, dental, and vision insurance.
- II. A current detailed breakdown by bargaining unit employee showing the following (please indicate date of time period data is for):
- Pay/occupation grade or level (i.e. pay grade 5);
  - Job title;
  - Straight-time hourly rate;
  - Shift primarily assigned to;
  - Age or date of birth;
  - Seniority or date of hire.
- III. For the entire bargaining unit:
- The current average hourly rate;
  - Number of employees currently at each level of the vacation schedule;
  - Average number of days used per bargaining unit member for paid sick leave, paid personal days, paid jury duty, paid bereavement leave, paid military leave, and any other types of paid leave during the most recent year (calendar, fiscal or 12-month period);
  - Average annual cost to the employer per employee for pension, health care, life insurance, accidental death & dismemberment, and each other type of insurance or other employer provided benefits;
  - Average hours of overtime worked per week per bargaining unit member.
- IV. For any pension, savings or stock plan:
- Form 5500 and all schedules and attachments for the past three years;
  - Annual Funding Notice for defined benefit plans and actuarial reports for the past three years;
  - The current Summary Plan Description (SPD) and all current Summary of Material Modification (SMM);
  - The current plan document, including all amendments and attachments;
- The current IRS determination letter;
  - For voluntary participation and/or contribution plans, such as 401(k) plans, the annual average for the past three year[s] for:
    - The number of bargaining unit members participating;
    - The average contribution by these participants;
    - The average employer match/contribution for these participants;
    - The average account balance for participants;
    - The number of these participants with loans from the plan.
- V. The current Summary Plan Description (SPD) and Summary of Material Modifications (SMM) for all other benefit plans not included in Section IV.
- VI. An electronic copy (preferable format is in Microsoft Word) of the current collective-bargaining agreement.
- The requested information pertains to the wages and benefits of bargaining unit employees and the costs of such wages and benefits. It is well established that information concerning the terms and conditions of employment of unit employees is presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g., *UNY LLC d/b/a General Super Plating*, 367 NLRB No. 113, slip op. at 2 (2019); *Anheuser-Busch, LLC*, 365 NLRB No. 123, slip op. at 2 (2017); *Metro Health Foundation*, 338 NLRB 802, 803 (2003).<sup>4</sup> The Respondent has not asserted any basis for rebutting the presumptive relevance of this information. We find, therefore, that the Respondent unlawfully refused to furnish the information sought by the Union.
- Accordingly, we grant the Motion for Summary Judgment.
- 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 offices and places of business in Portland, Clackamas, and Milwaukie, Oregon (jointly, the Portland facilities) and has been engaged in the manufacture and repair of aerospace and mechanical components.

<sup>4</sup> Although the complaint does not specifically state that the information request was limited to unit employees, we find that the request indicates that it should be so construed. See, e.g., *Freyco Trucking, Inc.*, 338 NLRB 774, 775 fn. 1 (2003). We also find that the requested

information concerning retiree benefits is relevant to the future retirement benefits of active bargaining unit employees, which is a mandatory subject of bargaining. *Chemical Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 180 (1971).

In conducting its business operations during the 12 months preceding the complaint, which period is representative of all material times, the Respondent derived gross revenues in excess of \$500,000 and purchased and received goods at the Portland facilities valued in excess of \$50,000 directly from points outside the State of Oregon.

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.<sup>5</sup>

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. *The Certification*

Following a representation election held on September 22, 2017, the Union was certified on October 2, 2017.<sup>6</sup> After supplemental proceedings, the Regional Director issued an amended certification on May 4, 2018, certifying the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit:<sup>7</sup>

All full-time and regular part-time rework welders, rework specialists, and crucible repair welders employed by [the Respondent] at its facilities in Portland, Clackamas, and Milwaukie, Oregon; excluding all other employees, and guards and supervisors as defined by the Act.

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

### B. *Refusal to Bargain*

By letter dated December 3, 2018, the Union requested that the Respondent bargain collectively with it as the exclusive collective-bargaining representative of the unit employees. The Respondent did not reply to the Union's request. Since December 3, 2018, the Respondent has failed and refused to bargain with the Union.

By the December 3, 2018 letter, the Union also requested that the Respondent furnish it with the

information described above. The Respondent did not respond to the Union's request, and since December 3, 2018, the Respondent has failed and refused to provide the requested information. The requested information is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

We find that these failures and refusals constitute 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 December 3, 2018, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, and by failing and refusing since December 3, 2018, to furnish the Union with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the Respondent's 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. We shall also order the Respondent to furnish the Union with the information it requested.

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 on 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

<sup>5</sup> The complaint, as amended, alleges that the Charging Party Local Union has at all material times been a local constituent union of the Union (i.e., of District Lodge W24); that the Union has delegated bargaining responsibilities to the Charging Party Local Union for the purposes of representing certain groups of employees; and that both the Union and the Charging Party Local Union have at all material times been labor organizations within the meaning of Sec. 2(5).

In its answer to the complaint, the Respondent does not dispute the above allegations but states that it lacks knowledge as to whether either the Union or the Charging Party Local Union has at all material times been a labor organization and whether the Union delegated bargaining responsibilities to the Charging Party Local Union. The Respondent could have, but did not, challenge the Union's labor organization status

in the representation proceeding, and it has presented no argument concerning either issue in its opposition to the General Counsel's motion and answer to the Notice to Show Cause.

<sup>6</sup> The Respondent filed a request for review of the Regional Director's Decision and Direction of Election on September 18, 2017, and a corrected request on October 12, 2017. The Board granted review and remanded the proceeding to the Regional Director on December 15, 2017. *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017).

<sup>7</sup> The Respondent subsequently filed a request for review of the amended certification on May 17, 2018. The Board denied the request for review in Case 19-RC-202188 by unpublished order dated November 28, 2018.

(1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

The Charging Party Local Union requests the additional enhanced remedy of requiring an official of the Respondent to read the notice to all employees at the involved facilities. We find that there has been no showing that the Board's traditional remedies are insufficient to redress the violations found. Accordingly, we deny the Charging Party Local Union's request.

#### ORDER

The National Labor Relations Board orders that the Respondent, PCC Structural, Inc., Portland, Clackamas, and Milwaukie, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Association of Machinists and Aerospace Workers, District Lodge W24 (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) 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 collective-bargaining representative of the Respondent's unit employees.

(c) 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 rework welders, rework specialists, and crucible repair welders employed by [the Respondent] at its facilities in Portland, Clackamas, and Milwaukie, Oregon; excluding all other employees, and guards and supervisors as defined by the Act.

(b) Furnish the Union in a timely manner the information requested by the Union on December 3, 2018.

(c) Within 14 days after service by the Region, post at its facilities in Portland, Clackamas, and Milwaukie, Oregon, copies of the attached notice marked "Appendix."<sup>8</sup> Copies of the notice, on forms provided by the Regional

Director for Region 19, 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. The Respondent shall take reasonable steps 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 employees and former employees employed by the Respondent at any time since December 3, 2018.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 19 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. November 27, 2019

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Lauren McFerran, Member

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Marvin E. Kaplan, Member

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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.

<sup>8</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

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 Association of Machinists and Aerospace Workers, District Lodge W24 (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

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 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 rework welders, rework specialists, and crucible repair welders employed by [PCC Structural, Inc.] at its facilities in Portland, Clackamas, and Milwaukie, Oregon; excluding all other employees, and guards and supervisors as defined by the Act.

WE WILL furnish the Union in a timely manner the information requested by the Union on December 3, 2018.

PCC STRUCTURALS, INC.

The Board's decision can be found at [www.nlr.gov/case/19-CA-207792](http://www.nlr.gov/case/19-CA-207792) 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.

