

# SIMONS ■ HALL ■ JOHNSTON

February 27, 2020

## Via E-Filing

Executive Secretary  
National Labor Relations Board  
1015 Half Street SE  
Washington, D.C. 20570-0001

**Re: Request for Board Review of Acting Regional Director Action  
Case No. 32-RM-255914**

Dear Executive Secretary:

Pursuant to Section 102.67 of the Rules and Regulations of the National Labor Relations Board (“NLRB” or “Board”) Nevada Gold Mines, LLC (“NGM”) requests Board review of the Acting Regional Director’s February 13, 2020, dismissal of NGM’s RM Election Petition (the “Decision”). As detailed below, there are compelling reasons for Board review because (1) the Decision departs from officially reported Board precedent, (2) the Decision is clearly erroneous on substantial factual issues and such errors prejudicially affects the rights of a party, and (3) there are compelling reasons for reconsideration of an important Board rule or policy.

## I. RELEVANT FACTS AND PROCEDURAL HISTORY

### A. Background

NGM is a Delaware limited liability company formed in April 2019 as a joint venture between Newmont Goldcorp Corporation (“Newmont”) and Barrick Gold Corporation (“Barrick”). NGM commenced its operations on July 1, 2019. Pursuant to a lease agreement, NGM leased employees from Newmont and Barrick from July 1, 2019 until December 22, 2019, at which time they received employment offers from NGM. NGM’s substantial and representative complement is approximately 2,900 employees. As of the time of the RM Petition, NGM’s workforce was comprised of 1,329 employees who were formerly employed by Newmont and represented by International Union of Operating Engineers, Local 3 (the “Union”), and 1,463 employees who were formerly employed by Barrick or are new employees and were not represented by a union.

6490 S. McCarran Boulevard, Suite F-46 Reno, NV 89509

**Phone** 775-785-0088 **Fax** 775-785-0087 **Website** SHJNevada.com

Against this backdrop, beginning in late-2019, the Union began an aggressive campaign to sign-up employees, and repeatedly requested NGM to recognize it as the bargaining representative of all employees in the combined Bargaining Unit (“BU”). For instance, in August of 2019, Chris Connor, a Union representative, had a conversation with Hiliary Wilson, Esq., General Counsel for NGM. Mr. Conner specifically requested that once the Barrick people become employed by NGM, the Union should be recognized as their representative.

Thereafter, during several in-person meetings, the Union continued to request NGM to recognize the Union as the representative of NGM’s new combined workforce. Specifically, on November 15, 2019, November 19, 2019 and December 11, 2019, the Union repeated its request for recognition of the combined BU. On November 19, 2019, the Union requested that NGM “give them” the corresponding Barrick employees and that they would “then engage in bargaining on behalf of the new combined BU.” At another meeting, the Union repeated its explicit request for recognition by NGM and justified its request by arguing that the former Barrick employees will be doing the same jobs as those who were in the Newmont BU.

By this time, however, NGM realized that the bargaining unit represented by the Union was no longer appropriate, as it has become substantially integrated with former employees of Barrick, who were not represented by the Union. Consequently, NGM believed that the unit had lost the requisite continuity to continue as an appropriate bargaining unit. In addition, based upon signs that employees were dissatisfied with the Union, as evidenced by statements to that effect by employees and other labor union representatives, NGM began to suspect that the Union no longer enjoyed support, even among former employees of Newmont. Thus, NGM had a right—and in fact was legally obligated—to refuse to recognize the Union unless and until it could demonstrate its majority support in the appropriate bargaining unit through an election.

### B. The Union’s ULPs

When NGM refused the Union’s demands, the Union responded by filing Unfair Labor Practice Charges (“ULPs”), essentially seeking to force itself upon NGM’s employees without an election. The Union signed its ULPs under penalty of perjury, and its ULPs are public records appropriately considered by the Board. In its first ULP filed on December 13, 2019, the Union alleged as follows:

2. Basis of the Charge (*set forth a clear and concise statement of the facts constituting the alleged unfair labor practices*)  
In the last six months, Newmont Goldcorp has refused to bargain with the Union over the effects of an impending joint venture to create NGM, a perfectly clear successor employer. NGM has similarly refused to recognize the Union or bargain over the terms and condition of employment for bargaining unit members offered employment with NGM. Employees were asked to sign employment letters relating to terms and conditions of employment, and which require relinquishment of representation, without notice to the Union or an opportunity to meet and confer prior to the letters being distributed. Employees were offered wage increases not previously bargained with the Union. The Employer has failed to provide information requested by the Union related to the joint venture as well, and discriminated against the Union by unilaterally denying the Union access.

See December 13, 2019, ULP, attached as “Exhibit 1.”

This was followed by another ULP on January 2, 2020, alleging the following:

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

In the past six months, NGM has refused to recognize the Union or the CBA despite being a perfectly clear successor. It has refused to meet and confer with the Union over terms and conditions of employment, and it has refused to provide the Union with information responsive to its requests. NGM asked employees to sign employment letters relating to terms and conditions of employment, and which required relinquishment of representation, without notice to the Union. Employees were also offered wage increases not previously bargained with the Union. NGM has also discriminated against the Union by unilaterally denying the Union access.

See January 2, 2020, ULP, attached as "Exhibit 2."

And, in an amended ULP filed on January 8, 2020, the Union alleged as follows:

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

In the past six months, NGM has withdrawn recognition from the Union despite being a perfectly clear successor. It has refused to meet and confer with the Union over terms and conditions of employment, made unilateral changes, and refused to provide the Union with information responsive to its requests. NGM had employees sign employment letters relating to terms and conditions of employment, and which required relinquishment of representation. Employees were also offered wage increases not previously bargained with the Union. NGM has also discriminated against the Union by unilaterally denying the Union access.

See January 8, 2020, Amended ULP, attached as "Exhibit 3."

Thus, Union's own ULPs corroborate the fact that it requested recognition.

### C. NGM's RM Petition

Having received the Union's demands for recognition, but also having direct numerical proof and indirect proof that the Union may not have majority support in the appropriate BU, NGM filed its RM Petition on February 5, 2020. One of the primary thrusts of NGM's RM Petition is that because the former Newmont and Barrick employees have been substantially integrated, the former Newmont BU is no longer intact and appropriate. Consequently, the Union must demonstrate that it enjoys majority support in the combined BU, as the former Newmont BU now lacks the requisite community of interest and is contrary to the purposes of the NLRA. Further, the employees in the combined BU, a majority of whom were never represented by the Union, have a right to choose whether they wish to be represented and, if so, to choose whom they wish to be represented by.

Notably, the RM Petition form supplied by the Board does not request the employer to indicate whether a union has requested recognition as the majority representative. See [https://www.nlr.gov/sites/default/files/attachments/basic-page/node-3040/Form%20NLRB-502%20\(RM\)%20-%20RM%20Petition.pdf](https://www.nlr.gov/sites/default/files/attachments/basic-page/node-3040/Form%20NLRB-502%20(RM)%20-%20RM%20Petition.pdf) (last visited February 24, 2020). Instead, it simply requests an employer to state "A labor organization made a demand for recognition on the Employer/Petitioner on (Date) \_\_\_\_\_."

On February 7, 2020, a board agent for Region 32 requested “any written documentation that that [sic] the Union has requested that the Employer recognize and bargain with the Union for the unit of 2,900 employees.” See February 7, 2020 Email, attached “**Exhibit 4.**” NGM was not requested to provide information relevant to whether the Union had requested recognition as the majority representative of the combined BU. See *id.* On February 11, 2020, NGM supplemented its RM Petition with the requested information as well as additional information related to the basis for the RM Petition. See Supplement, attached as “**Exhibit 5.**”

#### **D. The Decision**

On February 13, 2020, the Acting Regional Director of Region 32 vacated the scheduled hearing and summarily dismissed NGM’s RM Petition. The Decision acknowledged that “[a]lthough a recognition need not be in writing and there is no particular wording necessary,” it added that “the Union must clearly assert it has majority support at the present time.” The Decision stated that NGM had averred that the Union had “made statements indicating their desire, or request” for recognition. Despite never asking NGM for such information, the Acting Regional Director dismissed NGM’s RM Petition on the ground that NGM “does not contend that the Union has ever claimed to be the representative of any of [it’s] approximately 1,500 non-unionized employees, or that it enjoyed the support of a majority of employees in a combined unit.” The Decision further found, without identifying any supporting evidence, that “presently there is no claim of representative status by the Union in the petitioned-for unit.”

As demonstrated below, the Union clearly made a present demand for recognition. By requiring NGM to specifically allege that the Union used particular phrasing (despite having never even asked NGM about the issue) the Acting Regional Director applied a hyper-technical, arbitrary standard that departs from official reported Board precedent. To the extent there was any doubt that the union had made the requisite demand, then a hearing should have been conducted. Instead, the Decision vacated the hearing and summarily dismissed NGM’s RM Petition. As a result of these failures, the Decision on a substantial factual issue is clearly erroneous and has prejudiced NGM.

Further, even where there is not an explicit claim by a union to represent a majority of employees, there is an exception to such requirement when the unit claimed to be represented by a union is contrary to the purposes of the NLRA. Here, at a minimum, there is undoubtedly a present request for representation as to the former Newmont BU. As NGM explained, however, because the former Newmont and Barrick employees have been substantially integrated, the former Newmont BU is no longer intact and appropriate under the NLRA. By completely failing to analyze the exception raised by this scenario, the Decision again departed from officially reported Board precedent.

## II. ANALYSIS

### A. By Disregarding the Union's Demands, the Decision Departed from Board Precedent and is Clearly Erroneous

#### 1. *The Decision Disregarded the Union's Express Demand*

Under Section 9(c)(1) of the NLRA, the Board “shall direct an election by secret ballot and shall certify the results thereof” where an election petition is filed “(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a).” Section 9(a), in turn, states that “[r]epresentatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining . . . .”

The Board has long held that demands far less explicit than those by the Union here constitute a present demand for recognition as majority representative. For example, in *Holiday Inn of Providence-Downtown*, the Board directed an election pursuant to an employer's RM Petition based upon a union's letter that had simply stated “[we] are writing you this letter, seeking your permission and requesting clearance in order to establish proper procedure with the operators of the Holiday Inn in this city, for the sole purpose of signing a Union contract with our union.” 179 NLRB 337 (1969). The Board found this letter “to be a clear request that the Employer recognize it as the representative of its future employees and for a contract covering them.” *Id.* The fact that the union had not used the particular phrase “we demand recognition as a majority representative” did not give the Board any pause.

Similarly, in *Denny's Restaurant, Inc.* the Board considered a new employer's RM Petition based upon a union's letter that had simply stated “we expect to have our representation rights with respect to these locations recognized.” 186 NLRB 48 (1970). The Board found this was a demand for immediate recognition, and therefore, directed an election be conducted. *Id.* Once again, the fact that the union had not used the particular phrase “we demand recognition as a majority representative” did not give the Board any pause.

Here, as in *Holiday Inn* and *Denny's Restaurant*, the Union repeatedly demanded immediate recognition of the combined BU, as NGM explained witnesses could verify. And, the fact that the Union demanded recognition is corroborated by, among other things, the Union's own ULPs. It is unclear if the Union ever attempted to disclaim its demands for recognition (if the Union did so, NGM was never given notice of that fact, let alone an opportunity to respond). To the extent the Union attempted to disavow its demands, or to the extent the Acting Regional Director was unclear on what, precisely, the Union had demanded, then a hearing should have been conducted. Instead, the Acting Regional Director summarily dismissed NGM's RM Petition on the ground that the Union had not recited the particular phrase “we demand recognition as a majority representative.” This was a clear departure from officially reported Board precedent.

Indeed, the Board's own RM Petition form does not ask, let alone require an employer to aver, that the union had not used the particular phrase "we demand recognition as a majority representative." Rather, consistent with its precedent, the Board simply requires the employer to state "A labor organization made a demand for recognition on the Employer/Petitioner on (Date) \_\_\_\_\_." And, as the Decision itself noted, "no particular wording is necessary" to find the requisite question concerning representation. Unfortunately, the Decision avoid applying this principle.

## ***2. The Decision Disregarded the Union's Implicit Demand***

In addition, the Union's own conduct is tantamount to a demand for recognition as a majority representative. The Board's decision in *Kimel Shoe Co.*, is instructive on this point. 97 NLRB 127, 128 (1951). There, the Board found that the union's representatives had implicitly demanded recognition, despite the fact that when the union and employer had met, "[o]n neither occasion . . . did the Union's representatives claim that the Union represented a majority of the employees concerned." *Id.* (emphasis added). This was because, even after the union purported to disclaim its demand for recognition, it had continued to complain of "the Employer's alleged refusal to recognize the Union." *Id.* Thus, "[b]y such conduct the Union reaffirmed its claim to majority representation." *Id.* Accordingly, the Board concluded that "[i]n such circumstances we believe that the policies of the Act will best be served by directing an election, and we accordingly deny the Union's motion to dismiss the instant petition." *Id.*

And, in *Curtis Bros. Inc.*, the Board determined that the union's picketing was "tantamount to a present demand that the Employer enter into a contract with the Union *without regard to the question of its majority status among the employees concerned.*" 114 N.L.R.B. 116 (1955) (emphasis added). Accordingly, the Board found "a question affecting commerce exists concerning the representation of employees of the Employer," and it directed that an election be conducted pursuant to the employer's RM petition. *Id.*

Numerous board decisions are in accord. *See, e.g., Roberts Tires*, 212 N.L.R.B. 405, 406 (1974) (concluding that, although a union had disclaimed any interest in the employees covered by the new employer's RM petition, the union's picketing was "tantamount to a demand for recognition."); *Johnson Bros. Furniture Co.*, 97 NLRB 246, 247 (1951) ("It is apparent that the unions, by their proposed contracts of August 13, demanded recognition by the Employer as exclusive bargaining representatives").

Here, even if the Acting Regional Director assumed (despite disregarding, or refusing to even consider, all of NGM's evidence to the contrary) that the Union had not made an express demand for present recognition, the Union's actions were tantamount to the requisite demand. These actions include filing multiple ULPs complaining that NGM had not recognized it, and conducting an aggressive campaign. Unfortunately, the Acting Regional Director failed to explore this issue, and failed to recognize that a union need not recite particular words in order to be deemed to have made the requisite demand for recognition. As a result of these failures, the Decision on a substantial factual issue is clearly erroneous and has prejudiced NGM.

**B. By Permitting the Union to Evade an Election by Clinging to a BU that is no Longer Intact or Appropriate, the Decision Departed from Board Precedent and is Clearly Erroneous**

Even if the Union supposedly did not make the requisite demand for recognition, an exception to such requirement exists here. Although an RM petition must generally be predicated on a claim for recognition, there is an “exception to this requirement . . . when the claimed unit is contrary to the purposes of the Act . . .” *K. Van Bourgondien & Sons, Inc.*, 294 NLRB 268, 268 n.2 (1989). Notwithstanding historical recognition of a bargaining unit, it is well-established that it must “conform reasonably well to other standards of appropriateness.” *Trident Seafoods, Inc. v. NLRB*, 101 F.3d 111, 119 (D.C. Cir. 1996). Courts have repeatedly held that where union and non-union employees are “functionally integrated” in a new workforce, the unit loses the requisite “community of interest.” *Id.* at 120. Further, “[a] unit might, for instance, be only marginally appropriate prior to the transaction, in which even relatively small changes following the transfer of ownership could push it into the category of an inappropriate unit.” *See Deferiet Paper Company v. NLRB*, 235 F.3d 581, 584 (D.C. Cir. 2000).

Here, even if the bargaining unit represented by the Union was appropriate in the first place, and even if the Union continues to enjoy majority support of that unit, any such unit is now clearly inappropriate given its substantial integration with former Barrick and other employees who are strangers to the Union and the CBA between the Union and Newmont. Under similar circumstances, the board has routinely held that the bargaining unit is no longer appropriate. *See P.S. Elliot Services*, 300 NLRB 1162, 1162 (1990) (alleged successor had no obligation to bargain with union of predecessor’s employees where the new operations were “highly integrated” and “there is frequent employee interchange” such that there was no longer “a community of interest sufficiently distinct and separate from [the other employees] to warrant the establishment of a separate appropriate unit.”); *Border Steel Rolling Mills, Inc.*, 204 NLRB 89, 821 (1973) (purported successor had no obligation to recognize union of predecessor’s employees where they were “functionally integrated” with other employees).

NGM pointed all of this out in its supplement to its RM petition. Despite this, the Decision suggested that no election was necessary because the Union “does not seek to represent” all of the employees in the combined BU. In this, the Decision permitted the Union to claim that it only represents the former Newmont BU. The Decision did not analyze, let alone find, that such a BU remains intact and appropriate, although that issue was one of the primary thrusts of NGM’s RM Petition. This is a glaring omission, particularly given the fact that NGM provided four-pages of detailed briefing on this issue in its supplement. By completely ignoring this issue, the Decision plainly departed from Board precedent.

**C. There are Compelling Reasons for Reconsideration of an Important Rule or Policy**

Since the enactment of the NLRA nearly a century ago, courts have consistently emphasized that the Act must not be construed to deprive employees their right to choose whether or not to be represented. *See, e.g., International Association of Machinists v. NLRB*, 414 F.2d 1135, 1138 (D.C. Cir. 1969) (upholding finding that new employers were not successors, noting

“[t]o have concluded otherwise would have deprived the new employees of [the new employer]—a majority of whom had no prior affiliation with [the union]—of rights guaranteed them by Section 7 of the Act to be represented by an agent of their own choice.”); *Hirsch v. Pick-Mt. Laurel Corporation*, 436 F. Supp. 1342, 1359 (D. N.J. 1977) (“this court would be reluctant to compel recognition by the successor employer, where there is a substantial possibility of installing a minority union and frustrating the concept of majority choice.”).

As one court aptly explained,

when a new employer hires only part of the old unit, together with others who were never part of the unit, any decision regarding the employer’s duty to bargain with the union affects the new employer, the old employees whom he has hired, and the new employees who were not previously represented by the union. *The rights of all three must be considered. Basic to this consideration is § 9(a) of the Act, 29 U.S.C. § 159(a), which places in the hands of the majority of the employees in the unit the decision whether to be represented or not by the union. That majority’s right is paramount.*

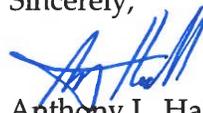
*Pacific Hide & Fur Depot, Inc. v. NLRB*, 553 F.2d 609, 612 (9th Cir. 1977) (emphasis added).

The Acting Regional Director’s Decision runs directly afoul of these principles. Without even conducting a hearing, much less considering the rights of all the employees implicated by its Decision, the Acting Regional Director summarily denied approximately 2,900 employees an election. It is difficult to fathom a more unfair, and undemocratic, result. There are plainly compelling reasons to reconsider any purported Board rule or policy that led to the result reached in the Decision.

In effect, the Decision permits the Union to evade an election, and thwart the concept of majority choice, by clinging to a BU that is clearly no longer appropriate or intact. Indeed, in a tacit recognition that the former Newmont BU is no longer appropriate or intact, the Union not only demanded recognition as the bargaining representative of the combined BU, but it filed multiple ULPs predicated on those demands. The Union cannot now disavow its demands for recognition, or rely upon a minority, but clearly inappropriate BU, simply because it apparently does not believe it would win an election in the appropriate BU. In sum, the tactics sanctioned by the Decision cannot be squared with the purposes of the Act.

Thank you for your time and attention. If you have any questions, please do not hesitate to call.

Sincerely,



Anthony L. Hall, Esq.  
of Simons Hall Johnston PC

**CERTIFICATE OF SERVICE**

I, Jennifer L. Smith, declare:

I am employed in the City of Reno, County of Washoe, State of Nevada by the law offices of Simons Hall Johnston PC. My business address is 6490 S. McCarran Boulevard, Suite F-46, Reno, Nevada 89509. I am over the age of 18 years and not a party to this action.

Pursuant to Section 102.67(i)(2) of the Board's Rules and Regulations, I hereby certify that on the 27<sup>th</sup> day of February, 2020, I served a true and correct copy of the foregoing **REQUEST FOR REVIEW** via electronic service (e-mail) on the recipients listed below:

Eileen B. Goldsmith  
Altshuler Berzon LLP  
177 Post St., Suite 300  
San Francisco, CA 94108  
Tel: (415) 421-7151  
[egoldsmith@altshulerberzon.com](mailto:egoldsmith@altshulerberzon.com)

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on February 27, 2020.

  
Jennifer L. Smith

**EXHIBIT "1"**

**EXHIBIT "1"**



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 32  
1301 Clay St Ste 300N  
Oakland, CA 94612-5224

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (510)637-3300  
Fax: (510)637-3315



Download  
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December 13, 2019

Lisa Boman, Human Resources  
Newmont Goldcorp and Nevada Gold Mines (NGM)  
Carlin Gold Quarry  
285 Spruce Road  
Elko, NV 89801

Re: Newmont Goldcorp and Nevada Gold Mines  
(NGM)  
Case 32-CA-253335

Dear Ms. Boman:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

**Investigator:** This charge is being investigated by Field Attorney COREEN KOPPER whose telephone number is (510)671-3031. If this Board agent is not available, you may contact Regional Attorney CHRISTY KWON whose telephone number is (510)671-3020.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, [www.nlr.gov](http://www.nlr.gov), or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

**Presentation of Your Evidence:** We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

December 13, 2019

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

**Preservation of all Potential Evidence:** Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

**Prohibition on Recording Affidavit Interviews:** It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

**Procedures:** Pursuant to Section 102.5 of the Board's Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency's web site ([www.nlr.gov](http://www.nlr.gov)). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determination on the merits solely based on the evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions

December 13, 2019

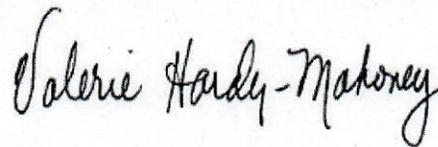
about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

If the Agency does not issue a formal complaint in this matter, parties will be notified of the Regional Director's decision by email. Please ensure that the agent handling your case has your current email address.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, [www.nlr.gov](http://www.nlr.gov) or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



VALERIE HARDY-MAHONEY  
Regional Director

Enclosures:

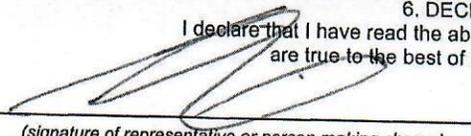
1. Copy of Charge
2. Commerce Questionnaire

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 32-CA-253335	Date Filed 12/13/2019

**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Newmont Goldcorp and Nevada Gold Mines (NGM)	b. Tel. No. 775.778.4027
	c. Cell No.
	f. Fax No. 775.340.1374
d. Address (Street, city, state, and ZIP code) Carlin Gold Quarry 285 Spruce Road Elko, NV 89801	e. Employer Representative Lisa Boman, Human Resources
	g. e-mail Lisa.Boman@nevadagoldmines.com
	h. Number of workers employed 1,350
i. Type of Establishment (factory, mine, wholesaler, etc.) Gold Mine	j. Identify principal product or service Gold Mine
The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 8(a)(5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) In the last six months, Newmont Goldcorp has refused to bargain with the Union over the effects of an impending joint venture to create NGM, a perfectly clear successor employer. NGM has similarly refused to recognize the Union or bargain over the terms and conditions of employment for bargaining unit members offered employment with NGM. Employees were asked to sign employment letters relating to terms and conditions of employment, and which require relinquishment of representation, without notice to the Union or an opportunity to meet and confer prior to the letters being distributed. Employees were offered wage increases not previously bargained with the Union. The Employer has failed to provide information requested by the Union related to the joint venture as well, and discriminated against the Union by unilaterally denying the Union access.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Operating Engineers Local Union No. 3	
4a. Address (Street and number, city, state, and ZIP code) 1620 South Loop Road, Alameda, CA 94502	4b. Tel. No. (510) 748-7400
	4c. Cell No.
	4d. Fax No. (510) 748-7436
	4e. e-mail gliao@oe3.org
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) International Union of Operating Engineers, AFL-CIO	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
 (signature of representative or person making charge)	Gening Liao, Esq. (Printtype name and title or office, if any)
Address 1620 South Loop Road, Alameda, CA 94502	Tel. No. (510) 748-7400
Date Dec 12, 2019	Office, if any, Cell No.
	Fax No. (510) 748-7436
	e-mail gliao@oe3.org

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

**QUESTIONNAIRE ON COMMERCE INFORMATION**

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

CASE NUMBER  
32-CA-253335

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

CORPORATION  LLC  LLP  PARTNERSHIP  SOLE PROPRIETORSHIP  OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).

7. A. PRINCIPAL LOCATION:

B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. Total:

B. At the address involved in this matter:

9. DURING THE MOST RECENT (Check appropriate box):  CALENDAR YR  12 MONTHS or  FISCAL YR (FY dates)

	YES	NO
A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value. \$		
B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$		
C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$		
D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$		
E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$		
F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$		
G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$		
H. Gross Revenues from all sales or performance of services (Check the largest amount): <input type="checkbox"/> \$100,000 <input type="checkbox"/> \$250,000 <input type="checkbox"/> \$500,000 <input type="checkbox"/> \$1,000,000 or more If less than \$100,000, indicate amount.		
I. Did you begin operations within the last 12 months? If yes, specify date: _____		

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?  
 YES  NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)	SIGNATURE	E-MAIL ADDRESS	DATE

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

**EXHIBIT "2"**

**EXHIBIT "2"**

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**CHARGE AGAINST EMPLOYER**

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Nevada Gold Mines	b. Tel. No. 775.778.4027
	c. Cell No.
	f. Fax No. 775.340.1374
d. Address (Street, city, state, and ZIP code) Carlin Gold Quarry 285 Spruce Road Elko, NV 89801	e. Employer Representative Lisa Boman, Human Resources
	g. e-mail Lisa.Boman@nevadagoldmines.com
	h. Number of workers employed 1,500
i. Type of Establishment (factory, mine, wholesaler, etc.) Gold Mine	j. Identify principal product or service Gold Mine

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 8(a)(5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

In the past six months, NGM has refused to recognize the Union or the CBA despite being a perfectly clear successor. It has refused to meet and confer with the Union over terms and conditions of employment, and it has refused to provide the Union with information responsive to its requests. NGM asked employees to sign employment letters relating to terms and conditions of employment, and which required relinquishment of representation, without notice to the Union. Employees were also offered wage increases not previously bargained with the Union. NGM has also discriminated against the Union by unilaterally denying the Union access.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)  
Operating Engineers Local Union No. 3

4a. Address (Street and number, city, state, and ZIP code) 1620 South Loop Road, Alameda, CA 94502	4b. Tel. No. (510) 748-7400
	4c. Cell No.
	4d. Fax No. (510) 748-7436
	4e. e-mail gliao@oe3.org

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)  
International Union of Operating Engineers

6. DECLARATION	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
	Gening Liao, Esq.
(signature of representative or person making charge)	(Print/type name and title or office, if any)
Address <u>1620 South Loop Road, Alameda, CA 94502</u>	Date <u>Jan 2, 2020</u>
	Tel. No. (510) 748-7400
	Office, if any, Cell No.
	Fax No. (510) 748-7436
	e-mail gliao@oe3.org

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)  
PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

**Re: Nevada Gold Mines – Unfair Labor Practice**

**PROOF OF SERVICE**

I am employed in the County of Alameda, State of California. I am over the age of 18 years and **not a party to this action.**

My business address is 1620 South Loop Road, Alameda, CA 94502. My electronic service address is: [ijackson@oe3.org](mailto:ijackson@oe3.org). My fax number is (510) 748-7436.

On January 2, 2020, I served the following **documents**:

- UNFAIR LABOR PRACTICE

I served the documents on the **person or persons** below as follows:

Valerie Hardy-Mahoney, Regional Director  
National Labor Relations Board, Region 32  
1301 Clay Street, Suite 300-N  
Oakland, CA 94612-5211

Lisa Boman, Human Resources  
Carlin Gold Quarry  
285 Spruce Road  
Elko, NV 89801  
Email: [Lisa.Boman@nevadagoldmines.com](mailto:Lisa.Boman@nevadagoldmines.com)

The documents were served by the following means:

**BY UNITED STATES MAIL.** I enclosed the documents in a sealed envelope or package addressed to the person or persons at the addresses listed above by placing the envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;

**BY E-FILE**

**BY FAX TRANSMISSION.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used.

**BY ELECTRONIC SERVICE.**

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 2, 2020 at Alameda, CA.

  
\_\_\_\_\_  
Idell Jackson

## Idell Jackson

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**From:** NLRBRegion32@nlrb.gov <e-Service@service.nlrb.gov>  
**Sent:** Thursday, January 2, 2020 12:47 PM  
**To:** Idell Jackson  
**Subject:** RE: 1-2643116421-Signed Charge Against Employer

Confirmation Number: **1000306471**

You have successfully accomplished the steps for E-Filing a **Charge - CA** with NLRB Region 32, Oakland, California. This email notes the official date and time of the receipt of your submission. Please save this email for future reference. Please note that this receipt is not confirmation that your case has been docketed; rather, this email solely constitutes the regional office's acknowledgment of receipt of your document(s).

@@EfiledDocuments

Date Submitted:	1/2/2020 12:45:57 PM (UTC-08:00) Pacific Time (US & Canada)
Dispute Location:	Elko, NV
Regional, Sub-Regional Or Resident Office:	Region 32, Oakland, California
Charge Type:	CA
Inquiry Number:	1-2643116421
Filing Party:	Charging Party
Name:	Liao, Esq., Gening
Email:	gliao@oe3.org
Address:	1620 South Loop Road Alameda, CA 94502
Telephone:	5107487400
Fax:	
Additional Email:	ijackson@oe3.org
Attachments:	Signed Charge Against Employer: 2020.01.02 ULP against Nevada Goldmines_GL.pdf

\*\*\*\*\*  
DO NOT REPLY TO THIS MESSAGE. THIS IS A POST-ONLY NOTIFICATION.  
MESSAGES SENT DIRECTLY TO THE EMAIL ADDRESS LISTED ABOVE WILL NOT BE READ.  
\*\*\*\*\*

**EXHIBIT "3"**

**EXHIBIT "3"**

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**CHARGE AGAINST EMPLOYER**

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

**AMENDED**

**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Nevada Gold Mines	b. Tel. No. 775.778.4027
	c. Cell No.
	f. Fax No. 775.340.1374
d. Address (Street, city, state, and ZIP code) Carlin Gold Quarry 285 Spruce Road Elko, NV 89801	e. Employer Representative Lisa Boman, Human Resources
	g. e-mail Lisa.Boman@nevadagoldmines.com
	h. Number of workers employed 1,500
i. Type of Establishment (factory, mine, wholesaler, etc.) Gold Mine	j. Identify principal product or service Gold Mine
The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 8(a)(5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)  In the past six months, NGM has withdrawn recognition from the Union despite being a perfectly clear successor. It has refused to meet and confer with the Union over terms and conditions of employment, made unilateral changes, and refused to provide the Union with information responsive to its requests. NGM had employees sign employment letters relating to terms and conditions of employment, and which required relinquishment of representation. Employees were also offered wage increases not previously bargained with the Union. NGM has also discriminated against the Union by unilaterally denying the Union access.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Operating Engineers Local Union No. 3	
4a. Address (Street and number, city, state, and ZIP code) 1620 South Loop Road, Alameda, CA 94502	4b. Tel. No. (510) 748-7400
	4c. Cell No.
	4d. Fax No. (510) 748-7436
	4e. e-mail gliao@oe3.org
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) International Union of Operating Engineers	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
 <hr/> <i>(signature of representative or person making charge)</i>	Gening Liao, Esq. <hr/> <i>(Print/type name and title or office, if any)</i>
Address <u>1620 South Loop Road, Alameda, CA 94502</u>	Tel. No. (510) 748-7400
Date <u>01/08/2020</u>	Office, if any, Cell No.
	Fax No. (510) 748-7436
	e-mail gliao@oe3.org

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

**Re: Nevada Gold Mines – Amended Unfair Labor Practice**

**PROOF OF SERVICE**

I am employed in the County of Alameda, State of California. I am over the age of 18 years and **not a party to this action.**

My business address is 1620 South Loop Road, Alameda, CA 94502. My electronic service address is: [ijackson@oe3.org](mailto:ijackson@oe3.org). My fax number is (510) 748-7436.

On January 8, 2020, I served the following **documents**:

- **AMENDED UNFAIR LABOR PRACTICE**

I served the documents on the **person or persons** below as follows:

Valerie Hardy-Mahoney, Regional Director  
National Labor Relations Board, Region 32  
1301 Clay Street, Suite 300-N  
Oakland, CA 94612-5211

Lisa Boman, Human Resources  
Carlin Gold Quarry  
285 Spruce Road  
Elko, NV 89801  
Email: [Lisa.Boman@nevadagoldmines.com](mailto:Lisa.Boman@nevadagoldmines.com)

The documents were served by the following means:

**BY UNITED STATES MAIL.** I enclosed the documents in a sealed envelope or package addressed to the person or persons at the addresses listed above by placing the envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;

**BY E-FILE**

**BY FAX TRANSMISSION.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used.

**BY ELECTRONIC SERVICE.**

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 8, 2020 at Alameda, CA.

  
Idell Jackson

**Idell Jackson**

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**From:** NLRBRegion32@nlrb.gov <e-Service@service.nlrb.gov>  
**Sent:** Wednesday, January 8, 2020 9:27 AM  
**To:** Idell Jackson  
**Subject:** RE: 1-2646562141-Signed Charge Against Employer

Confirmation Number: **1000306672**

You have successfully accomplished the steps for E-Filing a **Charge - CA** with NLRB Region 32, Oakland, California. This email notes the official date and time of the receipt of your submission. Please save this email for future reference. Please note that this receipt is not confirmation that your case has been docketed; rather, this email solely constitutes the regional office's acknowledgment of receipt of your document(s).

@@EfiledDocuments

Date Submitted:	1/8/2020 9:19:19 AM (UTC-08:00) Pacific Time (US & Canada)
Dispute Location:	Elko, NV
Regional, Sub-Regional Or Resident Office:	Region 32, Oakland, California
Charge Type:	CA
Inquiry Number:	1-2646562141
Filing Party:	Charging Party
Name:	Liao, Esq., Gening
Email:	gliao@oe3.org
Address:	1620 South Loop Road Alameda, CA 94502
Telephone:	5107487400
Fax:	
Additional Email:	ijackson@oe3.org
Attachments:	Signed Charge Against Employer: 2020.01.08 OE3 ULP Charge Form(signed)_GL.pdf

\*\*\*\*\*  
DO NOT REPLY TO THIS MESSAGE. THIS IS A POST-ONLY NOTIFICATION.  
MESSAGES SENT DIRECTLY TO THE EMAIL ADDRESS LISTED ABOVE WILL NOT BE READ.  
\*\*\*\*\*

**EXHIBIT "4"**

**EXHIBIT "4"**

**From:** [Tsiliacos, Nicholas L.](#)  
**To:** [Anthony Hall](#)  
**Cc:** [Jennifer Smith](#); [Valencia, Hokulani](#)  
**Subject:** Nevada Gold mines, LLC petition 32-RM-255914  
**Date:** Friday, February 7, 2020 11:54:02 AM  
**Attachments:** [PET.32-RM-255914.Signed RM Petition.pdf](#)

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Hello

Now that the technical deficiencies have been resolved and the petition has been docketed, and given the reasoning for and nature of the petition, our Region must undertake an administrative investigation to determine if the Employer has the required objection evidence supporting the showing of interest of the Union's loss of majority. Accordingly, I ask that you provide the following information. First, and foremost, please provide me with any written documentation that that the Union has requested that the Employer recognize and bargain with the Union for the unit of 2,900 employees. Second, on what basis does the Employer doubt the Union's continued majority support from the unit of 2,900 employees? Does the Employer have written statements which can be provided to the Region, for example? If so, please provide them.

Finally, you state that the NLRB lacks the constitutional and statutory jurisdiction to consider the Union's allegation that the Employer improperly withdrew recognition of the Union. I ask that you provide me with a detailed argument for the Employer's stance. Having case sites is helpful.

You are instructed to provide your response by close of business Tuesday, February 11, 2020, as the information should have already been in your possession prior to the filing of the petition.

Meanwhile, for the sake of expediency, I will be sending you another email today regarding election arrangements.

Yours truly,

Nicholas L. Tsiliacos  
Board agent  
Region 32  
1301 Clay Street, Suite 300N  
Oakland, CA 94612  
510.671.3046

**EXHIBIT "5"**

**EXHIBIT "5"**

# SIMONS ■ HALL ■ JOHNSTON

February 11, 2020

Via E-mail: [Nicholas.Tsiliacos@nlrb.gov](mailto:Nicholas.Tsiliacos@nlrb.gov)

Nickolas Tsiliacos  
Board Agent  
National Labor Relations Board  
1301 Clay St. Ste 300N  
Oakland, CA 94612

**Re: Case No. 32-RM-255914**

Dear Mr. Tsiliacos:

As requested in your emails on behalf of the National Labor Relations Board (the “NLRB” or the “Agency”), dated February 10, 2020, Nevada Gold Mines, LLC (“NGM”) submits this supplement to its initial statement.

## **Union Made Repeated Request to Represent the Combined Workforce**

The Union’s first request to represent the combined workforce was made by Chris Connor to Hiliary Wilson, Esq., during a conversation in August of 2019. He specifically requested that once the Barrick people become employed by NGM, that the Operating Engineers Local Union No. 3 (the “Union”) should be recognized as their representative.

In addition, the Union, at each of the three in-person meetings conducted with the Union requested NGM to recognize the Union as the representatives of the new combined workforce. Specifically, on 11/15/19, 11/19/19 and 12/11/19 the Union repeated its request for recognition of the combined Bargaining Unit (“BU”) workforce. For example, on 11/19/19 the union requested that “we give them” the corresponding Barrick employees and that they would “then engage in bargaining on behalf of the new combined BU.” At another meeting the request was justified with the argument that NGM should recognize them because the former Barrick employees will be doing the same jobs as those who were in the Newmont BU. Thus, both Hiliary Wilson, Esq. and Lisa Boman can verify the repeated request for recognition of the combined BU that have been made by the Union. The Union cannot make the request four times and then block the representation election which is the product of their repeated requests.

6490 S. McCarran Boulevard, Suite F-46 Reno, NV 89509

**Phone** 775-785-0088 **Fax** 775-785-0087 **Website** [SHJNevada.com](http://SHJNevada.com)

### **Loss of Majority Status**

NGM has both direct numerical proof as well as indirect proof that the Union does not have majority support in the existing BU. The BU employee list, which was submitted with NGM's RM Petition, consists of 2,792 employees as of 2/2/2020. Of those BU employees only 1,329 are formerly represented Newmont employees. Thus, even if it were assumed that among the 1,329 employees the Union had 100% support, which it does not,<sup>1</sup> they would only be able to show support of 47.6%.

### **The Former Newmont BU Represented by the Union is No Longer Intact or Appropriate**

Notwithstanding historical recognition of a bargaining unit, it is well-established that a new employer has no obligations to the Union of the former employer where the unit "does not conform reasonably well to other standards of appropriateness." *Trident Seafoods, Inc. v. NLRB*, 101 F.3d 111, 119 (D.C. Cir. 1996). Courts have repeatedly held that where union and non-union employees are "functionally integrated" in the new workforce, the new unit loses the requisite "community of interest." *Id.* at 120.

Further, "[a] unit might, for instance, be only marginally appropriate prior to the transaction, in which even relatively small changes following the transfer of ownership could push it into the category of an inappropriate unit." *See Deferiet Paper Company v. NLRB*, 235 F.3d 581, 584 (D.C. Cir. 2000). Indeed, "all of the Board cases in which successorship was found are predicated on the finding that the predecessor's bargaining unit remained intact under the successor and continued to be an appropriate unit." *NLRB v. Security-Columbian Banknote Co.*, 541 F.2d 135, 139 (3d Cir. 1976).

Here, even if the bargaining unit represented by the Union was appropriate in the first place (which, in and of itself, is a doubtful proposition given that it improperly combined maintenance and production employees and it combined employees from different geographical worksites), and even if the Union continues to enjoy majority support of that unit, any such unit is now clearly inappropriate given its substantial integration with former Barrick and other employees who are strangers to the Union and the CBA between the Union and Newmont. Under similar circumstances, the board has routinely held that the bargaining unit is no longer appropriate, obviating any obligations the new employer might otherwise have to the Union. *See P.S. Elliot Services*, 300 NLRB 162, 1162 (1990) (alleged successor had no obligation to bargain with union of predecessor's employees where the new operations were "highly integrated" and "there is frequent employee interchange" such that there was no longer "a community of interest

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<sup>1</sup> The Union routinely only had employees paying dues in the high 20% range. After NGM was formed, the Union began an aggressive campaign to sign up employees. With over 5 months of work, the Union was only able to obtain just over 30% of employees paying dues. Further, NGM has received numerous verbal complaints about the union which indicate that former Newmont employees do not support the Union. Finally, NGM has been approached by the Plumbers and Pipefitters union, which claims that there may be as many as 100 employees that no longer wish to be represented by OE3.

sufficiently distinct and separate from [the other employees] to warrant the establishment of a separate appropriate unit.”); *Border Steel Rolling Mills, Inc.*, 204 NLRB 89, 821 (1973) (purported successor had no obligation to recognize union of predecessor’s employees where they were “functionally integrated” with other employees).

A few examples may help the Board to understand that not only is NGM a completely new operation (and is not a successor) but there is no way to separate the old Newmont BU employees from the new combined NGM employees. Let’s begin with the Gold Star pit. This mine location was previously owned by Newmont. The gold ore in this mine is of the highest grade at the center. However, as you move away from center in ever larger concentric circles, the grade of ore becomes lower and lower. Because of the limitations of Newmont’s shovels, Newmont could mine this ore outwards to a certain point. Mining cost for Newmont was \$3.60/ton. This meant that Newmont could not mine beyond the point where it had already reached prior to the formation of NGM and had abandoned the remaining land for mining purposes. However, because Barrick had invested in much larger shovels which were acquired by NGM when it was formed on July 1, NGM moved the former Barrick equipment to the Newmont mine and re-opened it in the new geographic area that was unable to be mined by Newmont. NGM trained former Newmont operators to use the new larger equipment alongside former Barrick operators. Thus, in a completely new geographic area that was not mined by Newmont, NGM now has former Barrick shovels being operated by mixed former Newmont and former Barrick operators. The operators work side-by-side performing the exact same job duties and cannot be distinguished from each other by the arbitrary old Newmont BU designation. Further, using the mixed equipment, mixed operators and new mine site, NGM is able to extract ore that Newmont would never have tried to extract at a cost of \$1.90/ton.

Further, the ore that the operators mine is loaded onto haul trucks that are mixed between former Newmont and former Barrick haul trucks and operated by a mix of former Newmont and former Barrick drivers. Indeed, because this is a completely new mine site, NGM has begun and will continue to hire additional workers, including operators and haul truck drivers to work with the former Newmont and former Barrick employees. Thus, a Newmont driver now may be loaded by an employee that never worked for either entity on his/her first haul. On his/her second haul, the former Newmont driver may be loaded by a former Barrick employee and by a former Newmont employee on his/her third haul. Meanwhile, a former Newmont loader, during the course of his/her day will load former Newmont, former Barrick and new haul truck drivers. That loader is supervised by a mix of former Newmont and former Barrick managers and that loader is subject to new rules and conditions of employment which were determined by NGM.

This is not the end of the integration for this site. The low-grade ore (recall that this ore was not something that Newmont could mine in a cost effective manner and so abandoned the location that is being mined by NGM) is transported by the haul truck drivers to Mills 5 and 6. The mills no longer operate in the same fashion they did before. These particular mills have taken procedures and techniques from both former Barrick and former Newmont operations and

instituted new, and unique procedures. Further, some of the processes/procedures that have been implemented are the result of comparing Newmont and Barrick methods and deciding upon a new process/procedure that neither used before. Thus, the former Newmont Mill 5 is processing ore that it would never have processed but for the new mining area opened by NGM and it is processing it in a new manner. Further, the mill is now managed by a mix of former Barrick and former Newmont managers. This new operation involves between 400-500 of the 2,792 voting unit employees. This means that 17.9% of the proposed BU is fully integrated. There is no legitimate way to separate these 400-500 employees from each other based on their former status as a member of the Newmont BU.

This is not the end of the integration of Newmont's old BU into the new NGM workforce for this new mine site. The former Newmont BU also included supporting jobs, such as Emergency Response Teams ("ERT"), dispatch, blast crews and maintenance, to name just a few. The dispatch has been fully integrated. These approximately 12 employees have been combined into a single work site (Gold Quarry Time Shack) and they dispatch former Newmont, former Barrick and new hires. The same integration has occurred for the blast crews. The blast crews have been fully mixed and consist of about ½ former Newmont and ½ former Barrick employees. These blast crews travel throughout the NGM operations (e.g. to both former Newmont and former Barrick mine sites) and consist of about 60 employees. The ERT employees are also fully integrated and work seamlessly together. ERT employees consists of approximately 130 employees (about ½ former Newmont and ½ former Barrick). With regard to maintenance employees, a completely new NGM specific maintenance schedule has been created. The employees in maintenance are now trained on and are working on all equipment and may be dispatched to work on NGM worksites. The maintenance employees consist of approximately 200 employees. Thus, of the 2,792 voting unit employees an additional 400 (or 14.37%) are fully integrated. It is impossible to divide the former Newmont employees out of these new work sites and work groups. For example, the Union cannot legitimately argue that it can represent ½ of the blasters, when they work together, have the same managers, are sent to both former Newmont and former Barrick work sites, they have the same job duties, and are subject to the same new NGM rules and procedures.

In the Betze pit there are surface stockpiles. This is a former Barrick pit and stockpiles. The stockpiles were not going to be processed by Barrick for many years because their chemistry made it impractical for them to be processed with existing Barrick technology. However, the former Newmont Mill 5 operations work perfect for these stockpiles. Thus, former Newmont shovel operators are performing work in a completely new and formerly abandoned location. Those former Newmont operators are loading a mix of former Barrick, former Newmont and new hire haul truck drivers. In addition, the stockpile has 3 types of ore. Thus, the depending on the type of ore that is loaded, it is driven by the haul truck drivers to Mill 5 (former Newmont), Goldstrike Autoclave and Gold Strike Roaster (both former Barrick). Significantly, the fact that these stockpiles had 3 types of ore was another reason Barrick could not and did not process them, because its mills cannot handle the same type of ore that Mill 5 handles; thus, because NGM owns

Mill 5 and Barrick did not this mine site has become feasible to NGM. The work described in this paragraph involves approximately 400 employees (another 14.3% of the 2,792 employees).

Further, Mill 5 would have been closed by Newmont because they did not have enough ore of the type that Mill 5 was designed to process. However, NGM has kept Mill 5 open by shipping former Barrick ore (Betze stockpiles, Goldstrike oxide stockpiles, etc.) to Mill 5. The new NGM operation also saved the Barrick Goldstrike Autoclave, which was scheduled by Barrick to shut down on December 15, 2019. However, NGM has kept the autoclave open by processing a mix of former Newmont ore (Pete Refractory Stockpile, etc.) and some former Barrick ore. Mill 5 has approximately 80-100 employees and the Goldstrike Autoclave has approximately 250 employees. Neither of these groups of employees would still be employed by either Newmont or Barrick but for the new NGM operations. Thus, over 330-350 (11.8-12.5%) of the employees at issue would not even be employed but for the new operation – this can hardly be deemed a successor operation. It is a new and unique operation that could not and did not exist prior to NGM's formation.

I can continue with examples for the proposed BU employees. This is just meant to give a flavor of what has occurred and will continue to occur at the new NGM operation.

### **The NLRB Lacks Jurisdiction Over the Fundamental Underpinnings of the Union's Charge**

The charge which the Union is attempting to use as its blocking charge (32-CA-254059) is entirely premised on an alleged recognition occurring in or about May of 2019. Without recognition, the Union's charge becomes entirely without merit because, as set forth above, it has lost majority status and the BU is no longer intact. Thus, for example, there is no duty to bargain, if the Union does not have majority status in the BU with NGM. Further, offers of employment do not violate the NLRA if the Union no longer represents the individuals to whom the offers are made.

The Agency only has jurisdiction to investigate alleged unfair labor practices "affecting commerce." See 29 U.S.C. § 160(a). For non-retail enterprises, the Board has limited its jurisdiction to those with a gross outflow or inflow of revenue of at least \$50,000. See *In re Hobart Crane Rental, Inc.*, 337 N.L.R.B. 77 (2002). If the employer does not meet the jurisdictional threshold amounts established by the NLRB, the Agency lacks jurisdiction. See *Motion Picture Machine Operators*, 204 N.L.R.B. 142 (1973).

Here, at the time of the alleged recognition (May 2019) NGM did not have a gross outflow or inflow of revenue of at least \$50,000. Thus, the NLRA cannot be applied to NGM retroactively. Stated another way, actions taken prior to coverage by the NLRA cannot be the basis for a charge. Since the alleged recognition occurred prior to NLRA jurisdictional coverage, the claims in the charge cannot be considered (because there is no jurisdiction to consider them) and such charge cannot block the election.

The Agency also lacks jurisdiction to consider the Union's claim of recognition because, at the time of the alleged recognition, NGM did not have any employees. *International Union of Operating Engineers Local 487 Health and Welfare Trust Fund v. Heavy Construction Association of South Florida, Inc.*, 308 NLRB 805, 807 (1992) ("the 'ordinary meaning' of 'employer' does not include an entity that has no employees. Rather, the plain meaning of 'employer' is one who employs employees to work for wages and salaries.") NGM did not have any employees until December 23, 2019. Thus, not only does the NLRB lack jurisdiction for events occurring prior to July 1, 2019 (when NGM first engaged in interstate commerce), the board also lacks jurisdiction until NGM acquired employees on December 23, 2019.<sup>2</sup>

### The Union Waived its Claims

It is well-settled that a union may waive its statutory rights under the NLRA. *See, e.g., Plumbers and Pipefitters Local Union No. 520 v. NLRB*, 955 F.2d 744, 746 (1992) (union waived right to pursue unfair labor practice charge relating to grievance that it settled); *NLRB v. United Technologies Corp.*, 884 F.2d 1569, 1575-76 (2d Cir. 1989) (union waived right to bargain over employer's progressive discipline policy); *Mahon v. NLRB*, 808 F.2d 1342, 1345 (9th Cir. 1987) (union was empowered "to conclusively bind" unit employees to settlement limiting their backpay entitlement, "[w]holly apart from their own separate consents"); *Southwestern Bell Telephone Company v. NLRB*, 667 F.2d 470, 476 (5th Cir. 1982) (holding that union waived its right to request information that was relevant and necessary to its bargaining function). The Board "is estopped from prosecuting any alleged violation" that the union waived. *Southwestern Bell*, 667 F.2d at 476.

As courts have observed, the Board has a policy of deferring to such private agreements as they further "the NLRA's policy of encouraging private dispute resolution." *See Plumbers and Pipefitters*, 955 F.2d at 752. In fact, the NLRA and LMRA "have as their paramount goal the promotion of labor peace through the collective efforts of labor and management." *Id.* (quoting *Hammontree v. NLRB*, 925 F.2d 1486, 1502 (D.C. Cir. 1991) (Edwards, J., concurring)). Here, in September 2019, the Union and Newmont entered into a "Memorandum of Understanding." In the MOU, the Union clearly and unequivocally waived each of the alleged unfair labor practices it is now attempting to pursue. Indeed, the Union "**comprehensively agreed**" that:

- NGM's "**non-union status**" would be maintained;
- NGM's "**lack of any duty to bargain**" with the Union would be maintained;

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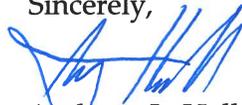
<sup>2</sup> The Union cannot dispute this fact because it signed the September 2019 Memorandum of Understanding which memorializes that NGM was not the employer and was only leasing the Newmont and Barrick employees during the MOU period. Thus, the Union cannot sign the MOU and then ignore its express terms. Specifically, that the individuals involved were not employees of NGM until the lease period ended. The lease period ended on December 22, 2019.

- NGM's "*lack of any obligation, to recognize, acknowledge or be bound by the CBA*" would be maintained; and
- The "*MOU shall prevent* any argument of accretion, alter-ego or other *successorship* [principle] being argued or established".

The MOU explicitly identified NGM and Barrick as third-party beneficiaries who may use or enforce the MOU. In other words, although the Union has apparently decided not to honor its agreement, it clearly and unmistakably waived each of its claims. The Union cannot block an election based on claims which have been waived.

Thank you for your time and attention. If you have any questions, please do not hesitate to call.

Sincerely,



Anthony L. Hall, Esq.  
of Simons Hall Johnston PC

## Jennifer Smith

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Regional, Subregional Or Resident Office:	Region 32, Oakland, California
Case Name:	Nevada Gold Mines, LLC
Case Number:	32-RM-255914
Filing Party:	Employer
Name:	Anthony Hall
Email:	ahall@shjnevada.com
Address:	6490 S McCarran Blvd
	Ste F-46
	Reno NV 89509
Telephone:	(775) 785-0088
Attachments:	Letter: 2020-02-11 ALH to NLRB re NGM Supplement.pdf

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