

CCO-066

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD :
 : Circuit No. 20-1503
 Petitioner :
 : Board Case Nos.:
 v. : 04-CA-223028, 04-CA-225626
 : 04-CA-228220, 04-CA-228242,
 : 04-CA-230168, 04-CA-234705,
 AMERINOX PROCESSING, INC. : 04-CA-235411, 04-CA-237409,
 : 04-CA-237473, 04-CA-241421
 Respondent :

JUDGMENT

Before: JORDAN, KRAUSE, MATEY, Circuit Judges

THIS CAUSE was submitted upon the application of the National Labor Relations Board for the enforcement of a certain order on consent issued by it against Respondent, Amerinox Processing, Inc., its officers, agents, successors, and assigns, on February 4, 2020, in Board Case Nos. 04-CA-223028, 04-CA-225626, 04-CA-228220, 04-CA-228242, 04-CA-230168, 04-CA-234705, 04-CA-235411, 04-CA-237409, 04-CA-237473 and 04-CA-241421; and upon the record in that proceeding, certified and filed in this Court enforcing the order.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by the United States Court of Appeals for the Third Circuit that the order of the National Labor Relations Board be, and the same is hereby enforced; and that the Amerinox Processing, Inc., its officers, agents, successors, and assigns, abide by and perform the directions of the Board set forth in its order. (See attached Order and Appendix)

Mandate shall issue forthwith.

BY THE COURT

s/ Cheryl Ann Krause

Circuit Judge

DATED: April 23, 2020

PDB/cc: All Counsel of Record



Certified as a true copy and issued in lieu
of a formal mandate on April 23, 2020

Teste: *Patricia A. Dodeguez*
Clerk, U.S. Court of Appeals for the Third Circuit

NATIONAL LABOR RELATIONS BOARD

v.

AMERINOX PROCESSING, INC.

ORDER

Amerinox Processing, Inc., Camden, New Jersey, its officers, agents, successors, and assigns shall

1. Cease and desist from

- (a) Threatening employees with discipline, discharge, layoff, closing the facility or employer, different terms and conditions of employment, enforcement or stricter enforcement of rules, or other specified or unspecified reprisals if they choose to be represented by or support a union.
- (b) Threatening to withhold pay raises and bonuses for as long as there is union activity at the facility.
- (c) Prohibiting employees from wearing insignia referring to a union or working conditions.
- (d) Creating the impression that it is engaged in the surveillance of its employees' union or other protected concerted activity.
- (e) Threatening employees with the loss of raises or benefits or other specified or unspecified reprisals if they associate with a union or its supporters.
- (f) Prohibiting employees from discussing a union during working time while permitting them to discuss other subjects unrelated to work.
- (g) Indicating to employees that they are being discharged because of their support for or affiliation with a union.
- (h) Confiscating union materials from its employees.

- (i) Indicating to employees that they are not receiving bonuses or additional pay because there is union activity at the facility.
- (j) Soliciting employee complaints and grievances and implicitly promising to remedy those complaints and grievances in response to union activity at the facility.
- (k) Promising employees different terms and conditions of employment, more influence with management, or other specified or unspecified benefits in response to union activity at the facility.
- (l) Interrogating employees about employee support for or sympathy toward a union.
- (m) Instructing employees to stop other employees from discussing a union.
- (n) Indicating to employees that union supporters cannot discuss a union during working time, even though the discussion of other subjects unrelated to work is permitted.
- (o) Threatening employees with discipline or other specified or unspecified reprisals for contacting, seeking assistance from, filing charges with, or cooperating with the National Labor Relations Board.
- (p) Equating contacting, seeking assistance from, filing charges with, or cooperating with the National Labor Relations Board with disloyalty.
- (q) Promising to forgive or reward employees who abandon their support for a union.
- (r) Discharging or disciplining any of its employees or in any other manner discriminating in regard to hire or tenure of employment or any other term or condition of employment, in order to discourage membership in or support for a union.
- (s) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist a union, to bargain collectively through representatives of their own choosing, and to engage in other

concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative actions necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board’s Order, remove from the Respondent’s files any reference to the discharges of Mark Sawyer, Kyle Clark, and Richard Bilo and to the disciplinary actions taken against Richard Bilo about February 7, March 5, and March 8, 2019, and, within 3 days thereafter, notify those employees in writing that this was done and that the discharges and disciplines will not be used against them in any way.

(b) Within 14 days from the date of the Board’s Order, make whole the following employees for any loss of pay they may have suffered by reason of the discrimination against them, by payment to them of the amounts set forth opposite their respective names via one lump-sum check for wages and one lump-sum check for interest for each employee, which are in addition to amounts already paid:

	Wages	Interest	Total
Mark Sawyer	\$16,055.00	\$65.80	\$16,120.80
Kyle Clark	\$ 3,994.00	\$ 6.00	\$ 4,000.00

(c) Compensate the above-named employees for the adverse tax consequences, if any, of receiving lump-sum wage awards.

(d) At the same time the make-whole payments are submitted to the Region, for each discriminatee receiving payment, file with the Region a report allocating the wage award to the appropriate calendar year(s) and the W-2 reflecting the wage award paid.

(e) For a period of 1 year from the date of the Board’s Order or until a certification after a fair election or until the Charging Party withdraws the petition for an election in Case 04-RC-223800, whichever comes first, supply the Charging Party immediately upon its request with the full names, work locations, shifts, job classifications, and contact information (including home address, available personal email

addresses, and available home and cellular telephone numbers) of employees in the following bargaining unit:

Included: All full-time and regular part-time shipping/receiving employees, production and maintenance employees employed by the Respondent at its 2201 Mount Ephraim Avenue, Camden, NJ facility.

Excluded: All professional employees, office clerical employees, guards, managers, and supervisors as defined in the Act.

- (f) For a period of 1 year from the date of the Board's Order or until a certification after a fair election or until the Charging Party withdraws the petition for an election in Case 04-RC-223800, whichever comes first, grant the Charging Party and its representatives immediately upon request reasonable access to the Respondent's bulletin boards and all places where notices are customarily posted in its Camden, New Jersey facility. The Respondent will take reasonable steps to ensure that materials posted by the Charging Party are not removed, altered, defaced, or covered by any other material.
- (g) Within 14 days after service by the Region, post at its Camden, New Jersey facility copies of the attached notice marked "Appendix A" in English and Spanish. Copies of the notice, on forms provided by the Region, after being signed by the Respondent's authorized representative, shall be posted and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. The Respondent will take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. In addition, within 14 days of service by the Region, 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 April 11, 2018.
- (h) Within 14 days after service by the Region, (i) hold a mandatory employee meeting or meetings, on working time and at times when the Respondent customarily holds meetings, and scheduled to ensure the widest possible employee attendance, at which a responsible Respondent official, in the presence of a Board agent, will read the notice marked "Appendix A" to employees in English and Spanish, or, at the Respondent's option, a Board agent and/or translator will read the notice

in the presence of a responsible Respondent official; (ii) announce the meeting(s) for the notice reading in the same manner the Respondent would customarily announce a meeting of employees; and (iii) require that all employees at the facility involved in this proceeding attend the meeting(s).

- (i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX A

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

Pursuant to a stipulation providing for a Board Order and a consent judgment of any appropriate United States Court of Appeals.

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative 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 interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT threaten you with discipline, discharge, layoff, closing the facility or company, worse terms and conditions of employment, stricter enforcement of rules, or other retaliation if you choose to be represented by or support a union.

WE WILL NOT threaten to withhold pay raises and bonuses for as long as there is union activity at the facility.

WE WILL NOT prohibit you from wearing clothes displaying union logos or messages about your working conditions.

WE WILL NOT create the impression that we are watching your union or other organizational activity.

WE WILL NOT threaten you with the loss of raises or benefits or with other retaliation if you associate with a union or its supporters.

WE WILL NOT prohibit you from discussing a union during working time while permitting you to discuss other subjects unrelated to work.

WE WILL NOT tell you that you are being fired because of your support for a union.

WE WILL NOT take your union pamphlets, flyers, and other materials away from you.

WE WILL NOT tell you that you are not receiving bonuses or additional pay because of union activity at the facility.

WE WILL NOT ask you what your complaints are and promise to fix them in response to union activity at the facility.

WE WILL NOT promise you better working conditions, more money, promotions, more influence with us, and other improvements in response to union activity at the facility.

WE WILL NOT ask you how employees feel about a union or about union activity at the facility.

WE WILL NOT tell you to stop your coworkers from discussing a union.

WE WILL NOT tell you that union supporters cannot talk to you about a union during working time.

WE WILL NOT threaten to discipline you or retaliate against you in any way for seeking information or help from the National Labor Relations Board or cooperating with them.

WE WILL NOT claim that it is disloyal to seek information or help from the National Labor Relations Board or cooperate with them.

WE WILL NOT promise to forgive you or to reward you if you stop supporting a union.

WE WILL NOT fire you, discipline you, or retaliate against you in any way because you support a union.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the National Labor Relations Act.

WE WILL pay Kyle Clark and Mark Sawyer for the wages and other benefits they lost because we fired them.

WE WILL submit a W-2 and a report allocating the wage award to the appropriate calendar years for Kyle Clark and Mark Sawyer.

WE WILL remove from our files any reference to the firings of Kyle Clark, Mark Sawyer, and Richard Bilo, and **WE WILL** notify them that we have done so and that their firings and disciplines will not be used against them in any way.

WE WILL, for a specified period of time, give Sheet Metal Workers Local 19 the contact information of our employees if Sheet Metal Workers Local 19 asks for it.

WE WILL, for a specified period of time, allow Sheet Metal Workers Local 19 to post materials on our bulletin boards and in other notice-posting areas.

AMERINOX PROCESSING, INC.

The Board's decision can be found at www.nlr.gov/case/04-CA-223028 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 St., S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

