

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO, CALIFORNIA

AMERICAN GOLF CORPORATION
d/b/a BADLANDS GOLF COURSE,
Respondent

and

28-CA-18753
28-CA-18757
28-CA-18856
28-CA-19075

LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL 872, AFL-CIO,
Charging Party Union

Winkfield F. Twyman, Jr., Esq.,
for the General Counsel
Daniel F. Fears, Esq., and
Jeffrey K. Brown, Esq.,
for the Respondent
David A. Rosenfeld, Esq.,
for the Charging Party Union

DECISION ¹

Albert A. Metz, Administrative Law Judge. The issues presented are whether the Respondent unlawfully withdrew recognition of the Union and refused to bargain with the Union in violation of Section 8(a)(1), and (5) of the National Labor Relations Act.² On the entire record, including my observation of the demeanor of the witnesses, and after considering the oral arguments and briefs filed by the parties, I make the following findings of fact.

¹ This matter was heard at Las Vegas, Nevada on November 20, 2003. The Parties filed their briefs on January 21, 2004. All dates in this decision refer to 2003 unless otherwise stated.

² 29 U.S.C. § 158 (a)(1) and (5).

I. JURISDICTION

5 The Respondent, a California corporation, owns and operates a golf course in Las Vegas, Nevada. The Respondent admits, and I find, that it 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.

II. BACKGROUND

10 On December 9, 1999, the Union was certified by the Board as the collective-bargaining agent of the employees in the following appropriate unit:

15 All regular full-time and regular part-time groundskeepers, mechanics, irrigators, and crew leaders employed by the Respondent at its Badlands Golf Club located in Las Vegas, Nevada; excluding all other employees, pro-shop workers, food and beverage workers, office clerical employees, casual and temporary employees, guards and supervisors as defined in the Act.

20 Shortly after the Union was certified the parties began bargaining but no agreement was ever reached. On March 25, 2002 the Union filed unfair labor practice charges against the Respondent in case number 28-CA-17833. The key issue presented in that matter was whether the Respondent had unlawfully withdrawn recognition from the Union as the representative of its unit employees. That case was ultimately litigated and on September 16, 2002, Judge, Mary Miller Cracraft, issued her decision in JD(SF)-69-02. Her decision found that the Respondent did violate Section 8(a)(1) and (5) of the Act by withdrawing recognition from the Union on February 8, 2002, and by failing to furnish the Union with certain relevant and necessary information it had requested. Judge Cracraft recommended that the Board order the Respondent to recognize and bargain with the Union as the exclusive representative of the unit employees. Additionally, 25 the Respondent was ordered to provide information to the Union that it had requested for purposes of collective-bargaining. No exceptions were filed to Judge Cracraft's decision and on November 8, 2002, the Board issued its Order adopting that decision and directing that the Respondent bargain in good faith with the Union.

35 Commencing on about November 26, 2002, the parties did engage in collective-bargaining for an initial labor agreement and the negotiations continued into May 2003. George Vaughn, the Union's Director of Organizing represented the Union. The Respondent was represented by its attorney, Daniel Fears, and Human Resources Manager, Kelly Howard.³ The parties met six to eight times for negotiations and additionally negotiated matters in several 40 telephone conversations.

In a May 9 draft agreement there were two unresolved issues between the parties. The first dealt with a reference to part-time employees. The second was a question as to whether a column called "Current Wages" should be included in Addendum "B" of the agreement. Vaughn 45 accepted the changes offered by the Respondent in the draft with the single exception that he

³ I find that the record evidence shows that at all relevant times, Daniel F. Fears, was the Respondent's labor attorney and an agent of the Respondent within the meaning of Section 2(13) of the Act.

left unchanged the inclusion of the unit employees' current wages.

In a position statement submitted to the Board's Regional office during the investigation of this matter Fears referred to a May 16 telephone call between the Parties;

5 At the May 16, 2003, telephone conference, there was one final provision that the Company advised Mr. Vaughn that it did not want in the contract. Specifically, the Company did not want a section in the contract that referred to "current wages," because it might create problems with newly hired employees who would see the current wages of existing employees. Mr. Vaughn and the undersigned did not agree upon this language. Although Mr. Vaughn kept saying words to the effect that he thinks it's done, the undersigned advised Mr. Vaughn that he would consider it further in the Union's final proposal.

15 Fears testified similarly at the hearing in reference to the May 16 conference call (Tr. 72):

20 A. I believe we had a phone conference around that date, and May 16th sounds about right. ... I may have said I will continue to consider his proposal, because I knew he wanted it in there....

25 On May 19 Vaughn wrote a letter to Kelly Howard and Fears. Vaughn's letter states he was including signed copies of the "final" agreement signed by the Union. The letter noted Vaughn's understanding that "nothing in this agreement has been altered or modified other than what was mutually agreed in our negotiations sessions." Addendum "B" of the agreement consists of a page of Wage Rates and Classifications. The page has a column of Wage Minimum(s) and another column listing the employees' Current Wages.

30 On May 23 the Respondent received handwritten petitions (in Spanish and English) from a majority of its unit employees stating:

35 We the employee's of Badlands Golf Course Maintenance no longer wish to be represented or affiliated with the Laborers Union Local # 872. We feel that we have been misrepresented by Local # 872, in that a contract was negotiated that is not in our best interest. Also, we had no say or vote in this contract being turned over to be signed.

At the hearing the Parties stipulated to the following additional facts:

40 1. The handwritten petitions were valid and represent the sentiment of a majority of the employees in the unit regarding union representation.

45 2. On May 23 the Respondent also received a petition in case 28-RD-892 requesting the Board to conduct an election among the unit employees so they could express their desires as to whether or not they wanted to decertify the Union as their collective-bargaining representative.

3. On or about June 3, 2003, the Respondent received a request for information from the Union.

50 4. On or about June 10 to 15 the Respondent withdrew recognition of the Union and so

advised the Union.

5 5. From the time of the petition to the time of the withdrawal, the sentiment of the unit employees as reflected in the handwritten petitions of May 23 did not change.

Fears testified that the parties were not able to reach agreement on the inclusion of the “current wages” section of the proposed contract. He, therefore, concluded that the Parties were at an impasse.

10 The Union’s June 3 request for information sought the following details concerning unit employees: employees’ name, address, phone number, date of hire, rate of pay, and job classification. The Respondent did not give the Union the requested information. On or about June 25, Vaughn sent a letter by FAX and mail to Fears requesting the same information asked for in the June 3 letter. The record does not reflect that the Respondent ever responded to the
15 June 25 letter. On October 9, David A. Rosenfeld, the Union’s attorney, sent a letter to Fears requesting an updated list of the employees, their phone numbers and addresses, a copy of all discipline imposed upon employees for the period January 1, 2003, to the present, employee handbook, any summary plan descriptions or benefit plans applicable to the employees and any workers compensation policy. The record does not show that the Respondent ever replied to
20 this letter.

In a written communication dated June 26, Fears provided the Board’s regional office with a statement concerning the Respondent’s position relative to the charges filed in this case. Fears’ statement relates the following regarding the reasons for withdrawing recognition:

25 Faced with a petition signed by an overwhelming number of the employees, it was apparent that (1) the employees had not ratified the proposal, and (2) this Union no longer represented a majority of the employees, and thus it would be inappropriate for the Company to negotiate with [the Union] and ultimately execute any proposed
30 agreement, even if it found no objection to the terms. (G. C. Exh. 2(a), p. 5)

III. ANALYSIS

A. Withdrawal of Recognition

35 The Respondent asserts that because the Union no longer had the support of the majority of the unit employees it was privileged to withdraw recognition. It argues that this conclusion is supported by its several months of bargaining with the Union that had not resulted in an agreement at the time the Respondent withdrew recognition. The Respondent makes the
40 point that it did not initially rely on the decertification petitions it received from the employees on May 23; rather it waited approximately three weeks before it withdrew recognition - more than six months after the commencement of bargaining. The Respondent urges that it was privileged to withdraw recognition because of the Board’s decision in *Levitz Furniture Company of the Pacific*, 333 NLRB 717 (2001) (An employer may unilaterally withdraw recognition from an
45 incumbent union only where the union has actually lost the support of the majority of the bargaining unit employees), and because it had engaged in a reasonable period of bargaining.

The Government argues that the Respondent was not privileged to withdraw recognition because the parties had not bargained for a year from the date the parties first met on
50 November 26, 2002. The Government asserts that this case is controlled by the Board’s

5 decision in **Chelsea Industries**, 331 NLRB 1648 (2000) (An employer does not have the right, after expiration of the certification year, to withdraw recognition from a union on the basis of an antiunion petition circulated and presented to the employer during the certification year.) See also, **Brooks v. NLRB**, 348 U.S. 96 (1954) (Absent unusual circumstances, an employer must recognize the union for the entire certification year, even if it is presented with evidence of the union's loss of majority.)

10 I find *Chelsea* to be distinguishable from the present case. In *Chelsea* the bargaining had taken place for a year after certification but the Respondent relied on a decertification petition received during that year as the basis for withdrawing recognition. In the present case the background evidence shows that the Parties had engaged in bargaining after the Union's December 9, 1999, certification. They never reached an agreement and the Respondent first withdrew recognition of the Union on February 8, 2002- over two years after certification. 15 Ultimately the Respondent was found to have violated Section 8(a)(1) and (5) because it withdrew recognition without proving that the Union had actually lost its majority support. Additionally, the Respondent violated the Act by not supplying the Union with information that it requested on January 25, 2002.

20 Fears' gave uncontroverted testimony in the present hearing that the parties had bargained "for a long period of time" after the certification until the Union "simply went away." There was no allegation in the earlier case that those negotiations were in bad faith or in any manner violated the Act. As noted in Judge Cracraft's decision, "No bargaining sessions have been held since August 2000." Thereafter nothing occurred until the Union sought to resuscitate bargaining in January 2002 when it sent a letter to the Respondent seeking to resume 25 negotiations. Although Union agent Vaughn was in attendance at the hearing in the present case he did not testify and the Union offered no evidence to controvert Fears' testimony concerning the essence and extent of the negotiations that preceded the Board's bargaining order. I further note that nothing in the Judge's Decision or the Board's order speaks to extending the bargaining year – a standard requirement in certification year situations. **Van** 30 **Dorn Plastic Machinery Co.**, 300 NLRB 278, 279 (1990) ("Absent unwarranted delay by the union, the certification year after an employer's initial refusal to bargain commences on the date of the parties' first bargaining session."); **Straus Communications v. NLRB**, 625 F.2d 458 (2d Cir. 1980); **Gulf States Manufacturers v. NLRB**, 598 F.2d 896 (5th Cir. 1979); **Mar-Jac Poultry Co.**, 136 NLRB 785 (1962), *enfd.* 939 F.2d 402 (6th Cir. 1991). See also, *Board's Unfair Labor Practice Casehandling Manual*, Sections 10142.5, 10166 (b) and 10168. I find that 35 the Government has failed to show by a preponderance of the evidence that the Parties' 1999-2000 negotiations did not satisfy the certification year rule of 12 months of unencumbered good faith bargaining. I conclude, therefore, that *Chelsea* is not controlling in the present matter.

40 The next point for examination is whether the Respondent's withdrawal of recognition in the present case otherwise frustrated the Board's extant bargaining order. The Board requires that a reasonable period of bargaining take place in order to comply with its bargaining orders. **Lee Lumber and Building Material Corp.**, 334 NLRB 399, 402 (2001) (When an employer has unlawfully failed to bargain with an incumbent union there should be an "insulated period" of a 45 defined period of at least six months in which the employer cannot challenge the union's majority status.) *Lee Lumber* teaches that in making an assessment of whether reasonable bargaining has taken place during the insulated period the Board looks at the following factors:

(1) **Whether the parties are bargaining for an initial contract.** The Parties in this case were negotiating for an initial contract. The Board holds that there are additional burdens associated with initial contract negotiations. *MGM Grand Hotel*, 329 NLRB 464, 466 (1999):

5 Particularly, where the parties are negotiating an initial contract, the Board recognizes the attendant problems of establishing initial procedures, rights, wage scales, and benefits in determining whether a reasonable time has elapsed. *Ford Center for the Performing Arts*, [328 NLRB 1, 3 (1999)] supra, slip op. at 1; *N. J. MacDonald & Sons, Inc.*, [155 NLRB 67 (1965)] supra at 71–72. The Board also recognizes that
10 establishing such initial procedures and contract terms may take time that is not required in those instances where “a bargaining relationship has been established over a period of years and one or more contracts have been previously executed.” *N. J. MacDonald & Sons*, supra at 72. The Board has also expressed its reluctance to negate good-faith bargaining for an initial contract when the parties’ efforts are on the verge of reaching
15 finality. *Ford Center for the Performing Arts*, supra, slip op. at 2.

(2) **The complexity of the issues being negotiated and the procedures adopted for bargaining.** As this was an initial contract there was no history or existing contract to guide the Parties in their negotiations. Examining the last contract proposal between the Parties leaves
20 the impression that the contract was not excessively complicated but the extensive negotiations that produced that document weighs in favor of showing that the Parties did have many issues to discuss and agree upon.

(3) **Passage of time and number of bargaining sessions.** The Parties had met on 6-8
25 occasions and also negotiated several times over the telephone. These negotiations spanned the period from November 26, 2002, until withdrawal of recognition in the period June 10-15, 2003.

(4) **Proximity to agreement.** The Parties had made substantial progress in their
30 negotiations. The proposal signed by the Union on May 16 left only the “current wages” inclusion as an issue. (C. P. Exh. 1). This was a matter which Fears told the Union that he would take under consideration.

(5) **Presence or absence of impasse.** The evidence does not show that the Parties
35 were at an impasse. By definition, an impasse occurs whenever negotiations reach that point at which the parties have exhausted the prospects of concluding an agreement and further discussions would be fruitless. *Laborers Health and Welfare Trust Fund v. Advanced Lightweight Concrete*, 484 U.S. 539, 543 (1988); *Jano Graphics, Inc.*, 339 NLRB No. 38 (June 12, 2003) slip op. at 7 (A genuine impasse in negotiations is “synonymous with a
40 deadlock; the parties have discussed a subject or subjects in good faith, and, despite their best efforts to achieve agreement with respect to such, neither party is willing to move from its position.”) The burden of proof rests on the party asserting that impasse exists. *North Star Steel Co.*, 305 NLRB 45 (1991); *Roman Iron Works*, 282 NLRB 725 (1987). Whether a bargaining impasse exists is a matter of judgment. Evidence concerning the bargaining history,
45 the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, the contemporaneous understanding of the parties as to the state of negotiations are all relevant factors to be considered in deciding whether an impasse in bargaining existed. *Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967),
50 enfd. sub nom. *Television Artists AFTRA v. NLRB*, 395 F.2d 622 (D.C. Cir. 1968); *Grand Auto*, 320 NLRB 854, 857 (1996).

The Board and courts have provided guidance as to what is a reasonable period of bargaining in various cases. In **Ford Center for the Performing Arts**, 328 NLRB 1, 3 (1999) the Board cited with approval **N.J. MacDonald & Sons**, 155 NLRB 67 (1965) which discussed what was a reasonable period of time for bargaining after an employer had unlawfully refused to bargain. *N. J. MacDonald* gives the following instruction on the subject (at pp.71–72):

The issue in this case is whether Respondent was obligated under the Act to continue to bargain with the Union after it received the employees' petition. In order to resolve this issue, we must determine whether a reasonable period of time had elapsed from the date of execution of the settlement agreement to the refusal to bargain. As the Board stated in **Poole Foundry and Machine Company**, 95 NLRB 34, 36, enfd. 192 F. 2d 740 (C.A. 4), cert. denied 342 U.S. 954:

It is well settled that after the Board finds that an employer has failed in his statutory duty to bargain with a union, and orders the employer to bargain, such an order must be carried out for a reasonable time thereafter without regard to whether or not there are fluctuations in the majority status of the union during that period....

The determination of what constitutes "a reasonable time" depends upon the particular circumstances involved. What is reasonable in one case may not be so in another. Thus, the Board has held that... [W]here the parties had not reached an impasse in negotiations, 6 months was held not to be "a reasonable time." [FN4. **H. E. Fletcher Co.**, 131 NLRB 474; **Consolidated Textile Company, Inc. (Ella Division)**, 106 NLRB 580. Accord: **Stant Lithograph, Inc.**, 131 NLRB 7, 8, affd. per curiam 297 F. 2d 782 (C.A.D.C.); **Frank Becker Towing Company Detroit Marine Towing L.O.L. Company**, 151 NLRB 466.]

Here, it does not appear that the parties had ever before negotiated a collective-bargaining contract. The Union and Respondent met in nine bargaining sessions over a 6-month period after the execution of the settlement agreement during which progress was made in reaching an agreement. At the last bargaining session preceding the refusal to bargain, all that remained in dispute were the amount of wage increase and a union-security provision. No indication was given at this or at any other time that an impasse had been reached in the negotiations. Indeed, it appears that such substantial progress had been made at the time of the refusal to bargain that the parties had reduced their agreement to writing, and the Union had announced that it would submit Respondent's offers on the wage increase and union security, the last issues in dispute, to the employees for their approval. And the parties had agreed to meet again. To say, as Respondent contends, that the 6 months during which it bargained was a reasonable period would be to ignore completely the fruitful negotiations during those months. It would ignore, also, the fact that these were negotiations for an initial contract which usually involve special problems, such as in the formulation of contract language, which are not present if a bargaining relationship has been established over a period of years and one or more contracts have been previously executed. Accordingly, we find that a reasonable time had not elapsed after the effective date of the settlement agreement when Respondent refused to bargain with the Union.

The Parties in the present case were close to agreement on the initial contract. The remaining issue of including the employees' current wages in the agreement was a relatively minor matter in light of the history of negotiations, the other weightier issues involved in the negotiations and the fact the Parties had reached agreement on the remainder of the contract. Fears took the position in his statement to the Regional office that he had notified the Union that he agreed to take the "current wage" matter under consideration. Balancing the cited factors and case law speaking to the subject, I find that the Parties had not bargained for a reasonable period of time sufficient to empower the Respondent to withdraw recognition. *Lee Lumber*, supra.

The Respondent decided to wait approximately three weeks after receiving the decertification petitions before it announced its withdrawal of recognition. The announcement thus came a few days after the six month insulated bargaining period. The Respondent seems to see this as sufficient to meet the requirements of the *Lee Lumber* six month insulated period. In its brief, however, the Respondent argues that it "...has relied [for withdrawal of recognition] not upon the May 23, 2003 'petition,' but upon the stipulated fact that, at all times from May 23 through June 10-15, a majority of the employees did not support the Union." (Resp. brief p. 9) I find this argument disingenuous. Fears' pre-hearing position statement to the Region states that, "Faced with a petition signed by an overwhelming number of the employees...this Union no longer represented a majority of the employees, and thus it would be inappropriate for the Company to negotiate with [the Union] and ultimately execute any proposed agreement, even if it found no objection to the terms. (G. C. Exh. 2(a), p. 5) I find that the Respondent did rely on the May 23 petitions as a major reason for withdrawing recognition on June 10-15.

The Respondent also argues that the Union agreed to submit any agreement to ratification by the employees and this was never done. It makes the point that this is one reason nothing had been finalized between the parties. I find this to be a circular argument in light of the Respondent's other contention that the Parties had never agreed upon a final contract. Fears admitted as much when he testified:

Q. Just -- did he [Vaughn] at that point say that they -- it had been ratified? Yes or no.

A. When you say "it ratified": No, he didn't say that. He said the major terms that were at issue at that time -- because we did not have a final type of agreement, he said major things were voted upon and that the employees also would ratify any final agreement.

Thus, I find that the issue of ratification was a pending matter that was not a legitimate excuse for the Respondent to claim that the Parties could not reach a final agreement.

The Respondent argues that its withdrawal of recognition is sanctioned by the Board's decision in *Levitz Furniture Company of the Pacific*, 333 NLRB 717 (2001)(An employer may unilaterally withdraw recognition from an incumbent union only where the union has actually lost the support of the majority of the bargaining unit employees.) In *Levitz* the Board was not faced with the employer's unlawful refusal to bargain background present in this case. Thus, in the instant case the Board has found that the Respondent had violated the Act by unilaterally withdrawing recognition and not having proved the actual loss of majority status. It is within the context of this unfair labor practice and the Board's bargaining order that the Respondent's second unilateral withdrawal of recognition must be assessed. In sum, the evidence shows that the Board had found that the Respondent had previously violated the Act by refusing to bargain in good faith with the Union. Thereafter, the Respondent did bargain with the Union for

approximately five months before it received decertification petitions from a majority of its employees. The Respondent relied upon these petitions as an important factor in withdrawing recognition from the Union. At the time of withdrawal of recognition the Parties were very close to an agreement on the terms of the initial collective-bargaining agreement and it has not been shown that final agreement was not possible. The Board has emphasized many times that, “from the earliest days of the Act, the Board has sought to foster industrial peace and stability in collective-bargaining relationships, as well as employee free choice, by presuming that an incumbent union retains its majority status.” *Levitz*, supra, at p. 720. I find that the employees expressions of nonsupport for the Union on May 23 do not overcome the Board’s mandate that unencumbered bargaining be given an opportunity to succeed for a reasonable period to time where the employer has been the cause of the delay in accomplishing good faith bargaining because of its prior unfair labor practices. I conclude that based on the record as a whole, and in light of the noted case law, that the Government has proven by a preponderance of the evidence that in June 2003 the Respondent prematurely and unlawfully withdrew recognition of the Union as the bargaining agent of the unit employees. I find that the Respondent’s withdrawal of recognition was a violation of Section 8(a)(1) and (5) of the Act.

B. The Information Requests

The Respondent does not contest the nature of the Union’s requests for information relating to unit employees as set forth above. It did, however, take the position that it was not required to supply such information because of its position that the Union no longer represented a majority of the employees. Having found that the Respondent did unlawfully withdraw recognition from the Union, I further find that the information the Union requested is reasonable and necessary for it to carry out its representative duties. I conclude that the Respondent violated Section 8(a)(1) and (5) of the Act by refusing to provide the information requested by the Union in its June 3, 25 and October 9 letters. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967).

CONCLUSIONS OF LAW ⁴

1. American Golf Corporation d/b/a Badlands Golf Course is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Laborers’ International Union of North America, Local 872, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated Section 8(a)(1) and (5) of the Act.

4. The foregoing unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law, and on the entire record, I issue the

⁴ A motion made on the record by Counsel for the General Counsel to withdraw paragraph 6(e) of the Complaint (refusal of access to Union representatives on May 29th, 2003) was granted.

following recommended:⁵

REMEDY

5 In light of the Respondent’s having for a second time unlawfully withdrawn recognition of
the Union and having failed to fully comply with the Board’s extant bargaining order, I find that
an affirmative bargaining order, the traditional remedy for a refusal to bargain with the certified
representative of employees, is warranted. *Caterair International*, 322 NLRB 64 (1996).
10 Moreover, for the reasons set forth in *Horizon House Developmental Services*, 337 NLRB No.
9, slip op. at 5-6 (2001), were it necessary to balance employees’ Section 7 rights with whether
other purposes of the Act might override the rights of employees to choose their bargaining
representatives and whether alternative remedies are adequate to remedy the Respondent’s
violations, an affirmative bargaining order would also be required. In addition, the Respondent
shall provide the information requested by the Union on June 3, 25, and October 9, 2003.

ORDER

15 The Respondent, American Golf Corporation d/b/a Badlands Golf Course, its officers,
agents, successors, and assigns, shall

20 1. Cease and desist from:

 (a) Refusing to bargain in good faith with the Laborers’ International Union of North
America, Local 872, AFL-CIO.

25 (b) Unlawfully withdrawing recognition from the Union.

 (c) Refusing to supply the Union with necessary and relevant information that it requests
for purposes of performing its representative duties.

30 (d) In any like or related manner interfering with, restraining, or coercing employees in
the exercise of the rights guaranteed them by Section 7 of the Act.

35 2. Take the following affirmative action necessary to effectuate the policies of the Act:

 (a) On request, bargain with the Laborers’ International Union of North America, Local
872, AFL-CIO, 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:

40 All regular full-time and regular part-time groundskeepers, mechanics, irrigators, and
crew leaders employed by the Respondent at its Badlands Golf Club located in Las
Vegas, Nevada; excluding all other employees, pro-shop workers, food and beverage
workers, office clerical employees, casual and temporary employees, guards and

⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommend Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

supervisors as defined in the Act.

(b) Provide the Union with the information it requested in its June 3, 25 and October 9, 2003, letters.

(c) Within 14 days after service by the Region, post at its facility in Las Vegas, Nevada, copies of the attached notice marked "Appendix." ⁶ Copies of the notice written in both English and Spanish, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or ceased working at its Las Vegas, Nevada facility, the Respondent shall duplicate and mail, at its own expense, a copy of the notice in both English and Spanish to all current employees and former employees employed by the Respondent at any time since June 3, 2003. *Excel Container, Inc.*, 325 NLRB 17 (1997).

(d) 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.

Dated: March 15, 2004

Albert A. Metz
Administrative Law Judge

⁶ 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 UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

5

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

10 The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

15

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

20

WE WILL, on request, bargain with the Laborers' International Union of North America, Local 872, AFL-CIO, 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:

25

All regular full-time and regular part-time groundskeepers, mechanics, irrigators, and crew leaders employed by the Respondent at its Badlands Golf Club located in Las Vegas, Nevada; excluding all other employees, pro-shop workers, food and beverage workers, office clerical employees, casual and temporary employees, guards and supervisors as defined in the Act.

30

WE WILL NOT refuse to bargain in good faith with the Laborers' International Union of North America, Local 872, AFL-CIO.

35

WE WILL NOT unlawfully withdraw recognition from the Union.

WE WILL NOT refuse to supply the Union with necessary and relevant information that it requests for purposes of performing its representative duties.

40

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

45

WE WILL provide the Union with the information it requested in its June 3, 25 and October 9, 2003, letters.

**American Golf Corporation d/b/a Badlands Golf
Course**

(Employer)

Dated _____ By _____
(Representative) (Title)

5 The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

10 2600 North Central Avenue, Suite 1800, Phoenix, AZ 85004-3099
(602) 640-2160, Hours: 8:15 a.m. to 4:45 p.m.
COMPLIANCE OFFICER, (602) 640-2146.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

15 THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE
20 OFFICER, (913) 967-3005.