JD–40–04
Vineland, NJ

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

PRO–SPEC PAINTING, INC.

and

Cases 6–CA–33611
6–CA–33818

INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES, DISTRICT
COUNCIL 57 OF WESTERN PENNSYLVANIA,
AFL–CIO, CLC

Joanne F. Dempler, Esq., for the
General Counsel.
Ronald Yarbrough, President,
1819 Cedar Avenue
Vineland, New Jersey 08360-3413.

DECISION

STATEMENT OF THE CASE

EARL E. SHAMWELL, JR., Administrative Law Judge: This matter was heard by me in Pittsburgh, Pennsylvania, on February 23, 2004, pursuant to an original charge filed in Case 6–CA–33611 by International Union of Painters and Allied Trades, District 57 of Western Pennsylvania, AFL–CIO, CLC (the Union) on August 18, 2003, against Pro–Spec Painting, Inc. (the Respondent). On October 31, 2003, the Regional Director for Region 6 of the National Relations Board (the Board) issued a complaint against the Respondent.

On December 5, 2003, the Union filed an original charge against the Respondent in Case 6–CA–33818; the Union filed an amended charge in this case on January 29, 2004, against the Respondent. On February 4, 2004, the Regional Director issued his Order consolidating cases and consolidated amended complaint against the Respondent. The consolidated complaint (the complaint) alleges that the Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act (the Act) by hiring nonunion employees in contravention of the hiring provisions of the Commonwealth of Pennsylvania Project Labor Agreement to which it and the Union were signatories.

The complaint also alleges that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with certain information and failing to continue in effect all of the terms and conditions of the said Project Labor Agreement.

On November 25, 2003, the Respondent, through its president, Ronald W. Yarbrough (Yarbrough) filed its answer in Case 6–CA–33611 and essentially denied the commission of any unfair labor practices. The Respondent, in spite of having received a copy of the amended

consolidated complaint and notice of the February 23, 2004 hearing date by certified mail on February 6, 2004, did not file an answer to the amended complaint.

The Respondent did not appear at the hearing on February 23, 2004, and the matter proceeded as scheduled.[1]

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, I make the following

Findings of Fact

I. Jurisdiction—The Respondent as Employer

The Respondent, a New Jersey corporation with an office and place of business in Vineland, New Jersey, and a jobsite at the Forest County State Correctional Institution located in Marienville, Forest County, Pennsylvania, has been engaged in business as a painting contractor in the construction industry. The Respondent admits, and I find and conclude, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.[2]

II. The Labor Organization

District Council 57 of Western Pennsylvania includes four painting locals as well as drywall finishing, glazing, and a few non-construction locals. The geographic jurisdiction of District Council 57 is the 32-county region of Western Pennsylvania. Chris Geronimos serves as director of organizing for District Council 57, and Tom Tyger is one of the business agents.

District Council 57 and its subordinate locals exist at least in part for the purposes of dealing with employees concerning conditions of work and other statutory subjects, such as grievances, labor disputes, wages, rates of pay, or hours of employment. Employees attend local union meetings and they vote in local union elections, such as for the ratification of collective-bargaining agreements and for local officers. In addition, District Council 57 files annual LM2s with the U.S. Department of Labor. I would find and conclude that District Council 57 is a labor organization within the meaning of Section 2(5) of the Act.

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[1] I note that prior to the hearing I scheduled and arranged, as is my practice, a pretrial telephone conference with the General Counsel, Charging Party, and the Respondent's Mr. Yarbrough who indicated to my clerical assistant that he would participate. On the appointed day of the conference, February 18, 2004, at 10:30 a.m., all parties except the Respondent were available on the telephone line. However, Mr. Yarbrough's secretary said that he was not available although she admitted that Yarbrough was aware of the conference call's having been previously scheduled and his agreement to participate.

[2] In its answer to the original complaint in Case 6–CA–33611, the Respondent admitted its employer status within the meaning of the Act. Also, in Pro-spec Painting, Inc., 339 NLRB No. 115 (July 31, 2003), the Respondent admitted that it was an employer in commerce within the meaning of the Act. I have taken administrative notice of that decision in finding that the Respondent is covered by the Act and subject to the National Labor Relation Board's jurisdiction.

III. Alleged Unfair Labor Practices

A. The Background Facts

The Respondent is a painting contractor that undertakes large painting projects in several states. Ronald Yarbrough is the president and head of the Respondent. Yarbrough did not appear at the hearing; however, in his answer to the complaint in Case 6–CA–33611, he admitted that at all material times associated with the charges, he was a supervisor and/or agent of the Respondent within the meaning of Section 2(11) and/or (13) of the Act.[3]

Over the past 5 years, the Respondent has performed painting work on three projects in Western Pennsylvania; that is, PNC Park in Pittsburgh, the Fafayette County (Pennsylvania) State Correctional Institution, and the Forest County State Correctional Institution (FCSCI) in Marienville Forest County, Pennsylvania.

At FCSCI, the Commonwealth of Pennsylvania, through its Department of General Services (DGS), was constructing a new prison facility. The Respondent was awarded the painting work for this prison project.

On July 10, 2001, the Respondent entered into a $506,528 contract with DGS,[4] which called for periodic payments upon completion of certain phases of the painting project. The Respondent received payments under the contract and by February 2003 had received 480,119.72, including a payment of $31,030.80 that same month.[5]

The Respondent's contract with DGS required it to abide by the terms of a Project Labor Agreement which was incorporated by reference in the main contract.

The Project Labor Agreement (PLA) is a collective-bargaining agreement for the construction unions working on the FCSCI project. The terms of the PLA expressly control the hiring on the project. It permits each contractor, including the Respondent, to utilize its own "core employees"[6] as the first and third employees at the Forest County jobsite or up to 10 percent of all employees at the jobsite, whichever is greater. It further requires that all other employees hired be referred from the unions' hiring halls.[7] In practice, the PLA requires that the first employee be a core employee; the second employee is referred from the hiring hall; the third employees is a core employee; and the next 19 employees are to be referred from the hiring hall.

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[3] I would find and conclude, based on the admission and the credible evidence of record hereinafter discussed, that Yarbrough was, at all material times, a supervisor and/or agent of the Respondent within the meaning of the Act.

[4] See GC Exh. 5, the contract between the Respondent and DGS.

[5] See GC Exh. 13, a copy of an invoice submitted by the Respondent for payment under the DGS contract.

[6] Core employees are employees brought onto a project by a nonunion employer and are usually not union members.

[7] See GC Exh. 6, which contains the Project Labor Agreement asserted to by the Respondent pursuant to the DGS contract. See, specifically Art. VI, Sec. 9 of the agreement.

B. The Substantive Allegations

1. The Respondent's Alleged Discriminatory and Retaliatory Refusal to Use the Union's Hiring Hall

The complaint essentially alleges that the Respondent, between June 25 and July 29, 2003, hired two nonunion employees to perform work under the PLA at the Forest County jobsite instead of hiring one nonunion employee and recalling a laid-off union employee through the Union's hiring hall referral system; that the Respondent took this action because the Union demanded adherence to the PLA and to discourage employees from engaging in union or other concerted activities, in violation of Section 8(a)(3) and (1)of the Act.

The General Counsel submits that the Respondent's repudiation of the hiring provisions of the PLA was done in retaliation for the Union's prior efforts to force the Company to comply with the agreement and hire employees from the Union's hiring hall.

To establish this charge, the General Counsel called Chris Geronimos, the Union's director or organizing,[8] and Tom Tyger, business agent for the Union.

Geronimos testified that the Respondent, by virtue of having entered into the contract with the Commonwealth of Pennsylvania, was required to honor the hiring provisions of the PLA to which his Union was a signatory.

According to Geronimos, in the beginning of the prison painting project, the Union became aware that the Respondent had a work complement that was not in compliance with the hiring provisions of the PLA.

Specifically, Geronimos stated that the Union determined that the Respondent had employed a core employee, one Larry Preston, in contravention of the hiring ratio; that the Respondent had already placed core employee John Tokach and foreman John Brandonio at the site, so a union employee should have been employed in the place of Preston. According to Geronimos, based on the Union's complaint, Preston was removed from the project.

Geronimos said that in the spring of 2003, the prison painting project was winding down, and there was a substantial reduction of the work force. In July 2003, Geronimos said that he was informed by the Union's business agent, Tom Tyger, that there were two core employees working at the prison jobsite, but no union painters. Tyger identified the two core employees as once again Tokach and Brandonio.

According to Geronimos, neither Tokach nor Brandonio had been referred by the Union's hiring hall and that, based on the PLA, there should have been one core employee and one union employee.

Tyger[9] testified that he was familiar with the prison painting project and had had dealings with the Respondent's president, Yarbrough, on two occasions. Tyger stated that some time

[8] Geronimos testified that he served as director of organizing for the past 13 months; prior to that, he was an organizer for about 5 years.

[9] Tyger said that he was a business agent for Painters Local Union No. 409, a participating labor organization associated with the Union (District 57). Local Union 409's jurisdiction covers 14–16 counties in Pennsylvania.

before July 8, 2003—he did not provide a specific date—there was a problem relating to the core employee ratios at the site, which he brought to Yarbrough's attention. According to Tyger, Yarbrough told him that an employee the Union thought was a core painter employee was actually merely a delivery truckdriver. However, Tyger said that a union steward at the site maintained this so-called truckdriver stayed at the site and worked there a full day. Tyger said that the problem abated upon his receiving advice that the driver did not work the site the next day.

Tyger's second contact with Yarbrough took place after a July 8, 2003 visit to the site. According toTyger, on this occasion he spoke with the project's oversight manager who advised that the Respondent's employees were working that day and provided a worker's cellular telephone number. Tyger said he called the employee, who happened to be Brandonio, the Respondent's foreman. According to Tyger, Brandonio said that he and Tokach were both working at the site, but to contact Yarbrough for further information.

Tyger said he telephoned Yarbrough on July 9 and advised him that the Company was in violation of the PLA, but that the Union desired to resolve the matter without involving the grievance process. According to Tyger, Yarbrough basically said that he was not going to comply with the PLA and that he (Tyger) should do what he had to do; that he was not going to rehire union members on the site. According to Tyger, Yarbrough was hostile to the Union and the PLA.[10]

Tyger said that as a result of his conversation on July 9, 2003, he filed a grievance against the Respondent with O'Brien–Kreitzberg, the joint venture construction management firm responsible for oversight of the project, alleging the Respondent's violation of the PLA's hiring provisions.

The Applicable Legal Principles

Section 8(a)(3) of the Act makes it an unfair labor practice for an employer to discriminate in regard to hire or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization. 29 U.S.C. §158(a)(3).

Preliminary to determining whether an employer has discriminated against an employee in violation of Section 8(a)(3) or 8(a)(1) of the Act, the Board has held that the General Counsel must first make a prima facie showing sufficient to support the inference that the protected activity(ies) of the employee was a motivating factor in the employer's decision to discipline or discharge the employee. If this is established, the burden then shifts to the employer to demonstrate that discipline or discharge would have occurred irrespective of whether the employee was engaged in protected activity. *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981).

An initial case is made out where the General Counsel establishes union activity, employer knowledge of that activity, animus, and adverse action against those involved, which has the effect of encouraging or discouraging union activity. *Farmer Bros. Co.,* 303 NLRB 638,

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[10] Tyger memorialized his conversation with Yarbrough on July 10, 2003. See GC Exh. 11. Tyger's notes indicate that, inter alia, Yarbrough threatened to go "public" on how PLAs do not work and said that the Union (District 57) in particular, in conjunction with the PLA, cost the taxpayer's extra money.

349 (1991). Inferences of animus and discriminatory motivation may be warranted under all the circumstances of a case, even without direct evidence.

Once the General Counsel has met her initial elemental Wright Line requirements, the burden shifts back to the employer. That burden requires a respondent "to establish its *Wright Line* defense only by a preponderance of evidence." The respondent's defense does not fail simply because not all of the evidence supports it, or even because some evidence tends to negate it. *Merrilat Industries*, 307 NLRB 1301, 1303 (1992).

The Respondent, here, in default, has not offered a defense to the 8(a)(3) allegations. Therefore, it remains to determine whether the General Counsel has satisfied Wright Line.

First, I have credited the testimony and supporting documents of the General Counsel's witnesses, Geronimos and Tyger, regarding their contacts and conversations with the Respondent's employees and its president, Yarbrough.

Accordingly, the evidence of record establishes that on two occasions prior to July 8, 2003, the Union, having discovered that the Respondent may have violated the hiring provisions of the PLA, advised the Respondent of this fact and insisted on compliance with the PLA. On July 8, 2003, the Union once more discovered that the Respondent had not complied with hiring provisions of the PLA, by using two core employees as opposed to one core and one union employee on the then two-man crew performing work at the prison jobsite. The Respondent's president reacted angrily and made comments indicating that he was, inter alia, repudiating the PLA and that the Union (and the PLA) had cost the taxpayers extra money and that he would go "public" with this information.

The Respondent's hostile and threatening remarks to the union representatives who were attempting to enforce the PLA, the terms of which the Respondent had agreed to obtain the state contract, clearly demonstrate animus toward the Union and its members. It therefore is clear on this record that the Respondent intentionally failed to utilize the Union's hiring hall in the summer of 2003 because of its animus toward the Union and its members. In agreement with the General Counsel, I would find and conclude that the Respondent's failure to follow the hiring provisions of the PLA was motivated by its animus toward the Union, and actually in retaliation for said Union's insistence that the PLA's hiring provisions be followed; and that the Respondent violated Section 8(a)(1) and (3) of the Act by such discriminatory conduct. I would further find and conclude that the Respondent violated the Act for the period covering June 26 to July 21, 2003.[11]

2. The Union's Information Request

The complaint alleges essentially that the Respondent failed and refused to furnish the Union certain information deemed necessary for and relevant to the Union's performance of its duties as the limited exclusive bargaining representative of unit members performing work at the Forest County prison facility; the failure to provide this information is alleged to be in violation of Section 8(a)(5) and (1) of the Act.

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[11] See GC Exh. 12, copies of daily field reports submitted by the Respondent to the O'Brien–Kreitzberg general contractor for the FCSCI project, which contains its certified payroll of painting employees at the site for the period of May 1 to November 1, 2003. These reports indicate that both Brandonio and Tokach worked at the project during the above period.

As noted earlier herein, based on his discovery of the two core employees working at the Forest County prison facility on July 9, 2003, and the Respondent's hostile reaction thereto, Tyger filed a grievance on behalf of the Union with the project manager for O'Brien–Kreitzberg, the general contractor for the project.

Tyger's grievance letter set out how the Union discovered the two core employees working at the site, in violation of pertinent provisions of the PLA, as well as the Respondent's failure to inform the Union of the restarting of the painting work and its continued refusal to rehire union members.[12]

Geronimos testified that on July 31, 2003, pursuant to the grievance, he sent a letter to Yarbrough as follows (in pertinent part):

> Dear Mr. Yarbrough:
>
> Please let this letter serve as Official Request for Information. We are seeking the following information:
>
> 1) The weekly number of Pro-Spec Employees working on the Forest County Prison Facilities from May 1, 2003 – July 31, 2003.
> 2) The total number of hours worked by Pro–Spec Employees Daniel Brandonio and John Tokach at the aforesaid facility during the aforementioned time period.
> 3) The weekly total number of hours worked for each Pro–Spec Employee, not listed above, while working on at the aforesaid facility during the aforementioned time period.
>
> We are requesting this information in a timely manner, and would appreciate if you could forward this information within seven (7) days of receipt of this letter.[13]

Geronimos stated that he requested the information essentially to determine the number of hours that were worked by the core employees in violation of the PLA, which numbers would in turn determine the number of hours the union members lost due to the Respondent's violation of the PLA, which was the gravamen of the grievance. According to Geronimos, the information sought, in short, was necessary to maintain and support the Union's grievance in question.

Geronimos stated that the Respondent has never provided any of the requested information and, in fact, the entire grievance has been stalled by the Respondent's failure to select an arbitrator.[14]

The General Counsel submits, first, that the Respondent, an admitted employer in the construction industry, granted recognition to the Union as the exclusive (though limited) collective-bargaining representative of the employees performing painting and related work described in pertinent provisions of the PLA. Second, these employees constitute an

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[12] See GC Exh. 7, Tyger's letter to the project manager.

[13] The letter in its entirety is contained in GC Exh. 8.

[14] In its answer to complaint in Case 6–CA–33611 (GC Exh. 1(f)), the Respondent stated that it did not provide the requested information because it was available to the Union from either the project manager and/or the Pennsylvania Department of General Services.

appropriate unit for purposes of collective bargaining with in the meaning of Section 9(b) of the Act.[15] I agree and would so find and conclude based on the record evidence.

The General Counsel further contends that the Union's grievance alleged violations of the hiring provisions of the PLA. In order to prosecute the grievance, the Union determined that it needed the requested information regarding the number of employees working and their hours worked. She contends that without this information, the Union could not establish the number of days and hours worked by core employees in violation of the PLA. Accordingly, the General Counsel submits the requested information is relevant and necessary to assist the Union in the performance of its statutory duties as the exclusive representative of the project painters, as well as the processing of the aforestated grievance.

The Applicable Legal Principles

Under the Act, an employer is obligated, upon request, to furnish a union with information that is potentially relevant and that would be useful to the union in discharging its statutory responsibilities. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *Pieper Electric, Inc.*, 339 NLRB No. 160 (August 21, 2003); *LBT, Inc.*, 339 NLRB No. 72 (June 29, 2003).

The duty to furnish information stems from the underlying statutory duty imposed on employers and unions to bargain in good faith with respect to mandatory subjects of bargaining. *Cowles Communication, Inc.*, 172 NLRB 1909 (1968).

The burden is on the requesting union to establish the requisite relevance and necessity of the requested information. *Ormet Aluminum Mill Products*, 335 NLRB 788 (2001).

The standard of relevance is a liberal discovery-type standard. *Brazos Electric Power Cooperative*, 241 NLRB 1016. Essentially, the union must establish that it had a logical foundation and factual basis for requesting the information in question. *Phoenix Coca-Cola Bottling Co.*, 337 NLRB 1239 (2002).

However, for purposes of relevancy, information related to employees' terms and conditions of employment is presumed to be relevant. *Atlanta Hilton and Tower*, 271 NLRB 1600 (1984).

In the case of information sought in the context of grievances, the Board, in determining what information is producible, does not pass on the merits of the grievances underlying the request. The Union is not required to demonstrate that the information sought is accurate, nonhearsay, or even ultimately reliable. *W.L. Molding Co.*, 272 NLRB 1239 (1986).

It is well established in Board law that names of employees, their classifications, hours and wages, addresses, dates of hire, fringe benefits, and date and amount of last wage raise are related to the employees' terms and conditions of employment and are thus presumptively relevant information for the purpose of collective bargaining. *Miller Processing Services*, 308 NLRB 929 (1992).

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[15] Article VI of the PLA states in Section 1: Each contractor recognizes the [signatory] Union as sole and exclusive bargaining representatives of all craft employees within their respective jurisdiction working on the [Forest County] Project under the Agreement. As noted, the Union here signed the PLA. Notably, Geronimos testified that none of the employees performing painting and related work at the FCSCI site worked as clericals, guards, or professionals.

The Board also has held that the union's ability to obtain requested information through its own independent investigation or from other sources does not excuse the employer from its duty to provide relevant and necessary information. *B.P. Exploration, Inc.*, 337 NLRB 887 (2002); *New Surfside Nursing Home*, 330 NLRB 1146 (2000).

With these legal principles serving as a backdrop, it seems abundantly clear that the Union's request for the type of information covered in its July 31 letter to the Respondent is relevant and necessary to the performance of its statutory duty as collective-bargaining representative. First, the categories of information generally relate to terms and conditions of employment for the Respondent's employees—mandatory subjects of collective bargaining—and, second, were necessary to assist the Union in the prosecution of its grievance under the PLA. Accordingly, the Respondent was obliged to provide the information. *Postal Service*, 337 NLRB 820, 822 (2002). That the information may have been sought and/or obtained by the Union from other sources, as noted, is not a valid defense under Board law.

Accordingly, I would find and conclude that the Respondent violated Section 8(a)(5) and (1) of the Act by its failure and refusal to provide the Union with the information requested by the July 31 letter.

3. The Respondent's Repudiation of the PLA

The complaint essentially alleges that from about June 25, 2003, until on or about July 27, 2003, the Respondent repudiated the PLA's hiring provisions, a mandatory subject for purposes of collective bargaining, without the Union's consent, all in violation of Section 8(a)(5) and (1).

I have concluded previously herein that the hiring provisions of the PLA constitute mandatory subjects for purposes of collective bargaining. The evidence of record clearly establishes that the Respondent, intentionally and out of a discriminatory motive, did not enforce or comply with or continue in effect the hiring provisions of the PLA to which it was a signatory. Equally clear, the Respondent's actions were undertaken without the consent of the Union, and actually without its knowledge until around July 8, 2003. The General Counsel has abundantly established the Respondent's unilateral repudiation of the PLA's hiring provisions.

I would find and conclude, based on the entire record herein, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain collectively and in good faith regarding the said hiring provision of the PLA with the Union, the limited exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Ronald Yarbrough is a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(3) of the Act.

4. By using two core employees to perform work under the Project Labor Agreement at the Forest County jobsite during the period from on or about June 25, 2003, to on or about July 27, 2003, instead of using one core employee and using one referral from the Union's hiring hall to perform this work because the Union had demanded adherence to the Project Labor Agreement, and to discourage employees from engaging in union or other concerted activities, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

5. The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time painters employed by Pro–Spec Painting, Inc., performing work at the Forest County State Correction Institution located in Marienville, Forest County, Pennsylvania under the Project Labor Agreement; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act.

6. For the period from on or about July 10, 2001, until events described in Article IV, Section 8 of the Project Labor Agreement, which events had not occurred at any material time, based on Section 9(a) of the Act, the Union was the limited exclusive collective-bargaining representative of the unit described above.

7. By failing to provide the information requested by the Union in order to process a grievance over the Respondent's failure to honor the hiring provisions of the Project Labor Agreement, which information was relevant and necessary to the Union's performance of its duties as the limited exclusive collective-bargaining representative of the unit, the Respondent has been failing and refusing to bargain collectively and in good faith with the Union in violation of Section 8(a)(1) and (5) of the Act.

8. By intentionally using two core employees to perform work under the Project Labor Agreement at the Forest County jobsite during the period from on or about June 25, 2003, to on or about July 27, 2003, instead of using one core employee and using an employee referred from the Union's hiring hall to perform this work, as required by the hiring provisions set forth in Article VI, Section 9 of the Project Labor Agreement, without the consent of the Union, having thereby refused to abide by the terms of its collective-bargaining agreement with the Union concerning a mandatory subject of bargaining, the Respondent has been failing and refusing to bargain collectively and in good faith with the limited exclusive collective-bargaining representative of the unit (within the meaning of Section 8(d) of the Act) in violation of Section 8(a)(1) and (5) of the Act.

9. The above unfair labor practices of the Respondent affect 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 following recommended[16]

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[16] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended 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.

ORDER

The Respondent, Pro–Spec Painting, Inc., Vineland, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Using more core employees to perform work covered under the Project Labor Agreement at the Forest County State Correctional Institution than permitted under the Project Labor Agreement instead of using employees referred from the Union's hiring hall to perform this work, or otherwise discriminating against employees because they engage in union activities.

(b) Failing or refusing to bargain collectively in good faith with the Union as the limited exclusive collective-bargaining representative of its employees in the following appropriate bargaining unit by failing to provide relevant and necessary information requested by the Union on July 31, 2003:

> All full-time and regular part-time painters employed by Pro–Spec Painting, Inc., performing work at the Forest County State Correction Institution located in Marienville, Forest County, Pennsylvania under the Project Labor Agreement; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act.

(c) Failing or refusing to bargain collectively in good faith with the Union as the limited exclusive collective-bargaining representative of its employees in the appropriate bargaining unit by making changes in any mandatory subject of bargaining embodied in the Project Labor Agreement affecting unit employees without obtaining the Union's consent prior to making any such change.

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

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

(a) Promptly provide the Union with the information it requested on July 21, 2003.

(b) Make whole for any loss of earnings and other benefits, with appropriate interest thereon, the individual designated by the Union as the employee who would have been referred to the Forest County State Correction Institution jobsite from the Union's hiring hall during the period from on or about June 25, 2003, to on or about July 27, 2003, had the Respondent not repudiated the hiring provisions of the Project Labor Agreement and had the Respondent not discriminated against union members.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, the Respondent shall duplicate and mail, at its own expense, copies of the attached Notice marked "Appendix[17] on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, to all current and former employees employed by the Respondent at the Forest County State Correctional Institution jobsite.

(e) 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, Washington, D.C. May 6, 2004

Earl E. Shamwell Jr.
Administrative Law Judge

[17] 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

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

In recognition of these rights, we hereby notify our employees that:

The International Union of Painters and Allied trades, District Council 57 of Western Pennsylvania, AFL–CIO, CLC is the representative of the painters employed by us to perform work under the Project Labor Agreement at the Forest County State Correction Institution located in Marienville, Forest County, Pennsylvania, in dealing with us regarding wages, hours, and other working conditions.

WE WILL NOT use more core employees to perform work covered under the Project Labor Agreement at the Forest County State Correctional Institution jobsite than permitted under the Project Labor Agreement instead of using employees referred from the Union's hiring hall to perform this work, or otherwise discriminate against employees because they engage in union activities.

WE WILL NOT fail or refuse to provide relevant and necessary information requested by the Union.

WE WILL NOT make any change to any subject in the Project Labor Agreement for the Forest County State Correctional Institution which affect your wages, hours, and working conditions without first getting the Union's consent.

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

WE WILL promptly provide the Union with the information it requested on July 21, 2003, about our employees working at the Forest County State Correctional Institution.

WE WILL pay the laid-off painter designated by the Union as the employee who would have been recalled to the Forest County State Correction Institution from on or about June 25, 2003, to on or about July 27, 2003, for the wages and other benefits he lost because we failed to use an employee referred from the Union's hiring hall as required by the Project Labor Agreement.

PRO–SPEC PAINTING, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

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.nlrb.gov.

1000 Liberty Avenue, Federal Building, Room 1501, Pittsburgh, PA 15222-4173
(412) 395-4400, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
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 OFFICER, (412) 395-6899.