

*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**RAV Truck & Trailer Repairs, Inc., and Concrete Express of NY, LLC, a single employer and Teamsters Local 456, International Brotherhood of Teamsters.** Case 02–CA–265683

April 29, 2021

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS EMANUEL  
AND RING

The General Counsel seeks summary judgment in this case on the ground that there are no genuine issues of material fact as to the allegations of the complaint, and that the Board should find, as a matter of law, that RAV Truck & Trailer Repairs, Inc., and Concrete Express of NY, LLC, a single employer (collectively, the Respondent), violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish information necessary for and relevant to Teamsters Local 456, International Brotherhood of Teamsters' performance of its duties as the exclusive collective-bargaining representative of a unit of the Respondent's employees.

On March 3, 2020,<sup>1</sup> the Board issued a Decision and Order in which it adopted the judge's conclusions that the Respondent violated Section 8(a)(3) and (1) by discharging and laying off two employees and by engaging in the unlawful partial closure of RAV Truck & Trailer Repairs, and agreed with the judge that a broad cease-and-desist order was warranted. See *RAV Truck & Trailer Repairs, Inc.*, 369 NLRB No. 36, fn. 2 & 3 (2020). The Board ordered the Respondent to reopen and restore the business operation of RAV, reinstate the two employees, and bargain with the Union, which it found was the exclusive collective-bargaining representative for a unit of full- and regular part-time mechanics, upon request.

On March 27, shortly after the Union's information request at issue herein, the Respondent filed in the United States Court of Appeals for the District of Columbia Circuit a Petition for Review of the Board's March 3 Order, and the General Counsel filed a cross-application for enforcement.<sup>2</sup>

Pursuant to a charge filed by the Union, the General Counsel issued a complaint on October 14, and an amended complaint and notice of hearing on November 4, alleging that the Respondent violated Section 8(a)(5) and

(1) of the Act by refusing to provide relevant requested information to the Union in contravention of its obligation to recognize and bargain with the Union as the representative of the unit employees.<sup>3</sup> The Respondent filed an answer admitting in part and denying in part the allegations of the complaint and asserting affirmative defenses.

On December 11, the General Counsel filed with the Board a Motion for Summary Judgment. On January 12, 2021, the Board issued an Order Transferring Proceeding to the Board and Notice to Show Cause why the motion should not be granted. The Respondent filed a response, and the General Counsel filed a reply to the Respondent's response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The complaint alleges, and the Respondent admits, that on about May 14, 2018, a majority of unit employees designated and selected the Union as their collective-bargaining representative and, on March 11, 2020, the Union demanded bargaining and requested in writing that the Respondent furnish it with the following information:

1. Copies of all current rules, policies and procedures governing terms and conditions of employment of the bargaining unit employees, including all policies on a Concrete Express or RAV intranet;
2. Copies of all documents identifying the last known compensation for the bargaining unit employees, including pay periods, hourly rates of pay, salaries, etc.;
3. Copies of all current rules, policies and procedures governing the terms and conditions of employment of the bargaining unit employees, including employee handbooks, employee manuals, employee work schedules, lunch breaks, vacation schedules, vacation policies, holiday schedules, disciplinary policies, job requirements, drug test policies, etc.;
4. Any and all documents, including plan documents, summary plan descriptions, and premium contributions related to the existing health insurance, pension, dental, vision, 401k, profit sharing, retirement, annuity, and other fringe benefit plans offered to bargaining unit employees, if any;
5. All policies and procedures related to training programs offered to bargaining unit employees;

for review arguing, among other things, that irreparable harm might be caused by litigation of the complaint. On November 23, the court denied the Respondent's motion.

<sup>1</sup> All dates are in 2020 unless otherwise noted.

<sup>2</sup> Oral arguments were held on February 17, 2021.

<sup>3</sup> On October 23, the Respondent filed with the court an Emergency Motion for Stay of the Board Order during the pendency of its petition

6. Any documentation related to potential methods, procedures, policies, materials, equipment, uniforms, tools or operations used or to be used by bargaining unit employees;
7. A description of all tools, materials, equipment, uniforms, safety gear, or other items provided to bargaining unit employees;
8. Any policies or other documentation related to maintenance of efficient operations;
9. Any policies, procedures, or other documentation related to the assignment of work and/or overtime to bargaining unit employees, including determining the employees to whom to assign work and overtime, and the order of assigning them for overtime work;
10. Any policies, draft proposals, or other documentation related to the standards or methods of performance and evaluation, including sample evaluation forms;
11. Any policies, draft proposals, or other documentation related to bargaining unit employee competency, including sample evaluation forms;
12. Any and all policies, internal communications, or other documentation related to employee fitness-for-duty standards; and
13. Any and all policies, internal communications, or other documentation related to drug testing policy, including cutoff concentrations, substances tested for, testing standards, handling of test results, records retention, and consequences for use.

The complaint also alleges that the information described above is “necessary for, and relevant to, the Union’s performance of its duties as the exclusive collective-bargaining representative of the Unit,” and that since about March 30, the Respondent has failed and refused to furnish the Union with the requested information. The complaint further alleges that by the above conduct, the Respondent has been failing and refusing to bargain collectively and in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act, and that this unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

In its answer, the Respondent admits that, since March 30, it has failed and refused to furnish the Union with the requested information. However, the Respondent denies that the requested information was relevant and necessary to the Union’s performance of its duties as the exclusive collective-bargaining representative of the unit based on

its contention that there is no bargaining relationship between it and the Union unless and until the court enforces the Board’s March 3 Order. Thus, although the Respondent’s answer summarily denies that the information requested by the Union is necessary and relevant, it is clear from its answer and response to the Notice to Show Cause that its refusal to provide the information is based entirely on its contention that the Union is not yet the exclusive bargaining representative of the unit.

It is a settled principle that for summary judgment to be appropriate, the record must show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Betterroads Asphalt, LLC*, 369 NLRB No. 114, slip op. at 1 (2020) (citing *Conoco Chemicals Co.*, 275 NLRB 39, 40 (1985) (citing *Stephens College*, 260 NLRB 1049, 1050 (1982))).

We find that there are no factual issues warranting a hearing with respect to the Union’s information request. It is well established that the type of information the Union requested, concerning the terms and conditions of employment of unit employees, is presumptively relevant for purposes of collective bargaining and must be furnished on request. See *NP Palace LLC d/b/a Palace Station Hotel & Casino*, 368 NLRB No. 148, slip op. at 4 (2019) (citing *NP Sunset LLC d/b/a Sunset Station Hotel Casino*, 367 NLRB No. 62, slip op. at 1–2 (2019), *enfd.* 792 Fed.Appx. 557 (9th Cir. 2020); *United Parcel Service of America*, 362 NLRB 160, 162 (2015); *Southern California Gas Co.*, 342 NLRB 613, 614 (2004); *International Protective Services*, 339 NLRB 701, 704 (2003)). The Respondent has not asserted any basis for rebutting the presumptive relevance of this information.

In its response to the General Counsel’s motion for summary judgment, the Respondent argues that the Board should dismiss the complaint or, in the alternative, stay these proceedings until the court rules on the petition for review and cross-petition for enforcement of the Board’s March 3 Order. Neither argument has merit. The Board’s March 3 Decision and Order ordered the Respondent to bargain with the Union, and it is settled that the pendency of collateral litigation does not suspend a respondent’s duty to bargain under Section 8(a)(5). See *Maywood Donut Co.*, 256 NLRB 507, 508 (1981) (citing *Keller Aluminum Chairs Southern, Inc.*, 173 NLRB 947, 952 *fn.* 14 (1968)); see also *Great Dane Trailers, Inc.*, 191 NLRB 6, 7 (1971); *Porta-Kamp Mfg. Co.*, 189 NLRB 899, 900 (1971); and Section 10(g) of the Act (“The commencement of proceedings under subsection (e) of (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board’s order”). Accordingly, the Respondent had a duty to bargain with the Union and the

pending court decision does not absolve it of its obligation to provide the requested relevant information.

Based on the foregoing, we find that there are no material issues of fact regarding the complaint's allegations that warrant a hearing. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

At all material times RAV Truck & Repairs, Inc., a New York corporation with a place of business located at 3773 Merritt Avenue Bronx, NY, has been engaged in the business of truck repair and Concrete Express of NY, LLC, a New York limited liability company with an office and place of business at 2279 Hollers Avenue, Bronx, NY, has been engaged in the manufacture and wholesale and retail sale of concrete.

At all material times, RAV Truck & Trailer Repairs, Inc. and Concrete Express of NY, LLC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; and have interchanged personnel with each other.<sup>4</sup>

Based on the operations described above, Respondent RAV Truck & Trailer Repairs, Inc. and Respondent Concrete Express of NY, LLC constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

During the 12-month period preceding issuance of the complaint, the Respondent derived gross revenues in excess of \$500,000, and purchased and received at goods, products, and materials valued in excess of \$5000 directly from suppliers located outside New York State.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union, Teamsters Local 456, International Brotherhood of Teamsters, is a labor organization within the meaning of Section 2(5) of the Act.

<sup>4</sup> The complaint additionally alleges that RAV Truck and Concrete Express have had interrelated operations with common truck maintenance and repair. The Respondent's answer denies this allegation "with respect to the meaning of 'interrelated operations with common truck maintenance and repair.'" We find it unnecessary to resolve this dispute because the Respondent admits the complaint allegation that RAV Truck & Trailer Repairs, Inc. and Concrete Express of NY, LLC constitute a single-integrated business enterprise and a single employer within the

##### II. ALLEGED UNFAIR LABOR PRACTICES

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 mechanics employed by Respondent at its facility at 3773 Merritt Avenue, Bronx, NY., excluding all other employees, including clerical employees, guards, managers, professional employees, and supervisors as defined by the Act.

On May 14, 2018, a majority of unit employees designated and selected the Union as their representative for the purposes of collective bargaining.

On March 11, the Union requested that the Respondent furnish information to the Union that is relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative of the unit. Since about March 30, the Respondent has failed and refused to furnish the requested information. We find that the Respondent's conduct constitutes an unlawful refusal to bargain collectively with the Union in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to provide information requested by the Union that is necessary and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of its employees in violation of section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in an unfair labor practice, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to provide the Union with information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees, we shall order the Respondent to furnish the Union with the information requested on March 11.<sup>5</sup>

meaning of the Act. Moreover, the Board found that these entities continue a single employer in *RAV Truck & Trailer Repairs, Inc.*, 369 NLRB No. 36 (2020), and the Respondent has not identified any changed circumstances that would warrant a different result here.

<sup>5</sup> We decline the General Counsel's request to issue a second bargaining order as the first order is still extant and no useful purpose would be served by a second order. See *Canton Sign Co.*, 186 NLRB 237, 238 (1970).

## ORDER

The National Labor Relations Board orders that the Respondent, RAV Truck & Trailer Repairs, Inc. and Concrete Express of NY, LLC, Bronx, New York, a single employer, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Teamsters Local 456, International Brotherhood of Teamsters (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondent's unit employees.

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

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

(a) Furnish to the Union in a timely manner the information requested by the Union on March 11.

(b) Post at its facility in Bronx, New York, copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 11, 2020.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 2 a sworn certification of a responsible official on a form provided by the Region

<sup>6</sup> If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to

attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 29, 2021

\_\_\_\_\_  
Lauren McFerran, Chairman

\_\_\_\_\_  
William J. Emanuel, Member

\_\_\_\_\_  
John F. Ring, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

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

## FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT refuse to bargain collectively with Teamsters Local 456, International Brotherhood of Teamsters (the Union) by refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. 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."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union in a timely manner the information that it requested on March 11, 2020.

RAV TRUCK & TRAILER REPAIRS, INC. AND CONCRETE EXPRESS OF NY, LLC

The Board's decision can be found at [www.nlr.gov/case/02-CA-265683](http://www.nlr.gov/case/02-CA-265683) or by using the QR code below. Alternatively, you can obtain a copy of the

decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

