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**Winco Holdings, Inc. and International Brotherhood
Of Teamsters, Local 22.** Case 27-CA-345285

February 4, 2026

DECISION AND ORDER

BY MEMBERS PROUTY, MURPHY, AND MAYER

This is a refusal-to-bargain case in which Winco Holdings, Inc. (the Respondent) is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on June 27, 2024, by International Brotherhood of Teamsters, Local 22 (the Union), the Acting General Counsel issued a complaint on March 11, 2025, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union following the Union's certification in Case 27-RC-332945. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.¹

¹ The Respondent references an "Amended Answer" in its response to the Notice to Show Cause. The Board has no record of such filing.

² The Motion was referred to Judge Giannasi per Sec. 102.179 of the Board's Rules and Regulations because the Board lacked a quorum at the time it was filed. The Board has since regained its quorum.

³ In its answer, the Respondent denies the complaint allegations that the bargaining unit is appropriate, that the Union is the lawful exclusive collective-bargaining representative of the unit, that the Respondent has been failing and refusing to bargain collectively and in good faith with the Union in violation of Sec. 8(a)(5) and (1) of the Act, that the unfair labor practice affects commerce within the meaning of Sec. 2(6) and (7) of the Act, and that the Acting General Counsel is entitled to relief. In its response to the Notice to Show Cause, the Respondent continues to argue that the certification is invalid based on its objections to the election. Those denials and assertions do not raise any issues warranting a hearing. All representation issues were fully litigated and resolved in the underlying representation proceeding. In addition, the Respondent stipulated to the appropriateness of the unit in the underlying representation proceeding, admits that the Union was certified as the exclusive collective-bargaining representative of the unit, admits that the Union requested recognition and bargaining, and admits that it has refused to bargain with the Union.

The Respondent's answer also advances affirmative defenses, including that the complaint fails to state a *prima facie* claim; the claims alleged in the complaint are beyond the Regional Director's authority and against public policy; the complaint has been issued without substantial justification; and the order and remedies sought are not authorized by the National Labor Relations Act. In addition, the Respondent's affirmative defenses advance various constitutional claims, including that pursuing the case violates Article I of the Constitution because it implicates the Major Questions Doctrine and non-delegation principles; violates Article

On August 21, 2025, the Acting General Counsel filed a Motion for Summary Judgment. On September 4, 2025, Chief Administrative Law Judge Robert A. Giannasi issued an Order Transferring the Proceeding to the Board and a Notice to Show Cause why the motion should not be granted.² On September 17, 2025, the Respondent filed a response to the Notice to Show Cause, and on September 24, 2025, the Acting General Counsel filed a reply.

Ruling on Motion for Summary Judgment

The Respondent admits that it has refused to bargain but asserts that it has no duty to bargain and contests the validity of the Union's certification of representative based on its objections to the election in the underlying representation proceeding.³

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor has it established any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.⁴

II of the Constitution because it will involve the exercise of significant authority by an Officer of the United States who is improperly insulated from the President's removal power; violates separation of powers and due process principles because the Board concurrently exercises legislative, executive, and judicial powers; and that the order and remedies sought violate the Constitution. For all but the removal claim, the Respondent has not offered any explanation or evidence to support its bare assertions. Thus, we find that they are insufficient to warrant denial of the Acting General Counsel's Motion for Summary Judgment. See, e.g., *Sysco Central California, Inc.*, 371 NLRB No. 95, slip op. at 1 fn. 1 (2022); *Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino*, 366 NLRB No. 58, slip op. at 1 fn. 1 (2018) (citing cases), enfd. sub nom. *Operating Engineers Local 501 v. NLRB*, 949 F.3d 477 (9th Cir. 2020). Moreover, the Respondent admits that it has refused to recognize and bargain with the Union. As such, "the complaint does indeed state claims upon which relief can be granted." *Wolf Creek Nuclear Operating Corp.*, 366 NLRB No. 30, slip op. at 1 fn. 2 (2018), enfd. 762 F. App.x 461 (10th Cir. 2019).

The Respondent renews its Article II claim in its response to the Notice to Show Cause. However, because there is no evidence that the Respondent suffered any harm from the removal protections, its claim is denied. See *SJT Holdings, Inc.*, 372 NLRB No. 82 slip op. 1 fn. 4 (2023) (citing *Collins v. Yellen*, 594 U.S. 220, 257-258 (2021), and *Calcutt v. FDIC*, 37 F.4th 293, 316 (6th Cir. 2022), rev'd per curiam on other grounds, 598 U.S. 623 (2023)); *K & R Contractors, LLC v. Keene*, 86 F.4th 135, 148-149 (4th Cir. 2023) ("[R]egardless of how we answer the constitutional question presented by the removal provisions, we would be required to deny the petition because K & R has not asserted any harm resulting from the allegedly unconstitutional statutes[.]").

⁴ The Respondent's request that the complaint be dismissed is therefore denied. Members Murphy and Mayer did not participate in the prior

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been an Idaho corporation with a principal office in Idaho and a store in Salt Lake City, Utah (the Respondent's facility), and has been engaged in operating a retail grocery store.

During the last calendar year, a representative period, the Respondent derived gross revenues in excess of \$500,000 and purchased and received at its Utah facility goods valued in excess of \$5000 directly from points outside the State of Utah.

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

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following an election conducted by secret ballot on February 6 and 7, 2024, the Regional Director for Region 27 issued a Decision on Objections and Certification of Representative in Case 27-RC-332945 on April 18, 2024, certifying the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Included: All full-time and regular part-time cashiers, clerks, lead clerks, DI clerks, maintenance clerks, pricing clerks, cart clerks, meatcutters, receivers, and stockers in all departments, including, but not limited to: meat, deli, grocery, variety, bakery, bulk, seafood, produce; and managers in training and freight and maintenance employees employed by the Employer at its South Salt Lake City, Utah Store, Store #142.⁵

Excluded: Office clerical employees, professional employees, loss prevention employees, security employees, assistant store managers, store managers, guards, and supervisors, as defined in the Act.

On June 21, 2024, the Board denied the Respondent's request for review of the Regional Director's decision. The Union continues to be the exclusive collective-bargaining representative of the employees in the unit under Section 9(a) of the Act.

representation proceeding. They agree, however, that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice proceeding and that summary judgment is appropriate, with the parties retaining their respective rights to litigate relevant issues on appeal.

⁵ No determination has been made regarding whether the individuals employed by the Employer in the Department Manager, Department

B. Refusal to Bargain

By emails dated February 13, 2024, April 25, 2024, and June 27, 2025,⁶ the Union requested that the Respondent bargain with the Union as the exclusive collective-bargaining representative of the unit. Since about May 1, 2024, and continuing to date, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit since about May 1, 2024, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).⁷

ORDER

The National Labor Relations Board orders that the Respondent, Winco Holdings, Inc., Salt Lake City, Utah, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Brotherhood of Teamsters, Local 22 (the

Manager in Training, Bookkeeper, and Store Personnel Clerk classifications are included in, or excluded from, the bargaining unit.

⁶ The Respondent does not dispute the authenticity of the Acting General Counsel's exhibits, attached to his motion for summary judgment, showing that the Union requested bargaining on these dates.

⁷ Having ordered the customary remedies for test-of-certification cases, we decline to order, in this case, the additional remedies sought by the Acting General Counsel in his Motion for Summary Judgment.

Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(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) On request, bargain with the Union 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:

Included: All full-time and regular part-time cashiers, clerks, lead clerks, DI clerks, maintenance clerks, pricing clerks, cart clerks, meatcutters, receivers, and stockers in all departments, including, but not limited to: meat, deli, grocery, variety, bakery, bulk, seafood, produce; and managers in training and freight and maintenance employees employed by the Employer at its South Salt Lake City, Utah Store, Store #142.⁸

Excluded: Office clerical employees, professional employees, loss prevention employees, security employees, assistant store managers, store managers, guards, and supervisors, as defined in the Act.

(b) Within 14 days of service by the Region, post at its facility in Salt Lake City, Utah, copies of the attached notice marked "Appendix."⁹ Copies of the notice, on forms provided by the Regional Director for Region 27, 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 May 1, 2024.

⁸ No determination has been made regarding whether the individuals employed by the Employer in the Department Manager, Department Manager in Training, Bookkeeper, and Store Personnel Clerk classifications are included in, or excluded from, the bargaining unit.

⁹ 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

(c) Within 21 days after service by the Region, file with the Regional Director for Region 27 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. February 4, 2026

David M. Prouty, Member

James R. Murphy, Member

Scott A. Mayer, 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 fail and refuse to recognize and bargain with International Brotherhood of Teamsters, Local 22 (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

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, on request, bargain with the Union as the exclusive collective-bargaining representative of our 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:

Included: All full-time and regular part-time cashiers, clerks, lead clerks, DI clerks, maintenance clerks, pricing clerks, cart clerks, meatcutters, receivers, and stockers in all departments, including, but not limited to: meat, deli, grocery, variety, bakery, bulk, seafood, produce; and managers in training and freight and maintenance employees employed by the Employer at its South Salt Lake City, Utah Store, Store #142.¹⁰

Excluded: Office clerical employees, professional employees, loss prevention employees, security employees,

assistant store managers, store managers, guards, and supervisors, as defined in the Act.

WINCO HOLDINGS, INC.

The Board's decision can be found at www.nlrb.gov/case/27-CA-345285 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.



¹⁰ No determination has been made regarding whether the individuals employed by the Employer in the Department Manager, Department

Manager in Training, Bookkeeper, and Store Personnel Clerk classifications are included in, or excluded from, the bargaining unit.