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**Portillo's Hot Dogs, LLC and International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL-CIO.** Case 13-CA-354045

March 11, 2026

DECISION AND ORDER

BY MEMBERS PROUTY, MURPHY, AND MAYER

This is a refusal-to-bargain case in which Portillo's Hot Dogs, LLC (the Respondent) is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on November 4, 2024, amended November 12, 2024, by the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL-CIO (the Union), the General Counsel issued a complaint on November 22, 2024, 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 13-RC-313847. (Official notice is taken of the record in the representation proceedings 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

<sup>1</sup> The Respondent's January 13 opposition asserts that summary judgment is not appropriate because the General Counsel's request for make-whole relief turns on disputed allegations about the Respondent's future conduct. This misapprehends the General Counsel's argument, which is that the make-whole remedy requested is necessary to remedy the Respondent's admitted past and present refusal to bargain. Because the remedies granted are appropriate to remedy the Respondent's past and present conduct, there is no merit to its January 13 opposition.

<sup>2</sup> In its answer to the complaint, the Respondent admits that it has refused to recognize and bargain with the Union because it seeks to challenge the Board's certification and does not assert any arguments that were not or could not have been raised in the underlying representation hearing. Thus, no hearing is warranted. See *Wolf Creek Nuclear Operating Corp.*, 366 NLRB No. 30, slip op. at 1 fn. 2 (2018), enfd. mem. 762 F. App'x 461 (10th Cir. 2019).

The Respondent's claim that Sec. 10(b) bars one or more of the allegations in the complaint is inaccurate; indeed, the charge was filed on November 4, 2024, and the complaint alleges that the Respondent's refusal to bargain began on October 31, 2024.

The Respondent's remaining affirmative defenses—that the Board members and administrative law judges are unconstitutionally insulated from removal, the Board's adjudication of private rights and legal relief violates the Seventh Amendment of the United States Constitution, and the structure of the NLRB violates the separation of powers—are bare assertions without any explanation or evidence. We therefore find them insufficient to warrant denial of the 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 db/a Green Valley Ranch Resort Spa Casino*, 366 NLRB No. 58, slip op. at 1

and denying in part the allegations in the complaint and asserting affirmative defenses.

On December 20, 2024, the General Counsel filed a Motion for Summary Judgment. On December 30, 2024, the Board issued an Order Transferring the Proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On January 13, 2025, the Respondent filed a response to the Notice to Show Cause.<sup>1</sup>

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 contention, raised and rejected in the underlying representation proceeding, that the Union promised employees work permits, green cards, and citizenship in exchange for their votes and for joining the Union.<sup>2</sup>

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

fn. 1 (2018) (citing cases), enfd. sub nom. *Operating Engineers Local 501 v. NLRB*, 949 F.3d 477 (9th Cir. 2020).

In addition to finding them unsupported, we also find no merit to these constitutional claims. As to its arguments regarding Board member and administrative law judge removal protections, there is no evidence that the Respondent suffered any harm from their removal protections. See *SJT Holdings, Inc.*, 372 NLRB No. 82 slip op. 1 fn.4 (2023) (citing *Colins 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[.]”).

Also unavailing is the Respondent's claim that the Board unconstitutionally exercises both prosecutorial and adjudicatory authority. “[T]he Supreme Court has held that administrative agencies can, and often do, investigate, prosecute, and adjudicate rights without violating due process.” *Illumina, Inc. v. Fed. Trade Comm'n*, 88 F.4th 1036, 1047 (5th Cir. 2023) (citing *Withrow v. Larkin*, 421 U.S. 35, 47, 56 (1975)).

Finally, there is no merit to the Respondent's claim that the Board's adjudication of private rights and legal relief violates the Seventh Amendment. The Supreme Court has considered, and rejected, that the Act implicates the Seventh Amendment. *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 48-49 (1937); see also *Atlas Roofing Co. v. OSHRC*, 430 U.S. 442, 453-55 (1977) (reaffirming that the Act created a public right and that Congress could therefore assign the adjudication of that right to the Board without violating the Seventh Amendment).

U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

At all material times, the Respondent has been a limited liability company with an office and place of business in Addison, Illinois (the Respondent Portillo's facility), where it has been engaged in business as a food production facility for its restaurants located in and outside the State of Illinois.

In conducting its operations described above, during the last calendar year, a representative period of time, the Respondent, at its Addison, Illinois facility sold goods or provided services valued in excess of \$50,000 directly to the Respondent's restaurants or other business entities located outside the State of Illinois.

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 April 13, 2023, the Regional Director issued a Decision and Certification of Representative in Case 13-RC-313847 on December 18, 2023, 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 Production Associates, Forklift Operators, HACCP Coordinators, FSQA Associate, Plant Mechanic, Crew Chiefs, and temporary employees in these classifications, employed by the Employer at its facility currently located at 380 S. Rohlwing Rd, Addison, Illinois.

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

On August 16, 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 unit employees under Section 9(a) of the Act.

###### B. *Refusal to Bargain*

The General Counsel alleges that on about October 10, 2024, the Union, by email, requested that the Respondent bargain with the Union as the exclusive collective-bargaining representative of the unit. Since October 31, 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 October 31, 2024, the Respondent has engaged in an unfair labor practice 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).<sup>3</sup>

#### ORDER

The National Labor Relations Board orders that the Respondent Portillo's Hot Dogs, LLC, Addison, Illinois, and its officers, agents, successors, and assigns, shall

1. Cease and desist from

For the reasons stated in his dissent in *Longmont United Hospital*, *supra*, and in order to effectuate Sec. 10(c) of the Act, Member Prouty would overrule *Ex-Cell-O Corp.* and impose the additional remedies outlined in his dissent, including ordering the employer to make affected employees whole for any provable, reasonably quantifiable economic harm resulting from the employer's unlawful refusal to bargain. See *Longmont*, *supra*, slip op. at --5 (Member Prouty, dissenting).

<sup>3</sup> The Respondent asserts that the General Counsel's request that the Respondent be required to make its employees whole for the lost opportunity to bargain is "barred by the National Labor Relations Board's long-established precedent in *Ex-Cell-O Corp.*, 185 NLRB 107 (1970)." We agree, and we decline the General Counsel's request to revisit the holding in *Ex-Cell-O*. See *Longmont United Hospital*, 374 NLRB No. 50 (Feb. 26, 2026).

(a) Failing and refusing to recognize and bargain with the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL-CIO (the Union) as the exclusive collective-bargaining representative of the 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) 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 Production Associates, Forklift Operators, HACCP Coordinators, FSQA Associate, Plant Mechanic, Crew Chiefs, and temporary employees in these classifications, employed by the Employer at its facility currently located at 380 S. Rohlwing Rd, Addison, Illinois.

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

(b) Within 14 days after service by the Region, post at its facility in Addison, Illinois, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 13, 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 October 31, 2024.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 13 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. March 11, 2026

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David M. Prouty, Member

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James R. Murphy, Member

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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 the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL-CIO (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit described below.

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 and put in writing and sign any agreement reached on terms and

<sup>4</sup> 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."

conditions of employment for our employees in the following appropriate bargaining unit:

Included: All full-time and regular part-time Production Associates, Forklift Operators, HACCP Coordinators, FSQA Associate, Plant Mechanic, Crew Chiefs, and temporary employees in these classifications, employed by the Employer at its facility currently located at 380 S. Rohlwing Rd, Addison, Illinois.

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

PORTILLO'S HOT DOGS, LLC

The Board's decision can be found at [www.nlr.gov/case/13-CA-354045](http://www.nlr.gov/case/13-CA-354045) 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.

