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Kuraray America, Inc. and International Chemical Workers Union Council/United Food and Commercial Workers International Union, Local 900c. Case 16–CA–364229

May 22, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY
AND MAYER

This is a refusal-to-bargain case in which Kuraray America, Inc. (the Respondent) is contesting the certification of International Chemical Workers Union Council/United Food and Commercial Workers International Union, Local 900C (the Union) as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on April 23, 2025, by the Union, the General Counsel issued a complaint on April 25, 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 16–RC–350268. (Official notice is taken of the record in the representation proceeding as defined in the Board’s Rules and Regulations, Sections 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).¹ The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On May 13, 2025, the General Counsel filed a Motion for Summary Judgment. On June 12, 2025, the Respondent filed an opposition to the General Counsel’s motion. On April 22, 2026, the Board issued an Order Transferring the Proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent has not filed a response to the Notice to Show Cause.

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 bargaining unit was not appropriate for the purposes of collective bargaining.²

¹ The record shows that the representation proceeding involved a petition for a self-determination election among a group of unrepresented employees to decide if they wished to be represented by the Union as part of an existing bargaining unit. See *Armour & Co.*, 40 NLRB 1333 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).

² In its answer, the Respondent denies par. 5 of the complaint, which states that the unit is appropriate for the purposes of collective bargaining within the meaning of Sec. 9(b) of the Act. The Respondent admits the allegations in par. 9 of the complaint, which states that the Respondent has refused to bargain collectively and in good faith with the Union, but asserts that it did not have an obligation to bargain with the Union because the unit was not appropriate for collective bargaining. The Respondent also argues in its opposition to summary judgment that the employees in the petitioned-for unit did not share a community of interest with the employees in the existing unit represented by the Union. The appropriateness of the unit was fully litigated and resolved in the underlying representation proceeding. Accordingly, we conclude that the Respondent’s denials of the allegations in pars. 5 and 9 of the complaint and the arguments raised in its opposition to summary judgment do not raise any issues warranting a hearing.

The Respondent asserts in its opposition to summary judgment and as an affirmative defense that the Respondent did not have a duty to bargain with the Union while its request for review of the Decision and Direction of Election was pending with the Board. This argument is without merit. The Respondent’s duty to bargain attached when the certification of representative issued. See *Allstate Insurance Co.*, 234 NLRB 193, 193 (1978).

We find no merit to the constitutional claims raised in the Respondent’s opposition to summary judgment and in its answer. 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. at 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.”).

The Respondent asserts in its opposition to summary judgment and in its answer that a hearing in this matter would violate its rights under the Fifth and Seventh Amendments to the United States Constitution because the claims raised in the complaint and the remedies sought exceed the Board’s statutory authority. After reviewing the arguments put forward by the Respondent in support of its position, we find that it has failed to establish that a hearing in this matter would violate its Constitutional rights. Indeed, we note that the Supreme Court has already considered, and rejected, the argument that the Act implicates the Seventh Amendment. See *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).

The Respondent’s answer states that the Board’s procedures in unfair labor practice cases violate Sec. 10(b) of the Act and “the due process and equal protection provisions of Article Five of the United States Constitution.” The Respondent has not presented any factual or legal basis in support of this defense. To the extent that the Respondent argues that the complaint is barred by Sec. 10(b), the Respondent admits that it has refused to bargain with the Union since November 4, 2024 and that the charge was filed on April 23, 2025. Therefore, we find that the Respondent’s Sec. 10(b) defense is without merit.

The Respondent further asserts in its answer that the Board unconstitutionally exercises legislative, executive, and judicial powers in the same administrative proceedings; the complaint rests on a rule established by the Board in contravention of the Administrative Procedure Act; the Board lacks subject matter jurisdiction to consider or decide the threshold constitutional matters raised in the Respondent’s answer; and the Board’s unfair labor practice procedures fail to comply with the

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.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a Delaware Corporation with an office and place of business located in La Porte, Texas, and has been engaged in the business of manufacturing specialty chemicals.

In conducting its operations during the previous 12-month period, the Respondent sold and shipped from its La Porte facility goods valued in excess of \$50,000 directly to points outside the State of Texas.

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 a self-determination election conducted by secret ballot on October 9, 2024, the Regional Director issued a Corrected Certification of Representative in Case 16–RC–350268 on October 21, 2024, certifying the Union as the exclusive collective-bargaining representative of “[a]ll full-time and regular part-time laboratory analysts employed by the Employer at its facility located at 12342 Strang Road, La Porte, Texas 77571,” but excluding “[a]ll other employees, including temporary, professional, office clerical, managers, guards, and supervisors as defined

Federal Rules of Civil Procedure, the Federal Rules of Evidence, the express language of the National Labor Relations Act, and violate the Fifth Amendment to the United States Constitution. The Respondent has not, however, offered any explanation or evidence to support these bare assertions. Thus, we find that these affirmative defenses are 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 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).

³ Vinyl Acetate Monomer.

⁴ Polyvinyl alcohol.

in the Act” as part of the existing unit of all employees assigned to the Production (VAM³ and Elvanol) and Maintenance Departments and engaged in the manufacturing, maintenance, and distribution of VAM and PVA⁴ at the Respondent’s La Porte facility already represented by the Union.⁵

On April 9, 2026, the Board denied the Respondent’s request for review of the Regional Director’s Decision and Direction of Election. 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*

On October 24, 2024, December 12, 2024, and March 3, 2025, the Union, by email, requested that the Respondent bargain with the Union as the exclusive collective-bargaining representative of the unit. On November 4, 2024, December 13, 2024, and March 16, 2025, the Respondent, by email, declined to bargain with the Union. Since about November 4, 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 since about November 4, 2024, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, 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.⁶

⁵ On October 18, 2024, the Regional Director issued a Certification of Representative in Case 16–RC–350268, certifying the Union as the exclusive collective-bargaining representative of the unit, but inadvertently omitting that the unit was included in the existing unit represented by the Union.

⁶ The General Counsel requests that the Board extend the certification year pursuant to the Board’s decision in *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). Such a remedy, however, is inappropriate where, as here, the underlying representation proceeding involved a self-determination election. See *Winkie Mfg. Co.*, 338 NLRB 787, 788 fn. 3 (2003), affd. 348 F.3d 254, 254 (7th Cir. 2003); *White Cap, Inc.*, 323 NLRB 477, 478 fn. 3 (1997) (citing cases).

ORDER

The National Labor Relations Board orders that the Respondent Kuraray America, Inc., La Porte, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with International Chemical Workers Union Council/United Food and Commercial Workers International Union, Local 900C (the Union) as the exclusive collective-bargaining representative of all full-time and regular part-time laboratory analysts employed by the Employer at its facility located at 12342 Strang Road, La Porte, Texas 77571, but excluding all other employees, including temporary, professional, office clerical, managers, guards, and supervisors as defined in the Act as part of the existing unit of all employees assigned to the Production (VAM and Elvano) and Maintenance Departments and engaged in the manufacturing, maintenance, and distribution of VAM and PVA at the Respondent's La Porte facility already represented by the Union.

(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 following group of employees, as part of the existing unit of all employees assigned to the Production (VAM and Elvano) and Maintenance Departments and engaged in the manufacturing, maintenance, and distribution of VAM and PVA at the Respondent's La Porte facility 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 laboratory analysts employed by the Employer at its facility located at 12342 Strang Road, La Porte, Texas 77571.

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

(b) Within 14 days after service by the Region, post at its facility in La Porte, Texas, copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 16, 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 November 4, 2024.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 16 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 22, 2026

James R. Murphy, Chairman

David M. Prouty, 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.

7 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

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 Chemical Workers Union Council/United Food and Commercial Workers International Union, Local 900C (the Union) as the exclusive collective-bargaining representative of all full-time and regular part-time laboratory analysts employed by us at our facility located at 12342 Strang Road, La Porte, Texas 77571, but excluding all other employees, including temporary, professional, office clerical, managers, guards, and supervisors as defined in the Act as part of the existing unit of all employees assigned to the Production (VAM and Elvanol) and Maintenance Departments and engaged in the manufacturing, maintenance, and distribution of VAM and PVA at our La Porte facility already represented by the Union.

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 the following group of employees, as part of the existing unit of all

employees assigned to the Production (VAM and Elvanol) and Maintenance Departments and engaged in the manufacturing, maintenance, and distribution of VAM and PVA at the our La Porte facility 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 laboratory analysts employed by the Employer at its facility located at 12342 Strang Road, La Porte, Texas 77571.

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

KURARAY AMERICA, INC.

The Board's decision can be found at www.nlr.gov/case/16-CA-364229 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.

