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**Sea World of Florida LLC d/b/a Discovery Cove and
International Union of Operating Engineers,
Local 30, AFL–CIO.** Case 12–CA–368374

July 22, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY
AND MAYER

This is a refusal-to-bargain case in which Sea World of Florida LLC d/b/a Discovery Cove (the Respondent) is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on June 27, 2025, by the International Union of Operating Engineers, Local 30, AFL–CIO (the Union), the General Counsel issued a complaint on April 2, 2026, 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 and to furnish relevant and necessary information following the Union’s certification in Case 12–RC–362952. (Official notice is

¹ In its answer, the Respondent makes several denials that are insufficient to preclude summary judgment. First, the Respondent denied, in part, the complaint allegation related to filing and service of the charge (par. 1), but the charge and affidavit of service of the charge, appended to the General Counsel’s motion for summary judgment as Exh. I, are sufficient to prove the dates of filing and service. The Respondent has not contested the authenticity of this exhibit.

Likewise, the Respondent’s denial of the appropriateness of the unit (par. 5(a)) does not preclude summary judgment because the Board has considered and rejected that claim in the underlying representation proceeding. Additional denials in the Respondent’s answer are of issues that were, or could have been, litigated in the representation case and/or are of legal conclusions (pars. 5(b), 5(c), 6(a), 6(b), 7(a), 7(b), 7(c), 8, 9); such denials do not preclude summary judgment.

We find no merit to the constitutional claims raised in the Respondent’s 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.”).

Also unavailing is the Respondent’s bare assertion that a hearing in this matter would violate its rights under the Fifth and Seventh Amendments to the United States Constitution. The Supreme Court has already considered, and rejected, the argument 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

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).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On May 26, 2026, the General Counsel filed a Motion for Summary Judgment. On June 1, 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. On June 15, 2026, the Respondent filed a Response to Notice to Show Cause and Motion for Summary Judgment and Respondent’s Motion for Summary Judgment (Response). On June 22, 2026, the General Counsel filed a reply.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain and to provide information but contests the validity of the certification based on its contention, raised and rejected in the representation proceeding, that the dive supervisors, formerly called lead divers, in the certified unit are supervisory employees excluded from coverage under the Act.¹

Congress could therefore assign the adjudication of that right to the Board without violating the Seventh Amendment).

Nor is there merit to the Respondent’s claim that the agency “unconstitutionally exercises legislative, executive, and judicial powers within the same administrative proceedings.” “[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)). See also *Flamingo Hilton-Laughlin v. NLRB*, 148 F.3d 1166, 1174 (D.C. Cir. 1998); *NP Red Rock, LLC, d/b/a Red Rock Casino Resort Spa v. NLRB*, No. 24–1221, 2026 WL 1676491 (D.C. Cir. June 10, 2026).

To the extent that the Respondent argues that the complaint is barred by Sec. 10(b), we find that defense without merit. The Respondent has failed and refused to bargain with the Union since May 29, 2025, and the charge was filed on June 27, 2025.

The Respondent further asserts in its answer that the complaint does not state a claim on which relief may be granted and that the General Counsel’s prosecution violates Executive Order 14215 and the Constitution; 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”; that the Board lacks subject matter jurisdiction to consider or decide the threshold constitutional matters raised in the Respondent’s answer; that the claims raised and the remedies sought exceed the NLRB’s statutory authority; that the remedies sought are punitive, contrary to precedent, and constitutionally infirm; that the Board’s unfair labor practice procedures fail to comply with the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the express language of the Act, and violate the Fifth Amendment; that the complaint rests on a rule established by the Board in contravention of the Administrative Procedure Act; that the complaint allegations are “barred by the equitable doctrines of laches, waiver, estoppel, and unclean hands”; that the complaint is invalid to the extent that it asserts legal conclusions rather than factual allegations; and that the

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The evidence that the Respondent offers to adduce at a hearing does not meet the Board's standard for newly discovered and previously unavailable evidence, nor has the Respondent established any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.² 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).

We also find no factual issues warranting a hearing with respect to the Respondent's refusal to furnish the Union with requested information. The complaint alleges, and the Respondent admits, that on about May 29, 2025, the Union sent the following information requests to the Respondent by email³:

- (i) Current wages for each employee in the unit and their seniority date.
- (ii) Wage increases and rates for each employee in the unit for the following years if applicable: 2022, 2023, 2024, and 2025
- (iii) How the employer determined wage increases for those years. If wage increases are determined in any way because of performance reviews, provide the reviews for each employee in the unit for those years.
- (iv) An overview of the performance review process and any wage matrix associated with the process.
- (v) Staff responsible for leading performance reviews including Employer officials who approve the reviews and/or wage increases due to those reviews.

(vi) Training for staff responsible for performance reviews including any internal or external management training programs.

(vii) Process for unit employees to appeal performance reviews if any.

(viii) Date of hire for each employee in the unit.

(ix) Hours worked for each employee for the following years: 2021, 2022, 2023, 2024, and 2025.

(x) Job descriptions for each represented title in the unit.

(xi) Shift schedules for each employee in the unit.

(xii) A copy of the initial employment offer letter, if any, for each employee in the unit.

(xiii) Scope of work that employees are responsible for at the facility.

(iv) Managerial staff who are charged with providing work orders or determining work tasks to employees.

(v) All required trade specific licenses, if any, for each employee.

(vi) Training programs offered to employees (OSHA 10, for example).

(vii) Employer's workplace safety policy, if any, and who is responsible for recording any workplace accidents.

(viii) On-call payment amounts in Lieu of Benefits from 2021 to 2025.

(ix) Copy of all discipline records for unit members.

(xx) A copy of the handbook applicable to employees in the bargaining unit.

Respondent acted properly and lawfully. 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).

² Despite fully litigating the issue of whether the two dive supervisors are supervisors within the meaning of Sec. 2(11) of the Act in the underlying representation proceeding, the Respondent asserts that it has "newly discovered" evidence of their supervisory status, which warrants either summary judgment in its favor or another hearing at which it can fully develop the record of their supervisory status. A party seeking to introduce newly discovered evidence after the record of a representation case has closed must establish that the newly discovered evidence existed, but was unavailable to the party before the close of the representation

proceeding; that the evidence would have changed the result of the proceeding; and that it moved promptly upon discovery of the evidence. *Manhattan Center Studios*, 357 NLRB 1677, 1679 (2011). In its Response, the Respondent makes no attempt to meet this test. The Respondent does not show that it was "excusably ignorant" of the proffered evidence at the time of the representation hearing or that it would have changed the result; indeed, most of the Respondent's new evidence of purported supervisory status postdates the representation proceeding. See *Manhattan Center Studios*, supra; see *Schnurmacher Nursing Home*, 327 NLRB 253, 253 fn.4 (1998) (finding that new evidence postdating the representation hearing "is neither newly discovered nor does it amount to a special circumstance warranting a reopening of the record"), *enforcement denied in non-relevant part*, 214 F.3d 260 (2d Cir. 2000).

³ To the extent the Respondent denies factual allegations related to the Union's request to bargain and for information (pars. 6(a), 7(b)), that request is attached as Exh. H to the General Counsel's Motion. The Respondent does not contest the authenticity of this exhibit.

(xxi) A copy of the current PTO (paid time off) policy (Vacation days, sick days, Personal days, etc).

(xxii) A SPD (summary plan description) of the health care benefit(s) available to employees in the unit.

(xxiii) Employer's hourly contribution, per employee, for health care benefits.

(xxiv) Employees' hourly contribution toward health care benefits.

(xxv) A SPD of retirement benefit(s) available to employees in the unit.

(xxvi) Employer's hourly contribution, per employee, towards retirement benefit(s).

(xxvii) Employees' hourly contribution toward retirement benefit(s).

(xxviii) Shift schedules for each employee in the unit.

The complaint further alleges that since about May 29, 2025, the Respondent has failed and refused to furnish the Union with the requested information, which the Respondent admits is true but claims is permissible because it has no legal obligation to do so.

It is well established that information 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, e.g., *Metro Health Foundation, Inc.*, 338 NLRB 802, 803 (2003). The Respondent has not asserted any basis for rebutting the presumptive relevance of this information.⁴ Rather, the Respondent re-raises its contention, rejected above, that the Union was improperly certified. We find, therefore, that the Respondent unlawfully refused to furnish the information sought by the Union. See e.g., *NP Sunset LLC d/b/a Sunset Station Hotel Casino*, 367 NLRB No. 62, slip op. at 1–2 (2019), enfd. mem. 792 F. App'x 557 (9th Cir. 2020); *CVS Albany, LLC, d/b/a CVS*, 364 NLRB No. 122, slip op. at 1 (2016), enfd. mem. 709 F.App'x 10 (D.C. Cir. 2017) (per curiam); *Metro Health Foundation*, supra.

Accordingly, we grant the General Counsel's Motion for Summary Judgment and deny the Respondent's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Florida corporation with a place of business located at 6000 Discovery Cove Way, Orlando, Florida, has been engaged in the business of operating a marine-life park at its resort complex located in Orlando, Florida.⁵

During the past 12 months, the Respondent, in conducting its operations described above, derived gross revenues in excess of \$ 500,000, and purchased and received at its Orlando, Florida facilities goods valued in excess of \$50,000 directly from points located outside the State of Florida.

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

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following an election conducted by secret ballot on May 6, 2025, the Regional Director issued a Certification of Representative in Case 12–RC–362952 on May 28, 2025, certifying the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time associate divers, senior divers, dive supervisors (supervisors, water safety), dive safety officers, and dive technicians (gear technicians) employed by the Employer at its Discovery Cove and Aquatica parks, Orlando, Florida; excluding all other employees, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined by the Act.

On February 20, 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 about May 29, 2025, the Union, by email, requested that the Respondent recognize the Union as the exclusive

⁴ Although the Respondent's answer denies that the information requested was related to the Union's role as the exclusive collective-bargaining representative of the unit (par. 7(b)), it provides no legal or factual support for that denial.

⁵ Though the Respondent denies, in par. 2(a) of its answer, that it "has been engaged in the business of operating a marine-life theme park at its resort complex located at 6000 Discovery Cove Way," the Respondent's Response admits that it is "a marine-life theme park," and in the underlying representation proceeding, the Respondent stipulated that it has "a

place of business located at 6000 Discovery Cove Way, Orlando, Florida."

⁶ In its answer, the Respondent denied, in part, allegations that the Respondent is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning the meaning of Sec. 2(5) of the Act (pars. 2(d), 3); however, the parties stipulated to these conclusions in the underlying representation proceeding. See GC's MSJ, Exhibit M.

collective-bargaining representative of the unit, and bargain collectively with the Union as the exclusive collective-bargaining representative of the unit. On the same day, the Union, by email, requested that the Respondent furnish the Union with the information described above.

Since about May 29, 2025, 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 and to furnish the Union with the requested information.

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 appropriate unit since about May 29, 2025, and by failing and refusing since about May 29, 2025, to furnish the Union with requested information that is necessary and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the Respondent's unit employees, 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. We shall also order the Respondent to furnish the Union with the information it requested on May 29, 2025.

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).

ORDER

The National Labor Relations Board orders that the Respondent Sea World of Florida LLC d/b/a Discovery Cove,

Orlando, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with the International Union of Operating Engineers, Local 30, AFL-CIO (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) Failing and refusing to furnish the Union with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the unit employees.

(c) 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:

All full-time and regular part-time associate divers, senior divers, dive supervisors (supervisors, water safety), dive safety officers, and dive technicians (gear technicians) employed by the Employer at its Discovery Cove and Aquatica parks, Orlando, Florida; excluding all other employees, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined by the Act.

(b) Furnish to the Union in a timely manner the information requested by it on May 29, 2025.

(c) Within 14 days of service by the Region, post at its facility in Orlando, Florida copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 12, 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

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

United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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 29, 2025.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 12 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. July 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.

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 Union of Operating Engineers, Local 30, AFL-CIO (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT fail and refuse to furnish the Union with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of our unit employees.

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

All full-time and regular part-time associate divers, senior divers, dive supervisors (supervisors, water safety), dive safety officers, and dive technicians (gear technicians) employed by the Employer at its Discovery Cove and Aquatica parks, Orlando, Florida; excluding all other employees, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined by the Act.

WE WILL furnish to the Union in a timely manner the information requested by the Union on May 29, 2025.

SEA WORLD OF FLORIDA LLC D/B/A
DISCOVERY COVE

The Board's decision can be found at www.nlrb.gov/case/12-CA-368374 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.

