No. 24-1079

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JONES LANG LASALLE AMERICAS, INC.,	)	
***Petitioner*,**	)	
v.	)	**PETITION FOR REVIEW**
NATIONAL LABOR RELATIONS BOARD,	)	
***Respondent*.**	)	

Pursuant to 29 U.S.C. § 160(f) and Federal Rule of Appellate Procedure 15(a), Jones Lang LaSalle Americas, Inc. ("Petitioner"), hereby petitions this Court for review of the Decision and Order of the National Labor Relations Board entered on March 21, 2024 ("Order"). A copy of the Order is attached hereto and reported at 373 NLRB No. 37 (2024).

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April 3, 2024

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2024, the foregoing Petition for Review was electronically filed with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system, and a true and correct copy of the foregoing Petition for Review, with attachments, was served by email on:

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Jones Lang LaSalle Americas, Inc. *and* International Union of Operating Engineers, Stationary Engineers, Local 39, AFL–CIO. Case 20–CA–328308

March 21, 2024

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS KAPLAN AND PROUTY

This is a refusal-to-bargain case in which the Respondent, Jones Lang LaSalle Americas, Inc., is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on October 18, 2023, later amended October 31 and November 27, 2023, by International Union of Operating Engineers, Stationary Engineers, Local 39, AFL-CIO (the Union), the General Counsel issued a complaint on December 13, 2023, 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 20–RC–315897. (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.

On January 19, 2024, the General Counsel filed a Motion for Summary Judgment. On January 22, 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 February 5, 2024, the Respondent filed a response to the Notice to Show Cause.

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

Ruling on Motion for Summary Judgment

The Respondent admits that it has refused to bargain but contests the validity of the Union's certification of representative based on its objection, raised and rejected in the underlying proceeding.[1]

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 as to the Respondent's failure and refusal to recognize and bargain with the Union.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent Jones Lang LaSalle Americas, Inc., a Maryland corporation, has been engaged in the provision of building management services

[1] In its answer, the Respondent largely admits the complaint allegations, including the allegation that it is refusing to recognize and bargain with the Union, but denies the portion of complaint par. 6 asserting that the Union has been properly certified as the exclusive collective bargaining representative. In its response to the Notice to Show Cause, the Respondent simply reiterates its representation case objections. The unit issue and those objections were fully litigated and resolved in the underlying representation proceeding. Accordingly, the Respondent's denial does not raise any litigable issue in this proceeding.

The Respondent's answer advances various additional affirmative defenses, including that the complaint is untimely; the complaint is invalid to the extent that alleged agents of the Respondent acted outside the scope of their employment; the complaint is barred under the equitable doctrines of laches, waiver, and/or unclean hands; the complaint fails to give the Respondent adequate due process notice; the for-cause protections extended to the Board's administrative law judges violate separation of powers principles in Article II of the Constitution; the agency wields a structurally unconstitutional combination of prosecutorial and adjudicatory functions; and the complaint fails to state a claim. The Respondent has not, however, offered any explanation or evidence to support the bare assertions of its affirmative defenses. Thus, we find that they 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); *George Washington University*, 346 NLRB 155, 155 fn. 2 (2005), enfd. mem. per curiam No. 06-1012, 2006 WL 4539237 (D.C. Cir. Nov. 27, 2006); *Circus Circus Hotel*, 316 NLRB 1235, 1235 fn. 1 (1995).

In addition to finding them unsupported, we also find no merit to the Respondent's constitutional claims. The Respondent's concerns with the removability of the Board's administrative law judges are immaterial here, as the merits of this test-of-certification case will not be heard before an administrative law judge. Similarly, the Respondent's concerns that the Board exercises an unconstitutional combination of prosecutorial and adjudicatory functions are immaterial, as this case involves no related Sec. 10(j) proceeding. In any event, "the 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)).

Lastly, there is no merit to the Respondent's claim that Sec. 10(b) bars some or all of the allegations in the complaint. The initial charge was filed on October 18, 2023, and the complaint alleges that the Respondent's refusal to bargain began on July 6, 2023 and is ongoing.

at various locations, including at the Amazon Inc. 300 Boone Drive building located in Napa, California.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, purchased and received at its Napa, California location goods and materials valued in excess of $50,000 directly from suppliers located outside the State of California.

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, International Union of Operating Engineers, Stationary Engineers, Local 39, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election conducted on May 17, 2023, the Regional Director issued a Decision to Overrule Employer's Objections and Certification of Representative in Case 20–RC–315897 on June 8, 2023, certifying the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time Maintenance Technician IIs and Maintenance Technician IIIs employed by the Employer at the Amazon Inc. building at 300 Boone Drive, Napa, California 94558; excluding all other employees, managers, guards, and supervisors as defined by the Act.

On September 7, 2023, 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

By letter, dated July 6, 2023,[2] the Union requested that the Respondent bargain with the Union as the exclusive collective-bargaining representative of the unit. By letter dated October 9, 2023, the Union renewed its request. The Respondent, by letter dated October 12, 2023, refused. Since at least July 6, 2023, 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 July 6, 2023, 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.

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).

In addition, the General Counsel requests that we adopt a compensatory remedy requiring the Respondent to make its employees whole for the lost opportunity to bargain at the time and in the manner contemplated by the Act. To do so would require overruling *Ex-Cell-O Corp.*, 185 NLRB 107 (1970), and outlining a methodological framework for calculating such a remedy. The Board has decided to sever this issue and retain it for further consideration to expedite the issuance of this decision regarding the remaining issues in this case.[3] See *Longmont United Hospital*, 371 NLRB No. 162, slip op. at 2 (2022), enfd. 70 F.4th 573 (2023). The Board will issue a supplemental decision regarding a make-whole remedy at a later date. See *Kentucky River Medical Center*, 355 NLRB 643, 647

[2] In its answer to the complaint, the Respondent avers that the letter was sent July 27, 2023. The General Counsel, however, attached the letter to her motion for summary judgment as Exhibit H, and that letter is dated July 6, 2023. The Respondent does not dispute the authenticity of this exhibit.

[3] In its response to the Board's Notice to Show Cause, the Respondent opposes the General Counsel's request that the Board overrule *Ex-Cell-O.* Because the issue of compensatory relief will be severed for future consideration, the Respondent's arguments on that matter are no barrier to granting summary judgment. See *Longmont United Hospital v. NLRB*, 70 F.4th 573, 581-582 (D.C. Cir. 2023).

Member Kaplan would not sever this issue. Instead, he would apply *Ex-Cell-O* and deny the General Counsel's request for a make-whole remedy.

fn. 13 (2010); *Kentucky River Medical Center*, 356 NLRB 6 (2010).

ORDER

The National Labor Relations Board orders that the Respondent Jones Lang LaSalle Americas, Inc., Napa, California, and 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, Stationary Engineers, Local 39, AFL-CIO (the 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:

> All full-time and regular part-time Maintenance Technician IIs and Maintenance Technician IIIs employed by the Employer at the Amazon Inc. building at 300 Boone Drive, Napa, California 94558; excluding all other employees, managers, guards, and supervisors as defined by the Act.

(b) Post at its Napa facility copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 20, 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 July 6, 2023.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 20 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 21, 2024

_____
Lauren McFerran, Chairman

_____
Marvin E. Kaplan, Member

_____
David M. Prouty, 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

[4] 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 or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees has returned to work, and the notices may not be posted until a substantial complement of employees has returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." 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."

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