

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

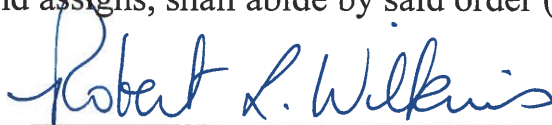
AGGREGATE INDUSTRIES	)	
	)	
Petitioner/Cross-Respondent	)	Nos. 14-1252, 14-1276
	)	
v.	)	<b>ORIGINAL</b>
	)	
NATIONAL LABOR RELATIONS BOARD	)	
	)	
Respondent/Cross-Petitioner	)	Board Case No. 28-CA-23220

**JUDGMENT**

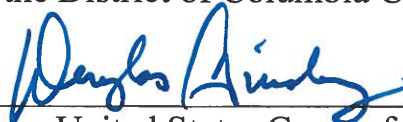
Before: WILKINS, *Circuit Judge*, and GINSBURG and RANDOLPH, *Senior Circuit Judges*

THIS CAUSE came to be heard upon a petition filed by Aggregate Industries to review an Order of the National Labor Relations Board dated October 31, 2014, in Case Nos. 28-CA-023220 and 28-CA-023250, reported at 361 NLRB No. 80, and upon a cross-application for enforcement filed by the National Labor Relations Board to enforce said Order. The Court heard argument of the parties and has considered the briefs and agency record filed in this cause. On June 10, 2016, the Court, being fully advised in the premises, handed down its opinion granting in part the petition of Aggregate Industries and granting in part the Board's cross-petition for enforcement. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the Court that Aggregate Industries, its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendices).



\_\_\_\_\_  
Judge, United States Court of Appeals  
for the District of Columbia Circuit



\_\_\_\_\_  
Judge, United States Court of Appeals  
for the District of Columbia Circuit



\_\_\_\_\_  
Judge, United States Court of Appeals  
for the District of Columbia Circuit

ENTERED: 09/19/2016

# NATIONAL LABOR RELATIONS BOARD

v.

## AGGREGATE INDUSTRIES

### ORDER

Aggregate Industries, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Bypassing the Union and dealing directly with its mechanical sweeper truck drivers in the Construction Bargaining Unit with regard to their terms and conditions of employment.
- (b) Unilaterally, without notice to the Union or affording the Union an opportunity to bargain, assigning mechanical sweeper truck driving work to drivers who are represented by the Laborers Union, when such work had previously been performed by drivers who were included in the Construction Bargaining Unit.
- (c) Unilaterally, without notice to the Union or affording the Union an opportunity to bargain, changing the terms and conditions of its mechanical sweeper truck drivers by treating them as employees in the bargaining unit covered by the Laborers' collective-bargaining agreement.
- (d) 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) Restore the status quo ante by returning and assigning the work of driving its mechanical sweeper trucks to employees who are represented by the Union and employed in the Construction Bargaining Unit.
- (b) Make sweeper truck drivers Andrew Barnum and Mike Crane whole for any loss of wages and other benefits suffered as a result of its unilateral change, in the manner set forth in the Remedy section of the judge's decision.

- (c) Reimburse former Construction Bargaining Unit employees for any expenses resulting from the Respondent's failure to make any required contributions to benefit funds, in the manner set forth in the Amended Remedy section of this decision.
- (d) Compensate former Construction Bargaining Unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.
- (e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (f) Within 14 days after service by the Region, post at its facility in Las Vegas, Nevada and its truck yard in Sloan, Nevada, and distribute in the employees' mail slots, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 28, 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. 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 1, 2010.
- (g) Within 21 days after service by the Region, file with the Regional Director for Region 28 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.

## APPENDIX

### NOTICE TO EMPLOYEES

#### POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN 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 bypass the Union and deal directly with our mechanical sweeper truck drivers in the Construction Bargaining Unit with regard to their terms and conditions of employment.

WE WILL NOT unilaterally, without notice to the Union or affording the Union an opportunity to bargain, assign mechanical sweeper truck driving work to drivers who are represented by Laborers' International Union of North America, Local 872 (Laborers), when such work had previously been performed by drivers who were included in the Construction Bargaining Unit.

WE WILL NOT unilaterally, without notice to the Union or affording the Union an opportunity to bargain, change the terms and conditions of our mechanical sweeper truck drivers by treating them as employees in the bargaining unit covered by the Laborers' collective-bargaining agreement.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of the rights listed above.

WE WILL restore the status quo ante by returning and assigning the work of driving our mechanical sweeper trucks to employees who are represented by the Union and employed in the Construction Bargaining Unit.

WE WILL reimburse former Construction Bargaining Unit employees for any expenses resulting from the Respondent's failure to make any required contributions to benefit funds, plus interest compounded daily.

WE WILL compensate former Construction Bargaining Unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

WE WILL make sweeper truck drivers Andrew Barnum and Mike Crane whole for any loss of wages and other benefits suffered as a result of our unilateral change, plus interest compounded daily.

## AGGREGATE INDUSTRIES

The Board's decision can be found at [www.nlr.gov/case/28-CA-023220](http://www.nlr.gov/case/28-CA-023220) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



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

AGGREGATE INDUSTRIES	)	
	)	
Petitioner/Cross-Respondent	)	Nos. 14-1252, 14-1276
	)	
v.	)	
	)	Board Case Nos.
NATIONAL LABOR RELATIONS BOARD	)	28-CA-023220
	)	28-CA-023250
Respondent/Cross-Petitioner	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on August 19, 2016, I electronically filed the foregoing document with the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. I further certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

s/Linda Dreeben  
Linda Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1099 14th Street, NW  
Washington, DC 20570

Dated at Washington, D.C.  
this 19th day of August, 2016