

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL LABOR RELATIONS BOARD :
 :
 Petitioner : No. 24-1181
 :
 v. :
 : Board Case Nos.:
 OMNI EXCAVATORS, INC. : 05-CA-291774
 : 05-CA-292168
 Respondent :

JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

Before: Henderson, Pillard, and Walker, Circuit Judges

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, Omni Excavators, Inc., its officers, agents, successors, and assigns, enforcing its order dated February 9, 2024, in Case Nos. 05-CA-291774 and 05-CA-292168, reported at 373 NLRB No. 18, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Omni Excavators, Inc., its officers, agents, successors, and assigns, shall abide by said order (See attached Order and Appendix).



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

NATIONAL LABOR RELATIONS BOARD

v.

OMNI EXCAVATORS, INC.

ORDER

Omni Excavators, Inc., Washington, D.C. its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Failing and refusing to recognize and bargain with Construction and Master Laborers' Local Union 11 a/w Laborers' International Union of North America, AFL-CIO (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.
 - (b) Coercively interrogating employees about their sympathies and/or support for the Union, including soliciting employees' signatures on a survey regarding membership in the Union.
 - (c) Bypassing the Union and dealing directly with its employees in the unit, including by asking employees to declare their preferences regarding the purported transfer of their fringe benefits to the Union.
 - (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) 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 laborers, including foremen, power equipment operators, drivers, and traffic flaggers employed by Omni Excavators, Inc. (the Respondent); but excluding mechanics, office clerical employees, professional employees, managerial employees, guards and supervisors as defined by the Act.

Upon the Union's request, such bargaining sessions shall be held for a minimum of 24 hours per calendar month, for at least 6 hours per session,

until an agreement or lawful impasse is reached or the parties agree to a respite in bargaining. The Respondent shall submit written bargaining progress reports every 15 days to the Regional Director for Region 5, serving copies thereof on the Union.

- (b) Post at its facility in Washington, D.C., copies of the attached notice marked "Appendix A" in English and Spanish. Copies of the notice, on a form provided by the Regional Director for Region 5, in English and Spanish, 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 its Washington, D.C. facility at any time since December 9, 2021.
- (c) Within 14 days after service by the Region, duplicate and mail, at its own expense, after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix A" in both English and Spanish to all current and former unit employees employed by the Respondent at its Washington, D.C. facility at any time since December 9, 2021, at their home addresses.
- (d) Hold a meeting or meetings during work hours at its facility in Washington, D.C., scheduled to ensure the widest possible attendance of bargaining unit employees, at which the attached Notice to Employees marked "Appendix A" and the attached Explanation of Rights marked "Appendix B" will be read to employees in English and Spanish by a high-ranking responsible management official in the presence of a Board Agent and, if the Union so desires, a union representative, or, at the Respondent's option, by a Board agent in the presence of a high-ranking responsible management official and, if the Union so desires, a union representative. A copy of the notice and the Explanation of Rights, in English and Spanish will be distributed by a Board agent during this

meeting or meetings to each unit employee in attendance before the notice and Explanation of Rights are read.¹

- (e) Supply the Union, on its request, with the full names, home addresses, telephone numbers, and personal email addresses of its current unit employees, updated weekly, until a complete collective-bargaining agreement or lawful impasse is reached or the parties agree to a respite in bargaining.
- (f) Within 21 days after service by the Region, file with the Regional Director for Region 5 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.

¹ If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted and read 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 notice must be posted and read within 14 days after the facility reopens and 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].”

APPENDIX A

NOTICE TO EMPLOYEES

POSTED, READ, AND MAILED 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 fail and refuse to recognize and bargain with Construction and Master Laborers' Local Union 11 a/w Laborers' International Union of North America, AFL-CIO (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT interrogate you about your sympathies and/or support for the Union in any way, including soliciting your signatures on surveys regarding membership in the Union.

WE WILL NOT bypass the Union and deal directly with you, including by asking you to declare your preferences regarding the purported transfer of your fringe benefits to 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 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 laborers, including foremen, power equipment operators, drivers, and traffic flaggers, excluding mechanics, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

Upon the Union's request, such bargaining sessions shall be held for a minimum of 24 hours per calendar month for at least six hours per session, until an agreement or lawful impasse is reached or the parties agree to a respite in bargaining.

WE WILL submit written bargaining progress reports every 15 days to the compliance officer for Region 5, serving copies thereof on the Union.

WE WILL post this notice at our facility in Washington, D.C. for a period of 60 days. In addition, WE WILL post the notice electronically, including email, and by any such means as we generally use to communicate with you.

WE WILL, within 14 days from the date of the Board's order, mail a copy of this notice to the homes of all current and former unit employees employed by us at any time since December 9, 2021. WE WILL maintain proofs of mailing as required by the Board.

WE WILL hold a meeting or meetings during working hours and have this notice and the Board's Explanation of Rights read to you and your fellow workers in English and Spanish, and any other languages deemed appropriate by the Regional Director by a high-ranking responsible management official in the presence of a Board agent and, if the Union so desires, a union representative, or, at our option, by a Board agent in the presence of a high-ranking responsible management official and, if the Union so desires, a union representative. A copy of the notice and the Explanation of Rights, in English and Spanish, will be distributed by a Board agent during this meeting or meetings to each unit employee in attendance before the notice is read.

WE WILL, upon request, supply the Union with the full names, home addresses, telephone numbers, and personal e-mail addresses of our unit employees, updated weekly until a complete collective-bargaining agreement or lawful impasse is reached or until we agree with the Union to a respite in bargaining.

OMNI EXCAVATORS, INC.

The Board's decision can be found at www.nlrb.gov/case/05-CA-292168 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.



APPENDIX B

EXPLANATION OF RIGHTS

READ AND MAILED 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

Employees covered by the National Labor Relations Act have the right to join together to improve their wages and working conditions, including by organizing a union and bargaining collectively with their employer, and also the right to choose not to do so. This Explanation of Rights contains important information about your rights under this Federal law. The National Labor Relations Board has ordered Omni Excavators, Inc. to provide you with the Explanation of Rights to describe your rights and provide examples of illegal behavior.

UNDER THE NATIONAL LABOR RELATIONS ACT, YOU HAVE THE RIGHT TO:

- Contact a union and, if they become your representative, have them negotiate with your employer concerning your wages, hours, and working conditions.
- Support your union in negotiations.
- Discuss your wages, benefits, other terms and conditions of employment, and negotiations between the union and your employer with your coworkers or your union.
- Take action with one or more coworkers to improve your working conditions.
- Strike and picket, depending on the purpose or means used.
- Choose not to do any of these activities.

It is illegal for your employer to:

Make unilateral changes in your terms and conditions of employment by implementing a collective-bargaining proposal without first bargaining with the Union to an overall good-faith impasse for a successor collective-bargaining agreement.

There are rules that govern your employer's conduct during collective bargaining with your union:

- Your employer must meet with your union at reasonable times to bargain in good faith about wages, hours, vacation time, insurance, safety practices, and other mandatory subjects.

- Your employer must participate actively in the negotiations with a sincere intent to reach an agreement.
- Your employer must not change existing working terms and conditions while bargaining is ongoing.
- Your employer must honor any collective-bargaining agreement that it reaches with your union.
- Your employer cannot retaliate against you if you participate or assist your union in collective bargaining.

Illegal conduct will not be permitted. The National Labor Relations Board enforces the Act by prosecuting violations. If you believe your rights or the rights of others have been violated, you should contact the NLRB promptly to protect your rights, generally within 6 months of the unlawful activity. You may ask about a possible violation without your employer or anyone else being informed that you have done so. The NLRB will conduct an investigation of possible violations if a charge is filed. Charges may be filed by any person and need not be filed by the employee directly affected by the violation.

You can contact the NLRB's resident office, located at: 1015 Half Street SE, Washington, D.C. 20570.

The Board's decision can be found at www.nlr.gov/case/05-CA-292168 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.

