

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Cognizant Technology Solutions U.S. Corporation and Google, LLC, Joint Employers and Alphabet Workers Union—Communications Workers of America, Local 9009. Case 16–CA–326027

January 3, 2024

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS PROUTY
AND WILCOX

This is a refusal-to-bargain case in which the Respondents are contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on September 19, 2023, by the Alphabet Workers Union—Communications Workers of America, Local 9009 (the Union), the General Counsel issued a complaint on September 25, 2023, alleging that Respondent Cognizant Technology Solutions U.S. Corporation (Respondent Cognizant) and Respondent Google, LLC (Respondent Google) have 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–305751. (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 Respondents each filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On October 19 and 23, 2023, the General Counsel and the Union, respectively, filed Motions for Summary Judgment. On October 24, 2023, the Board issued an Order Transferring the Proceeding to the Board and a Notice to

¹ In its answer, Respondent Google largely admits the complaint allegations, including the allegation that it is refusing to recognize and bargain with the Union. Both Google and Cognizant deny complaint par. 7(a), which sets forth the appropriate unit, and par. 7(c), which asserts that the Union is the exclusive collective-bargaining representative. Respondent Cognizant denies par. 9, which alleges that the Respondents’ refusal to bargain violates Sect. 8(a)(5) and (1); and par. 10, which alleges that the Respondents’ unfair labor practices affect commerce. Both Respondents deny par. 2(c) which alleges that the Respondents have co-determined essential terms and conditions of employment. In their responses to the Notice to Show Cause, the Respondents merely reassert the arguments, raised and rejected in the underlying representation case, that Cognizant and Google are not joint employers. In fact, Respondent Google asserts that it intends to test the unit’s certification. Accordingly, the Respondents’ denials do not raise any litigable issue in this proceeding.

Respondent Cognizant also denies that it has been a Texas corporation with an office and place of business located at 717 E. Parmer Lane, Austin, Texas 78753, as alleged in par. 2(a) of the complaint. Nevertheless, this allegation was established by Cognizant in the underlying representation proceeding. It also denies pars. 8(a) and (c) of the complaint, which allege that the Union, by email, requested that the Respondents recognize and bargain with it and that the Respondents, by email, refused. The General Counsel, however, attached the relevant emails to

Show Cause why the motions should not be granted. On November 6 and 7, 2023, Respondent Cognizant and Respondent Google, respectively, filed responses to the Notice to Show Cause. The Union filed a reply on November 13, 2023.

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

Ruling on Motion for Summary Judgment

Respondent Cognizant denies but Respondent Goggle admits its refusal to bargain with the Union. However, both Respondents contest the validity of the Union’s certification of representative based on their contentions, raised and rejected in the underlying proceeding, that Cognizant and Google are *not* joint employers of the employees certified in underlying representation proceeding.¹

All representation issues raised by the Respondents were or could have been litigated in the prior representation proceeding. The Respondents do not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor have they established any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondents have 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 Motions for Summary Judgment as to the Respondents’ failure and refusal to recognize and bargain with the Union.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent Cognizant Technology Solutions U.S. Corporation has been a Texas

her Motion for Summary Judgment; Cognizant does not dispute the authenticity of those documents. Thus, these denials fail to raise a disputed issue for hearing. See *Biewer Wisconsin Sawmill, Inc.*, 306 NLRB 732, 732 (1992).

Google’s answer asserts several affirmative defenses. None of these defenses—save the defense pertaining to the General Counsel’s request for 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—are supplemented with any additional argument or support. Therefore, they are insufficient to warrant denial of the Motions 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). Because the issue of compensatory relief will be severed for future consideration, Google’s arguments on that matter are no barrier to granting summary judgment. See *Longmont United Hospital v. NLRB*, 70 F.4th 573 (D.C. Cir. 2023).

Finally, there is no merit to the Google’s claim that Sec. 10(b) bars one or more of the allegations in the complaint. Indeed, the charge was filed on September 19, 2023, and the complaint alleges that the Respondents’ refusal to bargain began on June 29, 2023.

² We construe Respondent Google’s request that the charge be dismissed as requesting dismissal of the complaint. Pursuant to the foregoing, we deny this request.

corporation with an office and place of business located at 717 E. Parmer Lane, Austin, Texas 78753 (the E. Parmer Lane facility) where it has been engaged in the business of providing consulting and technology services.³

Annually, Respondent Cognizant, in conducting its business operations described above, provides services valued in excess of \$50,000 to customers directly outside the State of Texas.⁴

We find that Respondent Cognizant is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, Respondent Google, LLC, has been a Delaware corporation with an office and place of business located at 7700 W. Parmer Lane, Austin, Texas 78729, where it has been engaged in the business of providing internet-related services and products.

Annually, in conducting its business operations described above, Respondent Google provides services valued in excess of \$50,000 to points directly outside the State of Texas.⁵

We find that Respondent Google is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, Respondents Cognizant and Google have codetermined the essential terms and conditions of employment of employees employed at the E. Parmer Lane facility and have been joint employers.

We find that Alphabet Workers Union—Communications Workers of America, Local 9009, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

On March 3, 2023, the Regional Director issued a Decision and Direction of Election in which he found Respondent Cognizant and Respondent Google to be joint employers of the petitioned-for employees. Thereafter, following a representation election conducted by mail between March 22 and April 19, 2023, the Regional Director issued a Certification of Representative on May 4, 2023, certifying the Union as the exclusive collective-bargaining representative of the employees in the following unit:

INCLUDED: All full-time and regular part-time Senior Process Executive-Data/Music Generalist (SPEs) and Project/Process Specialists/Subject Matter Experts (SMEs) employees employed by the Employers in YouTube Music Content Operations who are employed to work from the Employer's (Cognizant Technology Solutions U.S. Corporation) facility at 717 E. Parmer Lane in Austin, Texas.

EXCLUDED: Team Leads, temporary employees, seasonal employees, managerial employees, professional employees, confidential employees, guards and supervisors as defined in the Act.

On July 19, 2023, the Board denied the Respondents' requests for review of the Regional Director's Decision and Direction of Election and subsequent Certification of Representative. 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 email dated June 15 and July 26, 2023, the Union requested that the Respondents bargain with the Union as the exclusive collective-bargaining representative of the unit. By emails dated June 29, 2023, and continuing to date, the Respondents have failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit.

We find that the Respondents' 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 June 29, 2023, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondents have 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 Respondents have violated Section 8(a)(5) and (1) of the Act, we shall order them 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 Respondents begin 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 Respondents to make their employees whole for the lost opportunity to bargain at the time and in the manner contemplated by the

³ This is the only facility involved in this case.

⁴ Although the complaint fails to state that Respondent Cognizant provides these services "annually," Cognizant stipulated that it is engaged in commerce within the meaning of the Act in the underlying representation proceeding

⁵ Although the complaint fails to state that Respondent Google provides these services "annually," Google admitted that it does so in its answer to the complaint.

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. See *Longmont United Hospital*, 371 NLRB No. 162, slip op. at 2 (2022), enf. 70 F.4th 573 (D.C. Cir. 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 fn. 13 (2010); *Kentucky River Medical Center*, 356 NLRB 6 (2010).⁶

ORDER

The National Labor Relations Board orders that Respondent Cognizant Technology Solutions U.S. Corporation and Respondent Google, LLC, Austin, Texas, and its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with the Alphabet Workers Union—Communications Workers of America, Local 9009 (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:

INCLUDED: All full-time and regular part-time Senior Process Executive-Data/Music Generalist (SPEs) and Project/Process Specialists/Subject Matter Experts (SMEs) employees employed by the Employers in YouTube Music Content Operations who are employed to work from the Employer's (Cognizant Technology Solutions U.S. Corporation) facility at 717 E. Parmer Lane in Austin, Texas.

EXCLUDED: Team Leads, temporary employees, seasonal employees, managerial employees, professional

employees, confidential employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at the E. Parmer Lane facility 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 Respondents' authorized representatives, shall be posted by the Respondents 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 Respondents customarily communicate with their employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. If Respondent Cognizant has gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at the E. Parmer Lane facility at any time since June 29, 2023.

(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 Respondents have taken to comply.

Dated, Washington, D.C. January 3, 2024

Lauren McFerran, Chairman

David M. Prouty, Member

Gwynne A. Wilcox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

⁶ Having ordered the customary remedies for test-of-certification cases and severed the *Ex-Cell-O Corp.* matter for future consideration, we decline to order, in this case, the additional remedies sought by the Union in its Motion for Summary Judgment.

⁷ 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 Respondents are communicating with their 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."

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 the Alphabet Workers Union—Communications Workers of America, Local 9009 (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

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:

INCLUDED: All full-time and regular part-time Senior Process Executive-Data/Music Generalist (SPEs) and Project/Process Specialists/Subject Matter Experts (SMEs) employees employed by the Employers in YouTube Music Content Operations who are employed to work from the Employer's (Cognizant Technology Solutions U.S. Corporation) facility at 717 E. Parmer Lane in Austin, Texas.

EXCLUDED: Team Leads, temporary employees, seasonal employees, managerial employees, professional employees, confidential employees, guards and supervisors as defined in the Act.

COGNIZANT TECHNOLOGY SOLUTIONS U.S.
 GOOGLE, LLC

The Board's decision can be found at www.nlr.gov/case/16-CA-326027 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.

