

**Allied Meat Company and Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO. Case 27-CA-4464**

November 3, 1975

**DECISION UPON RECONSIDERATION**

**BY MEMBERS FANNING, JENKINS, AND PENELLO**

On August 28, 1975, the National Labor Relations Board issued a Decision and Order<sup>1</sup> in the above-captioned proceeding upon the General Counsel's Motion for Summary Judgment, finding that Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the National Labor Relations Act, as amended, and ordering it to take certain remedial action therefor. Thereafter, on September 15, 1975, Respondent filed with the Board a Motion for Reconsideration, with exhibits attached, asserting that the Board erred in its Decision wherein it stated that Respondent had not filed a response to the Notice To Show Cause why the General Counsel's motion should not be granted, when in fact such a response had been filed, and requesting reconsideration in view of this document.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:<sup>2</sup>

Initially, we note that Respondent's response to the Notice To Show Cause was filed with the Regional Office of the Board, according to the certificate of service attached thereto, whereas the Notice To Show Cause specifically required that such response be ". . . filed with the Board in Washington, D.C. . . ." However, although Respondent's response was improperly filed, we shall nonetheless grant its Motion for Reconsideration and consider its re-

sponse to the Notice To Show Cause upon our Decision herein.

In its response, Respondent asserts that (1) the General Counsel's motion was not filed in compliance with Section 102.24 of the Board's Rules and Regulations, Series 8, as amended, because it was filed only 12 days prior to the scheduled hearing; (2) the General Counsel erred in his recitation of the facts admitted by Respondent in its answer to the complaint; (3) the General Counsel's motion represented the culmination of a pattern of unfair treatment it had received from the Regional Office; and (4) a hearing was required on its objections to the election in Case 27-RC-4663, the representation case upon which the Board's Decision in the instant case is based.

With regard to (1) and (2) above, we find no merit in these contentions as the General Counsel's filing of the Motion for Summary Judgment was not unreasonably delayed after the Respondent had filed its answer to the complaint, and the General Counsel's recitation of the facts in his motion was substantially as admitted by Respondent in its answer. Concerning (3) and (4), these issues were raised and considered by the Board in the underlying representation proceeding, and, consistent with our determination in our Decision and Order herein, these issues may not be relitigated in this proceeding. Further, with regard to (4), the hearing issue was specifically raised and resolved in the instant proceeding. In these circumstances, we shall affirm our Decision and Order.

Accordingly, it is hereby ordered that Respondent's Motion for Reconsideration be, and it hereby is, granted, and its response to the Notice To Show Cause and the General Counsel's Motion for Summary Judgment be, and it hereby is, accepted and considered.

IT IS FURTHER ORDERED that for the reasons set forth above, the Board's Decision and Order in this matter be, and it hereby is, affirmed.

finds that Respondent's motion does not raise issues warranting full Board consideration.

<sup>1</sup> *Allied Meat Company*, 220 NLRB No. 12 (1975).

<sup>2</sup> Respondent requests consideration by the full Board of its Motion for Reconsideration. The Board panel, having duly considered this request,