

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Washington, D.C.

RAYMOND INTERIOR SYSTEMS

and

Case 21-CA-37649

SOUTHERN CALIFORNIA PAINTERS
AND ALLIED TRADES DISTRICT
COUNCIL NO. 36, INTERNATIONAL
UNION OF PAINTERS AND ALLIED
TRADES, AFL-CIO

UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF
AMERICA, LOCAL UNION 1506

and

Case 21-CB-14259

SOUTHERN CALIFORNIA PAINTERS
AND ALLIED TRADES DISTRICT
COUNCIL NO. 36, INTERNATIONAL
UNION OF PAINTERS AND ALLIED
TRADES, AFL-CIO

and

SOUTHWEST REGIONAL COUNCIL OF
CARPENTERS, UNITED BROTHERHOOD
OF CARPENTERS AND JOINERS OF
AMERICA

(Party in Interest)

**ANSWERING BRIEF OF THE COUNSEL FOR THE GENERAL COUNSEL TO
CHARGING PARTY PAINTERS UNION'S CROSS-EXCEPTIONS**

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I. INTRODUCTION

The Charging Party Painters Union excepts to the Judge's recommended Order and Remedy, claiming that they are insufficient to remedy the unfair labor practices of Respondent Raymond and Respondent Carpenters Union, collectively called Respondents. As explained below, the General Counsel asserts that the Painters Union's cross-exceptions and proposed remedy are inconsistent with the General Counsel's Consolidated Complaint, herein called the Complaint. The General Counsel urges the Board to fully adopt the Judge's Decision, Order, and Remedy, as written.

II. ARGUMENT

The Charging Party Painters Union seeks an order requiring Respondent Raymond to provide benefits equivalent to both those in the Carpenters Union plans, and to those in the Painters Union plans as they existed in the expired Section 8(f) agreement. The Painters Union claims that this is the only remedy that will make employees whole for their losses. (Painters Union Cross-Exceptions Brief, 6:12-15; 8: 9-11)¹ They also claim that their proposed remedy will restore the status quo ante as of the expiration of the Painters Union agreement.

The General Counsel's position is that the Painters Union's requested remedy is inconsistent with the Complaint. Specifically, Complaint paragraph 11 alleges that on or about September 30, 2006, Respondent Raymond *lawfully* withdrew recognition from the Painters Union as the representative of the drywall-finishing employees. Both Respondent Raymond and Respondent Carpenters Union have admitted this complaint

¹ References are to the page and line numbers in the Painters Union's brief in support of cross-exceptions.

allegation in their answers. Finally, the Judge found that the Painters Union had a Section 8(f) agreement with Respondent Raymond that expired immediately before October 1, 2006; Charging Party Painters Union has not excepted to this finding. (ALJD 23:5-6)

Therefore, the lawful status quo ante is not the restoration of the Painters Union benefits. In theory, the lawful status quo ante should be that commencing on October 1, 2006, Respondent Raymond was a non-union employer: it had lawfully withdrawn recognition from the Painters Union, and its recognition of the Carpenters Union was unlawful. Absent Respondents' unfair labor practices, the proper status quo ante would be that the employees should enjoy whatever benefits Respondent Raymond, in its sole discretion, had chosen to provide.

Consistent with Board law, the Judge ordered that Respondent Raymond restore the employees to the position they would have been in but for the Respondents' unfair labor practices, with the caveat that none of the employees should be made to suffer a loss of benefits as the result of Respondents' unlawful conduct. Accordingly, and despite the unlawful grant of the Carpenters Union benefits to the drywall finishers, the Judge properly ordered Respondent Raymond to provide alternate benefits *equivalent* to the Carpenters Union benefits, so as to minimize the harm to the employees.

The Judge's recommended Order and Remedy are distinct from the relief sought by the Painters Union. The Judge is not ordering that Respondent Raymond provide benefits equivalent to the Carpenters Union benefits to punish the Painters Union or to assist the Carpenters Union. Rather, the sole reason for the chosen remedy is to minimize harm to employees who were unlawfully accreted into the Carpenters Union bargaining unit, through no fault of their own.

While finding that Respondents acted unlawfully, the Judge expressed repeated concerns throughout the case that no employees should be further harmed in remedying Respondents' unfair labor practices. Consistent with these concerns, the Judge crafted a narrow remedy that ameliorates the unlawful conduct but protects the affected employees.

How Respondent Raymond ultimately complies with the Judge's Order and Remedy – whether by providing alternate benefits coverage through another union plan, through self-insurance, or through a myriad of other possibilities – is a fact-intensive issue that would best be left to the compliance proceedings in these matters.

III. CONCLUSION

The Painters Union's exceptions to the Judge's recommended Order and Remedy are inconsistent with the Complaint and should be rejected by the Board. The Judge's Order and Remedy are appropriate under Board law and policy so that employees will not be adversely affected by Respondents' unfair labor practices. Accordingly, the General Counsel respectfully requests that the Painters Union's cross-exceptions be rejected and that the Board fully adopt the Judge's Decision, Order, and Remedy, as written.

Respectfully submitted,



Patrick J. Cullen
Counsel for the General Counsel
National Labor Relations Board

Dated this 20th day of February, 2009.

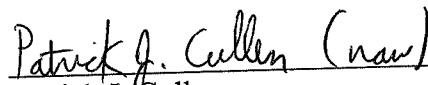
STATEMENT OF SERVICE

I hereby certify that copies of the Answering Brief of the Counsel for the General Counsel to Charging Party Painters Union's Cross Exceptions were served by e-mail on the 24th day of February, 2009, on the following parties:

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