

SPE Utility Contractors, LLC and Local 339, International Brotherhood of Teamsters. Cases 7–CA–49691, 7–CA–49889, and 7–CA–50103

November 26, 2008

ORDER GRANTING MOTION

BY CHAIRMAN SCHAMBER AND MEMBER LIEBMAN

On June 30, 2008,¹ the National Labor Relations Board² issued its Decision and Order in the above-entitled proceeding.³ The Board found, among other things, that the Respondent, SPE Utility Contractors, LLC, violated Section 8(a)(5) and (1) of the Act by directly dealing with unit employees regarding an incentive bonus program (the FPL challenge)⁴ and by agreeing with employees to recall employee Cheri Seaman to perform bargaining unit work relating to the FPL challenge. The Order required that the Respondent “[o]n request from the Union, bargain collectively and in good faith with regard to compensating unit employees for any and all work performed with respect to the FPL Challenge.”

On September 9, the General Counsel filed a motion for clarification. The General Counsel asks the Board to modify its Order by providing for a make-whole remedy for the Respondent’s direct dealing with employees with respect to the FPL challenge. The General Counsel explains that such a remedy is the traditional remedy in cases of direct dealing. Also on September 9, the Respondent filed a response opposing the General Counsel’s motion.

The modification to the Order which the General Counsel requests is consistent with the Board’s conventional remedy in a case where a respondent has engaged in an unfair labor practice that caused, or may have caused, employees monetary loss.⁵ The failure to pro-

vide such a remedy in this case was inadvertent. Therefore, we shall grant the motion, and modify the Order accordingly. We shall substitute a new notice to conform to the Order as modified.

ORDER

The General Counsel’s motion for clarification is granted. Accordingly, the Board’s Order in the underlying decision (352 NLRB 787) is modified, and the Respondent, SPE Utility Contractors, LLC, Port Huron, Michigan, its officers, agents, successors, and assigns, shall take the actions specified in the Order as modified.

1. Substitute the following for paragraph 2(a).

“(a) Make whole unit employees Tonya Bland, Lisa Thompson, and Cheri Seaman for any loss of earnings and other benefits they may have suffered as a result of the Respondent’s unilateral changes and direct dealing relating to the FPL Challenge, in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).”

2. Insert the following as paragraph 2(b) and reletter subsequent paragraphs.

“(b) 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.”

3. Substitute the attached notice for that which issued on June 30, 2008.

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.

resulting from the respondent’s unilateral reduction of employees’ hours of work, pay, and other benefits).

¹ All dates hereafter are 2008, unless otherwise stated.

² Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board’s powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

³ 352 NLRB 787.

⁴ The “FPL challenge” was an offer by the Respondent to certain employees of a cash bonus if they could reconcile the Respondent’s accounts with the Florida Power and Light Company (FPL) by February 15, 2007.

⁵ See generally *Children’s Center for Behavioral Development*, 347 NLRB 35 (2006) (The Board found that the respondent bypassed the union and dealt directly with employees by negotiating a reduction in their hours and pay, and therefore the Board ordered that the respondent make employees whole for any loss of earnings and other benefits

WE WILL NOT bypass Local 339, International Brotherhood of Teamsters, and WE WILL NOT deal directly with our bargaining unit office clerical employees with regard to wages, hours, or other terms and conditions of their employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act, as set out above.

WE WILL make whole unit employees Tonya Bland, Lisa Thompson, and Cheri Seaman for any loss of earnings and other benefits they may have suffered as a result of our unilateral changes relating to the FPL Challenge, with interest.

SPE UTILITY CONTRACTORS, LLC