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San Luis Trucking, Inc. and its alter ego Servicios Especializados Del Colorado, S.A. De C.V., and Factor Sales, Inc., all a single employer and/or joint employers and United Food and Commercial Workers Union, Local 99. Cases 28–CA–20387, 28–CA–20469, 28–CA–20559, 28–CA–20643, and 28–CA–20743

November 22, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS PEARCE
AND HAYES

On February 29, 2008, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 352 NLRB 211.¹ Thereafter, Respondents San Luis Trucking, Inc. (SLT) and Factor Sales, Inc. (FS) filed petitions for review in the United States Court of Appeals for the District of Columbia Circuit, and the General Counsel filed a cross-application for enforcement against all three Respondents.² On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. Thereafter, the court of appeals remanded this case for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.³

The Board has considered the judge's decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions, to modify the remedy, and to adopt the recommended Order to the extent and for the reasons stated in

¹ 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 powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

² SLT and FS subsequently withdrew their petitions for review.

³ Consistent with the Board's general practice in cases remanded from the courts of appeals, and for reasons of administrative economy, the panel includes the remaining member who participated in the original decision. Furthermore, under the Board's standard procedures applicable to all cases assigned to a panel, the Board Members not assigned to the panel had the opportunity to participate in the adjudication of this case at any time up to the issuance of this decision.

the decision reported at 352 NLRB 211 (2008), which is incorporated herein by reference, as modified below.⁴

AMENDED REMEDY

The Respondents, having unlawfully discharged SLT employees Ignacio Sandoval, Jorge Gonzalez, and Jose Quezada, must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus daily compound interest as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

The Respondents, having unlawfully closed SLT resulting in the layoffs of SLT employees, Jesus Aguilera, Antonio Macias, Jose Marquez, Blas Martinez, Raymundo Salcido, Eduardo Siqueiros, Diana Tenorio, and Jose Vera, must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, supra, plus daily compound interest as prescribed in *Kentucky River Medical Center*, supra.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge in 352 NLRB 211 as modified below, and orders that the Respondents, Factor Sales, Inc. and San Luis Trucking, Inc., San Luis, Arizona, and Servicios Especializados Del Colorado, S.A. De C.V., their officers, agents, successors, and assigns, shall take the action set forth in the recommended Order as modified.

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

“(k) Within 14 days after service by the Region, post at its San Luis, Arizona facility, copies of the attached notice marked “Appendix”¹⁴ in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days

⁴ In accordance with our decision in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), we modify the judge's recommended remedy by requiring that backpay and other monetary awards shall be paid with interest compounded on a daily basis. In addition, we shall modify the judge's recommended Order to provide for the posting of the notice in accord with *J. Picini Flooring*, 356 NLRB No. 9 (2010). For the reasons stated in his dissenting opinion in *J. Picini Flooring*, Member Hayes would not require electronic distribution of the notice.

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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. In the event that, during the pendency of these proceedings, 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 em-

ployed by the Respondent at any time since January 2005.

Dated, Washington, D.C. November 22, 2010

Wilma B. Liebman, Chairman

Mark Gaston Pearce, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD