

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

COMAR, INC.

and

**Cases 4-CA-28570
4-CA-33903**

**UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION**

ORDER

The Charging Party's Request for Review of the Acting General Counsel's decision affirming the Regional Director's compliance determination is denied.

On July 31, 2003, pursuant to a Decision and Order¹ finding, inter alia, that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act, the Board ordered the Respondent to recognize and bargain with Charging Party United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (the Union) in the following unit:

All hourly paid production workers who are performing the work that was formerly done as part of the Applicator Division of Comar, Inc. at its facility then located in Vineland, New Jersey, except plant executives, salesmen, office employees, janitors, watchmen and foremen, as excluded by the provisions of the Labor Management Relations Act of 1947 as amended.

The United States Court of Appeals for the D.C. Circuit enforced the Board's Order in full, by unpublished opinion dated May 19, 2004.² During the compliance proceeding,

¹ 339 NLRB 903 ("*Comar I*").

² 111 Fed.Appx. 1.

the Board refused to limit the remedy as the Respondent requested, leaving the court-enforced Board Order intact.³

On October 31, 2008, the Regional Director for Region 4 issued a compliance determination letter, finding that the Respondent had fully complied with the Board's Orders and closing the cases, conditioned on the Respondent's continued compliance with the Board's Orders. On May 7, 2009, the Union requested that the Regional Director rescind the compliance determination and reopen the compliance proceedings. The Regional Director sent a letter to the Union on June 16, 2009, declining to reopen the compliance proceedings.

By letter dated June 25, 2009, the Union filed with the General Counsel an appeal of the Regional Director's June 16, 2009 determination. By letter dated August 31, 2009, the General Counsel denied the Union's appeal. Thereafter, on September 14, 2009, the Union filed a request for review of the General Counsel's decision pursuant to Section 102.53(c) of the Board's Rules and Regulations. See also *Ace Beverage Co.*, 250 NLRB 646 (1980).

On January 25, 2010, the Board directed the Regional Director to issue an amended compliance determination containing a more detailed explanation of the evidence she relied on to support her decision not to reopen compliance proceedings. The Regional Director issued an amended compliance determination on May 12, 2010. The Union appealed the amended compliance determination to the General Counsel pursuant to Section 102.53(a) of the Board's Rules and Regulations. By letter dated November 26, 2010, the Acting General Counsel denied the Union's appeal

³ 349 NLRB 342 (2007) ("*Comar II*").

“substantially for the reasons set forth in” the Regional Director’s amended compliance determination. On December 10, 2010, the Union filed with the Board the instant request for review, pursuant to Section 102.53(c) of the Board’s Rules and Regulations. The Region filed a response to the Union’s request for review.⁴

Having duly considered the matter, we deny the Union’s request for review. As directed by the Board’s January 25, 2010 Order remanding the proceeding, the Regional Director’s amended compliance determination letter clearly sets forth all the facts on which the Region’s determinations are based.⁵ The Regional Director found that the Respondent, through the following actions, complied with the Board’s Orders:

(1) fulfilled its monetary obligations by payment of \$4,350,780 to affected employees; (2) properly offered reinstatement to the unlawfully discharged employees; (3) rescinded unilateral changes as requested by the Union in its April 25, 2007 letter; (4) properly recognized the Union; (5) provided all relevant information to the Union; and (6) bargained in good faith with the Union as required by the Board Orders.⁶

We find that the Regional Director did not clearly err in concluding that the Respondent fulfilled its obligation to bargain with the Union concerning the Board-ordered unit and fully complied with the Board’s Orders. The essence of the Union’s disagreement with the Region’s position is the Union’s argument that the Board-ordered unit consists solely of employees who had formerly worked at the Vineland facility and relocated to the Buena facility. We find that the unit description in *Comar I*, supra, is correctly articulated by the Regional Director as encompassing all employees who are

⁴ The Respondent has not filed a response to the Union’s request for review.

⁵ The Union requests that the Board reaffirm its January 25, 2010 Order remanding the proceeding. We deny this request as moot, in light of the fact that the Regional Director has complied with the Board’s Order, and the amended compliance determination is now before the Board.

⁶ Amended compliance determination, p. 6, fn. 6.

performing the *work* that was formerly performed at the Vineland facility's Applicator Division. Even though the composition of the Board-ordered unit might have consisted, at the time of the hearing in *Comar I*, of only former Vineland employees, the Union has not established a basis for continuing to limit the unit to those employees given the functionally-defined unit description and the fact that employees in the Respondent's finishing department now perform the work defined in the unit description. Accordingly, we conclude that the Union has failed to establish a sufficient basis for reversing the Regional Director's compliance determination.

Dated, Washington, D.C., February 22, 2011

WILMA B. LIEBMAN,	CHAIRMAN
MARK GASTON PEARCE,	MEMBER
BRIAN E. HAYES,	MEMBER