

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
ATLANTA BRANCH OFFICE

NEWBURG EGGS, INC.

and

Cases 3-CA-27834  
3-RC-11918

UNITED FOOD AND COMMERCIAL  
WORKERS, LOCAL 342

*Brie Kluytenaar and Alfred Norek, Esqs.,*  
for the Acting General Counsel.

*Jay Jason and Aryeh Lazarus, Esqs.*  
*(Tarshis, Catania, Liberth, Mahon &*  
*Milligram, PLLC),* for the Respondent.

*Jonathan Friedman, Esq.,* for the Charging Party.

SUPPLEMENTAL DECISION

**ROBERT A. RINGLER, Administrative Law Judge.** On February 7, 2011,<sup>1</sup> this consolidated case was tried in Monticello, New York. On April 27, a decision issued (the decision), which found, inter alia, that Newburg Eggs, Inc. (the Respondent or the Company) violated Section 8(a)(1) of the National Labor Relations Act (the Act). The decision, which also sustained several objections to the Company's conduct prior to an election, found that such conduct warranted setting aside the election results and conducting a new election.

In footnote 2, the decision indicated that the Company's counsel failed to submit a posthearing brief (the brief). Following the issuance of the decision, it was discovered that the brief was errantly filed with the Region 3 field office, instead of the Division of Judges. Upon discovering this error, counsel contacted the office of the Chief Administrative Law Judge, and asked for the decision to be rescinded and reissued, following due consideration of the errantly filed brief.

By letter dated May 4, the Chief Administrative Law Judge responded:

I understand . . . your office has been in communication with my Executive Assistant . . . about the e-filing of your brief in the above consolidated case . . . . As [the] Judge . . . pointed out in his decision, Respondent did not file a brief with

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<sup>1</sup> All dates are in 2011, unless otherwise stated.

the Judges Division. The e-mail confirmation you provided . . . shows that your brief was improperly filed with Region 3 of the NLRB. The Board's Rules provide that briefs to administrative law judges must be timely filed with the Judges Division. And the e-filing instructions on the Board's web-site permit the e-filer to select the appropriate office with which to file a document. In this case, the e-filer selected Region 3. The Judges Division never received a copy of the Respondent's brief, either directly from the Respondent or from Region 3.

It is regrettable that your brief was not considered by [the] Judge . . . , but I am satisfied that the brief was never properly placed before [the] Judge . . . . I would note that, pursuant to Rule 102.46 of the Board's Rules, you may file exceptions to [the] . . . decision with the Board, along with a supporting brief. Any further questions in this regard should be addressed to the Board, through the office of the Executive Secretary.

The Company, subsequently, filed a Motion for Reconsideration of Decision with the National Labor Relations Board (the Board), which was opposed by the other parties to this proceeding.

On May 25, the Board issued the following Order:

The Motion for Reconsideration of Decision filed by Respondent . . . is granted. Accordingly, this matter is remanded to [the] Administrative Law Judge . . . for reconsideration of his April 27, 2011 decision after reviewing the . . . brief.

Based upon the entire record, which now includes the errantly filed brief,<sup>2</sup> I find that the decision remains correct and should stand in its entirety. The brief failed to raise any new matters that were not previously considered. The factual record in the underlying consolidated cases, which consisted mainly of transcripts of recorded meetings and other documentary evidence, was essentially undisputed. Moreover, the Company failed to call any witnesses, and the two witnesses presented by its opposition were highly credible. I find, therefore, that the brief failed to demonstrate that the findings of fact contained in the decision were flawed, or should otherwise be revised. I find, furthermore, that the brief failed to cite any legal precedent or advance any connected argument, which was not previously considered or addressed. I find, as a result, that the decision should stand in its entirety.<sup>3</sup>

Dated, Washington, D.C., June 14, 2011

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**Robert A. Ringler**  
**Administrative Law Judge**

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<sup>2</sup> The brief has now been placed in the correct electronic folder.

<sup>3</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order, which were fully set forth in the decision dated April 27 and are incorporated herein by reference, shall as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.