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

GOURMET TOAST CORPORATION

and Case No. 29-CA-30404

LOCAL 1430, INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, AFL-CIO

Ashok Carlos Bodke, Esq., Brooklyn, NY, for the General Counsel.
Jack Feld, Brooklyn, NY, for the Respondent.
Cesar Alarcon, White Plains, NY, for the Charging Party.

DECISION

Statement of Facts

Steven Fish, Administrative Law Judge: Pursuant to charges filed and amended charges filed by Local 1430, International Brotherhood of Electrical Workers, AFL-CIO, herein called Charging Party or the Union, the Director for Region 29 issued a Complaint and Notice of Hearing on January 11, 2011, alleging that Gourmet Toast Corporation, herein called Respondent, violated Sections 8(a)(1) and (5) of the Act by reducing the hours of employee Mario Beltre (a/k/a Mario Toribo) on various occasions in September 2010[1] and laid off Beltre on October 10, 2010 without notice to or bargaining with the Union.

The trial opened on April 14, 2011. At that time, Respondent and Charging Party agreed upon a non-Board settlement, which General Counsel opposed. The terms of the settlement were discussed on the record, and Charging Party requested withdrawal of the charges based upon the settlement agreement. General Counsel objected to the granting of the request to withdraw. I reserved judgment on the request and asked the parties to submit briefs or position papers on the propriety of my accepting the settlement over the objection of General Counsel. Both the General Counsel and Respondent submitted letter briefs, which have been carefully considered. Based upon the entire record, I make the following:

Finds of Fact

I. Jurisdiction and Labor Organization

Respondent is a corporation with its principal office and place of business at 345 Park Avenue in Brooklyn, NY, where it is engaged in the non-retail production and distribution of food

[1] All dates hereinafter referred to are in 2010, unless otherwise indicated.

products.

During the past year, Respondent sold goods and materials valued in excess of $50,000 directly to customers located outside the state of New York. It is admitted, and I so find, that Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

It is also admitted, and I so find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. The Charges

The Union's original charge, filed on September 23, alleges that Respondent violated Section 8(a)(1), (3) and (5) of the Act by reducing the hours of employees without notifying the Union and because of the employees' support for the Union. The charge also alleges that Respondent has refused to meet with the Union for negotiations, despite a request by the Union.

On November 30, the Union filed a first amended charge, which alleges that Respondent violated Sections 8(a)(1) and (5) of the Act by reducing the regular hours of employees and laying off employees without notifying the Union and without providing the Union an opportunity to bargain.

III. The Complaint and Answer

As noted above, on January 11, 2011, the Director issued a Complaint and Notice of Hearing. The Complaint alleged that the Union was certified by the Board as the collective bargaining representative of Respondent's employees on September 14, 2010 and since that time the Union has been the exclusive representative of Respondent's employees in the unit certified.[2]

The Complaint further alleges that on various occasions in September 2010, Respondent reduced the hours of its employee, Mario Beltre, and on October 10, laid Beltre off without notifying the Union and without providing the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct in violation of Section 8(a)(1) and (5) of the Act.

Although the charges alleged that Respondent's conduct also violated Section 8(a)(3) of the Act and was motivated by employee support for the Union, the Complaint did not allege such a violation.

On January 21, 2011, Respondent, through its president, Jack Feld,[3] submitted a letter to the Region detailing Respondent's position. In this letter, Respondent essentially admitted that it did not bargain with the Union prior to the reduction in hours of Beltre in September, but asserts that it did bargain with the Union about the subject after the reduction. The letter further denies that Respondent laid off Beltre at any time.

---

[2] The unit consisted of all production, shipping, receiving and maintenance employees employed by Respondent at its Brooklyn facility.

[3] Respondent was not, and is not, represented by counsel in this proceeding.

According to the letter, Beltre was the least senior employee of Respondent, having been hired in June 2010. He had previously worked 40 hours a week, plus a few hours of overtime. However, Respondent, which is in the business of collecting old and unwanted bread from local bakers and processing it into bread crumbs, suffered a substantial reduction in its supply of bread from one of its main suppliers in mid-September. Feld was told, at that time, that the supplier, Anthony & Sons Bakery, had cut down dramatically in their waste since the price of flour had risen substantially and that they could no longer afford to throw away so much bread.

After a week of such reduction in supply, Feld, on September 21, told Beltre not to come in on Wednesday, September 22 because Respondent didn't have enough work for him because of the loss of bread. Feld asserts that he chose Beltre for the reduction in hours because Beltre was the least senior employee and because he did not speak any English and therefore could not perform certain jobs in the plant, which required communication with Feld or other English-speaking employees. On Wednesday, September 22, Feld called Beltre and informed him that there was no work for him on Thursday, September 23. Felt added that he would be out of the office on Thursday and Friday, September 23 and 24 because of the Jewish holidays, but that Beltre should call Warren Nurse, a supervisor, to see if there was work for him on Friday, September 24. Indeed, according to Feld, Beltre did indeed work on that Friday.

On Tuesday, September 28, Feld received a call from Cesar Alarcon, business agent for the Union. Alarcon asked Feld why he had reduced Beltre's hours. Feld explained that Respondent's bread supply had been substantially reduced and Respondent did not have enough work for Beltre. Alarcon asked what could be done to give Beltre more work. Feld informed Alarcon that he would be very busy because there were Jewish holidays again on Thursday and Friday of that week, but that when he returned from the holidays he (Feld) would look into it and see what he could do. Beltre worked only two days during the week ending October 1, 2010.

Beltre was called to work on Monday, October 4, although he normally did not work on Monday, but there was no work for him on Tuesday, October 5. Alarcon called Feld on October 5 and asked why he had not increased Beltre's hours. Feld responded that it appeared that the reduction in Respondent's supply was going to be permanent and there was no way he could put Beltre back to full-time as before. Feld added that he could only provide Beltre with one or two days a week of work until things changed. Alarcon again asked why Feld chose Beltre. Feld replied that Beltre did not speak English and there are some jobs that require fluency in English. Alarcon suggested that Feld asked other workers if they would be willing to give up a day so that Beltre could have more days. Feld replied that as he had explained before, Beltre could not perform some jobs because of his English, but that he would ask some employees, who Beltre could replace, if they would be willing to give up a day so that Beltre could have more hours. Fled asserts that he did ask some employees but nobody was willing, and they all said that they needed all their days.

On Friday, October 8, Feld contends that Alarcon called again and asked what can be done for Beltre. Beltre had been called into work for that day. Feld informed Alarcon that he had, as Alarcon had suggested, asked some employees about giving up days and that all of them had refused. Feld added that Respondent would only have one or two days a week of work for Beltre. Alarcon informed Feld that Beltre had told Alarcon that this was not enough work for him and he needed more hours. Feld replied that Beltre had also told Feld that he was not interested in such a small amount of work, but that he (Feld) had told Beltre that there wasn't anything that Feld could do. According to Feld, Alarcon asked if Beltre could file for unemployment insurance. Feld responded that Beltre should do so, adding "that is what it is for." Alarcon then allegedly responded that he would tell Beltre to file for unemployment insurance.

Feld unequivocally denied that he told Beltre on that day or on any other day that he was laid off.

On Wednesday, October 11, Feld received notice from unemployment insurance that Beltre had filed for unemployment insurance effective October 11. Feld states that he assumed from the above that Beltre was not interested in the one or two days a week of work that Respondent had available for him and had instead chosen to file for unemployment as Alarcon had suggested. Further, Beltre never returned to work after Friday, October 8. Feld also submitted also with his letter, a letter from Anthony & Sons, one of Respondent's suppliers, which confirmed that in September 2010, it had made production changes, which resulted in a reduction in the amount of truck loads that it had supplied to Respondent from six loads to three or four per week.

IV. The Hearing

At the hearing, as I indicated above, the Union requested withdrawal of the charges based on a non-Board settlement that had been negotiated by Alarcon and Feld, the terms of which were agreeable to Beltre.

The settlement provided that Respondent would pay Beltre $1500 in installments of $750 to be paid within a week of approval of the agreement and another $750 to be paid within the next week after approval. Beltre would waive his right to reinstatement.

Beltre testified that he agreed to the terms of the agreement and agreed to waive his right to reinstatement based on the payment to him of $1500 by Respondent as specified above.

General Counsel objected to the withdrawal and the settlement principally because it viewed the backpay inadequate and below the 80% figure that General Counsel believed to be appropriate. General Counsel stated that its calculations for Beltre came to $4114. General Counsel made the calculations based upon Beltre's pay in August and September before his hours were reduced. The gross figure was based on 40 hours, plus 4.5 hours of overtime.

Respondent vigorously contested the assumptions of General Counsel, contending that there was simply insufficient work for Beltre based upon the admitted loss of supply and there would not have been full weeks of work for Beltre, much less overtime for him had he continued to work for Respondent.

General Counsel conceded that its calculations are somewhat questionable, but still contends that the appropriate amounts should be based on Beltre's pre-reduction hours and earnings.

General Counsel also stated that it had cut off Beltre's backpay on December 10 since Beltre left the country on that date and did not return to the U.S. until late January 2011. General Counsel also agreed that since Respondent laid off two more employees in early January 2011 that Beltre would have been laid off at that point. Thus, General Counsel did not seek backpay after December 10.

General Counsel also conceded that if Feld's assertions made in its answer and repeated at the hearing are accurate that would be no violation as to the alleged layoff. However, General Counsel contends that Beltre was prepared to testify that contrary to Feld's

assertion, that Feld told Beltre not to come back to work and there was no more work for him. Further, Beltre would testify that he called the Union three days later and said that he had gotten laid off. Further, Alarcon would testify that is how he had learned about the layoff. General Counsel also stated that the Union and Respondent were engaged in collective bargaining negotiations during this period of time, including bargaining about layoffs and reduction of hours, and that there are differences in the recollections of Feld and Alarcon as to the nature and timing of their discussions. Finally, General Counsel also opposed the settlement since it did not provide for Beltre's reinstatement.

V. The Briefs

In its brief, General Counsel made some minor recalculations in the backpay due to Beltre. He used updated production and payroll records submitted by Respondent. The brief presented various alternative calculations based upon the positions taken at the hearing. As noted above, General Counsel based its calculations on Beltre's hours prior to the hours reduction and 4.5 hours of overtime. That calculation amounts to $374 per week. Based on this figure, full backpay according to General Counsel's revised figures is $3910, $2992 for the layoff (8 weeks at $374), plus $918 for the reduction of hours violation.

General Counsel also recognized that Feld asserted that Beltre would not have received any overtime, even if he had not been laid off, due to the reduction of work available. Therefore, General Counsel also calculated backpay without any overtime, which resulted in a figure of $3478 ($2560 x 8 weeks at $320, plus $918 for the reduction of hours liability).

General Counsel also recognized Respondent's argument that since production was declining, there was less work available for Beltre during the backpay period. Records submitted by Respondent and attached to General Counsel's brief corroborate a substantial decrease in production during the backpay period.

General Counsel, therefore, calculated backpay based on Feld's assertion that even absent the layoff, Beltre would have worked only two days a week. This calculation would reduce Respondent's liability to $2326 (22 hours a week at 11 hours a day; $126 per week for 8 weeks, yielding $1408) Adding $918 for the reduction in hours liability to $1408, results in the $2326 figure.

Thus, General Counsel states that the backpay of $1500 agreed to represents from 38% to 57% of total backpay depending on the calculations utilized.[4]

However, since any of these figures are below the 80% figure deemed essential by General Counsel and reinstatement was not offered, General Counsel maintained its opposition to my approving the withdrawal of the charges based on the agreement.

Respondent's brief maintained Feld's position as expressed in its answer and at the hearing that Respondent did not at any time inform Beltre that there was no more work for him, but only that Respondent did not have sufficient work to provide Beltre with the four days a week that Beltre had received prior to the reduction in his hours.

[4] However, General Counsel's calculations are not accurate. The $1500 settlement, assuming the $2326 figure to be correct, comes to 64% not $57%. Thus, the correct estimates of the settlement range from 38% to 64%, which averages out to 50.1%.

Feld further points out in his brief that he had been in constant discussions with Alarcon about Beltre's situation since the filing of the charge ad insists that in his conversation with Alarcon on October 8, Alarcon asked Feld if Beltre could file for unemployment insurance and Feld said, "Sure, that's what it is for." Apparently, Alarcon agreed that he had such a conversation with Feld, but believes that it occurred after Beltre informed him that Feld told Beltre that there was no work for him.

To support Feld's version of the events, he submitted a copy of a document entitled, "Gourmet Toast Contract Proposals and Language Changes to Make." This document appears to reflect agreements reached at a bargaining session on October 11 between Feld and Alarcon. The document indicates that the parties agreed on October 11 to the following language. "Seniority lay off. Delete last paragraph and change to 'Prior to commencing any general lay off or more than seven days, the Employer shall notify the Union.'"

Feld argues that this evidence supports his assertions as to the timing and substance of his conversation with Alarcon since if he had in fact told Beltre that there was no more work for him on October 8. "It is inconceivable that I would not have told Cesar about this at our negotiation meeting on Monday, October 11 when my obligations regarding this topic were being specifically discussed and negotiated, if I had not already notified him about this earlier."

VI. Analysis

The Board has long had a policy of encouraging the peaceful, nonlitigious resolution of disputes. The purpose of such attempted settlements has been to end labor disputes, and so far as possible to extinguish all the elements giving rise to them. *Independent Stave Co.*, 287 NLRB 740 (1987); *Wallace Corp.*, 323 U.S. 248, 253-254 (1944). The Board has reiterated its commitment to private negotiated settlement agreements and its policy of "encouraging parties to resolve disputes without resort to Board processes." *Combustion Engineering*, 272 NLRB 215 (1984); *Independent Stave*, supra.

However, the Board is not required to give effect to all settlements reached by the parties with or without General Counsel's approval. It is clear that the Board's power to prevent unfair labor practices is exclusive, and that its function is to be performed in the public interest and not in vindication of private rights and the Board alone is vested with lawful discretion to determine whether a proceeding, when once instituted, may be abandoned, *Independent Stave*, supra, 287 NLRB 740, 741 (1987). The test enunciated by *Independent Stave* considers these factors:

> [I]n order to assess whether the purposes and policies underlying the Act would be effectuated by our approving the agreement, the Board will examine all the surrounding circumstances including, but not limited to, (1) whether the charging party(ies), the respondent(s), and any of the individual discriminatee(s) have agreed to be bound, and the position taken by the General Counsel regarding the settlement; (2) whether the settlement is reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of the litigation; (3) whether there has been any fraud, coercion, or duress by any of the parties in reaching the settlement; and (4) whether the respondent had engaged in a history of violations of the Act or has breached previous settlement agreements resolving unfair labor practice disputes. Id at 743.

In assessing the non-Board settlement agreed upon by Charging Party, Respondent and Beltre, it is necessary to consider the *Independent Stave* criteria. In that regard, General Counsel concedes, as it must, that factors one, two and four favor approving the settlement reached. Thus, Charging Party, Respondent and the alleged discriminatee,[5] Beltre, have all agreed to the terms of the settlement. There is no allegation that there has been any fraud or coercion in reaching the settlement, and Respondent does not have a history of violations of the Act or breaching previous agreements.

That leaves factor 2, which considers whether the settlement is reasonable in light of the violations alleged, the risks inherent in litigation and the stage of litigation. General Counsel also concedes, and I agree, that since the settlement was offered prior to the commencement of litigation, it also weighs in favor of approval.

However, General Counsel argues that the settlement should not be approved because the backpay offered does not amount to 80% of estimated liability and that the agreement did not include reinstatement of Beltre. *Frontier Foundries*, 312 NLRB 73, 74 (1993) (Board declines to approve non-Board settlement providing for 6% of full backpay, concluding that this amount is "so clearly unreasonable," particularly since it involved "the serious nature of an 8(a)(3) violation").

General Counsel also contends that the risk inherent in this litigation is low since Respondent admitted its lack of notice to the Union on the reduction of Beltre's hours, and General Counsel had multiple witnesses, who would testify that Beltre had been laid off, contrary to Respondent's position.

I disagree with General Counsel's arguments in both respects. There is always a risk in litigation, particularly where as here, there are significant credibility resolutions to be made. *Independent Stave*, supra at 742. Indeed, although General Counsel is correct that Respondent conceded that it did not notify the Union prior to initially reducing Beltre's hours, it vigorously denies that it laid off Beltre. Notably, the bulk of the backpay allegedly due to Beltre is based on the allegation that Respondent failed to notify the Union before laying off Beltre. Since Respondent denies that it laid off Beltre, but merely maintained its position that there was insufficient work for Respondent to provide him with a full week of work, it is clear that there is a significant credibility resolution to be made in order to resolve that issue. Indeed, General Counsel conceded that if Feld's version of the facts is credited, there is no violation as to the alleged layoff.

While General Counsel asserts that it has "multiple witnesses" to establish that Beltre was told that he was laid off, it is not clear who these witnesses are or that they will be credited. While General Counsel argues that it makes little sense that Beltre, as claimed by Feld, would of his own accord decide to apply for unemployment if Respondent had not indicated that there was no more work for him, I do not necessary concur. It is conceivable that, as Feld asserts, he told the Union and Beltre that Respondent could not promise Beltre a full week's work and that Beltre may have preferred to file for unemployment insurance rather than accept one or two days a week of work. Furthermore, I find some plausibility to Feld's position, since he was

[5] Technically, Beltre probably should not be characterized as a discriminatee since there is no allegation of a discriminatory discharge or layoff. However, since Beltre's employment status was adversely affected by the alleged refusal to notify the Union in violation of Section 8(a)(5) of the Act, Beltre should be treated as a discriminatee for purposes of this discussion.

engaged in bargaining with the Union over the continued reduction of Beltre's hours as well as the terms of a contract, including agreeing to a clause with regard to notifying the Union of layoffs over seven days. In such circumstances, particularly where Feld was on notice by virtue of the original charge that Respondent was obligated to bargain with the Union before reducing the hours of Beltre, it is not likely that he would lay off Beltre without notifying the Union about such an action.

Moreover, to the extent that General Counsel's witnesses would testify otherwise, I note that Beltre, who would obviously be the primary witness, does not speak English. Since the record does not establish whether the alleged conversation between Beltre and Feld, wherein Feld allegedly told him that he was laid off or there was no work for him, took place with the aid of an interpreter, it is possible that Beltre may have misinterpreted Feld's statements to him about the availability of work. Feld may have told Beltre that there was no work for him on his next scheduled day rather than, as Beltre asserts, that there would be no more work for him at all.

I, of course, do not and cannot make any credibility resolutions on these issues without the witnesses' testimony and cross-examination. I make the above observations to conclude that, contrary to General Counsel's contentions, there is a significant credibility resolution to be made, so I cannot and do not conclude that the "risk inherent in this litigation was low."

As to General Counsel's contentions that the settlement should not be approved because the backpay offered does not equal 80% of backpay due and reinstatement was not offered to Beltre, I, once again, do not agree.

While the General Counsel may have its own internal guidelines that prohibit the acceptance of settlements below 80% of backpay due, these guidelines are not binding on the Board. In fact, the Board and/or judges have frequently approved settlements, which did not meet the 80% figure.[6] Indeed, in *Independent Stave*, itself, the Board approved a settlement, which included backpay of only 10% of the amount due, although the agreement did include reinstatement for three discriminatees. See also *American Pacific Concrete Pipe Co.*, 290 NLRB 623, 623-624 (1988) (in a backpay hearing, where unlike the instant case, liability had already been determined, Board approves settlement over the objection of General Counsel of backpay of slightly under 50%; payment of $20,000, where the backpay specification claimed that discriminatee was owed $41,610); *Service Merchandise Co.*, 299 NLRB 1132, 1134 (1990) (one of the discriminatees waived reinstatement and accepted 50% of backpay); *Combustion Engineering*, supra, 272 NLRB at 217 (Board approves settlement agreement reached between union and employer settling grievances, which encompassed complaint violations, providing for no backpay but with reinstatement); *Central Cartage Co.*, 206 NLRB 337, 337-338 (1973) (Board approves settlement negotiated between the union and employer, which provided for no backpay for alleged discriminatee and included agreement as to what work alleged discriminatee would perform); *Roselle Shoe Corp.*, 135 NLRB 472, 475-478 (1962) (Board approves settlement over objection of charging party, where backpay agreed upon was $12,000 for each discriminatee although if charging party's computation is accepted there would be $80,000 due for each discriminatee);[7] *Insulation Sales Inc.*, 1998 WL 1985159 (NLRB Division

[6] Indeed, as detailed below, in some cases, settlements were approved without any backpay being paid to the alleged discriminatees.

[7] While *Roselle Shoe*, supra, *Central Cartage*, supra and *Combustion Engineering*, supra were all pre-*Independent Stave*, all three cases were cited favorably in *Independent Stave*'s analysis.

of Judges 1998) (judge approved settlement between employer and charging party/discriminatee, providing for backpay of approximately one-third of what would have be due and waiver of reinstatement; General Counsel, although objecting to approval of withdrawal request, did not appeal judge's decision); *Ribbon Sumyoo Corp.*, 1992 WL 1465636 (NLRB Division of Judges 1992) (judge approves non-Board settlement providing for approximately 45% of backpay, plus waiver of reinstatement, over objection of General Counsel; again, no appeal filed by General Counsel to judge's approval of agreement and granting motion to withdraw charges).[8]

Based upon the above cited precedent alone, I reject General Counsel's objections to the settlement and would grant the Union's motion to withdraw the charges. However, here, there are other facts present, which reinforce my decision that approving the withdrawal effectuates the purposes of the Act.

First, the non-Board settlement was negotiated on behalf of Beltre by Alarcon, the Union business agent. Further, the Union has recently been certified and the parties are in the process of engaging in collective bargaining for a first contract, and the record reveals that some progress has been made in this regard. Although these is no collective bargaining agreement in existence between the parties and no formal grievance procedure, in fact, Feld had been bargaining with the Union concerning Beltre's hours and status, so the bargaining over the terms of the settlement can be construed as akin to a grievance resolution. The Board seems to be more prone to approve settlements reached in such contexts, even where General Counsel objects. *Combustion Engineering*, supra, 272 NLRB at 217; *Central Cartage Co.*, supra, 206 NLRB at 338. In both of these cases, as noted above, settlements were approved with no backpay for the alleged discriminatees. I find here that the parties' agreement to settle the issue of Beltre's alleged layoff "may be viewed as an ameliorative step in the parties' relationship and in their bargaining for a new contract." *Hospital Perea*, 356 NLRB #150 slip op at 1-2 (April 29, 2011). I also conclude that approval of the agreement "fosters rather than undercuts the Act's key goal of encouraging parties to resolve labor disputes by reaching collective bargaining agreements rather than resorting to the Board's process." Id at p.2.

Further, General Counsel's reliance on the failure of Respondent to reinstate Beltre is misplaced. Here, General Counsel has conceded that Beltre's backpay would have been cut off on December 10 since he left the country at that time and by the time he returned to the United States in January 2011, there had been a layoff of two employees of Respondent. General Counsel agrees that Beltre, even if he had not been laid off in October 2010, would have been part of the January 2011 layoff, particularly since he was the least senior employee of Respondent. Therefore, it is unlikely that reinstatement would have been an appropriate remedy for Beltre, even if General Counsel was successful in establishing that Beltre had been laid off in violation of the Act in October 2010.

Additionally, it is also significant that Respondent had been experiencing financial difficulties, including a substantial loss of business, which resulted in the layoff of two more employees in addition to the alleged layoff of Beltre. Thus, Respondent's financial condition could make a future award problematic. *American Pacific Pipe*, supra, 290 NLRB at 624 (Board

[8] Also notable is *BP Amoco Chemical*, 351 NLRB 614, 615-616 (2007) (majority of Board applied *Independent Stave* standards to termination agreements signed by 37 alleged discriminatees, providing for enhanced severance benefits but no backpay and dismissed complaint allegations concerning these discriminatees, even over the objection of both General Counsel and charging party; Member Liebman dissented).

relies on financial condition of employer in deciding to accept less than 50% of backpay alleged in compliance specification; Board states that discriminatee in accepting lower amount "knew of the potential risks posed by the respondent to actually obtaining a full backpay award").

Finally, I also have considered as *Independent Stave* requires, the "nature of the violations alleged." Here, there is no 8(a)(3) violation alleged or any violation the Respondent intentionally discriminated against employees based on protected conduct. Cf. *Frontier Foundries*, supra, 312 NLRB at 74, where the Board in rejecting the settlement for 6% of the backpay also noted the "serious nature of an 8(a)(3) violation."

Here, Respondent, who was not represented by counsel, did not intentionally violate the Act, but was clearly unaware that it was obligated to notify and bargain with the Union before reducing employees' hours. Immediately upon receipt of the charge, Respondent commenced bargaining with the Union over the continued reduction of Beltre's hours as well as the terms of a contract. In such circumstances, I find that this evidence further supports approving the approval of the settlement.

Accordingly, based on the foregoing analysis and authorities, I conclude that honoring the agreement reached here by Respondent, the Union and Beltre "advances the Act's purpose of encouraging voluntary dispute resolution, promoting industrial peace, conserving the resources of the Board and serving the public interest." *Independent Stave*, supra, 287 NLRB at 743.

I shall therefore conditionally grant the Union's request to withdraw the charges and to dismiss the complaint. My approval is conditioned upon Respondent making the payments agreed upon by the parties within seven days from the date that Respondent is notified that General Counsel does not intend to appeal this decision or the Board's approval of this decision, whichever occurs first.

Based upon the foregoing findings of fact and conclusions and the entire record, I hereby issue the following recommend:[9]

ORDER

The Union's request to withdraw the charges is granted and the Complaint is dismissed conditioned on Respondent's compliance with the terms of the agreement reached by the parties.

Dated, Washington, D.C., June 16, 2011

_____
Steven Fish
Administrative Law Judge

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order 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.