

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

**ENCLOSURE SUPPLIERS, LLC**

**and**

**Case 9-CA-46169**

**IRON WORKERS SHOPMEN'S LOCAL  
UNION NO. 468 OF THE INTERNATIONAL  
ASSOCIATION OF BRIDGE, STRUCTURAL,  
ORNAMENTAL AND REINFORCEMENT  
IRON WORKERS**

**ORDER**

On January 26, 2011, the Regional Director for Region 9 issued a complaint alleging, among other things, that on various dates the Respondent coercively interrogated its employees about their union sympathies in violation of Section 8(a)(1) of the Act. On February 28, 2011, before the opening of the hearing, the Respondent proposed an informal Board settlement. On March 16, 2011, Administrative Law Judge Ira Sandron opened the hearing and issued an oral ruling approving the proposed informal settlement agreement/consent order (consent order or agreement)<sup>1</sup> over the objections of the Acting General Counsel and the Charging Party. The consent order

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<sup>1</sup> The Board has found that the resolution of an unfair labor practice by a unilateral agreement proffered by a respondent and approved by a judge is in the nature of a consent order, and is not a true "settlement" between parties to the dispute. See *Electrical Workers IUE Local 201 (General Electric Co.)*, 188 NLRB 855, 857 (1971). When evaluating proposed consent orders, the Board has applied the factors set forth in *Independent Stave Co.*, 287 NLRB 740 (1987). See, e.g., *Food Lion, Inc.*, 304 NLRB 602, 602 fn. 4 (1991); *Copper State Rubber*, 301 NLRB 138, 138 (1991).

Chairman Liebman would not apply the *Independent Stave* factors in evaluating consent orders, as in her view, those factors were devised to evaluate true settlements that have been agreed to by at least two parties to the dispute. Instead, the Chairman would assess whether the proposed consent order fully remedies the allegations of the complaint. She, nonetheless, joins her colleagues in granting the special appeal for the reasons stated below.

approved by the judge provides in relevant part that "[t]he Charged Party will comply with all the terms and provisions of said Notice *during the posting period.*" (Emphasis added). In contrast, the Board's standard informal settlement agreement provides that "the Charged Party will comply with all the terms and provisions of said Notice."

On March 22, 2011, the Acting General Counsel filed a Request for Special Permission to Appeal Ruling of Administrative Law Judge and Appeal. On March 28, 2011, the Respondent filed a statement in opposition to the Acting General Counsel's appeal.

In his appeal, the Acting General Counsel argues that the consent order as approved by the judge does not satisfy the test of *Independent Stave Co.*, 287 NLRB 740 (1987). In *Independent Stave*, the Board held that in evaluating proposed settlement agreements to determine whether the purposes and policies underlying the Act would be effectuated by approval,

the Board will examine all the surrounding circumstances including, but not limited to, (1) whether the charging party(ies), [and] the respondent(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 . . . in reaching the settlement; and (4) whether the respondent has engaged in a history of violations of the Act or has breached previous settlement agreements resolving unfair labor practice disputes.

Id. at 743.

The Acting General Counsel maintains that the first two *Independent Stave* factors weigh conclusively against approval of the consent order here. As to the first factor, the Charging Party has not agreed to be bound by the agreement and the Acting General Counsel objects to it. As to the second factor, the Acting General Counsel

contends that the agreement as worded is unreasonable and does not provide an adequate remedy for the violation alleged. Specifically, the Acting General Counsel argues that an agreement such as the one at issue here that expressly or impliedly provides that the respondent is required to refrain from unlawful activity only during the notice-posting period is unreasonable, as it contradicts the provision of the Notice requiring that the Respondent refrain from interfering with, restraining or coercing its employees' exercise of their Section 7 rights. The Acting General Counsel additionally maintains that by limiting the Respondent's compliance obligation to the 60-day notice posting period, the agreement implies that the Respondent is free to engage in further violations of the Act after the 60-day period expires without fear of violating the consent order. Further, the Acting General Counsel contends that the temporal limitation in the agreement appears to limit the Acting General Counsel's ability to obtain summary judgment on the allegations in the instant complaint if the Respondent further violates the Act after the 60-day posting period.

In its opposition, the Respondent argues, among other things, that Judge Sandron properly exercised his discretion in approving the proposed agreement; that the agreement meets the requirements of *Independent Stave*, supra; that the agreement does not convey that the Respondent need only comply with the provisions of the Act during the posting period; and that, if further violations occur during the posting period, the Acting General Counsel can seek summary judgment on the allegations in the complaint.

Having duly considered the matter, we grant the request for special permission to appeal the administrative law judge's ruling and revoke his approval of the consent

order. We find that the consent order does not satisfy the requirements of *Independent Stave*<sup>2</sup> and that the judge abused his discretion in approving it over the objections of the Acting General Counsel and the Charging Party because the language of the agreement/consent order limits the period of compliance to the notice-posting period.

Accordingly,

IT IS ORDERED that the appeal is granted, that the agreement/consent order is set aside, and that this matter is remanded to the judge for further action consistent with this Order.

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

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

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<sup>2</sup> See, generally *Flint Iceland Arenas*, 325 NLRB 318 (1998).