

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

**SEAPORT PRINTING & AD SPECIALTIES, INC.,
d/b/a PORT PRINTING AD AND SPECIALTIES**

and

Case 15-CA-17976

**LAKE CHARLES PRINTING AND GRAPHICS UNION,
LOCAL 260 affiliated with GRAPHIC COMMUNICATIONS
INTERNATIONAL UNION, AFL-CIO**

ORDER¹

Employee Vince Mott's Request for Review of the Acting General Counsel's decision sustaining the Regional Director's compliance determination is granted and the case is remanded to the Regional Director for appropriate action, as described.

On December 28, 2007, the Board issued a decision in this case finding that the Respondent violated Section 8(a)(5) and (1) by refusing to engage in effects bargaining with the Union over the decision to lay off employees and by using nonunit employees and supervisors to perform bargaining unit work without affording the Union an opportunity to bargain with respect to this conduct and its effects. 351 NLRB 1269, 1270. The Board ordered the Respondent, among other things, to make unit employees whole for the loss of earnings and other benefits attributable to its failure to bargain. 351 NLRB at 1271, 1272. The Fifth

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Circuit enforced the Board's Order on December 9, 2009.²

On April 29, 2011, the Regional Director issued a compliance determination letter to discriminatee Vince Mott, setting forth the basis of her findings regarding the appropriate reimbursement Mott is owed for medical expenses. The Regional Director found, among other things, that in January 2006 Mott was added to his wife's medical insurance coverage at a different employer. Prior to adding Mott to her policy, Mott's wife's coverage, for herself and children, cost \$602.28. The additional cost of adding Mott was \$325.53 per month, for a total family coverage monthly amount of \$927.81. The Regional Director found that the addition of Mott to the policy increased the cost by 35%. Mrs. Mott's employer contributed \$200 a month, reducing the family's out of pocket expense to \$727.81. The Regional Director then calculated the reimbursement amount owed Mott by multiplying the percent increase in the premium to add Mott to the policy, i.e., 35%, times \$727.81 (the amount of the premium withheld from Mrs. Mott's paycheck), which amounted to \$254.73 per month. The Regional Director concluded that \$254.73 was the monthly amount owed Mott for insurance premiums in 2006, less a \$500 annual deduction.

For 2007 and 2008 the Regional Director used the same formula as 2006: she determined that adding Mott to the policy increased the family premium by 35%. She then deducted from the total premium the employer's \$200 contribution (Mrs. Mott's employer raised this to \$250 in 2008) to determine the

² 589 F.3d 812.

actual amount the Motts paid for insurance. She then calculated 35% of that amount to arrive at the monthly amount owed Mott pursuant to the Board's make whole Order. Taking into account the total amount Mott paid in insurance deductibles in 2006, 2007 and 2008 (\$1,867.71), and subtracting the amount deductible under the Respondent's plan (\$208.33), the Regional Director concluded that the total amount owed Mott is \$7,342.70.

By letter dated May 5, 2011, Mott appealed the Regional Director's findings to the Office of Appeals. Mott's appeal letter states, in part: "The part of the calculation that I disagree with is that she is reducing my actual increase in premiums by 35% due to my wife's employer paying a portion of her premiums. As you can see from documents provided my wife was receiving this benefit prior to me becoming insured on her insurance and did not affect the increase in monthly premium paid by my wife. Therefore the additional amount paid on my behalf is the difference between the premium for Employee and Family coverage and the premium for Employee and Children coverage." Thus, Mott argued that the correct amount owed him in 2006 was \$325.53 per month, not \$254.73 as the Regional Director calculated. Mott argued that the Regional Director incorrectly reduced the amount of his premium cost by calculating the amount owed based on a percentage, i.e., 35% of total amount withheld from Mrs. Mott's paycheck, rather than the amount Mott actually paid to be added to his wife's insurance policy. Mott made similar arguments regarding the Regional Director's calculations for 2007 and 2008. Mott also requested that he be reimbursed \$1,659.38 "in additional deductibles paid by me."

By letter dated June 10, 2011, the Office of Appeals denied Mott's appeal "substantially for the reasons set forth in the Regional Director's letter of April 29, 2011." The Office of Appeals added that "[w]hile you contend that the Employer's share of your wife's policy was the same prior to your addition in 2006, you failed to submit evidence to support your contention." The Office of Appeals further stated that Mott failed to provide any basis for his request for the additional amount of \$1,659.38.

On June 19, 2011 Mott, acting pro se, filed the instant request for review. Mott maintains that the Regional Director's calculation was incorrect because the amount paid by his wife's employer remained \$200 and did not change when he was added to her policy. Therefore, Mott contends, the additional amount paid monthly on his behalf in 2006 is \$325.54, the difference between the premium for Employee and Family coverage (\$927.81) and the premium for Employee and Children coverage (\$602.28). Mott makes the same arguments regarding the Regional Director's calculations for 2007 and 2008. In support of this contention Mott provided a letter from his wife's employer stating that the firm policy regarding insurance benefits for 2006 was that the employer would pay \$200 a month regardless of coverage selected, for example, Employees Only, Employee with Children or Employee and Family. Mott requests that he be awarded "the full amount of my insurance premiums" as well as "the additional previously agreed upon medical expenses of \$1,659.38."³

³ Although the Office of Appeals concluded that Mott failed to provide any basis for requesting \$1,659.38, this amount is the sum of the insurance deductibles the Regional Director calculated that Mott paid in 2006 (\$500), 2007(\$1,262.50) and

Having duly considered the matter, we grant Mott's Request for Review. We find that the Regional Director's formula applied to Mott does not accurately compensate him for the medical costs he incurred due to his unlawful layoff. In this regard, the Board "customarily includes reimbursement of substitute health insurance premium...in make-whole remedies for fringe benefits lost," and where discriminatees elect to maintain insurance coverage during the backpay period at their own cost, premiums for such replacement health insurance "would be fully recoverable." *Cliffstar Transp. Co.*, 311 NLRB 152, 166-167 (1993), citing , *Roman Iron Works*, 292 NLRB 1292, 1293-1294 (1989) and *Painters Local 277 (Polis Wallcovering)*, 282 NLRB 402, 403 fn. 10, 407 (1986). Here, Mott has provided documentation from his wife's employer that the employer's portion of the insurance premiums was constant regardless of whether Mott was added to the policy. Prior to Mott's addition in 2006, Mrs. Mott paid \$402.28 per month. After his addition, she paid \$727.81, an increase of \$325.53. The employer's contribution was \$200 both before and after Mott's addition. We therefore find that the Regional Director's conclusion that Mott was owed only 35% of the final family cost, or \$254.73 per month, is incorrect. The same holds true with respect to the 2007 and 2008 calculations.

Accordingly, we remand this case to the Regional Director for Region 15 for further action consistent with this decision. On remand, the Regional Director

2008 (\$105.21), minus \$208.33 that the Regional Director calculated as the amount that would have been the Respondent's deductible for January 2006-January 2008. The Regional Director's compliance determination letter confirms that Mott is owed this amount for deductibles he paid. Therefore there appears to be no disagreement between Mott and the Regional Director in this regard.

shall issue an amended compliance determination containing a revised calculation of the medical expenses owed to Mott.

Dated, Washington, D.C., August 18, 2011

WILMA B. LIEBMAN, CHAIRMAN

MARK GASTON PEARCE, MEMBER

BRIAN E. HAYES, MEMBER