

NOT INCLUDED IN
BOUND VOLUMES

PBH
Washington, IA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

WHITESELL CORPORATION

and

Cases 18-CA-18540
18-CA-18965
18-CA-19008

GLASS, MOLDERS, POTTERY, PLASTICS
AND ALLIED WORKERS INTERNATIONAL
UNION LOCAL 359

ORDER GRANTING MOTION FOR RECONSIDERATION

On September 30, 2011, the National Labor Relations Board issued a Decision and Order in this proceeding¹ finding that the Respondent committed numerous violations of Section 8(a)(5) and (1) of the Act. Specifically, the Board found that, between April 2007 and April 2009, the Respondent engaged repeatedly in bad-faith bargaining tactics that were designed to frustrate bargaining and negate the possibility of reaching an agreement. As part of its remedy, the Board ordered that its notice to employees be read aloud to the Respondent's employees by Chief Operations Officer Robert Wiese or Director of Human Resources John Tate, or by a Board agent in Wiese or Tate's presence. The Board held that such a remedy was warranted by "the serious,

¹ 357 NLRB No. 97.

persistent, and widespread nature of the Respondent's unfair labor practices, especially in view of the Respondent's repetition of the same type of misconduct previously found unlawful."²

On October 26, 2011, the Respondent filed a Motion for Reconsideration requesting that the Board delete the notice-reading remedy from its Order. In its motion, the Respondent asserts that the parties recently reached a collective-bargaining agreement, which was ratified unanimously by its employees. Given this development, it contends that the basis for the notice-reading remedy no longer exists, and that a reading now would be detrimental to the parties' relationship and their administration of the new agreement. The Respondent also asserts that it has already read a broader order to its employees pursuant to the U.S. District Court's 10(j) injunction against the Respondent. In addition, the Respondent notes that the General Counsel did not request a notice-reading remedy and that the Board imposed it sua sponte.

By letter dated November 15, 2011, the Acting General Counsel states that, although the Board's notice-reading remedy was warranted by the Respondent's misconduct, he does not oppose the Respondent's motion to delete it. The Acting General Counsel does not dispute the facts set forth by the Respondent,

² Id. slip op. at 6.

namely that the parties recently reached a collective-bargaining agreement and that the Respondent has already read aloud the court's order.³

For the reasons stated in our previous decision, we adhere to our finding that the notice-reading remedy was justified by the Respondent's extensive record of unlawful conduct.⁴

Nonetheless, in light of the specific and undisputed facts set forth by the parties and the Acting General Counsel's lack of opposition, we shall grant the Respondent's motion and delete the notice-reading provision from our Order.

Accordingly, the Board having duly considered the matter, IT IS ORDERED that the Respondent's motion is granted, as described above, and that paragraph 2(k) be deleted from the Board's Order reported in 357 NLRB No. 97.

Dated, Washington, D.C., November 29, 2011.

Mark Gaston Pearce, Chairman

³ The Charging Party did not file a response to the Respondent's motion.

⁴ To the extent the Respondent suggests that the Board acted improperly by imposing the notice-reading remedy *sua sponte*, we adhere to the view that remedial matters are traditionally within the Board's province and may be addressed by the Board even in the absence of exceptions. E.g., *Schnadig Corp.*, 265 NLRB 147 (1982).

Member Hayes adheres to his dissenting view in the Board's earlier decision, wherein he disagreed with his colleagues' decision, *sua sponte*, to require the Respondent to read aloud the Board's notice.

Craig Becker, Member

Brian E. Hayes, Member