

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 11

GREDE II, LLC

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER,  
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL  
AND SERVICE WORKERS INTERNATIONAL  
UNION, AFL-CIO, CLC

Cases 11-CA-22980  
11-CA-22984  
11-CA-22997  
11-CA-66972

GREDE II, LLC

Employer

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER,  
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL  
AND SERVICE WORKERS INTERNATIONAL  
UNION, AFL-CIO, CLC

Case 11-RC-6748

Petitioner

**GREDE II LLC'S RESPONSE IN OPPOSITION TO SPECIAL APPEAL OF COUNSEL  
FOR ACTING GENERAL COUNSEL**

## **INTRODUCTION**

On October 7, 2011, respondent Grede II, LLC terminated the employment of Stacy Ewing after a supervisor and a manufacturing superintendent observed him sleeping on the job. As Ewing slept, Grede's operations ground to a halt. The downtime on October 7 originated within Ewing's area of responsibility. In all, Grede lost three hours of production that day.

Counsel for Acting General Counsel argues that Ewing's termination, occurring more than eight months after the February 2, 2011 election at issue in this case, was somehow in response to his alleged Union-related activities, none of which are known to Grede. Counsel for Acting General Counsel argues further that the Ewing charge should be consolidated with the election-related allegations, even though the hearing on the election-related allegations is closed. As explained below, there is no compelling reason to upset the informed ruling of Judge Carson. The special appeal should be denied.

## **BACKGROUND**

The Union filed the original charge in this case on February 9, 2011, one week after the February 2, 2011 election at Respondent's Biscoe, North Carolina facility. Following numerous amended charges and an extended investigation, on October 31, 2011, Acting Regional Director issued an Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing. The consolidated complaint sought a *Gissel* bargaining order and set a hearing for January 9, 2012.

On December 22, 2011, Acting Regional Director filed a petition for injunctive relief in the United States District Court for the Middle District of North Carolina. Among other things, the petition sought a *Gissel* bargaining order. After considering briefs and oral argument by the parties, the district court denied the petition for injunctive relief in its entirety.

On January 13, 2012, Acting Regional Director issued a Second Order Consolidating Cases, Amended Consolidated Complaint, and Notice of Hearing. The amended consolidated complaint added additional allegations and set a hearing date for January 29, 2012.

The parties recently participated in a hearing from January 29, 2012 to February 10, 2012 before Administrative Law Judge George Carson II. After presenting its case in chief, Counsel for Acting General Counsel moved to amend the amended consolidated complaint to consolidate the Ewing charge. Judge Carson denied the motion before Grede could respond in writing.

In denying the motion to consolidate the Ewing charge, Judge Carson explained that, the Acting Regional Director and Counsel for Acting General Counsel have sought injunctive relief in this case and continue to seek a *Gissel* bargaining order. Accordingly, Judge Carson held that this case should be resolved expeditiously and further delay is not warranted. In further support of his ruling, Judge Carson expressed concern that this case must not be amended and expanded indefinitely, and a discharge occurring more than eight months after the election does not warrant further delay. Finally, Judge Carson observed that allowing the Ewing amendment would likely invite additional amendments as the Union continues to scrutinize Grede's post-election decisions.

Counsel for Acting General Counsel responded to Judge Carson's ruling through lengthy oral argument. Judge Carson considered Counsel for Acting General Counsel's arguments, but ultimately stood by his ruling. A few days later, Counsel for Acting General Counsel moved for reconsideration, and Judge Carson denied the motion. This special appeal followed.

## **DISCUSSION**

In its special appeal, Counsel for Acting General Counsel argues that Judge Carson's decision should be overturned for three reasons: (1) the Ewing charge should be consolidated to

preserve judicial economy and to avoid unnecessary costs and delay; (2) the Ewing charge is relevant to a potential *Gissel* remedy; and (3) the Ewing charge deserves a timely and fair adjudication. Counsel for Acting General Counsel made the same arguments before Judge Carson, and he considered them on the record<sup>1</sup>. Counsel for Acting General Counsel's special appeal presents no grounds for disturbing Judge Carson's ruling.

**I. Consolidating the Ewing Charge will not Preserve Judicial Economy or Avoid Unnecessary Costs and Delay.**

First, consolidating the Ewing charge will not preserve judicial economy or avoid unnecessary costs and delay. On February 10, 2012, Judge Carson closed the hearing pending resolution of the special appeal. Even if the Ewing charge is consolidated, it will require a separate hearing beginning on February 27, 2012. Any savings in costs and judicial resources will be minimal. Furthermore, the efficient resolution of the election-related claims remains paramount. Grede seeks prompt resolution of the February 2, 2011 election. The time necessary to resolve the Ewing charge in a separate proceeding does not justify weeks of additional delay in resolving the election.

**II. Counsel for Acting General has had Ample Opportunity to Present Evidence in Support of a Bargaining Order.**

Second, Judge Carson's ruling should not be overturned merely because Counsel for Acting General Counsel believes that the Ewing charge, if proven, might provide additional support for a *Gissel* bargaining order. Acting Regional Director sought a bargaining order in the original consolidated complaint without consideration of the Ewing charge. Acting Regional Director then sought a broad-reaching injunction under Section 10(j) of the Act without the Ewing charge. The amended consolidated complaint already contains more than 30 separate

---

<sup>1</sup> Unfortunately, a transcript of the hearing is not yet available.

allegations against Grede. Counsel for Acting General Counsel has had the opportunity to present evidence on all of those allegations. If the evidence presented in support of those 30 allegations does not support a *Gissel* bargaining order, then further amendment will not do so.

### **III. The Ewing Charge will Receive Timely and Fair Adjudication Absent Consolidation.**

Finally, although Grede does not object to a timely adjudication of the Ewing claim, consolidation is not necessary. Grede participated fully in the investigation of the Ewing charge even as Counsel for Acting General Counsel conducted its investigation on an expedited basis. Nevertheless, it was not until the hearing before Judge Carson had already begun that Acting Regional Director decided to issue a complaint regarding the Ewing charge. Any delay up until that point rests with the Acting Regional Director.

Grede welcomes a prompt hearing regarding the Ewing claim. Instead of appealing Judge Carson's denial of the motion to amend, Counsel for General Counsel should issue the complaint and the parties can move forward with the scheduling of that hearing.

### **CONCLUSION**

Counsel for Acting General Counsel concludes its special appeal by arguing that "to remove the [Ewing claim] from the rest of Respondent's conduct would create an artificial separation where none, in fact, exists . . ." The opposite is true. Counsel for Acting General Counsel's thirteenth-hour attempt to reopen the hearing before Judge Carson will create an artificial consolidation that serves only to delay resolution of an election. Grede will participate in a prompt hearing on the Ewing charge even if it is not consolidated.

Judge Carson made an informed decision based on a superior understanding of the facts and procedural history in this case. His decision should not be disturbed.

BODMAN PLC

By: /s/ John C. Cashen  
John C. Cashen (P31603)  
Jonathan A. Young (P73049)  
201 West Big Beaver, Suite 500  
Troy, Michigan 48084  
(248) 743-6000  
Attorneys for Grede II, LLC

Dated: February 13, 2012

## **CERTIFICATE OF SERVICE**

John C. Cashen certifies that the foregoing Response in Opposition to Special Appeal of Counsel for Acting General Counsel was efiled with the National Labor Relations Board Office of Executive Secretary and was served on the National Labor Relations Board, Acting General Counsel, care of Shannon R. Meares, to Shannon.meares@nlrb.gov by email and upon Brad Manzolillo, Esq., Counsel for the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC, Five Gateway Center, Room 913, Pittsburgh, PA 15222, email: bmanzolillo@usw.org on February 13, 2012.

/s/ John C. Cashen  
John C. Cashen

February 13, 2012