

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

**RESPONSE TO RESPONDENT'S OPPOSITION TO THE SPECIAL APPEAL
OF COUNSEL FOR ACTING GENERAL COUNSEL**

Comes now Counsel for Acting General Counsel, pursuant to Section 102.26 of the Board's Rules and Regulations, and files this Response to Respondent's Opposition to the Special Appeal of Counsel for Acting General Counsel (herein Respondent's Opposition). As set forth more fully below, Counsel for Acting General Counsel asserts that Respondent's Opposition is both procedurally and substantively deficient. More specifically, Respondent's Opposition is procedurally deficient because Respondent

failed to serve the Administrative Law Judge. Respondent's Opposition is substantively deficient because it improperly: (1) cites the rationale given by Judge Carson, on the record, for denying the motion to consolidate cases and amend complaint; (2) states that the District Court denied the petition for injunctive relief "in its entirety," when in fact the District Court denied the petition, without prejudice, asserting the need for an evidentiary hearing or, in the alternative, submission of the record evidence from the underlying administrative hearing; and (3) asserts that a February 27, 2012, hearing will cause further delay and is uneconomical.

A. Respondent's Opposition is Procedurally Deficient

Section 102.26 of the Board's Rules and Regulations provides that a party filing an opposition to a request for permission to special appeal and the special appeal must file its appeal promptly, in writing, and shall serve the other parties and the administrative law judge. A close review of the certificate of service attached to Respondent's Opposition demonstrates that it failed to properly serve Judge Carson. Counsel for Acting General Counsel, therefore, asserts that Respondent's Opposition be stricken based on its failure to comply with the procedural mandates of Section 102.26.

B. Respondent's Opposition is Substantively Deficient

Respondent's Opposition is substantively deficient because it: (1) cites rationale discussed by the parties during what Counsel for Acting General Counsel believes was an off-the-record discussion;¹ (2) implies that the District Court denied the petition for injunctive relief with prejudice; and (3) argues that the consolidation of the cases is uneconomical or would cause delay. As set out more fully below, the Respondent's Opposition is both misleading and lacks merit.

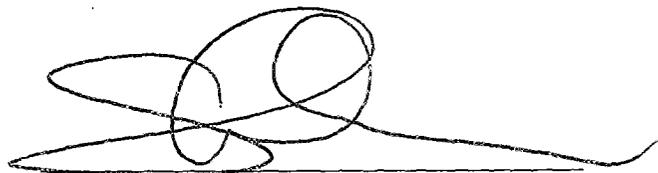
¹ The transcript is not yet available.

In regard to the Judge's stated reasons for denying the Motion to Consolidate Cases, Respondent attributes to Judge Carson several reasons regarding his basis for denying Counsel for Acting General Counsel's Motion to Consolidate Cases. (Opposition at 3) Although the transcript has not yet been prepared, Counsel for Acting General Counsel recalls that the discussions cited and relied on by Respondent were off-the-record. Thus, the only rationale given by Judge Carson on the record, specifically his concerns regarding efficiency and the timing of the filing of the charge, was that cited in Counsel for Acting General Counsel's Special Appeal.

In regard to the Board's petition for injunctive relief, Respondent indicates that the District Court simply denied the request for injunctive relief in its entirety. (Opposition at 2) To the contrary, the District Court denied the petition, without prejudice, based on its finding that an evidentiary hearing was necessary to resolve factual disputes. The District Court specifically noted that the administrative hearing was scheduled to begin within weeks of its order, and granted the Board the right to renew its petition and request an evidentiary hearing, or, in the alternative, submit the transcripts from the administrative proceeding in lieu of a request for an evidentiary hearing. The District Court stated that it would withhold entry of a final order until further notice from the Board. The Board was instructed to advise the District Court of the manner in which it would proceed within 30 days of the conclusion of the administrative hearing. Thus, Respondent's implication that the petition for injunctive relief was simply denied by the District Court is misleading and misrepresents the District Court's disposition of the matter.

Finally, in regard to Respondent's contention that conducting a hearing on the new allegation relating to the discharge of Stacy Ewing (Case 11-CA-071297) would somehow be uneconomical or cause delay is without merit. In this regard, at the outset of the hearing, the parties believed that the hearing would span the course of three weeks. During pre-hearing conference calls, Judge Carson instructed all parties to keep their schedules open for trial the week of February 27, 2012, as he intended to allow a 2-week recess following the anticipated adjournment on February 10, 2012. Thus, the parties were already on notice that the hearing would continue into the week of February 27, 2012. When the hearing closed on February 10, 2012, pending the Special Appeal, Judge Carson directed that the parties be prepared to proceed on the Ewing discharge allegation on February 27, 2012, should the Board grant the motion for consolidation. Respondent's contention that litigating the Ewing discharge allegation, which, at most, will likely entail a total of two days of direct and cross examination, would cause delay is illogical, as the parties were already planning to litigate the underlying case the week of February 27. Further, Ewing's discharge is closely related to and intertwined with Respondent's ongoing unlawful anti-union campaign and predates other 8(a)(3) allegations already litigated during the administrative proceeding. It follows, therefore, that the most cost-effective and logical course of action is to consolidate the Ewing discharge matter with the current administrative proceeding.

Dated at Winston-Salem, North Carolina, this 16th day of February 2012.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Shannon R. Meares
Counsel for Acting General Counsel
National Labor Relations Board
Region 11
4035 University Parkway, Suite 200
P. O. Box 11467
Winston-Salem, North Carolina 27116-1467

CERTIFICATE OF SERVICE

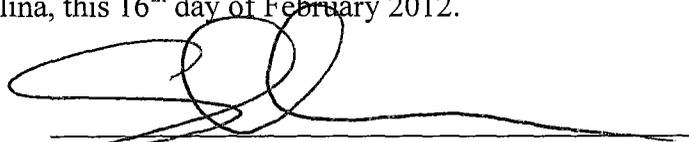
I hereby certify that a true and correct copy of Counsel for Acting General Counsel's Response to Respondent's Opposition to the Special Appeal of Counsel for Acting General Counsel was served by electronic mail on February 16, 2012, on the following:

The Honorable George Carson II
c/o Associate Chief Administrative Law Judge William N. Cates
National Labor Relations Board – Division of Judges
401 West Peachtree Street, NW, Suite 1708
Atlanta, GA 30308-3510

John C. Cashen, Esq.
Jonathan Young, Esq.
Counsel for Grede II, LLC
Bodman PLC
201 W. Big Beaver Rd., Suite 500
Troy, Michigan 48084
E-Mail: jcashen@bodmanlaw.com and jyoung@bodmanlaw.com

Brad Manzolino, 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
E-Mail: bmanzolino@usw.org

Dated at Winston-Salem, North Carolina, this 16th day of February 2012.



Shannon R. Meares
Counsel for Acting General Counsel
National Labor Relations Board
Region 11
4035 University Parkway, Suite 200
P. O. Box 11467
Winston-Salem, North Carolina 27116-1467