

NOT INCLUDED IN
BOUND VOLUMES

LS
Laurel, MS

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HOWARD INDUSTRIES, INC.,
TRANSFORMER DIVISION

and

Cases 15-CA -18637
15-CA-18772

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 1317

DECISION AND ORDER REMANDING

On July 28, 2009, Administrative Law Judge George Carson II issued the attached bench decision. The General Counsel filed exceptions and a supporting brief, the Charging Party joined the General Counsel's exceptions and brief, and the Respondent filed an answering brief.

The National Labor Relations Board¹ has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings,

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. September 11, 2009) (No. 09-328); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), petition for cert. filed 77 U.S.L.W. 3670 (U.S. May 22, 2009) (No. 08-1457); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. August 18, 2009) (No. 09-213). But see

findings, and conclusions, as modified below, and to adopt the recommended Order as modified.

The judge found that the Respondent removed Union steward Gregory Jones from its facility because of his advocacy as steward in support of an employee's grievance in violation of Section 8(a)(3) and (1) of the Act. In the absence of exceptions, we affirm this finding.

However, we find that the judge's decision does not provide an adequate basis for review of his finding that the Respondent did not violate Section 8(a)(1) by threatening Union steward James Chancellor with discipline for using notes while representing employee Dasmeon Caraway during an investigatory interview conducted by Human Resources Generalist Brant Stringer. Chancellor, Caraway, and Stringer gave varying accounts of the interview, including whether Stringer threatened Chancellor with discipline and, if so, when and for what reason. In concluding that no violation occurred, the judge found that it was unnecessary to make any determinations with respect to the credibility of Chancellor, Stringer, and Caraway for purposes of resolving differences in their accounts of what occurred during the interview. We disagree. In the absence of detailed factual findings and credibility resolutions, we are unable to resolve the exceptions to the judge's dismissal of the allegation.

Accordingly, we shall sever Case 15-CA-18637 from Case 15-CA-18772 and remand it to the judge so that he may reconsider the record evidence, make credibility

Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed sub nom. *NLRB v. Laurel Baye Healthcare of Lake Lanier, Inc.*, ___ U.S.L.W. ___ (U.S. September 29, 2009)(No. 09-377).

determinations, and explain the basis for his findings. In remanding this issue, we express no opinion as to the correctness of the judge's original disposition of the merits of the contested complaint allegation.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Howard Industries, Inc., Transformer Division, Laurel, Mississippi, its officers, agents, successors, and assigns, shall take the actions set forth in the Order, as modified by deleting the final sentence of the Order.

IT IS FURTHER ORDERED that Case 15-CA-18637, alleging that the Respondent violated Section 8(a)(1) of the Act by threatening employees with discipline for using notes while representing other employees during investigatory interviews, is severed from Case 15-CA-18772 and remanded to the administrative law judge for further appropriate action consistent with this decision.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a supplemental decision containing credibility resolutions, findings of fact, conclusions of law, and a recommended Order, as appropriate on remand. Following service of the supplemental decision on the parties, provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

Dated, Washington, D.C. , October 22, 2009 .

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD