

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

OLYMPIC SUPPLY, INC. d/b/a ONSITE
NEWS,

Respondent,

and

UNITE HERE! LOCAL 7,

Charging Party.

Case No. 5-CA-076019
5-RD-001500

Matthew J. Turner and John D. Doyle, Jr., Esqs.,
for the General Counsel.
Charles Hildebrandt, Esq. (The Roberts Law Group),
of Washington, DC, for the Respondent.
Krista Strothmann, for the Charging Party.

SUPPLEMENTAL DECISION

MICHAEL A. ROSAS, Administrative Law Judge. On August 27, 2012,¹ this case was tried in Baltimore, Maryland. On September 28, a Decision issued (the Decision), which found, inter alia, that Olympic Supply Co., d/b/a Onsite News (the Company), violated Section 8(a)(1) of the National Labor Relations Act (the Act). On October 2, an Erratum issued.

In footnote 3, the Decision noted that the Company did not submit post hearing briefs. On October 19, however, my office received a letter from the Company's trial counsel, dated October 10, explaining that he complied with the applicable service and filing requirements by emailing a brief to the General Counsel and charging party, and electronically filing it with the Judges Division in a timely manner. He also attached a copy of the electronic certificate received upon filing the brief. The electronic filing indicates, however, that the brief was E-Filed with "NLRB Region 05, Baltimore, Maryland" not the Judges Division.

Having reviewed the Board's Rules and Regulations, as well as the Board's current instructions to parties for E-Filing, I found that neither provision provides litigants with any direction as to which of the various E-rooms to file particular documents with. Accordingly, I requested that the Board's Executive Secretary transfer the case from the Board back to me for

¹ All dates are in 2012, unless otherwise indicated.

reconsideration of the Decision based on the Company's brief.² In an Order, dated October 24, Deputy Executive Secretary rescinded his office's previous Order Transferring Proceeding to the Board and transferred the case back to me in order to "consider the brief and issue a revised Decision and Order."

5 Based upon the entire record, which now includes the Company's filed brief, I find that the Decision remains correct and should stand in its entirety. The brief failed to raise any new matters that were not previously considered. In its brief, the Company contends that none of the witnesses provided testimony in support of the alleged violations. That is incorrect.

10 The General Counsel presented testimony by London Perry, the Company's general manager, and two employees, Kevin Wheeler and Monae Whitehead. The Company called Perry as its only witness. The testimony of all three witnesses established that Perry spoke with Wheeler and Whitehead in February about his enforcement of Company rules and the Union's relationship in that regard.

15 As fully explained at footnotes 16 and 18, I found Wheeler fairly credible, while Perry's testimony was fraught with evasiveness and inconsistencies. As explained at footnote 19, I found both Whitehead and Perry less than credible. Although an extremely reluctant witness, Whitehead was impeached by her prior sworn statement, which I credited, detailing Perry's threat to strictly enforce the rules if the Union prevailed in the election. Perry did not, however, refute the portion of Whitehead's testimony that I credited when called as a witness by the Company. After distilling
20 through the testimony, the facts clearly revealed that Perry informed Wheeler and Whitehead in February that he would have to be stricter in enforcing employee rules if the Union remained as the employees' bargaining representative.

25 I find, therefore, that the Company's brief failed to demonstrate that the findings of fact contained in the Decision were flawed or should otherwise be revised. I also find that the Company's brief, which relies on *Miller Industries Towing Equipment, Inc.*, 342 NLRB 1074, 1084 (2004), failed to cite any legal precedent or advance any connected argument, which was not previously considered or addressed. I find, as a result, that the Decision should stand in its entirety.³

Dated, Washington, D.C. November 7, 2012

30

Michael A. Rosas
Administrative Law Judge

² With the assistance of administrative staff, I was shown how an E-Filer enters the Board's electronic filing system and is then presented with a choice of offices with whom to file a document. Such offices include the Board's Regional Offices and the Judges Division. In this case, it appears that the Company chose the option of filing its brief with the Baltimore Regional Office instead of the Judges Division. While one can wonder why counsel did not select the Judges Division, an argument could be made that counsel chose to E-File with the Baltimore Regional Office because the hearing was conducted there.

³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.