

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Washington, D.C.**

AMPERSAND PUBLISHING, LLC
D/B/A SANTA BARBARA NEWS-PRESS

and

Case Nos. 31-CA-028589, 31-CA-028661, 31-CA-028667, 31-CA-028700, 31-CA-028733, 31-CA-028734, 31-CA-028738, 31-CA-028799, 31-CA-028889, 31-CA-028890, 31-CA-028944, 31-CA-029032, 31-CA-029076, 31-CA-029099, and 31-CA-029124

GRAPHIC COMMUNICATIONS
CONFERENCE, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S OPPOSITION TO
RESPONDENT'S MOTION FOR RECONSIDERATION**

On September 27, 2012, the National Labor Relations Board (“the Board”) found that Ampersand Publishing, LLC d/b/a Santa Barbara News-Press (“News-Press” or “Respondent”) violated Section 8(a)(5), 8(a)(3), and 8(a)(1) of the National Labor Relations Act (“the Act”).¹ On October 25, 2012, Respondent filed a motion for reconsideration of the above decision. There being no extraordinary circumstances warranting reconsideration, the Board should dismiss Respondent’s motion.

I. THE VALIDITY OF THE PRESIDENT’S RECESS APPOINTMENTS IS NOT GROUNDS FOR RECONSIDERATION OF THE BOARD’S DECISION.

Respondent’s motion for reconsideration is in part based on the President’s recess appointments of Board Members Richard F. Griffin, Jr. and Sharon Block. When confronted

¹ *Ampersand Publishing, LLC*, 358 NLRB No. 141 (2012).

with such challenges, the Board has found that it is not appropriate for it to decide whether Presidential appointments are valid. Instead, the Board applies the well-settled “presumption of regularity support[ing] the official acts of public officers in the absence of clear evidence to the contrary.” *Lutheran Home at Moorestown*, 334 NLRB 340, 341 (2001), citing *U.S. v. Chemical Foundation*, 272 U.S. 1, 14-15 (1926).

Accordingly, the validity of the President’s recess appointments is not grounds for reconsideration of the Board’s decision.

II. THE BOARD PROPERLY EXERCISED ITS AUTHORITY BY ORDERING RESPONDENT TO REIMBURSE THE CHARGING PARTY FOR BARGAINING EXPENSES.

Respondent’s motion for reconsideration claims that the bargaining expenses reimbursement remedy is “improper, punitive, and was specifically waived.” More specifically, Respondent argues that the *sua sponte* remedy was “never requested or even endorsed by the General Counsel,” and “in each case involving the extraordinary remedy of reimbursed bargaining expenses, the extraordinary relief has been specifically sought in a complaint or specifically sought through a motion.” Motion for Reconsideration at 16. These arguments are unsupported by Board law.

The Board has broad discretion in determining appropriate remedies, including the reimbursement of bargaining expenses, to dissipate the effects of unlawful conduct.⁴ Indeed, the Board is empowered to order remedies that are not specifically requested by any party. *WestPac Electric, Inc.*, 321 NLRB 1322 (1996). Here, the extraordinary remedy was requested by Graphic

⁴ *Regency Service Carts*, 345 NLRB at 676 (“Finally, in awarding the Union its negotiation expenses, we note that neither the General Counsel nor the Union requested this remedy from the judge. However, they seek it before the Board and the Board is free to fashion a remedy designed so far as possible to restore the status quo ante.”); *Kaumagraph Corp.*, 313 NLRB 624, 625 (1993) (Once a complaint has issued, responsibility for fashioning an appropriate remedy for the alleged unfair labor practices rests with the Board).

Communications Conference, International Brotherhood of Teamsters (“the Union”). In *Ampersand Publishing, LLC*, 358 NLRB No. 141, slip op. at 6, fn. 8 (2012), the Board cites *Regency Service Carts*, 345 NLRB 671, 676-677 (2005) in support of its decision that “[a]lthough the Union did not request this [reimbursement] remedy from the judge, its failure to do so does not preclude us from imposing it.” The fact that the Union requested the extraordinary remedy in its exceptions, rather than a motion or complaint, or the fact that the General Counsel did not specifically request the extraordinary remedy, does not affect the Board’s broad discretion in determining appropriate remedies.

Respondent incorrectly argues that the Board’s decision concerning the bargaining expenses reimbursement remedy deviates from precedent in *The Bakersfield Californian*, 337 NLRB 296 (2001), and *California Saw & Knife Works*, 320 NLRB 224, 275 (1995). *California Saw & Knife Works* stands for the proposition that only the General Counsel, not the charging party, may adopt and include arguments in a complaint under the Act. 320 NLRB at 275. In *The Bakersfield Californian*, the Board agreed with the judge that the General Counsel, by failing to object when the judge stated that he was not going to consider events after January 12 and 13, clearly acquiesced in the judge’s limiting of the scope of the complaint to encompass only the employer’s January 12 and 13 posting of the proposal, which limited the scope of the litigation (and potential legal liability) to the events of January 12 and 13. 337 NLRB at 298. The above cases relate to the establishment of the scope of a complaint, and the necessary connection between the allegations in a complaint and the finding of a violation of the Act. In contrast, the Board’s decision concerning the reimbursement remedy is a question of the Board’s remedial authority, and thus the Board’s decision does not deviate from precedent as argued by

Respondent.

Respondent claims that the General Counsel and the Union waived the extraordinary remedy by failing to specifically request it before the ALJ. Respondent fails to cite any cases finding waiver of a remedy under similar circumstances. Although bargaining expenses were not explicitly sought before the ALJ, the Union told the ALJ that “the most forceful remedies available must be applied because [the Union is] looking at a recidivist employer here.” Motion for Reconsideration at 7. Even if the Union had not made the request for the “most forceful” remedies, which naturally includes bargaining expenses, it would not have affected the Board’s *broad discretion* in determining appropriate remedies. (emphasis added). Based on the foregoing, Respondent’s contention that the extraordinary remedy has been waived does not warrant reconsideration of the Board’s decision.

Respondent incorrectly states that there was no support for the “vague conclusion” that Respondent’s proposals were so extreme that bargaining unit employees had “fewer rights and less protection than provided by law without a contract.” Motion for Reconsideration at 14.

Judge Anderson explained that:

Respondent’s proposals to an extraordinary degree sought to remove by union contractual waiver the Union’s rights to bargain with the Respondent regarding matters not explicitly controlled by the contract. This fact coupled with the general revanchist nature of the entirety of the Respondent’s proposed contract clearly rendered the Union better off refusing to enter into the Respondent’s proposed contract and accepting a relationship which while without a contract’s limitations on Respondent’s actions also did not including [sic] any waivers of the Union’s bargaining rights.

Ampersand Publishing, LLC, 358 NLRB No. 141, slip op. at 87. There is nothing vague about Judge Anderson’s conclusion, especially considering that Respondent’s numerous violations were detailed in Judge Anderson’s decision, e.g.:

Section 2 of the Respondent's management-rights proposal contains an exhaustive list of 18 specific categories of decisions effecting unit employees that are expressly reserved exclusively to the Respondent with the Union having no bargaining rights respecting them. Section 3 provides the Respondent unlimited license to utilize independent contractor news writers and photographers. Section 5 provides a similar license to use managers and supervisors to write or take pictures.

Id. at 85-86.

In support of Respondent's argument that the Board's decision is punitive, Respondent claims that the bargaining conduct and proposals in *Frontier Casino* were "significantly more egregious" than that of Respondent, and that the *Frontier Casino* Board found that the company's defense rested on the untruthful testimony of an attorney. Motion for Reconsideration at 13. Even assuming Respondent's behavior was not as egregious as that of the company in *Frontier Casino*, finding that Respondent is the "lesser of two evils" does not detract from the severity of Respondent's violations. Here, the Board clearly explained why Respondent's bad-faith bargaining was sufficiently aggravated to warrant reimbursement of the Union's bargaining expenses, e.g., section 1 of Respondent's proposal asserts that it will have no obligation to bargain with the Union or otherwise be obligated under Section 8(a)(5) of the Act to deal with the Union during the contract's life, section 6 of Respondent's proposal would have removed any obligation to bargain with the Union after the contract's term, and Respondent vigorously resisted the Union's proposals to establish a "just-cause" standard for employee discipline. *Ampersand Publishing, LLC*, 358 NLRB No. 141, slip op at 5. The Board also explained how Respondent's behavior away from the bargaining table demonstrated its calculated strategy to reduce negotiations to a sham and undercut the Union's bargaining strength.⁵ *Id.* The Board's decision is firmly grounded in the record and Board law.

⁵ The Board found that Respondent violated the Act by utilizing a nonemployee freelance reporter and employees from outside employment referral agencies to perform bargaining unit work, dealing directly with an unlawfully laid-off unit employee concerning a return to his duties as a nonemployee freelancer, suspending and discharging an employee, and unilaterally announcing a new one-story-per-day productivity standard for reporters and writers. *Id.*

Accordingly, there are no extraordinary circumstances warranting reconsideration.

III. CONCLUSION

Based on the foregoing, Counsel for the Acting General Counsel requests that the Board deny Respondent's motion for reconsideration.

Dated at Los Angeles, California, this 8th day of November, 2012.

A handwritten signature in cursive script, appearing to read "Manriquez", is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

Miguel A. Manriquez, Esq.
Counsel for the Acting General Counsel

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31-CA-029124

CERTIFICATE OF SERVICE

I hereby certify that I served the attached COUNSEL FOR THE ACTING
GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION FOR
RECONSIDERATION on the parties listed below, on the 8th day of November, 2012.

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