

NOT TO BE INCLUDED
IN BOUND VOLUMES

SL
Philadelphia, PA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HANSON AGGREGATES BMC, INC.

and

Cases 4-CA-33330
4-CA-33508
4-CA-33547
4-CA-34290
4-CA-34362
4-CA-34363
4-CA-34378

INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL 542, AFL-CIO

ORDER DENYING MOTION

On September 30, 2008, the National Labor Relations Board¹ issued a Decision and Order in the above-titled proceeding.² The Board affirmed several of the administrative law judge's findings that the Respondents engaged in conduct violating Section 8(a)(5) of the Act, including failing to furnish information, implementation of unilateral changes on January 1, 2006, prior to impasse in contract negotiations, and a refusal to bargain over a premium holiday for dental insurance coverage implemented on October 24, 2005. To remedy these violations, the Board's Order included affirmative provisions requiring compliance with the information requests, rescission of all unilateral changes, and make-whole remedies to employees affected by the changes. The Order also directed the Respondent to give the Union notice and opportunity to

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 Schaumber and Member Liebman 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.

² 353 NLRB No. 28

bargain before making any future changes in the terms and conditions of employment for bargaining unit employees.

On October 30, 2008, the General Counsel filed a Motion for Modification of Board Order. In the motion, the General Counsel requests that the affirmative bargaining provision of the Board's Order be modified to include a broad general bargaining order setting forth the Respondent's overall obligation to negotiate with the Union concerning terms and conditions of employment, as originally recommended by the administrative law judge. The General Counsel argues that the Board's findings of multiple Section 8(a)(5) violations warrant the broad directive to bargain. The Respondent filed a response to the motion, stating that the modifications are unnecessary and that the September 30 Order fully addresses the Board's rulings.

Having duly considered the matter, we deny the General Counsel's motion. Contrary to the General Counsel's assertions, a so-called limited bargaining order is the appropriate standard remedy for the unilateral change violations found in this case, which neither individually nor collectively rose to the level of a general refusal to bargain.³ All bargaining violations found here, including the information request violations, are fully and adequately addressed by the Board's Order and do not warrant a general bargaining directive.⁴

³ *Tribune Publishing Co.*, 351 NLRB No. 22 slip op. 1 fn. 1 (2007); *Sunoco, Inc.*, 349 NLRB 240 fn. 2 (2007); *Mimbres Memorial Hospital and Nursing Home*, 337 NLRB 998 fn. 2 (2002), petition for review denied sub nom. *NLRB v. CHS Community Health Systems, Inc.* 108 Fed.Appx. 577 (10th Cir. 2004). See also *Laurel Baye Healthcare of Lake Lanier, LLC*, 352 NLRB No. 30 (2008)(Board narrowed judge's recommended general bargaining order for multiple unilateral changes). This case is distinguishable from *Laurel Bay Health & Recreation Center*, 353 NLRB No. 24 (2008), relied on by the General Counsel, where the Board found an independent general refusal to bargain violation.

⁴ The Board's decision inadvertently failed to mention that the Order was modified to accord with standard remedial practice. See, e.g., *Laurel Baye*, 352 NLRB No. 30 slip. op. 1 fn. 3. Contrary to the General Counsel's argument in support of the motion to modify, the absence of specific exceptions by the Respondent to the judge's recommended order does not preclude the Board from sua sponte addressing remedial issues.

Accordingly,

IT IS ORDERED that the General Counsel's Motion for Modification of Board Order is denied.

Dated, Washington, D.C., December 22, 2008.

Peter C. Schaumber, Chairman

Wilma B. Liebman, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD