

UNITED STATES GOVERNMENT
National Labor Relations Board



Memorandum

TO: Hank Breiteneicher, Associate Executive Secretary April 3, 2013

FROM: Brian D. Gee, Acting Regional Director
Region 31, Los Angeles

SUBJECT: Ralphs Grocery Company
Case Nos. 31-CA-27160, 31-CA-27475, and 31-CA-27685

REQUEST TO WITHDRAW COMPLIANCE DETERMINATION

Based on case developments in this matter, the Region respectfully requests withdrawal of the Compliance Determination it issued on March 3, 2011.

Background of the case. In *Ralphs Grocery Co.*, 352 NLRB 128 (2008), a two-member Board issued its decision finding merit to the allegation that the Respondent violated Section 8(a)(5) by refusing to furnish various Locals of the United Food and Commercial Workers (the Charging Party Unions) with information relating to its hiring of bargaining unit employees under false identities during the 2003-2004 grocery store lockout (the false identities information). However, the Board dismissed the other information allegation that the Respondent violated Section 8(a)(5) by refusing to provide an audit report prepared by an outside law firm regarding Respondent's hiring practices during the lockout (the audit report).

The Board's decision was enforced by the Ninth Circuit in *NLRB v. Ralphs Grocery Co.*, No. 08-71507 (9th Cir. 2009). However, on August 23, 2010, in light of the

Supreme Court's decision in *New Process Steel*, the Ninth Circuit vacated its enforcement of the Board's order, and remanded the case to the Board. On September 30, 2010, a full panel of the Board adopted the two-member Board's decision and order in *Ralphs Grocery Co.*, 355 NLRB 1279 (2010). The Charging Party Unions filed Motions for Reconsideration and to Reopen the Record on October 8, 2010, regarding the Board's decision to dismiss the Section 8(a)(5) audit report allegation.

Compliance Determination regarding the false identities information. Following the Board's decision, the Region solicited compliance with the Board's order that Respondent produce all information covered by the false identities information allegation. During compliance, Respondent furnished to the Charging Party Unions over 2,500 pages of documents identifying approximately 160 bargaining unit employees hired under false name names during the 2003-2004 lockout; posted Notices at approximately 257 stores through California; mailed Notices to over 1,400 current and former employees employed by Respondent in facilities closed after December 23, 2004; and executed certifications of compliance. The Charging Party Unions nonetheless objected to the Region's determination of compliance based on its unsupported assertion that Respondent did not produce all required documents. Accordingly, on March 3, 2011, the Region issued a Compliance Determination over the false identities information allegation.

On June 22, 2011, the Acting General Counsel denied the Charging Party Unions' appeal of the Compliance Determination. Subsequently, on July 25, 2011, the Charging Party Unions filed with the Board a Request for Review of the Compliance Determination. Prior to any decision by the Board, we believe it is now appropriate to seek withdrawal of our Compliance Determination based on the case developments described below.

Charging Party Unions' appeal of the dismissal of the audit report allegation.

With regard to the audit report allegation, on April 3, 2012, the Board issued an order granting the Charging Party Unions' Motion for Reconsideration and remanding the case to the Region for appropriate action. On April 17, 2012, the Board issued an amended order that again granted the Motion and ordered the case be assigned to an Administrative Law Judge for a supplemental hearing and decision on issues raised in the Motion and the parties' briefs. A hearing was held before ALJ William G. Kocol on August 17, 2012. On October 24, 2012, Judge Kocol issued his supplemental decision and recommended order that Respondent be required to provide the internal audit report and information concerning that report.

Conclusion. Because information in the audit report may enable the Charging Party Unions to support their assertion that Respondent did not fully produce information related to the false identities allegation, the Region respectfully requests withdrawal of the Compliance Determination issued in this matter on March 3, 2011.


B.D.G.