

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NAACO MATERIAL HANDLING GROUP, INC.

and

Case 25-CA-083948

INDEPENDENT LIFT TRUCK BUILDERS UNION

ACTING GENERAL COUNSEL'S LIMITED EXCEPTIONS  
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

Comes now Counsel for the Acting General Counsel and, for the reasons set below, respectfully excepts to the Administrative Law Judge's Decision issued in the above-captioned case on April 24, 2013. Except for the points hereinafter set forth, no issue is taken with the Judge's findings, conclusions, and recommended order, and it is strongly urged that they be adopted by the National Labor Relations Board.

I. ACTING GENERAL COUNSEL'S LIMITED EXCEPTIONS

Counsel for the Acting General Counsel excepts to the Judge's inadvertent failure to specifically set forth in her recommended Notice to Employees (Appendix) that NAACO Material Handling Group, Inc., hereinafter referred to as the Respondent, rescind its unilateral change in the established past practice of allowing the Vice President of the International Lift Truck Builders Union, hereinafter referred to as the Union, to use the company-paid hours allotted to the Chief Union Steward while substituting for the Chief Union Steward in his absence and provide the Union with the opportunity to bargain over the established past practice.

## II. STATEMENT OF THE CASE

Pursuant to an unfair labor practice charge filed by the Union, a complaint was issued on September 22, 2012. The complaint alleged that the Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act (“Act”) by failing and refusing to provide the Union with relevant and necessary information related to the discipline of a bargaining unit employee since about March 2012. The complaint also alleged that the Respondent violated Section 8(a)(1) and (5) of the Act by refusing to allow the Union Vice-President to use company-paid time allotted to the Union to serve in the role of the absent Chief Union Steward.

A hearing was held regarding the allegations contained in the complaint on December 4 and 5, 2012 before Administrative Law Judge Christine Dibble. On April 24, 2012, the Judge issued her decision in the instant case finding merit to all of the allegations contained in the complaint. Specifically, the Judge found that the Respondent violated Section 8(a)(1) and (5) of the Act by failing and refusing to provide the Union with relevant and necessary information related to the discipline of a bargaining unit employee since about March 2012 (Decision, p. 12, l. 16-17). The Judge also found that the Respondent violated Section 8(a)(1) and (5) of the Act by refusing to allow the Union Vice-President to use company-paid time allotted to the Union to serve in the role of the absent Chief Union Steward (Decision, p. 13, l. 33-37; p. 15, l. 12-14).

## III. ARGUMENT

The Counsel for the Acting General Counsel’s exception to the Judge’s inadvertent failure to specifically set forth in her recommended Notice to Employees (Appendix) that the Respondent rescind its unilateral change in the established past practice of allowing the Union Vice-President to use the company-paid hours allotted to the Chief Union Steward while substituting for the Chief Union Steward in his absence and provide the Union with the

opportunity to bargain over the established past practice merely seeks to conform the recommended Notice to Employees to the Judge's Order and Remedy. In her decision, the Judge correctly found and concluded that the Respondent violated Section 8(a)(1) and (5) of the Act by refusing to allow the Union Vice-President to use company-paid time allotted to the Union to serve in the role of the absent Chief Union Steward (Decision, p. 13, l. 33-37; p. 15, l. 12-14).

Based upon her findings and conclusions, the Judge states in her Order that the Respondent shall cease and desist from unilaterally abandoning its established past practice of allowing the Union Vice-President to use company-paid time allotted to the Chief [Union] Steward when substituting for the Chief [Union] Steward (Decision, p. 16, l. 10-27). Also, based upon her findings and conclusions, the Judge states in her Remedy that the Respondent will be ordered to rescind the unlawful unilateral change in the established past practice, provide the Union with the opportunity to bargain over the past practice, and post and communicate by electronic post to employees the attached Appendix and notice (Decision, p. 15, l. 42-49). Thus, it is clear that, based upon language of the Judge's Order and Remedy, the Judge's intention is that the remedy for the Respondent's unlawful unilateral change in the established past practice of allowing the Union Vice-President to use company-paid time allotted to the Chief Union Steward when substituting for the Chief Union Steward is that the Respondent rescind the unlawful unilateral change in the established past practice, provide the Union with the opportunity to bargain over the past practice, and post a Notice to Employees. Therefore, the language in the Judge's Remedy should also be included in the Notice to Employees so that the Notice to Employees conforms with the Judge's Remedy.

Furthermore, a Notice to Employees serves to inform employees of their statutory rights and the remedies that the Respondent will undertake to cure its unfair labor practice. See

Hickmott Foods, Inc., 242 NLRB 1357 (1979). Thus, since the Respondent is required to post a Notice to Employees, the Notice should fully inform employees about the remedies that the Respondent will undertake to cure its unlawful unilateral change of established past practice.

IV. CONCLUSION

For the foregoing reasons, Counsel for the Acting General Counsel respectfully requests that Acting General Counsel's Exception to the Decision of the Administrative Law Judge be granted and that the Notice to Employees be corrected by adding the following language:

WE WILL, upon request of the Union, rescind any changes to the established past practice of allowing the Union Vice-President to use company-paid time allotted to the Union to serve in the role of the absent Chief Union Steward.

WE WILL, upon request of the Union, bargain in good faith to an agreement or to impasse prior to changing the parties' established past practice of allowing the Union Vice-President to use company-paid time allotted to the Union to serve in the role of the absent Chief Union Steward.

DATED at Indianapolis, Indiana, this 20th day of May 2013.

Respectfully submitted,

/s/ Raifael Williams

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CERTIFICATE OF SERVICE

**The undersigned hereby certifies that a copy of Acting General Counsel's Limited Exceptions to the Decision of the Administrative Law Judge has been E-filed on NLRB internet site (www.nlr.gov) and served by Electronic Transmission on May 20, 2013 upon the following persons, addressed to them at the following addresses:**

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