

NOT INCLUDED IN  
BOUND VOLUMES

PGB  
Tempe, AZ

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

BCI COCA-COLA BOTTLING  
COMPANY OF LOS ANGELES

and

Case 28-CA-022792

WAYNE ABRUE

ORDER DENYING MOTION FOR RECONSIDERATION

On April 30, 2013, the National Labor Relations Board issued a Decision and Order in this proceeding<sup>1</sup> remanding the case to the administrative law judge to conduct a hearing and determine whether the settlement agreement between the Respondent and the Union warrants deferral pursuant to *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955), and *Olin Corp.*, 268 NLRB 573 (1984). The complaint alleges that the Respondent laid off eight employees in violation of Section 8(a)(3) and (1) of the Act, and that the Respondent violated Section 8(a)(1) by making threats of futility, layoffs, and other unspecified reprisals. The settlement agreement specifically addresses the alleged unlawful layoffs, but does not specifically mention the 8(a)(1) allegations. In addition, no party addressed the 8(a)(1) allegations at the hearing or in the exceptions briefs, but they were not dismissed. Accordingly, the Board remanded the case in its entirety, directing the judge to determine whether the settlement agreement warrants deferral and to decide the 8(a)(1) allegations.

On May 24, 2013, the Respondent filed a motion for reconsideration, arguing: (1) that the Board did not have a valid quorum under *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013),

---

<sup>1</sup> 359 NLRB No. 110.

petition for cert. granted 2013 WL 1774240 (U.S. June 24, 2013) (No. 12-1281), and *NLRB v. New Vista Nursing and Rehabilitation Center*, \_\_\_ F.3d \_\_\_ No. 12-1936 (3d Cir., May 16, 2013), when it issued its April 30 Order; and (2) that the Board erroneously directed the judge to decide the 8(a)(1) allegations because those allegations are encompassed by the settlement agreement. The Acting General Counsel filed an opposition to the motion.

Having duly considered the matter, the Board finds that the Respondent's motion fails to present "extraordinary circumstances" warranting reconsideration under Section 102.48(d)(1) of the Board's Rules and Regulations.

We reject the Respondent's quorum-based arguments for the reasons stated in *Bloomington, Inc.*, 359 NLRB No. 113 (2013).

We also reject the Respondent's argument that the Board erroneously remanded the 8(a)(1) allegations for consideration by the judge. As stated, no party argued on exceptions to the judge's initial decision that the settlement agreement encompassed those allegations. Nevertheless, nothing in the April 30 Order forecloses the Respondent from arguing to the judge that the 8(a)(1) allegations in fact were resolved by the settlement and thus should be dismissed if the settlement warrants deferral under *Spielberg*, *supra*, and *Olin Corp.*, *supra*.

Accordingly, we conclude that the Respondent has not established extraordinary circumstances warranting reconsideration of the Board's Order Remanding.

IT IS ORDERED, therefore, that the motion for reconsideration is denied.

Dated, Washington, D.C., June 28, 2013.

---

Mark Gaston Pearce, Chairman

---

Richard F. Griffin, Jr., Member

---

Sharon Block, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD