

United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

N.L.R.B. -  
APPEALS COURT BRANCH  
16 FEB 10 AM 6:46  
LITIGATION SERVICES  
WASH. D.C.

No. 14-1163

September Term, 2015

FILED ON: NOVEMBER 24, 2015

MIKE-SELL'S POTATO CHIP COMPANY,  
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD,  
RESPONDENT

<b>MANDATE</b>	
Pursuant to	Fed. R. App. Pro. 41(a)
ISSUED:	01/27/2016
BY:	
ATTACHED:	<input checked="" type="checkbox"/> Appending Order <input checked="" type="checkbox"/> Opinion <input checked="" type="checkbox"/> Order on Costs

Consolidated with 14-1175

On Petition for Review and Cross-Application for Enforcement  
of an Order of the National Labor Relations Board

Before: BROWN and KAVANAUGH, *Circuit Judges*, and WILLIAMS, *Senior Circuit Judge*.

**JUDGMENT**

This appeal was considered on the record from the National Labor Relations Board (NLRB or Board) and on the briefs of the parties. The court has accorded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. CIR. R. 36(d). For the reasons stated below, it is

**ORDERED** and **ADJUDGED** that the petition for review is denied and the cross-application for enforcement is granted.

Mike-sell's Potato Chip Company (Mike-sell's) seeks review of a Board decision finding that the company violated 29 U.S.C. § 158(a)(1) and (5) by reducing union health benefits without obtaining the union's consent or complying with a contractual reopening clause. The Board cross-petitions for enforcement of its order.

"Judicial review of NLRB unfair labor practice findings is limited." *Douglas Foods Corp. v. NLRB*, 251 F.3d 1056, 1061 (D.C. Cir. 2001). This court "will uphold a decision of the Board unless it relied upon findings that are not supported by substantial evidence, failed to apply the proper legal standard, or departed from its precedent without providing a reasoned justification for doing so."

10 11 12 13  
14 15 16 17

18

19 20 21 22  
23 24 25 26

27 28 29

30 31 32 33 34 35 36 37 38 39 40  
41 42 43 44 45 46 47 48 49 50

51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70  
71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90  
91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110

111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130  
131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150  
151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170

*Inova Health Sys. v. NLRB*, 795 F.3d 68, 80 (D.C. Cir. 2015). “The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.” 29 U.S.C. § 160(e). Credibility determinations made by the administrative law judge (ALJ) and adopted by the Board will be “accept[ed] unless they are patently insupportable.” *NLRB v. Creative Food Design Ltd.*, 852 F.2d 1295, 1297 (D.C. Cir. 1988).

Mike-sell’s raises two issues. First, the company claims that the union agreed to the reduction in health benefits during a terse meeting on December 14, 2011. Because the Board’s contrary finding is supported by substantial evidence, we will not disturb it. Second, Mike-sell’s challenges credibility determinations made by the ALJ and adopted by the Board. This court should be “extremely reluctant to second-guess [credibility] conclusions based on our reading . . . years later . . . of a cold record.” *Amalgamated Clothing and Textile Workers Union v. NLRB*, 736 F.2d 1559, 1563 (D.C. Cir. 1984). We conclude that the credibility determinations were not so “patently insupportable” as to merit reversal. *Creative Food Design Ltd.*, 852 F.2d at 1297.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41.

**Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY: /s/  
Ken Meadows  
Deputy Clerk

A True copy:

United States Court of Appeals  
for the District of Columbia Circuit  
By:  Deputy Clerk

18  
11  
10  
9  
8  
7  
6  
5  
4  
3  
2  
1  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99