

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, SUBREGION 11**

PAC TELL GROUP, INC. D/B/A U.S. FIBERS
and
UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY, ALLIED-
INDUSTRIAL AND SERVICE WORKERS UNION,
LOCAL 7898

Cases 10-CA-121231
10-CA-128904
10-CA-132482
10-CA-145740
10-CA-160256

**GENERAL COUNSEL’S MOTION TO WITHDRAW MOTION FOR SUMMARY
JUDGMENT AND MOTION TO REMAND THE CASE TO THE REGIONAL
DIRECTOR**

On May 6, 2016,¹ Counsel for the General Counsel filed a Motion for Summary Judgment in this matter, urging the Board to find on the pleadings and the parties stipulation, that Respondent violated Section 8(a)(1) and (5) of the Act by failing to notify the Union and to engage in both pre- and post-imposition bargaining over the discretionary discipline and discharge of the named discriminatees. The General Counsel’s theory was based, in part, on the legal theory set forth in *Alan Ritchey*, 359 NLRB No. 40 (2012), which the Supreme Court later invalidated by its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014).

On June 20, the Board issued an Order Transferring Proceedings to the Board and Notice to Show Cause. On July 5, Respondent filed a Response to Notice to Show Cause. Thereafter, on August 26, the Board issued its decision in *Total Security Management*, 364 NLRB No. 106 (2016), holding that discretionary discipline is a mandatory subject of bargaining and, “an employer must provide its employees’ bargaining representative notice and opportunity to

¹ All dates herein are in 2016, unless otherwise stated.

bargain before exercising its discretion to impose certain discipline on individual employees, absent an agreement with the union providing for a process, such as a grievance-arbitration system, to address such disputes.” The Board expressly stated that its holding in *Transit Security Management* was prospective. *Id.*, slip op. at 1.

Accordingly, in light of the Board’s decision to apply its holding in *Transit Security Management* prospectively, Counsel for General Counsel moves to withdraw the Motion for Summary Judgment and requests that the Board remand these cases back to the Regional Director for further processing.

Dated at Winston-Salem, North Carolina, October 5, 2016.

Respectfully submitted,

/s/Timothy W. Mearns

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing General Counsel's Motion to Withdraw Summary Judgment and Motion to Remand the Case to the Regional Director have this date been served electronically upon the following parties:

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Dated at Winston-Salem, North Carolina, October 5, 2016.

/s/ Timothy W. Mearns

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