United States Government

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570-0001

VIA CM/ECF

October 31, 2016

Catherine O'Hagan Wolfe, Clerk of Court
United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Re: *National Labor Relations Board v. Local 660 United Workers of America* (2d Cir. No. 16-2721)

Oral Argument Held Tuesday, October 18, 2016
Before Circuit Judges Kearse, Jacobs, and Pooler

Dear Ms. Wolfe:

We write in response to the questions posed by the Court at oral argument on October 18, 2016. The Court was concerned with the scope of the Board's order regarding the notice-posting requirement.

By way of background, and as stated in our motion, Congress specifically directed how the Board should dispose of a "no-exceptions" case like this in Section 10(c) of the Act (29 U.S.C. § 160(c)). Section 10(c) provides that where, as here, no exceptions are filed with the Board to an administrative law judge's recommended decision, that decision "shall become the order of the Board." 29 U.S.C. § 10(c); *see* 29 C.F. R. 102.48(a). Thus, Congress gave the Board no role in reviewing or modifying an order recommended by an administrative law judge

that comes before it under Section 10(c) of the Act, even though Congress required the Board to adopt such an order as its own. In turn, Section (e) of the Act provides that "no objection that has not been urged before the Board . . . shall be considered by the court, unless the failure or neglect to urge such objection shall be excused by extraordinary circumstances." 29 U.S.C. § 10(e). As noted at argument, no party before the Board filed exceptions to any portion of the judge's recommended decision and order, including the General Counsel, who prosecutes the case.

In any event, turning to the scope of the notice posting ordered by the judge and adopted by the Board pursuant to Section 10(c) of the Act, provision 2(c) of the order directs the Union (the respondent before the Board) to "[s]ign and return to the Regional Director sufficient copies of the notice for posting, *if willing, by Alstate Maintenance LLC,* at all places where notices to employees are customarily posted." (Emphasis added.) The "if willing" condition is the standard condition when the employer, who is being asked to post the notice, was not a party to the Board proceeding and on whose property the relevant employees work. *See, e.g., Int'l Bro. of Elec. Workers, Local 48 & Patrick Mulcahy*, 333 NLRB 963 (2001). In addition, the Regional Office will work to contact all employees entitled to backpay, as is customary practice, when distributing the backpay monies due under the order.

We also note that in a separate case, severed from this one, pursuant to a settlement agreement between Alstate and the Regional Office, Alstate posted a notice at its premises that covered all but one of the violations stated in the order against the Union, namely its unlawful recognition of Local 660 as the collective-bargaining representative and its unlawful effectuating of the collective-bargaining agreement:

> **WE WILL NOT** recognize or contract with Local 660, United Workers of America ("Local 660") as the collective-bargaining representative of our employees, until it has been certified as such representative by the National Labor Relations Board.
>
> **WE WILL NOT** maintain or give effect to our collective-bargaining agreement with Local 660, with effective dates of December 1, 2012 through November 30, 2015, or any extension, or modification thereof, unless and until Local 660 is certified by the National Labor Relations Board; but we are not required to make any changes in wages or other terms and conditions of employment that may have been established pursuant to the contract.

The Alstate notice also informed employees that if the Region were unable to collect dues remittances from Local 660, it will reimburse employees for 50 percent of those dues. To be sure, these provisions do not specifically state that the Union, rather than Alstate, violated the Act. Nor do they include the remaining violation found against the Union—that is, the Union's threat of job loss for not signing a union dues checkoff authorization.

In sum, the Board submits that, given the jurisdictional limitations imposed upon the Board in Section 10(c) of the Act, and upon the Court in Section 10(e) of the Act, the Board is entitled to summary enforcement of its order, but also attempts by this letter to provide reassurance to the Court that employees will receive the customary notice posting remedy appropriate under the circumstances of this case.

By way of further information, the Regional Office has contacted Alstate, which has indicated that it is not willing to post the notice issued against the Union on its premises. However, Alstate has agreed to provide the Regional Office with the most current addresses of the current employees, and the Regional Office will mail the notice to the current employees. The mailing should effectively serve the goal of ensuring that employees adversely affected by the Union's unfair labor practices receive a copy of the Union's signed notice.

Sincerely,

/s/ Linda Dreeben

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