

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 181, AFL-CIO
(Marathon Petroleum Company)**

and

Case 09-CB-155016

WILLIAM DUKE HAYWOOD

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 181, AFL-CIO
(Maxim Crane Works LLP)**

and

Case 09-CB-159411

MITCHELL LUKE HAYWOOD

ORDER

On November 27, 2015, the Regional Director for Region 9 issued a complaint alleging, among other things, that the Respondent Union violated Section 8(b)(1)(A) of the Act when its business agent refused to allow the Charging Parties to review its out-of-work list pursuant to their requests to show them the list in order to determine their positions for job referral. Before the opening of the hearing, the Respondent proposed an informal Board settlement. The Respondent had previously rejected an informal Board settlement proposed by the General Counsel. On February 22, 2016, Administrative Law Judge Geoffrey Carter telephonically opened the hearing and issued a ruling approving the Respondent's proposed informal settlement agreement/consent

order (consent order)¹ over the objections of the General Counsel and the Charging Parties. The consent order approved by the judge includes a notice provision stating “[w]e will honor the request of any job referral applicant to review the out-of-work list to determine their positions for referral on the out-of-work list.” In contrast, the informal settlement agreement the General Counsel had proposed includes a notice provision stating “[w]e will honor the requests of William Duke Haywood and Mitchell Luke Haywood to review the out-of-work list to determine their positions for referral on the out-of-work list.”

On March 9, 2016, the General Counsel filed a Request for Permission to Appeal Ruling of Administrative Law Judge and Memorandum in Support of Appeal. On March 25, 2016, the Respondent filed a statement in opposition to the General Counsel’s appeal.

In his appeal, the General Counsel argues, among other things, that the consent order as approved by the judge does not satisfy the test of *Independent Stave Co.*, 287 NLRB 740 (1987), and that it does not provide a complete affirmative remedy as it is currently worded because it does not name the alleged discriminatees whose rights were violated. In its opposition, the Respondent argues, among other things, that Judge Carter’s ruling complies with the requirements of *Independent Stave*, supra, and that the consent order’s remedy is actually broader than the remedy proposed by the General Counsel because it allows any registrant on the out-of-work list, including the Charging

¹ The Board has found that the resolution of an unfair labor practice by a unilateral agreement proffered by a respondent and approved by a judge is in the nature of a consent order, and is not a true “settlement” between parties to the dispute. See *Local 201, Electrical Workers (General Electric Co.)*, 188 NLRB 855, 857 (1971).

Parties, to seek review of the list, which the Respondent contends the Charging Parties have not done.

After the judge issued his ruling, the Board held in *United States Postal Service*, 364 NLRB No. 116 (2016), that *Independent Stave* is not the appropriate standard for evaluating a judge's order approving and incorporating the settlement terms proposed by a respondent, over the objections of the General Counsel and the charging party. The Board clarified that the appropriate standard for evaluating such orders is "whether the order provides a full remedy for all of the violations alleged in the complaint."²

Having duly considered the matter, we grant the request for permission to appeal the administrative law judge's ruling, and deny the appeal on its merits. Applying the standard in *United States Postal Service* here, we find that the judge's order approving the Respondent's proffered terms over the objections of the General Counsel and Charging Parties provides a full remedy for the violations alleged in the complaint. As described, the settlement requires the Respondent to "honor the request of any job referral applicant to review the out-of-work list to determine their positions for referral on the out-of-work list." We interpret that requirement to encompass the specific remedy sought by the General Counsel. Thus, the Respondent must grant each of the two Charging Parties the right to review the applicable out-of-work list that was in place when each made his request. On that basis, we approve the consent order.³

² Id., slip op. at 1.

³ Acting Chairman Miscimarra agrees with his colleagues' interpretation of this consent settlement agreement. Specifically, he finds that the agreement requires Respondent to allow the Charging Parties to review the out-of-work lists in place at the time their original requests were made. He therefore joins his colleagues in both granting the permission to appeal and denying the appeal on the merits.

Acting Chairman Miscimarra writes separately to state his disagreement with his

Accordingly,

IT IS ORDERED that the General Counsel's request for permission to appeal is granted, the appeal is denied, and the consent order is approved.

Dated, Washington, D.C., April 14, 2017

PHILIP A. MISCIMARRA, ACTING CHAIRMAN

MARK GASTON PEARCE, MEMBER

LAUREN McFERRAN, MEMBER

colleagues' evaluation of this agreement under *United States Postal Service*. He finds that the Board acted incorrectly in overruling 25 years of precedent when it determined that it would no longer evaluate consent settlement agreements under *Independent Stave*. As stated more fully in his dissent in *United States Postal Service*, 364 NLRB No. 116, slip op. at 4-8 (Member Miscimarra, dissenting), he would continue to apply *Independent Stave* in evaluating consent settlement agreements, because he trusts the Board to adequately evaluate whether a proposed settlement agreement is reasonable. Respondents will be understandably less amenable to settlement if settlements, by rule, involve no concessions from the opposing party. As a result, charging parties will be more frequently required to undertake the lengthy, often burdensome process of litigating charges with no guarantee that the litigation will result in a remedy. Acting Chairman Miscimarra believe it serves the purposes of the Act to entrust the Board with the task of determining when a settlement agreement will provide a reasonable remedy to the charging parties while also allowing the parties to avoid the risks inherent in litigation.