

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

ROY SPA, LLC,

and

Case 19-CA-083329

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL 2

**GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S
MOTION FOR RECONSIDERATION OF BOARD DECISION**

On July 27, 2017, the National Labor Relations Board ("Board") issued its Decision ("Roy Spa II") denying the application of Roy Spa, LLC ("Respondent") for attorney's fees and expenses pursuant to the Equal Access to Justice Act ("EAJA")("Respondent's Application"), following a Supplemental Decision by Chief Administrative Law Judge Giannasi. Roy Spa II followed an earlier decision of May 10, 2016 ("Roy Spa I"), remanding the case to the Board's Division of Judges and leading to the second Board Decision. On August 24, 2017, Respondent filed a Motion for Reconsideration ("Respondent's Motion" or "Motion") under §§ 102.48(d)(1) and 102.154 of the Board's Rules and Regulations seeking to revisit the Board's Decisions in both Roy Spa I and Roy Spa II.

As an initial matter, Respondent's Motion invokes an improper section of the Board's Rules and Regulations and fails to meet the standard set forth in the appropriately cited section requiring extraordinary circumstances or material error. Second, by its Motion, Respondent merely repeats its earlier arguments, further failing to meet the appropriate standard set forth in § 102.48(d)(1). Third, Respondent's Motion makes clear that Respondent is actually using the Motion as a vehicle to procure a second bite at the apple with the undisguised desire that the Chairman's dissent now

becomes the majority opinion. For these reasons, and for the substantive reasons extensively litigated in this case and reflected in the underlying Board and Administrative Law Judge Decisions, General Counsel opposes Respondent's Motion.

I. Respondent's Motion for Reconsideration Does Not Meet the Appropriate Standard Warranting Reconsideration

As noted above, Respondent invokes §§ 102.48(d)(1) and 102.154 of the Board's Rules and Regulations as the basis for its Motion. Section 102.154 clearly does not apply, as it is limited to the filing of exceptions with the Board post-ALJD. That leaves § 102.48(d)(1), which is the appropriate section and states as follows:

A party to a proceeding before the board may, **because of extraordinary circumstances**, move for reconsideration . . . after the Board decision or order. A motion for reconsideration shall state with particularity the **material error** claimed and with respect to any finding of material fact shall specify the page of the record relied on.

(emphasis added).

Simply stated, Respondent has not made any showing of either extraordinary circumstances or material error requiring reconsideration. Rather, Respondent has simply raised yet again the very same jurisdictional and procedural arguments that two different Judges and two trips to the Board have already addressed: that the Board failed to rely on substantial evidence in reaching its decision, and that the Board should not have permitted the General Counsel's motion for extension of time and motion to dismiss. By its very citation to both Roy Spa I and II, and the underlying decisions of the Administrative Law Judges, it is clear that these issues have been repeatedly addressed throughout the litigation of Respondent's EAJA application. Thus, contrary to Respondent's oft-repeated contentions throughout the various stages of these proceedings over the past many years, the substantive and procedural issues related to

Respondent's EAJA application were fully-considered and well-founded; the Board simply rejected Respondent's arguments.

The only "new" elements of Respondent's Motion are excerpts from the now-Chairman's dissent in the Board's decision and the assertion that the dissent should instead be the majority opinion. Respondent does not mask its attempt to simply have the Board reconsider its previous decisions in the hope that the outcome changes, ostensibly because of the changing constituency of its membership. The language of § 102.48(d)(1) itself makes clear this is to be avoided absent extraordinary circumstances and material error. Thus, it is self-evident that allowing a party to return to any adjudicatory body in the hope of reaching the opposite conclusion on the same facts and body of law is neither appropriate nor *de rigeur*. Despite this, that is exactly what Respondent seeks by its Motion.

II. Conclusion

Respondent's Motion for Reconsideration should be denied because it lacks a factual or legal basis, fails to demonstrate any extraordinary circumstances or material error, and raises no issues that the Board has not previously considered. Accordingly, Counsel for the General Counsel requests the Board summarily deny it in its entirety.

Signed at Seattle, Washington, this 5th day of September, 2017.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of General Counsel's Opposition to Respondent's Motion for Reconsideration of Board Decision was served on the 5th day of September, 2017, on the following parties:

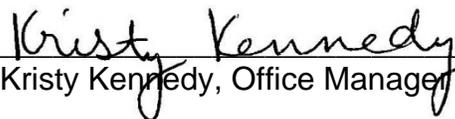
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