

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

LEGGETT & PLATT, INC.

vs.

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS
(IAM), AFL-CIO

CASE NOS. 09-CA-194057
09-CA-196426
09-CA-196608

**RESPONDENT LEGGETT & PLATT, INC.'S ANSWERING BRIEF TO
COUNSEL FOR THE GENERAL COUNSEL'S LIMITED EXCEPTIONS**

**ARTHUR T. CARTER
ARRISSA K. MEYER
LITTLER MENDELSON, P.C.
2001 Ross Avenue, Suite 1500
Dallas, Texas 75201-2931
Telephone: (214) 880-8105
Facsimile: (214) 594-8601
atcarter@littler.com
akmeyer@littler.com**

**A. JOHN HARPER III
LITTLER MENDELSON, P.C.
1301 McKinney St.
Houston, Texas 77010
Telephone: (713) 652-4750
Facsimile: (713) 513-5978
ajharper@littler.com**

**Attorneys for Respondent
LEGGETT & PLATT, INC.**

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I. INTRODUCTION

Respondent Leggett & Platt, Inc. (“Leggett” or the “Company”) submits this Answering Brief to respond to Counsel for the General Counsel’s second exception. As explained herein, Administrative Law Judge Andrew S. Gollin (“ALJ”) correctly found that requiring a management official to read a remedial notice is unwarranted in this case.

II. RESPONSE IN OPPOSITION TO COUNSEL FOR THE GENERAL COUNSEL’S SECOND EXCEPTION

A. The ALJ’s Decision Not to Order a Notice Reading Remedy is Appropriate in This Case and Consistent With Board Precedent.

The ALJ did not err in declining to order a notice reading remedy. As the ALJ correctly stated, such a remedy is “atypical and generally ordered in situations when there is a showing that the Board’s traditional notice remedies are insufficient.” (ALJ 21:47). The ALJ described the circumstances under which a reading remedy may be appropriate, including “when a respondent is a recidivist violator of the Act, when unfair labor practices are multiple and pervasive, or when circumstances exist that suggest employees will not understand or will not be appropriately informed by a notice posting” and found that no such circumstances warranted a notice reading remedy in this case. (ALJ 21:48 – 22:2). *Compare HealthBridge Management, LLC*, 365 NLRB No. 37, slip op. at 11 (2017) (finding notice reading appropriate to address large-scale violations that had a strong tendency to chill employees’ exercise of their Section 7 rights); *Sprain Brook Manor Rehab, LLC*, 365 NLRB No. 45, slip op. at 60 (2017) (finding notice reading appropriate for recidivist employer who engaged in “serious, extensive and pervasive violations” of the Act); *Southern Bakeries, LLC*, 364 NLRB No. 64, slip op. at 33 (2016) (finding notice reading necessary to counteract the coercive impact of the employer’s unfair labor practices, “which were substantial, pervasive and frequently committed at analogous captive audience meetings”).

Counsel for the General Counsel takes exception with this conclusion, arguing that Leggett’s “gross misconduct” warrants the issuance of a notice reading remedy. However, Counsel mischaracterizes Leggett’s actions. The ALJ did not find that Leggett engaged in “gross misconduct,” and Counsel for the General Counsel has not excepted to the ALJ’s failure to make such a finding. Moreover, at every step of the withdrawal process, Leggett informed employees that it was their choice about whether to have a Union or not. (*See e.g.*, Jt. Ex. 5 (“The Company respects your right to support or not to support the Union”)). Doing so negates the need for a reading remedy, a purpose of which is to assure employees that they may freely exercise their Section 7 rights. *See, e.g., Marquez Bros. Enters., Inc.*, 358 NLRB 509, 510 (2012), *aff’d*, 2014 NLRB LEXIS 979 (Dec. 16, 2014) (ordering notice reading where the employer engaged in a “persistent campaign of coercive conduct and exhibited an “evident lack of inhibition in coercing employees to withdraw their support of the Union”). Nor is there any evidence that Leggett is a recidivist employer, that it discharged or discriminated against Union supporters, or that it otherwise engaged in widespread misconduct that would make such a remedy appropriate. Thus, the ALJ’s ruling is consistent with several recent failure to bargain cases where the employers’ conduct did not rise to an egregious level of misconduct, and the Board did not order a reading remedy. *See Strategic Resources, Inc.*, 364 NLRB No. 42, slip op. 2-3 (2016); *Wayron, LLC*, 364 NLRB No. 60, slip op. 11-12 (2016); *Empire Janitorial Sales & Service, LLC*, 364 NLRB No. 138, slip op. at 1-2 (2016); *Masonic Temple Ass’n of Detroit*, 364 NLRB No. 150, slip op. at 1-2 (2016).

B. The Cases Cited by Counsel for the General Counsel are Distinguishable.

The cases cited by Counsel for the General Counsel in support of her second exception demonstrate that the circumstances under which notice reading may be appropriate are not present here. In *McAllister Towing & Transportation Company, Inc.*, 341 NLRB 394 (2004), the

employer accelerated the timing of a mid-year wage increase in order to influence the outcome of an election, and, during the post-election period, extended its 401(k) plan to employees and granted them five paid holidays as part of a three-stage strategy to squash union support. The Board ordered the notice reading because the employees would continue to be reminded of respondent's unlawful conduct by the benefits they received. Here, on the other hand, Leggett made no attempts to influence employee opinion regarding the outcome of the decertification petition and made no changes to employee's terms and conditions of employment until *after* it withdrew recognition. Moreover, Counsel for the General Counsel's argument that employees' receipt of benefits will remind them of Leggett's withdrawal of recognition is inconsistent with her first exception, in which she argues that Leggett should not be required to rescind benefit improvements except upon the Union's request.

Vincent/Metro Trucking, LLC and United Food and Commercial Workers Local 789, 355 NLRB 289 (2010), is also distinguishable. There, the Board found that a notice reading was necessary to remedy a respondent's unfair labor practices of soliciting employees to decertify the union, preparing, distributing, and collecting affidavits in support of decertification, and unlawfully withdrawing recognition from the union in violation of board-approved settlement agreement. Here, however, the decertification effort was employee-initiated, and Leggett took no steps toward withdrawal until it received the decertification petition from employees.¹

Moreover, in the cited cases in which the Board found that the participation of high-ranking management officials in unfair labor practices warranted a notice reading, the actions of the management officials were severely anti-union. For example, in *Consec Security*, 325 NLRB 453 (1998), *enf'd.* 185 F.3d 862 (3d Cir. 1999), the operations manager threatened striking

¹ Indeed, Region 9 found that the decertification petition was not tainted by employer influence. (Co. Exs. 8-9).

employees with termination and removed employees from their shifts, which decreased their compensation. Similarly, in *OS Transport LLC*, 358 NLRB 1048 (2012), the employer's most senior officials were involved in a series of escalating unfair labor practices that included unlawful threats of closure of operations, job loss, removal of lucrative work assignments, reduction of union supporters' work opportunities, and, ultimately, discharge of two pro-union employees. In *McAllister Towing*, the general manager developed and implemented a strategy to dramatically improve employees' wages and benefits in an attempt to erode union support. The contrast between these cases and the instant case is significant. Here, General Manager Chuck Denisio merely signed a letter announcing benefit changes to employees after the withdrawal, and the record evidence demonstrates that, at most, Human Resources Manager Stephen Day gestured Cordell Roseberry toward Keith Purvis.²

C. Under These Circumstances, Ordering a Notice Reading Remedy Would Be Punitive and Exceed the Board's Authority.

Because Leggett's conduct was not the type of egregious, pervasive, or repeat misconduct that typically warrants a notice reading remedy, the General Counsel's request in this case to have a Leggett management representative read the remedial notice is purely punitive. Remedies must be tailored to fit the nature and extent of the violations found, and the Act does not confer upon the Board "a punitive jurisdiction enabling the Board to inflict...any penalty it may choose because [a respondent] is engaged in unfair labor practices, even though the Board be of the opinion that the policies of the Act might be effectuated by such an order." *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 235-236 (1938).

The Supreme Court has gone further and found that the Board may not impose punitive remedies of any kind, and that it is instead limited to restoring the status quo pre-violation.

² Leggett has excepted to the ALJ's finding that Day directed Roseberry to Purvis for the purpose of signing an anti-union petition.

Republic Steel Corp. v. NLRB, 311 U.S. 7, 10, 12-13 (1940); *NLRB v. J.H. Rutter-Rex Mfg. Co.*, 396 U.S. 258, 265 (1969); *see also New Breed Leasing Corp. v. NLRB*, 111 F.3d 1460, 1470 (9th Cir. 1997) (Board may impose remedy to restore situation to what it would have been pre-violation, it may not impose a punitive remedy). Before withdrawing recognition, Leggett reminded employees that it was their right to choose whether or not to have a union. (*See* Jt. Ex. 5). Thus, Leggett’s pre-violation status quo stands in stark contrast to the cases described above involving employers who were actively attempting to oust the unions. As a result, imposing a notice reading remedy would not be a return to the status quo, but rather a punitive overcorrection. *See NLRB v. Laney & Duke Storage Warehouse Co., Inc.*, 369 F. 2d 859, 869 (5th Cir. 1966) (finding requirement that management read the Board’s Recommended Order and Notice to each employee was punitive and was “unnecessarily embarrassing and humiliating to management rather than effectuating the policies of the Act”); *see also International Union of Electrical, Radio, and Machine Workers v. NLRB*, 383 F.2d 230, 232-33 (D.C. Cir. 1967) (finding employer’s reading of the order to employees would be humiliating and degrading and “undoubtedly have a lingering effect on future relations between the company and the Union”).

While this remedy may be appropriate for willful violations of the Act, Leggett’s conduct was at most “incautious...and insufficiently wary of Union gamesmanship.” *Scomas of Sausalito, LLC v. NLRB*, 849 F.3d 1147, 1157 (D.C. Cir. 2017). Two employees started the decertification efforts of their own volition. Leggett took reasonable steps to verify the petition signatures. Leggett gave the Union notice of its anticipatory withdrawal, which Region 9 determined to be lawful. It allowed the Union an opportunity to present evidence that it had regained majority support, to which the Union did not respond other than stating it “did not believe the Company’s claim.” (Jt. Ex. 6). Given that Leggett had no knowledge of the pro-

union petition until after withdrawal, requiring Leggett's management to read a remedial notice only further rewards the "gotcha" gamesmanship of the Union.

In the absence of any evidence demonstrating that Leggett's conduct warrants this extraordinary remedy, and because the request is in contravention of the limitations on the Board to only issue remedial measures, Counsel for the General Counsel's exception requesting imposition of this extraordinary remedy should be denied.

III. CONCLUSION

For the foregoing reasons and based on the record evidence, Leggett respectfully requests that the Board deny Counsel for the General Counsel's second exception and uphold the ALJ's conclusion that a notice reading remedy is unwarranted in this case.

Respectfully submitted,

/s/ Arthur T. Carter

ARTHUR T. CARTER
ARRISSA K. MEYER
LITTLER MENDELSON, P.C.
2001 Ross Avenue, Suite 1500
Dallas, Texas, 75201
Telephone: (214) 880-8105
Facsimile: (214) 594-8601
atcarter@littler.com
akmeyer@littler.com

A. JOHN HARPER III
LITTLER MENDELSON, P.C.
1301 McKinney Street, Suite 1900
Houston, Texas 77010
Telephone: (713) 652-4750
Facsimile: (713) 513-5978
ajharper@littler.com

Attorneys for Respondent
LEGGETT & PLATT, INC.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Respondent's Answering Brief to Counsel for the General Counsel's Limited Exceptions were served on the following by electronic filing at NLRB.gov, email, and/or U.S. Mail this 20th day of November, 2017:

National Labor Relations Board
Office of the Executive Secretary
1015 Half Street SE
Washington, D.C. 20570-0001
Washington, D.C.
Via e-filing at www.nlr.gov

Judge Andrew S. Gollin
National Labor Relations Board Division of Judges
1015 Half Street SE
Washington, D.C. 20570-0001
Via CM/RRR:

Zuzana Murarova
Counsel for the Petitioner
Garey E. Lindsay
Regional Director
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271
Via email at zuzana.murarova@nlrb.gov and CM/RRR:

William Haller
Counsel for the Union
International Association of Machinist & Aerospace Workers, AFL-CIO (IAM)
9000 Machinists Place
Upper Marlboro, MD 20772-2687
Via email at whaller@iamaw.org and CM/RRR:

Aaron B. Solem
Counsel for Keith Purvis, James Green, Albert Dwayne Hawkins, Glenn Dixon, Jack
Keith, Frederick Sandeflur, Brian Patrick, Tim Keeton, James Wells, Justin Gilvin, and
Marvin Rogers
National Right to Work Defense Foundation
8001 Braddock Road
Springfield, Virginia 22160
Via email abs@nrtw.org and CM/RRR:

/s/ Arthur T. Carter

Arthur T. Carter

Firmwide:151120525.4 076785.1012