

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

APL LOGISTICS WAREHOUSE  
MANAGEMENT SERVICES, INC.

and

Cases 9-CA-43431  
9-CA-43719  
9-CA-43858  
9-CA-43876  
9-CA-44009

INTERNATIONAL CHEMICAL WORKERS  
UNION COUNCIL LOCAL 692C/  
UNITED FOOD & COMMERCIAL WORKERS  
INTERNATIONAL UNION, CLC

**DECISION AND ORDER<sup>1</sup>**

Statement of the Cases

On May 16, 2008, Administrative Law Judge John H. West issued a decision and order approving formal settlement in this proceeding, with certain corrections.<sup>2</sup> On June 27,

---

<sup>1</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

<sup>2</sup> The judge's Decision and Order Approving Formal Settlement Agreement was initially misidentified as a decision on the merits, rather than an order approving a settlement, and on May 16, 2008, the Office of the Executive Secretary issued an Order Transferring Proceeding to the National Labor Relations Board, which informed the parties of the Board's rules regarding the filing of exceptions to the administrative law judge's decision, citing Sec. 102.46 of the Board's Rules and Regulations. On July 31, 2008, the Office of the Executive Secretary issued an Order rescinding the May 16, 2008 Order. The July 31, 2008 Order informed the parties that the pleadings they had filed would be treated as a request for permission to file a special appeal, and oppositions to that request, under Section 102.26 of the Board's Rules and Regulations. Accordingly, the General Counsel's motion to strike

2008, APL Logistics Warehouse Management Services, Inc., the Respondent, and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation,<sup>3</sup> subject to the Board's approval, providing for

---

portions of the Charging Party's memorandum in support of exceptions is denied.

<sup>3</sup> Charging Party International Chemical Workers Union Council Local 692C/ United Food & Commercial Workers International Union, CLC, refused to enter into the Formal Settlement Stipulation, and requests special permission to appeal the judge's order approving the settlement. The Charging Party objects to the Formal Settlement Stipulation on the grounds that: (1) the Board should not approve withdrawal of the complaint allegations; (2) the Charging Party intends to seek at a hearing broader or different remedies than those sought by the General Counsel; (3) the Settlement does not adequately remedy the Respondent's withdrawal of recognition or the Sec. 8(a)(3) allegations, or provide a make-whole remedy for the unilateral change to the Respondent's paid time off (PTO) policy; (4) the Settlement omits factual findings that would establish that the decertification petition was tainted; (5) the Settlement inappropriately contains a non-admission clause and a narrow cease and desist order; (6) extraordinary remedies are warranted, which are not provided by the Settlement; and (7) the Charging Party filed new unfair labor practice charges alleging further bad-faith bargaining during the course of the hearing, and approval of the proposed settlement will interfere with prosecution of these charges under *Jefferson Chemical Co.*, 200 NLRB 992 (1982).

After careful consideration, the Board grants the Charging Party's request for special permission to appeal, and affirms the judge's order. In so ruling, the Board finds that under all of the circumstances here, it would effectuate the purposes of the Act to approve the Stipulation, despite the Charging Party's refusal to execute it. In *K&W Electric*, 327 NLRB 70 (1998), the Board applied to a formal settlement the principles for approval of a settlement articulated in *Independent Stave Co.*, 287 NLRB 740, 743 (1987) whether (1) the parties have agreed to be bound and the General Counsel's position regarding the settlement; (2) the settlement is reasonable in light of the violations alleged, the risks in litigation, and the stage of litigation; (3) fraud, coercion, or duress have occurred; and (4) the respondent has a history of unlawful conduct or has breached previous settlement agreements. The Stipulation here meets these standards. Although the

the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The Respondent and the General Counsel waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act, as amended, and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following:

### **Findings of Fact**

#### 1. The Respondent's business

The Respondent is a corporation engaged in the business of providing warehousing and logistical services from its Shepherdsville, Kentucky facility.

---

Charging Party opposes the Stipulation, the General Counsel agreed to it and recommends its approval, and the Respondent has agreed to be bound. Further, the Stipulation substantially remedies all of the complaint allegations. To the extent that the Charging Party asserts that not all of the complaint allegations are fully remedied, we find that the remedies provided are appropriate and reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of the litigation. There is no evidence of fraud, coercion, or duress. In addition, no evidence has been presented establishing that the Respondent is a recidivist violator of the Act. Finally, the Charging Party asserts that the Respondent has violated a prior informal settlement agreement. Assuming arguendo that this is correct, it does not establish a basis for rejecting the Stipulation. Rather, the General Counsel's negotiation of a formal settlement agreement is appropriate under such circumstances.

In the 12-month period ending June 27, 2008, in conducting its business operations described above, the Respondent purchased and received at its Shepherdsville, Kentucky facility goods valued in excess of \$50,000 directly from suppliers located outside the Commonwealth of Kentucky.

At all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2 The labor organization involved<sup>4</sup>

The International Chemical Workers Union Council Local 692C/ United Food & Commercial Workers International Union, CLC (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. The appropriate unit

The following employees of the Respondent (the unit), constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time warehousing employees employed by the Respondent at its Shepherdsville, Kentucky facility, but excluding all office clerical employees, all employees employed by the temporary agencies, all professional employees, administrative assistants, and guards and supervisors as defined in the Act, as set forth in NLRB Case 9-RC-17821.

On January 7, 2004, the Charging Party was certified as the exclusive collective-bargaining representative of the unit.

At all material times, since January 7, 2004, based on Section 9(a) of the Act, the Charging Party has been the exclusive collective-bargaining representative of the unit.

**ORDER**

---

<sup>4</sup> We note that at certain points, the Stipulation indicates that the Union is affiliated with the AFL-CIO. We have corrected the Stipulation to conform to the case caption.

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that:

The Respondent, APL Logistics Warehouse Management Services, Inc., its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Refusing to provide the Union requested information that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees

(b) Failing or refusing to recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the unit described below regarding their wages, hours and other terms and conditions of employment.

(c) Implementing unilateral changes in wages, the paid time off (PTO) policy and in any other terms and conditions of employment without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

(d) Implementing across-the-board wage increases and merit wage increases to discourage employees from engaging in union and other concerted activities.

(e) In any like or related manner, interfering with, restraining or coercing employees in the exercise of rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) To the extent that the Respondent has not already done so, immediately furnish the Union with the following information:

(i) A list of temporary employees employed by the Respondent, as requested by the Union on October 18 and 23, November 15 and 30, 2006, and January 23, 2007

(ii) The position and hours worked of all temporary employees as requested by the Union on January 23, 2007.

(iii) Information related to the Respondent's sexual harassment policy and employee hotline as requested by the Union in paragraphs A(2), B(3), (4), (6) and (7) of the December 18, 2007 letter to the Respondent.

(iv) Copies of all workers compensation settlements since September 2006, as requested by the Union on July 16, 2007.

(v) Information related to the Respondent's drug testing policy as requested by the Union in items 2, 4, 5, 8, 9, 10(b), 11, 12, and 14 of the August 1, 2007 letter to the Respondent.

(b) Upon written request of the Union, rescind the following unilateral changes:

- (i) The implementation of the merit increase system.
- (ii) The across-the-board wage increase and merit increases granted to unit employees since about October 1, 2007.
- (iii) The change in the PTO policy regarding the discontinuance of the deadline for scheduling PTO.
- (iv) The changes to the PTO policy made after September 11, 2007.
- (v) The increase in the starting wage rate for new hires.

(c) Upon request, bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit with respect to rates of pay, wages, hours of employment and other terms and conditions of employment, and if an understanding is reached, reduce it to writing and sign it:

All full-time and regular part-time warehousing employees employed by the Respondent at its Shepherdsville, Kentucky facility, but excluding all

office clerical employees, all employees employed by the temporary agencies, all professional employees, administrative assistants, and guards and supervisors as defined in the Act, as set forth in NLRB Case 9-RC-17821

(d) Within 14 days of service by the Region, post at its Shepherdsville, Kentucky facility copies of the attached notice. Copies of the notice, on forms provided by Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that during the pendency of these proceedings the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 18, 2006.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 9 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., November 20, 2008.

---

Peter C. Schaumber, Chairman

---

Wilma B. Liebman, Member

(SEAL)

**NATIONAL LABOR RELATIONS BOARD**

**NOTICE TO EMPLOYEES**  
**Posted by Order of the**  
**National Labor Relations Board**  
**An Agency of the United States Government**

Pursuant to a stipulation providing for a Board order and a consent judgment of any appropriate United States Court of Appeals, the National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO:**

- Form, join or assist a union
- Bargain collectively through a representative chosen by employees
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

WE WILL NOT refuse to provide the International Chemical Workers Union Council Local 692C/ United Food & Commercial Workers International Union, CLC, the Union, requested information that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT fail or refuse to recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of all full-time and regular part-time warehousing employees employed by us at our Shepherdsville, Kentucky facility, but excluding all office clerical employees, all employees employed by the temporary agencies, all professional employees, administrative assistants, and guards and supervisors as defined in the Act regarding their wages, hours and other terms and conditions of employment.

WE WILL NOT implement unilateral changes in wages, the paid time off (PTO) policy or in any other terms and conditions of employment without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct

WE WILL NOT implement across-the-board wage increases and merit wage increases to discourage employees from engaging in union and other concerted activities.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce you in the exercise of rights guaranteed in Section 7 of the Act.

WE WILL, to the extent that we have not already done so, immediately furnish the Union with the following information:

(i) A list of temporary employees employed by us, as requested by the Union on October 18 and 23, November 15 and 30, 2006, and January 23, 2007

(ii) The position and hours worked of all temporary employees as requested by the Union on January 23, 2007.

(iii) Information related to our sexual harassment policy and employee hotline as requested by the Union in paragraphs A(2), B(3), (4), (6) and (7) of its December 18, 2007 letter.

(iv) Copies of all workers compensation settlements since September 2006, as requested by the Union on July 16, 2007

(v) Information related to our drug testing policy as requested by the Union in items 2, 4, 5, 8, 9, 10(b), 11, 12, and 14 of its August 1, 2007 letter.

WE WILL, upon written request of the Union, rescind the following unilateral changes:

- (i) The implementation of the merit increase system.
- (ii) The across-the-board wage increase and merit increases granted to unit employees since about October 1, 2007
- (iii) The change in the PTO policy regarding the discontinuance of the deadline for scheduling PTO.
- (iv) And changes to the PTO policy made after September 11, 2007

(v) The increase in the starting wage rate for new hires.

WE WILL, upon request, bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit with respect to rates of pay, wages, hours of employment and other terms and conditions of employment, and if an understanding is reached, reduce it to writing and sign it:

All full-time and regular part-time warehousing employees employed by the Respondent at its Shepherdsville, Kentucky facility, but excluding all office clerical employees, all employees employed by the temporary agencies, all professional employees, administrative assistants, and guards and supervisors as defined in the Act, as set forth in NLRB Case 9-RC-17821.

APL LOGISTICS WAREHOUSE  
MANAGEMENT SERVICES, INC.  
(Employer)

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

Address: 3003 John Peck Federal Building, 550 Main Street, Cincinnati, Ohio, 45202-3271 Telephone: 513-684-3686.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER.