

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

**WALDEN SECURITY, INC.**

**And**  
**UNITED GOVERNMENT SECURITY OFFICERS  
OF AMERICA, INTERNATIONAL UNION  
JOINTLY WITH ITS MEMBER LOCALS 85, 86,  
109, 111, 173, 175, 220**

**Cases 14-CA-170110,  
18-CA-170129,  
16-CA-170337,  
and 15-CA-176496**

**GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S  
MOTION FOR RECONSIDERATION**

Respondent's Motion for Reconsideration (Motion) should be denied because Respondent has not identified a material error in the Board's March 23, 2018 decision. Section 102.48(c)(1) of the Board's Rules and Regulations requires that the party seeking reconsideration must state with particularity the material error made by the Board. Respondent makes five separate arguments as to why the Board should reconsider its decision; none of these five arguments allege a material error. Further, at least three of the five do not even allege an error.

Respondent seeks reconsideration of the Board's finding that Respondent became a perfectly clear successor when it distributed a transition notice to the predecessor's employees working at various Federal courthouses in the Fifth and Eighth Judicial Circuits. Depending on which judicial district they worked in, these employees were represented in separate units by one of seven local unions and the International Union. The International Union also represented separate bargaining units of Respondent's employees in the Sixth Judicial Circuit. This relationship predated its bargaining relationship with Respondent in the Fifth and Eighth Circuits.

Respondent's first argument for reconsideration is that the Board should have taken administrative notice of the disposition of similar charges filed by the International over Respondent's conduct in the Sixth Circuit. Respondent asserts that this evidence would establish that the International Union as an entity knew that Respondent was likely to change terms and conditions of employment for the employees in the Fifth and Eighth Circuits. Respondent's proffered evidence is not material. The justification for the perfectly clear successor doctrine is that employees may be misled into believing they will be retained without changes in their employment conditions. *See Spruce Up Corporation*, 209 NLRB 194, 195 (1974), *enforced*, 529 F.2d 516 (4<sup>th</sup> Cir. 1975) (issue is whether "the new employer has either actively or, by tacit inference, misled employees into believing that they would be retained without change" in working conditions). Here, even if the International Union as an entity knew that Respondent had unilaterally changed the various contracts covering employees in the Sixth Circuit, this knowledge cannot be imputed to the actual employees in the Fifth and Eighth Circuits. Moreover, Respondent's conduct with respect to other groups of employees does not necessarily mean that Respondent will engage in the same conduct with respect to the employees in other areas of the country. Thus, the existence of these charges simply does not establish that employees in the Fifth and Eighth Circuits had any reason to believe that their own terms and conditions of employment were likely to be changed. These charges have no probative value for determining what the rank and file employees here knew. The Board did not make a material error when it declined to take administrative notice of different charges covering a different group of employees with different contracts.

Respondent's second and third arguments for reconsideration assert the Board misapplied its own rules when it failed to exercise its discretion under Section 102.48(b)(1) to reopen the

record. This is not an allegation of error because it relates to an exercise of discretion. Section 102.48(b)(1) provides that the Board *may* reopen the record in certain conditions and does not require such an action be taken. It is not error for the Board to decline to exercise its own discretion.

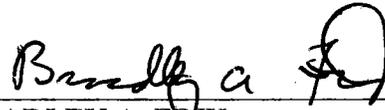
Respondent's fourth argument is that the Board should reconsider its own decision because Chairman Ring was confirmed by the United States Senate and seated after the decision issued. Chairman Ring's appointment to the Board does not establish a basis for reconsideration under Rule 102.48(c)(1).

Finally, Respondent argues that the Board erred in affirming the ALJ's decision because the record did not contain sufficient facts to establish a violation. Respondent argues that the record contains no information about when Respondent made actual offers of employment to employees, what Respondent told employees at meetings held after it created a perfectly-clear successor obligation, and whether employees actually believed that Respondent's transition letter created the successorship obligation. None of these facts are material to the underlying decision. The facts in the stipulated record establish that Respondent became a perfectly clear successor when it distributed the transition letter to the predecessor's employees between September 15 and October 8, 2015. The record establishes that Respondent did not have any other communication with employees about their employment terms before it sent the transition letter. The transition letter clearly conveyed Respondent's intent to retain the predecessor's employees without announcing any specific changes to working conditions. The obligation to bargain attached as soon as the employees received this letter. Respondent's subsequent actions are irrelevant to establishing a violation. It is not General Counsel's burden to prove facts in support of Respondent's defenses.

Accordingly, Respondent has not established any material error by the Board and the motion for reconsideration should be denied.

Dated: May 3, 2018

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bradley A. Fink", written over a horizontal line.

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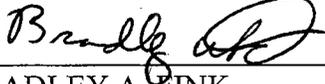
## CERTIFICATE OF SERVICE

I certify that a copy of the Counsel for the General Counsel's Request to Strike Respondent's Brief in Opposition to General Counsel's Brief was served by electronic mail on this 3<sup>rd</sup> day of May, 2018, on the following parties:

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