

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

INGREDION, INC. d/b/a PENFORD  
PRODUCTS CO.

and

Cases 18–CA–160654  
18–CA–170682

BCTGM Local 100G, affiliated with  
BAKERY, CONFECTIONERY, TOBACCO  
WORKERS, AND GRAIN MILLERS  
INTERNATIONAL UNION, AFL-CIO

ORDER DENYING RESPONDENT’S MOTION TO REOPEN RECORD

On May 1, 2018, the Board issued a Decision and Order in this proceeding, finding that the Respondent committed a number of unfair labor practices and ordering the Respondent to take certain remedial actions.<sup>1</sup> On May 17, 2018, the Respondent filed a Motion to Reopen the Record.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Respondent seeks to include in the record an affidavit from Andrew Sullivan, its Director of Employee Relations, Labor Relations and Compliance, and a collective-bargaining agreement it reached with the Union on February 8, 2017. The Respondent offers this evidence in order to establish that the parties arrived at an agreement, and that Ken Meadows, the Respondent’s former Director of Human Resources and chief labor negotiator, retired on May 1, 2017, and is no longer employed by the Respondent.

The Respondent’s motion is denied because the Respondent has not shown that extraordinary circumstances justify granting the motion or that the proffered evidence, if admitted, would require a different result.<sup>2</sup> The collective-bargaining agreement postdates and therefore would not be relevant to any of the events at issue in this case, which occurred between April 2015 and March 2016.<sup>3</sup> Both the contract and Meadows’

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<sup>1</sup> 366 NLRB No. 74 (2018).

<sup>2</sup> See Sec. 102.48(c)(1) of the Board’s Rules and Regulations.

<sup>3</sup> Evidence that covers a period after the hearing does not fall within the category of newly discovered evidence. Labor Ready, 330 NLRB 1024, 1024 (2000). The hearing in this case was held in April 2016. With respect to the effect the contract might have on our remedial order, we note that the order specifically required the Respondent

retirement are potentially relevant only to the implementation of our remedial order.<sup>4</sup> It is well established that the Board does not resolve remedial issues when adjudicating liability, but defers such issues to the compliance proceeding.<sup>5</sup>

Dated, Washington, D.C., August 16, 2018.

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Mark Gaston Pearce, Member

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Lauren McFerran, Member

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William J. Emanuel, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

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to bargain with the Union for a new contract and to restore the terms and conditions that existed in the bargaining unit as of September 14, 2015 (the date the Respondent unlawfully implemented its last contract offer) “until the parties have bargained to an agreement or a valid impasse.”

<sup>4</sup> Our remedial order required Meadows, in view of his primary responsibility for the Respondent’s unfair labor practices, to “read the attached notice to the assembled employees, or permit a Board agent, in the presence of Meadows and other corporate officials responsible for labor relations, to read the notice to employees.” If Meadows is no longer available to read the notice on the Respondent’s behalf, the General Counsel and the Respondent can negotiate (and if necessary litigate) the best possible notice-reading alternative in compliance.

With respect to the Respondent’s contention that our notice-reading requirement violated Meadows’ constitutional rights, it is well established that such a requirement falls within the Board’s remedial discretion under appropriate circumstances. See, e.g., Conair Corp. v. NLRB, 721 F.2d 1355, 1385–1387 (D.C. Cir. 1983), cert. denied sub nom. Local 222, International Ladies' Garment Workers' Union, v. NLRB, 467 U.S. 1241 (1984); J.P. Stevens & Co. v. NLRB, 417 F.2d 533, 537-540 (5th Cir. 1969).

Member Emanuel adheres to the view he expressed in the Decision and Order that a notice-reading requirement was neither necessary nor appropriate in this case. 366 NLRB No. 74, slip op. at 1 fn. 2 (2018). Nonetheless, because he agrees that the Respondent has not demonstrated extraordinary circumstances warranting reopening the record and the Respondent can raise the remedial issues in a compliance proceeding, he joins in denying the Respondent’s motion.

<sup>5</sup> Hawaiian Telcom, Inc., 365 NLRB No. 36, slip op. at 3 fn.5 (2017); Norris/O'Bannon, Dover Resources Co., 307 NLRB 1236, 1245 fn. 7(1992); Hotel & Restaurant Employees Local 1064 (Service America), 298 NLRB 872, 872 (1990); Expert Environmental Control, 297 NLRB 943, 943 fn. 1 (1990); Nick Robilotto, Inc., 292 NLRB 1279, 1279 (1989).