

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

**CONSOLIDATED COMMUNICATIONS
HOLDINGS, INC. D/B/A CONSOLIDATED
COMMUNICATIONS OF TEXAS COMPANY**

and

**Cases 16-CA-187792
16-CA-192050**

**COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO**

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

On September 21, 2018, Consolidated Communications Holdings, Inc. d/b/a Consolidated Communications of Texas Company (“Respondent”), pursuant to Section 102.48 of the Rules and Regulations of the National Labor Relations Board (“Board”) filed a Motion for Reconsideration and Brief in Support requesting that the Board reconsider its August 27, 2018 Decision and Order in this case. Counsel for the General Counsel respectfully opposes Respondent’s Motion for the reasons set forth below.

Section 102.48 of the Board’s Rules and Regulations provides that a Motion for Reconsideration must cite “extraordinary circumstances” and claim “material error.” §102.48(c)(1). The Board’s Decision and Order here presents neither extraordinary circumstances nor material error, and Respondent has failed to cite any circumstances or error in its Motion warranting the reconsideration it requests. The Board’s Decision and Order correctly applies longstanding Board law to the undisputed facts presented by the parties at hearing and relied upon by the Administrative Law Judge (“ALJ”).

First, contrary to Respondent's contention, the Board did not fail to apply well-established precedent regarding work slowdowns when it determined, based on undisputed facts, that employee Kim Thompson's demonstration on October 3, 2016 did not constitute an unprotected work slowdown. Rather than establish a new standard regarding slowdowns, as Respondent argues, the Board reasonably and rationally concluded that, during her demonstration, which involved Thompson and her fellow employees concertedly and permissibly standing up and stretching, Thompson "did not refuse to perform duties or reduce the rate of work, nor did the demonstration have a disruptive effect." See Decision and Order at 2-3. The Board then distinguished Thompson's activity, and that of her co-workers, from the activities of employees in cases like *DaimlerChrysler Corp.*, 344 NLRB 1324 (2005); *Davis Electrical Constructors, Inc.*, 216 NLRB 102 (1975); *General Electric Co.*, 155 NLRB 208 (1965); *Elk Lumber Co.*, 91 NLRB 333 (1950); *Russell Packing Co.*, 133 NLRB 194 (1961); *Potter Electrical Engineering & Construction Co., Inc.*, 181 NLRB 743 (1970); and *Arizona Public Service Co.*, 292 NLRB 1311 (1989), wherein employees either planned to or did engage in actions that clearly interfered (or would have interfered) with their employers' operations in order to exert economic pressure. Such unprotected actions include deliberate and extended work slowdowns and idleness on the job, self-removal from one's work station, and delaying or failing to show up for work entirely. The Board's comparison of the facts at hand to the referenced cases does not constitute a reversal of precedent; on the contrary, the Board utilized the parameters set forth by those cases in order to distinguish the facts of the instant case.

Second, it follows that the Board did not, as Respondent claims, *sua sponte* reverse longstanding Board precedent regarding slowdowns by determining, in its Decision and Order, that Thompson did engage in a protected demonstration rather than a "slowdown." Respondent's

claim wholly mischaracterizes the Board's Decision in this case. The Board's application of longstanding Board law to the facts of this case does not constitute a reversal of its precedent warranting briefing and notification to the parties or the public.

Finally, the Board's factual inferences upon which it based its Decision are not contrary to the ALJ's factual findings, and are indeed supported by record evidence. Contrary to Respondent's contention, the Board correctly noted that Thompson was not on working time when she asked her co-workers to participate in the action. Additionally, the Board relied on undisputed evidence that the employees were acting within the range of activity normally allowed by Respondent when, at 2:00 p.m. on the date in question, Thompson and about five other customer service employees stood at their workstations and stretched briefly. Respondent's disagreement with the Board's application of the law to these facts is not a basis for determining that the Board based its Decision on factual inferences unsupported by the record evidence. Respondent's assertion that the Board's factual inferences are contrary to the ALJ's factual findings is without merit.

Accordingly, Counsel for the General Counsel opposes Respondent's Motion for Reconsideration and respectfully urges the Board to reaffirm its Decision and Order in this proceeding.

DATED at Fort Worth, Texas, this 4th day of October, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that Counsel for the General Counsel's Opposition to Respondent's Motion for Reconsideration has been served this 4th day of October, 2018 on the following:

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