

NOT TO BE INCLUDED  
IN BOUND VOLUMES

RMcKE  
Louisville, KY  
Edge Moor, DE

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

E.I. DU PONT DE NEMOURS, LOUISVILLE WORKS

and

Cases 9-CA-040777  
9-CA-041634

PAPER, ALLIED-INDUSTRIAL, CHEMICAL  
AND ENERGY WORKERS INTERNATIONAL  
UNION AND ITS LOCAL 5-2002

E.I. DU PONT DE NEMOURS AND COMPANY

and

Case 4-CA-033620

UNITED STEEL, PAPER AND FORESTRY,  
RUBBER, MANUFACTURING, ENERGY, ALLIED  
INDUSTRIAL AND SERVICE WORKERS  
INTERNATIONAL UNION (USW)  
AND ITS LOCAL 4-786

ORDER DENYING MOTION FOR RECONSIDERATION

The Charging Parties' motion for reconsideration of the Board's Decision and Order reported at 367 NLRB No. 12 (2018) is denied.<sup>1</sup> The Charging Parties have not identified any material error or demonstrated extraordinary circumstances warranting reconsideration under Section 102.48(c)(1) of the Board's Rules and Regulations.<sup>2</sup>

---

<sup>1</sup> The Respondent filed a brief opposing the Charging Parties' motion and the Charging Parties filed a reply brief.

<sup>2</sup> The Charging Parties assert that the Board committed material error by failing to decide the "dispositive issue" of whether the Respondent violated the Act by refusing their requests to bargain over the Respondent's lawful changes to the unit employees' Beneflex Plan. We find no merit in the Charging Parties' contention. These consolidated proceedings were litigated by the General Counsel on the theory that the Respondent violated Section 8(a)(5) and (1) of the Act by unlawful unilateral changes

Dated, Washington, D.C., February 11, 2019.

---

John F. Ring, Chairman

---

Lauren McFerran, Member

---

Marvin E. Kaplan, Member

---

William J. Emanuel, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

---

inconsistent with past practice. During the entire litigation of this case, the General Counsel did not pursue the theory that a violation should be found based on the Respondent's failure to bargain over a *lawful* change. *E.I. du Pont de Nemours*, 364 NLRB No. 113, slip op. at 27-28 (2016). Accordingly, the Board rejects the Charging Parties' motion because it is the General Counsel, not the Charging Parties, who control the litigation of this case. See, e.g., *Coastal Marine Services, Inc.*, 367 NLRB No. 58, slip op. at 1 fn. 2 (2019) (The General Counsel controls the complaint, and the charging party cannot enlarge upon or change the General Counsel's theory of the case.), and cases cited therein.

Although Member McFerran adheres to her dissent from the majority decision in this case, she agrees that the Charging Party has not established grounds for reconsideration under Sec. 102.48(c)(1) of the Board's rules.