

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

STEIN, INC.,)	CASE NOS.
)	09-CA-215131
Respondent,)	09-CA-219834
)	
and)	CASE NO.
)	09-CB-215147
LABORERS' INTERNATIONAL UNION OF)	
NORTH AMERICA (LIUNA) LOCAL NO. 534,)	ADMINISTRATIVE LAW JUDGE
)	ANDREW S. GOLLIN
Charging Party,)	
)	
and)	
)	
INTERNATIONAL OPERATING ENGINEERS)	
(IUOE) LOCAL 18,)	
)	
Respondent,)	
)	
and)	
)	
LABORERS' INTERNATIONAL UNION OF)	
NORTH AMERICA (LIUNA) LOCAL NO. 534,)	
)	
Charging Party.)	
)	
)	
)	

RESPONDENT STEIN, INC.'S ANSWERING BRIEF TO THE GENERAL COUNSEL'S CROSS-
EXCEPTIONS TO THE ALJ'S DECISION AND ORDER

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Counsel for the General Counsel's Cross-Exceptions brief takes issue with the Administrative Law Judge's remedial order and corresponding "Notice to Employees" (G.C. Cross-Exception Br. at pp. 1-2). Counsel for the General Counsel argues, inter alia, that Administrative Law Judge Andrew Gollin failed to include as part of his remedial order in the recommended "Notice to Employees" that Respondent Stein "...file with the Regional Director a report allocating the back pay award to the appropriate calendar year(s) for any discriminatee owed back pay in this matter" (Id. at p. 2).

However, for the reasons set forth in Respondent Stein's March 14, 2019 Exceptions Brief, the Administrative Law Judge clearly erred in finding and determining that Respondent Stein had committed any violations of the National Labor Relations Act. Therefore, the Administrative Law Judge's remedial order, and his corresponding "Notice to Employees" should not have included any affirmative remedial relief, let alone a "make whole" remedy in the form of back pay or other monetary relief in this Burns'¹ successor dispute.

Most recently, in *Ridgewood Healthcare Center, Inc.*, 367 NLRB No. 110, Case Nos. 10-CA-113669, 10-CA-136190 (April 2, 2019), the NLRB reversed Administrative Law Judge Michael Rosas; reversed its prior decision in *Galloway School Lines*, 321 NLRB 1422 (1996); and held that the presumptively appropriate remedy in a Burns successor dispute is not a make-whole, back-pay remedy, but rather an "...order...to recognize and, upon request...bargain in good faith with the Union" Id. The Board majority in *Ridgewood Healthcare Center*² properly concluded that an economic make-whole remedy in a case such as this "...effectively eliminates the otherwise

¹ NLRB v. Burns Security Srvcs., Inc., 406 U.S. 272 (1972).

² CHAIRMAN RING and MEMBERS KAPLAN and EMANUEL.

customary Burns right to set initial employment terms unilaterally” and “...runs counter to the principal that initial terms must generally be set by ‘economic power realities’”. Id.

What’s more, Ridgewood Healthcare Center pointed out that a make-whole economic remedy in a Burns successor dispute such as this is wholly irreconcilable with the Supreme Court’s decision in Burns: “[B]ecause we conclude that the Galloway School Lines remedy constitutes an unwarranted extension of Love’s Barbeque³ that is contrary to the rationale of Burns, we overrule that case, and any case subsequently applying it, in relevant part”. Id.

It is axiomatic that Regional Directors of the National Labor Relations Board are required to adhere to the most recent NLRB precedents and their underlying rationales. Responses to the Questions of the Practice and Procedure Committee of the Labor and Employment Relations Section of the American Bar Association – 2006, Memorandum G.C. 06-04 (March 22, 2006) (“[I]f a Regional Director reaches a decision on a charge – either by announcing that a complaint will issue absent settlement or by soliciting withdrawal of the charge or issuing a dismissal letter – and thereafter one of the parties brings evidence or authority to the Director’s attention that argues contrary to the Director’s decision, the Director will reconsider the disposition of the charge.” Id. at *4.

To the extent Counsel for the General Counsel’s Exceptions is directed towards individual Ken Karoly under Total Security Management,⁴ the Board should return to its Fresno Bee, 337

³ Love’s Barbeque Rest., No. 62, 245 NLRB 78 (1979), enf’d. in part sub. nom., Kallmann v. NLRB, 640 F.2d 1094 (9th Cir. 1981).

⁴ Total Security Management, 364 NLRB No. 106 (2016).

NLRB 1161 (2002) doctrine. And, Respondent Stein nevertheless met its evidentiary burden under Total Security Management to legally justify Karoly's discharge under the Act in any event.

For the reasons set forth in Respondent Stein's Stated Exceptions and corresponding Exceptions Brief, and those set forth herein, Counsel for the General Counsel's Cross-Exceptions and the requested relief set forth therein, should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the foregoing Respondent Stein, Inc.'s Answering Brief to the General Counsel's Cross-Exceptions to the ALJ's Decision and Order has been served, via electronic mail, this 9th day of April, 2019, upon the following:

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