

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON D.C.**

NEXTEER AUTOMOTIVE CORPORATION

Respondent

and

CASE 07-CA-215036

LOCAL 699, INTERNATIONAL UNION,
UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKER
OF AMERICA (UAW), AFL-CIO

Charging Party

**COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO
RESPONDENT'S MOTION FOR RECONSIDERATION OF THE DECISION
AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD AND FOR A
STAY OF PROCEEDINGS**

1. On August 27, 2019, the National Labor Relations Board (the Board) issued its Decision and Order in this matter, adopting the recommended Order of the Administrative Law Judge (ALJ) as modified and set forth in the Board's Order. On September 18, 2019, Respondent filed its Motion for Reconsideration and for a Stay of Proceedings (Motion).

2. Respondent's Motion fails to meet the standard set forth in §102.48(c) and (c)(1) of the Board's Rules and Regulations, as amended on March 6, 2017 (Rules) necessitating reconsideration as it does not allege any extraordinary circumstance or material error with respect to any finding of material fact in the Board's decision.

3. Respondent requests that proceedings in this matter be stayed, hopeful that the Board might revise its application of the four-factor test set forth in *Atlantic Steel Co.*, 245 NLRB 814 (1979). Respondent's hopes rest on the Board's September 5, 2019, invitation to file briefs in *General Motors, LLC*, 368 NLRB No. 68 (2019). The invitation requests arguments as to the protection that should be afforded to profane and racially or sexually offensive language.

4. Respondent's motion does not claim that facts in the instant matter, as found by the administrative law judge and affirmed the Board, are in error or similar to those in *General Motors, LLC*. However, in its brief in support, Respondent attempts to recharacterize the discriminatee's actions by revisiting exceptions to factual findings made by the administrative law judge based upon credibility determinations. Respondent further objects to the judge's reliance on disciplinary time limits within the parties' collective-bargaining agreement in finding that Respondent could not rely upon long past incidents to justify the discriminatee's discharge.

5. According to §102.48(c) and (c)(1) of the Rules, a motion for reconsideration may be filed because of extraordinary circumstances. Procedurally, "a motion for reconsideration must state with particularity the material error claimed and with respect to any finding of material fact, must specify the page of the record relied on."

6. Contrary to Respondent's assertions, the Board was correct in affirming the administrative law judge's credibility determinations, in keeping with *Standard Dry Wall Products*, 91 NLRB 544 (1950), and factual finding that Respondent must adhere to the

provisions in the parties' collective-bargaining agreement regarding discipline.

Respondent's further basis for a stay of proceedings relies not upon facts, but rather a hope that applicable Board law might change in the future. Such a hope that any such change will occur or that it would be applicable to the facts in the instant matter are speculative. Regardless of the correctness of Respondent's expectation, Respondent's Motion must be denied because it fails to meet the standard set forth in §102.48(c) and (c)(1) of the Rules regarding reconsideration as it does not allege a material error in the Board's decision.

For the reasons stated above, it is respectfully requested that Respondent's Motion for Reconsideration and for a Stay of Proceedings be denied.

Respectfully submitted this 27th day of September, 2019.

/s/Scott R. Preston
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CERTIFICATE OF SERVICE

I certify that on the 27th day of September, 2019, I e-mailed copies of Counsel for the General Counsel's Opposition to Respondent's Motion for Reconsideration of the Decision and Order of the National Labor Relations Board and for a Stay of Proceedings to the following parties of record:

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Date: September 27, 2019