

BEFORE THE NATIONAL LABOR RELATIONS BOARD

BS&B SAFETY SYSTEMS, L.L.C.

and

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
AFL-CIO-CLC

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* Case 14-CA-239530
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**CHARGING PARTY USW'S REPLY BRIEF IN SUPPORT
OF ITS CROSS-EXCEPTIONS TO THE ADMINISTRATIVE
LAW JUDGE'S DECISION**

Pursuant to Section 102.46(e) of the Board's Rules and Regulations, Charging Party United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC ("USW" or "Union") files this Reply Brief in support of its Cross-Exceptions to the Administrative Law Judge's Decision in Case 14-CA-239530.

The Board Should Reverse The ALJ's Denial Of A Notice Reading.

"The Board has broad discretion to fashion 'a just remedy' to fit the circumstances of each case it confronts." *Excel Case Ready*, 334 NLRB 4, 5 (2001) (quoting *Maramont Corp.*, 317 NLRB 1035, 1037 (1995)). Although notice readings are more common in cases involving multiple violations, a notice reading is appropriate in this case because the Company discharged the top Union representative on site during prolonged contract negotiations, with the effect of discouraging protected activity.

The Board has held that a notice reading is particularly appropriate in cases involving the discharge of a key union supporter. “The Board considers the unlawful discharges of Union supporters to be highly coercive or ‘hallmark violations’ of the Act.” *Excel Case Ready*, 334 NLRB at 5 (quoting *Garney Morris, Inc.*, 313 NLRB 101, 103 (1993)). Even where only one employee is targeted, the Board has found that the employer’s “violations had a widespread impact warranting a notice remedy.” *Jason Lopez’ Planet Earth Landscape, Inc.*, 358 NLRB 383, 383 (2012); *see also Sysco Grand Rapids, LLC*, 367 NLRB No. 111 slip op. at 1 (2019) (ordering notice reading for violations including the discharge of a key union supporter “for conduct that resulted in lesser discipline for other employees who acted similarly”).

As discussed in the Union’s Cross-Exceptions, Stroup was the Local Union President – the top Union representative on site. He was the primary Union representative responsible for communicating with management about compliance with the settlement of previous unfair labor practice charges. Stroup is the only employee at the Company’s Tulsa facility who has ever been terminated for an inadvertent production error. *See* ALJD at 27 (describing evidence of “errors worse than Stroup’s with the employee permitted to rework the parts), 28 (observing that other terminated employees had intentionally sabotaged the Company’s product or had failed drug tests, while only Stroup was terminated for an inadvertent, reworkable error). The Company’s contention that Stroup “committed the most severe production error in the history of the Company” thus lacks support in the record. As in *Sysco*, Stroup was terminated for conduct – an inadvertent production error – that resulted in lesser discipline for other employees who acted similarly.

As in *Jason Lopez*, Stroup’s termination has had a widespread impact on the bargaining unit employees, who have been working without a contract since August 6, 2017. *See* ALJD at

3. Since Stroup's termination, employees have been afraid to engage in protected activity or hold Union office. *See* Counsel for the General Counsel's Brief Opposing Respondent's Exceptions at 17.

The cases cited by the Company are distinguishable and do not establish that a notice reading is inappropriate here. In *Ishikawa Gasket America, Inc.*, 337 NLRB 175, 176 (2001), and *Stein, Inc.*, 369 NLRB No. 10, slip op. at 28 (2020), no arguments were made in support of the request for a notice reading. The Board in *Ishikawa Gasket* observed that a notice reading is warranted "in situations when there is a showing that the Board's traditional notice remedies are insufficient, *such as* when a respondent is a recidivist violator of the Act, when unfair labor practices are multiple or pervasive, or when circumstances suggest that employees will not understand or will not be appropriately informed by a notice posting." *Id.* (emphasis added); *see also Gardner Trucking, Inc.*, JD-25-18, 2018 WL 1757018 (Apr. 11, 2018) (listing examples, but not an exclusive list, of circumstances that would warrant a notice reading). Nowhere does the Board say that these are the only circumstances in which a notice reading would be appropriate.

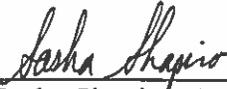
Here, the Union has shown that a notice reading is warranted because of Stroup's key role in the Union and the effect of his termination on the bargaining unit employees. *Ishikawa Gasket* and *Stein* therefore do not control this case.

Conclusion

For the reasons discussed above and in the Union's Cross-Exceptions to the Administrative Law Judge's Decision, the Board should reverse the ALJ's denial of the Union's request for a notice reading, and should order the Company to convene meetings of all bargaining unit employees at which Dennis Amend or Charles Hart will read the notice aloud to

employees in the presence of a representative of the Board, or a representative of the Board will read the notice aloud in the presence of a management representative.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a true copy of the Charging Party USW's Reply Brief in Support of its Cross-Exceptions to the Administrative Law Judge's Decision was served by electronic mail this 11th day of February, 2020, upon:

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