

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 01

BEVILACQUA ASPHALT CORP.

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL NO. 251, AFL-CIO

CASE 01-CA-245510

**GENERAL COUNSEL'S MOTION TO MODIFY THE
BOARD'S MARCH 4, 2020 ORDER AND MOTION TO
RECONSIDER ITS' DENIAL OF MAILING NOTICES**

NOW COMES Catherine A. Terrell, Counsel for the General Counsel of the National Labor Relations Board who, pursuant to Sections 102.48 and 102.49 of the Board's Rules and Regulations, respectfully moves the Board to modify its Order, published at Bevilacqua Asphalt Corp. 369 NLRB 39 (March 4, 2020) ("Decision and Order") and moves for reconsideration of its Decision, at footnote one, denying General Counsel's request for Respondent to mail notices.

1. On October 28, 2019, the Acting Regional Director for Region One, issued a Complaint and Notice of Hearing ("Complaint") in the instant case, alleging that Respondent violated Section 8(a)(3) and (1) of the Act by, on about July 25, 2019, barring former driver employee Daniel Hedquist ("Hedquist") from Respondent's plant when Hedquist was attempting to enter Respondent's facility on behalf of Respondent's customer, in retaliation for Hedquist's union and/or protected concerted activities he engaged in around May through December 2016, when Hedquist was employed by Respondent.
2. On December 26, 2019, Counsel for the General Counsel filed its' Motion to Transfer Proceeding to the Board and for Default Judgment (Motion for Default Judgment) because Respondent failed to file an Answer to the Complaint.
3. The Board issued a Notice to Show Cause on January 3, 2020 and Respondent filed no response.
4. On March 4, 2020, the Board issued its Decision and Order, granting default judgment and issuing a Notice obligating Respondent to post in its facility and providing that it would not engage in the unlawful conduct alleged in the Complaint without specific reference to the

discriminatee or a provision for the Notice to be provided to its' customer, Hedquist's employer, or Hedquist.

5. Counsel for the General Counsel respectfully requests the following affirmative paragraph be added to the Board's remedial Notice:

WE WILL grant our former employee Daniel Hedquist, as an employee of one of our customers, access to our property on the same basis that we grant access to employees of other customers and **WE WILL** notify our customer, Daniel Hedquist's employer, of this in writing.

6. Additionally, in footnote one of the Board's Decision and Order, the Board stated General Counsel has not shown that its' request for the notice to be mailed to current and former employees since December 1, 2016 is needed to remedy the effects of the Respondent's unfair labor practices. However, the Board may have inadvertently materially erred in its Decision.
7. Because this matter was decided pursuant to default judgment, there is no record evidence before the Board in order to cite with specificity pursuant to Section 102.48(d)(1) of the National Labor Relation Board's Rules and Regulations. However, as stated in the jurisdiction information in the Complaint, the nature of Respondent's business is a quarry and asphalt manufacturing plant. In a business like this, some employees, particularly drivers, do not regularly enter Respondent's office where Notices are to be posted. The Board has ordered a mailing to employees under similar circumstances. (See e.g. *Lou's Transport*, 361 NLRB 1446, 1448 (2014)). Moreover, mailing the Notice to Hedquist and his employer is necessary to put them on notice that Hedquist will no longer be unlawfully banned from Respondent's property and that restricting his work assignments is no longer necessary.
8. Additionally, Respondent has violated the Act previously by, among other things, discriminating against Hedquist by discharging him in retaliation for his protected activities. See attached Second Consolidated Complaint and Notice of Hearing in Cases 01-CA-181972 et. al.¹

WHEREAS the current remedial Order will not suffice to inform the affected employees, the discriminatee, and his employer, who is also Respondent's customer, about the Board's finding that Respondent committed an unfair labor practice and the measures that it will take to remedy that violation, Counsel for the General Counsel respectfully requests that the Board modify its' Order by adding an affirmative paragraph as set forth above at paragraph 5 to its' Notice requirement and

¹ This case was ultimately informally settled on May 17, 2017, including a notice mailing.

reconsider its' Decision, at footnote one of its' March 4, 2020 Decision and Order, and require the Notice be mailed to its currently and formerly employed employees since December 1, 2016.

Dated: March 30, 2020

Catherine A. Terrell

Catherine A. Terrell, Counsel for the General Counsel
Region One
National Labor Relations Board

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**AFFIDAVIT OF SERVICE OF: GENERAL COUNSEL'S MOTION TO MODIFY THE
BOARD'S MARCH 4, 2020 ORDER AND MOTION TO
RECONSIDER ITS' DENIAL OF MAILING NOTICES**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **March 30, 2020**, I served the above-entitled document(s) by email or regular mail upon the following persons, addressed to them at the following addresses:

Steve Bevilacqua, Owner
Bevilacqua Asphalt Corp.
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March 30, 2020

Date

Elizabeth C. Person, Designated Agent of NLRB

Name

Elizabeth C. Person

Signature