

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**WASHINGTON STATE NURSES
ORGANIZING PROJECT**

and

Case 19-CA-190619

**COMMUNICATIONS WORKERS OF
AMERICA, LOCAL 7901**

MOTION TO REMAND CASE TO THE REGIONAL DIRECTOR

Counsel for the General Counsel, pursuant to § 102.47 of the Board's Rules and Regulations, as amended, hereby files this motion requesting that the Board remand the above captioned case to the Regional Director of Region 19 for the purpose of processing a settlement agreement that was reached through use of the Board's Alternative Dispute Resolution ("ADR") program.

As background, an arbitrator had found all six discriminatees in the instant case were unlawfully discharged, but only awarded each employee 2 weeks backpay and a conversion of their discharge into layoffs. The Region rescinded its deferral of the case, issued complaint, and proceeded to hearing, on the basis that the remedies were insufficient under Board law. At hearing, Respondent and Counsel for the General Counsel ("CGC") stipulating to a resolution of a Joint Employer allegation in the case. As a result, CGC removed the American Federation of Teachers, AFL-CIO ("AFT") from the allegations, while AFT agreed to act as financial guarantor for any remedies that might be required of Respondent.

This case was heard on July 30, 2019, by Administrative Law Judge Eleanor Laws (the “ALJ”). Subsequently, the parties filed post-hearing briefs and the ALJ issued her decision and order finding that Respondent violated the Act on December 23, 2019 (“the ALJD”).¹

The ALJ found the arbitrator’s remedy was not a “reasonable application of the statutory principles that would govern the Board’s decision, if the case were presented to it [...]” ALJD 16:27-29 (citing to *Babcock & Wilcox*, 361 NLRB 1127 (2014)). The ALJ then ordered Respondent, as guaranteed by American Federation of Teachers, AFL-CIO, to rescind the discharges of all six employees and make each of them whole, including “for any loss of earnings or other benefits.” The ALJ also found Respondent’s supervisors and agents committed a number of independent 8(a)(1) violations by making unlawful statements.

Later on December 23, 2019, the Board overturned *Babcock & Wilcox* in *UPS, Inc.*, 369 NLRB No. 1 (December 23, 2019), returning to the older *Olin* and *Spielberg* standards for evaluating arbitral awards. *Olin Corp.*, 268 NLRB 573 (1984); *Spielberg Mfg. Co.* 112 NLRB 1080 (1955)

On February 20, 2020, Respondent filed exceptions and a brief in support of exceptions to the Board (collectively, “Exceptions”), challenging only the ALJ’s rejection of the sufficiency of the arbitrator’s remedies. Respondent’s exceptions brief relied in large part on the fact the Board had overturned *Babcock & Wilcox*, *supra*, after the issuance of the ALJD. Counsel for the General Counsel (“CGC”) filed an Answer to

¹ JD(SF) 44-19

those exceptions on February 28, 2020, contending that the ALJ's analysis would still support the same findings and remedy when applying *UPS, Inc., supra*.

Respondent, CGC, and the Charging Party entered into the Board's ADR program beginning March 9, 2020. The parties met and had substantive discussions on March 20 and March 26th. On March 30th, Respondent agreed to the framework of a decision. CGC provided Respondent with a draft settlement matching the agreed-to framework on April 2, 2020. Respondent agreed to that settlement on April 22, 2020. CGC and the Charging Party signed on to the settlement that day as well.

As part of the settlement, CGC had 7 days to provide Respondent with documents supporting CGC's backpay calculations, and Respondent would then have 10 additional days to challenge those backpay calculations in good faith. The parties exchanged documents and engaged in substantive discussions before reaching a final financial settlement. The parties signed the addendum to the completed agreement, with updated backpay and benefits figures, on May 11, 2020. That final settlement agreement, with the addendum, is attached to this Motion to Remand.

As part of the settlement agreement, Respondent agreed to withdraw its exceptions. By virtue of this withdrawal, CGC's Answer to Exceptions is also withdrawn. This Joint Motion to Remand therefore includes a request for the Board to approve withdrawal of all Post-ALJD exceptions documents.

A thorough review of the settlement agreement has been conducted and it has been determined that it meets the requirements of *Independent Stave Co.*, 287 NLRB 740 (1987). In evaluating whether a settlement should be approved, the question of whether the purposes and policies underlying the Act would be effectuated by the

approval of the agreement is examined by looking at all the surrounding circumstances including, but not limited to:

1. Whether the charging party, the respondent, and any of the individual discriminatees have agreed to be bound, and the position taken by the General Counsel regarding the settlement;
2. whether the settlement is reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of the litigation;
3. whether there has been any fraud, coercion or duress by any of the parties in reaching the settlement; and
4. whether the respondent has engaged in a history of violations of the Act or has breached previous settlement agreements resolving unfair labor practice disputes.

Applying those standards to this case, (1) all parties have agreed to be bound by the settlement agreement and the Charging Party, in consultation with the discriminatees, is satisfied with the settlement. The six discriminatees in the case are receiving backpay, benefits, expenses, and excess taxes totaling \$113,399. This equals 62.5% of the agreed-on 100% “make whole” remedy for all employees.

(2) The settlement is reasonable and appropriate given the nature of the violations, the intermediate state of the litigation, the parties discussions about employee mitigation, and the risks inherent in the litigation. Most notably, *Babcock & Wilcox, supra*, was overturned only hours after the ALJ issued her decision in the instant case. The ALJ relied on *Babcock & Wilcox* in her decision, while also referencing certain pre-*Babcock & Wilcox* cases. As a result, there was some uncertainty about the Board’s application of *UPS* to the instant case, which impacted the parties’ specific financial resolution in the attached settlement agreement.

Going on, (3) there is no evidence of any fraud, coercion or duress and all parties were represented by counsel throughout the process, including the Board's ADR process. (4) Finally, Respondent has no history of violating the Act nor of failing to comply with Board settlement agreements.

Based on the above, Respondent, Charging Party, and the Regional Director of Region 19 jointly request that the Board process a withdrawal of all post-ALJ exceptions documents, and remand the above captioned matter to the Regional Director of Region 19 so that he may approve and oversee compliance with the Settlement described therein.

Dated at Seattle, Washington this 15th day of May, 2020.

Respectfully submitted,

A handwritten signature in black ink that reads "Kristin White". The signature is written in a cursive, flowing style.

Kristin White, Counsel for the General Counsel
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Motion to Remand Case to the Regional Director was served on the 15th day of May, 2020, on the following parties:

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