UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25
SUBREGION 33

FULL-FILL INDUSTRIES, LLC

And

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION 538

Cases 25-CA-249830
25-CA-251056
25-CA-251084
25-CA-252037
25-CA-253355
25-CA-256552

GENERAL COUNSEL'S OPPOSITION
TO EMPLOYER'S MOTION TO DISMISS
CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Comes now Counsel for the General Counsel and, pursuant to Section 102.24 of the Board's Rules and Regulations, submits this Opposition to the Motion to Dismiss filed by Full-Fill Industries, LLC (Respondent). General Counsel asserts that most of Respondent's motion is untimely filed and that the Consolidated Complaint contains a sufficiently clear and concise description of Respondent's alleged unlawful acts as required by Section 102.15(b) of the Board's Rules.[1] As grounds therefore, the General Counsel states that:

1. On October 10, 2019, the International Brotherhood of Electrical Workers, Local 538 (the Union) filed an unfair labor practice charge in Case 25-CA-249830. Several additional charges and amendments were filed thereafter.

2. On April 24, 2020, a Consolidated Complaint and Notice of Hearing was issued by the Regional Director of Region Twenty-five. Respondent filed its Answer to that

[1] Consistent with the Board's Rules, the General Counsel reserves the right to file a further response should the Board see fit to issue a notice to cause in this matter.

Consolidated Complaint on May 5. No hearing date was set. Copies of the Consolidated Complaint and Respondent's Answer are attached hereto as Exhibits A and B, respectively.

3. On August 26, 2020, the Acting Regional Director issued a new Consolidated Complaint and Notice of Hearing. This new Consolidated Complaint encompassed all of the previous allegations and added only Paragraphs 7 and 8, constituting a single allegation that Respondent violated the Act by refusing to allow a bargaining unit employee to have a Union representative present in an investigatory interview which the employee reasonably believed could lead to discipline. Respondent's Answer to the new Consolidated Complaint was filed on September 1. No hearing date has been set. Copies of the new Consolidated Complaint and Respondent's Answer are attached hereto as Exhibits C and D, respectively.

4. On about September 22, 2020, Respondent filed its Motion to Dismiss Consolidated Complaint and Notice of Hearing. In short, Respondent asserts that various allegations in the Consolidated Complaint fail to provide a clear and concise description of the acts that constitute unfair labor practices. Respondent argues that the Consolidated Complaint should be dismissed or, in the alternative, a new consolidated complaint issued with specific factual allegations to allow Respondent to defend the consolidated complaint.

5. Section 102.15 of the Board's Rules requires that complaints must only contain two things: (1) "a clear and concise statement of facts upon which the Board asserts jurisdiction," and (2) "a clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of Respondent's agents or other representatives who committed the acts." The General Counsel is not required to plead evidence or the theory of the case in a complaint. See McDonald's USA, LLC, 362 NLRB 1347 (2015); see also Artesia Ready Mix Concrete,

Inc., 339 NLRB 1224, 1226 n. 3 (2003), and cases cited therein. A complaint cannot be dismissed for failure to state a claim upon which relief may be granted when the allegations, if true, set forth a violation of the Act. See Children's Receiving Home of Sacramento, 248 NLRB 308, 308 (1980). In evaluating a motion to dismiss, the Board "construes the complaint in the light most favorable to the General Counsel, accepts all factual allegations as true, and determines whether the General Counsel can prove any set of facts in support of his claims that would entitle him to relief." Detroit Newspapers, 330 NLRB 524, 525 n. 7 (2000). Finally, Section 102.24(b) of the Board's Rules states that "Where no hearing is scheduled . . . the motion [to dismiss] must be filed promptly."

6. As an initial matter, the bulk of Respondent's Motion to Dismiss should be deemed to be untimely filed. The first Consolidated Complaint in this case issued on April 24, 2020, and contains all of the same allegations that are in the August 26 Consolidated Complaint, with the exception of the allegation set forth above contained in Complaint Paragraphs 7 and 8. No hearing date was set by either Consolidated Complaint. Any motion to dismiss must be filed "promptly." Yet with regards to Complaint Paragraphs 5 and 6, Respondent waited until September 22, five months after those allegations were first issued, before filing its Motion to Dismiss. Such a delay is unreasonable and Respondent's motion should be rejected as untimely for all but the arguments concerning the violation first alleged in the August 26 Consolidated Complaint. However, the merits of each assertion by Respondent will also be addressed.

7. Respondent first argues that the surveillance allegations in the Consolidated Complaint are insufficient. Both Consolidated Complaints contain the following allegations in Paragraph 5:

(a) About September 4, 2019, Respondent, by Brian Clapp, at Respondent's facility:

(i) engaged in surveillance of employees engaged in Union activities; and

(ii) by taking his phone out while observing employees engaged in Union activities, created an impression among its employees that their Union activities were under surveillance by Respondent.

(b) About October 1, 2019, Respondent, by Rock Delp, at Respondent's facility, by making statements to employees, created an impression among its employees that their union activities were under surveillance by Respondent.

Despite Respondent's assertions to the contrary, each of those complaint allegations fully complies with Section 102.15(b) of the Board's Rules. Both Complaint Paragraphs 5(a) and (b) describe the acts which constitute unfair labor practices (surveillance and impression of surveillance) and the dates, place (Respondent's facility), and agents who committed the unlawful acts. Those allegations were sufficient for Respondent to answer them not once, but twice. Respondent's primary arguments in its motion are legal in nature, assertions about the merits of the allegations and whether or not Respondent's conduct rises to the level of an unfair labor practice. However, none of those arguments go to the sufficiency of the General Counsel's pleadings. Rather, Respondent is presenting arguments that are more appropriately addressed to an administrative law judge after a hearing has been held and all of the facts have been developed on the record. Respondent's motion should therefore be denied with regards to Complaint Paragraphs 5(a) and (b).

8. Respondent next raises the complaint allegation concerning employee Rick Johnson. Complaint Paragraphs 6(a) and (e) assert that Johnson was discharged because he formed, joined, and/or assisted the Union and engaged in concerted activities. That allegation is appropriate and complies with Section 102.15 of the Board's Rules in that it identifies the employee involved, the unlawful action taken against him, and the date of that action. To the

extent Respondent's agent is not named, at this stage of the litigation Respondent, not General Counsel, is in the best position to know exactly which member of Respondent's management team was responsible for making the decision to discharge Johnson. Respondent's primary arguments in its motion relate to the merits of the case and are best raised following a hearing and the full presentation of the evidence. Respondent's motion should therefore be denied.

9. Although not identifying specific complaint paragraphs, Respondent's Motion is next apparently disputing the sufficiency of Complaint Paragraphs 5(d) and 6(b) and (e). Those paragraphs allege:

> 5. (d) About October 30, 2019, Respondent, by Brian Clapp and Richard Simpson, at Respondent's facility, threatened to search employee lockers because employees engaged in Union activity.
>
> 6. (b) About October 30, 2019, Respondent searched its employee George Halls' toolbox.
>
> (e) Respondent engaged in the conduct described above in paragraphs [6(b)] because the named employees of Respondent formed, joined, and/or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

All of those pleadings comply with Section 102.15 of the Board's Rules and Respondent's motion to dismiss should be denied. Complaint Paragraph 5(d) identifies the alleged unfair labor practice (threatening to search lockers because employees engaged in union activity) and the date, place, and agents involved in making such threats. Similarly, Paragraphs 6(b) and (e) identify the employee involved (George Hall) and allege that his toolbox was searched because he engaged union and/or concerted activities. Respondent's arguments in its Motion are largely factual in nature and, in fact, seem to indicate that Respondent has more than sufficient information to answer the allegations, even before a full hearing on the merits has been held.

10. Complaint Paragraph 5(c) likewise meets the requirements of Section 102.15 of the Board's Rules. That allegation states:

> (c) About October 24, 2019, Respondent, by Jesse Gonzalez, at Respondent's facility, destroyed Union literature in the presence of employees.

Again, that pleading identifies the date, location, and Respondent's agent, as well as the unfair labor practice (destroying union literature in the presence of employees). The Board has previously held that an employer's destruction of union literature can be an unfair labor practice. See, e.g., Jennie-O Foods, Inc., 301 NLRB 305 (1991). The General Counsel's pleading is thus sufficient to survive a motion to dismiss and the hearing on that allegation should be permitted to proceed in order for a full record to be developed.

11. Respondent also disputes the sufficiency of the Complaint paragraphs relating to employee Justin Kindle. Complaint Paragraphs 6(c) through 6(e), taken as a whole, assert that Kindle was disciplined on November 15, 2019, and discharged on December 10 because he engaged in union and/or other concerted activities. Such pleadings are more than sufficient under Section 102.15 of the Board's Rules in that they identify the unfair labor practices (discipline and discharge due to union activity) and the employee involved. As before, to the extent that Respondent's agent is not named in the Complaint paragraphs, surely Respondent is aware which agent performed those acts (particularly where, as here, Respondent has admitted that the discipline and discharge did occur). Respondent's motion with regard to Complaint Paragraphs 6(c) through 6(e) should be denied.

12. Finally, Respondent challenges the only new allegation that was added to the August 26, 2020, Consolidated Complaint concerning a violation involving employee George Halls and Respondent's refusal to allow him Union representation at an investigatory interview that he reasonably believed could lead to discipline. Complaint Paragraph 7 identifies the

certified bargaining unit and that the Union has been the exclusive collective-bargaining representative of that unit. Complaint Paragraph 8 provides:

> (a) About February 13, 2020, Respondent, by Chad Steinbaugh and Lynn Mollica, at Respondent's facility, denied the request of its employee George Halls to be represented by the Union during an interview.
>
> (b) At all material times, including on February 13, 2020, Respondent's employee George Halls was in the Unit.
>
> (c) Respondent's employee George Halls had reasonable cause to believe that the interview described above in paragraph 8(a) would result in disciplinary action being taken against him.
>
> (d) About February 13, 2020, Respondent, by Chad Steinbaugh and Lynn Mollica, at Respondent's facility, conducted the interview described above in paragraphs 8(a) and 8(c) with its employee George Halls, even though Respondent denied the employee's request for union representation described above in paragraph 8(a).

Taken together, Paragraphs 7 and 8 fully comply with Section 102.15 of the Board's Rules. Those paragraphs identify the date of the violation, where the violation took place, and which agents of Respondent were involved. They also fully lay out a sufficient unfair labor practice claim under NLRB v. J. Weingarten Inc., 420 U.S. 251 (1975): Halls requested Union representation during an interview, he was in the bargaining unit, he believed that the interview could result in disciplinary action, and Respondent denied his request and proceeded with the interview. None of Respondent's arguments in support of its Motion to Dismiss demonstrate that the General Counsel's pleading is insufficient under the Board's Rules. Rather, Respondent appears to try and present factual evidence that is best developed at a hearing before an administrative law judge.

WHEREFORE, Counsel for the General Counsel asserts that much of Respondent's Motion to Dismiss should be rejected as not promptly filed and that the motion should otherwise be denied in its entirety and a hearing before an administrative law judge be allowed to proceed

once scheduled. The pleadings in the Consolidated Complaints meet the requirements of Section 102.15 of the Board's Rules and Respondent presents no other legal basis upon which the Consolidated Complaint should be dismissed.

SIGNED at Indianapolis, Indiana, this 9th day of October 2020.

Respectfully submitted,

Derek A. Johnson
Counsel for the General Counsel
National Labor Relations Board
Region Twenty-Five
Minton-Capehart Federal Building, Room 238
575 North Pennsylvania Street
Indianapolis, Indiana 46204
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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25
SUBREGION 33

FULL-FILL INDUSTRIES, LLC	
and	Cases 25-CA-249830 25-CA-251056 25-CA-251084 25-CA-252037 25-CA-253355
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 538	

ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Cases 25-CA-249830, 25-CA-251056, 25-CA-251084, 25-CA-252037, and 25-CA-253355, which are based on charges filed by International Brotherhood of Electrical Workers, Local Union 538 (the Union) against Full-Fill Industries, LLC (Respondent) are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below.

1. (a) The charge in Case 25-CA-249830 was filed by the Union on October 10, 2019, and a copy was served on Respondent by U.S. mail on October 11, 2019.

(b) The first amended charge in Case 25-CA-249830 was filed by the Union on October 25, 2019, and a copy was served on Respondent by U.S. mail on October 29, 2019.

(c) The second amended charge in Case 25-CA-249830 was filed by the Union on April 6, 2020, and a copy was served on Respondent by U.S. mail on April 7, 2020.

Exhibit A

(d) The charge in Case 25-CA-251056 was filed by the Union on October 31, 2019, and a copy was served on Respondent by U.S. mail on November 4, 2019.

(e) The first amended charge in Case 25-CA-251056 was filed by the Union on April 6, 2020, and a copy was served on Respondent by U.S. mail on April 8, 2020.

(f) The second amended charge in Case 25-CA-251056 was filed by the Union on April 21, 2020, and a copy was served on Respondent by U.S. mail on April 22, 2020.

(g) The charge in Case 25-CA-251084 was filed by the Union on October 31, 2019, and a copy was served on Respondent by U.S. mail on November 4, 2019.

(h) The charge in Case 25-CA-252037 was filed by the Union on November 18, 2019, and a copy was served on Respondent by U.S. mail on November 19, 2019.

(i) The charge in Case 25-CA-253355 was filed by the Union on December 12, 2019, and a copy was served on Respondent by U.S. mail on December 16, 2019.

2. (a) At all material times, Respondent has been a limited liability company with an office and place of business in Henning, Illinois (Respondent's facility) and has been engaged in the manufacture and non-retail sale of aerosol and pump cooking sprays and oils.

(b) During the calendar year ending December 31, 2019, Respondent in conducting its operations described above in paragraph 2(a), purchased and received at its Henning, Illinois facility goods valued in excess of $50,000 directly from points outside the State of Illinois.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Dave Clapp	-	Owner
Steve Clapp	-	Owner
Chad Steinbaugh	-	General Manager
Brian Clapp	-	Plant Manager
Lynn Mollica	-	HR Manager
Richard Simpson	-	Maintenance Manager
Jesse Gonzalez	-	Supervisor
Rock Delp	-	Gas House Lead
William Lowe	-	Warehouse Lead

5. (a) About September 4, 2019, Respondent, by Brian Clapp, at Respondent's facility:

(i) engaged in surveillance of employees engaged in Union activities; and

(ii) by taking his phone out while observing employees engaged in Union activities, created an impression among its employees that their Union activities were under surveillance by Respondent.

(b) About October 1, 2019, Respondent, by Rock Delp, at Respondent's facility, by making statements to employees, created an impression among its employees that their union activities were under surveillance by Respondent.

(c) About October 24, 2019, Respondent, by Jesse Gonzalez, at Respondent's facility, destroyed Union literature in the presence of employees.

(d) About October 30, 2019, Respondent, by Brian Clapp and Richard Simpson, at Respondent's facility, threatened to search employee lockers because employees engaged in Union activity.

6. (a) About September 19, 2019, Respondent discharged its employee Rick Johnson.

(b) About October 30, 2019, Respondent searched its employee George Halls' toolbox.

(c) About November 15, 2019, Respondent disciplined its employee Justin Kindle.

(d) About December 10, 2019, Respondent discharged its employee Justin Kindle.

(e) Respondent engaged in the conduct described above in paragraphs 6(a) through 6(d) because the named employees of Respondent formed, joined, and/or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

7. By the conduct described above in paragraphs 5(a) through 5(d), Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

8. By the conduct described above in paragraphs 6(a) through 6(e), Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

9. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

The General Counsel further seeks, as part of the remedy for the allegations in paragraphs 6(a), 6(d), 6(e), 8 and 9, that Respondent be required to submit the W-2 reflecting backpay paid to the discriminatees to the Regional Director.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before May 8, 2020**. Respondent also must serve a copy of the answer on each of the other parties.

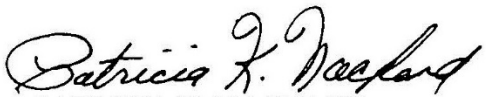
The answer must be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents,** enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer

containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **a date and time to be determined by subsequent order** a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: April 24, 2020



PATRICIA K. NACHAND
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 25/SUBREGION 33
101 SW Adams, 4th Floor
Peoria, Illinois 61602

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25
SUBREGION 33

Full Fill Industries, LLC	)	
	)	
Employer,	)	Case Numbers 25-CA-249830
	)	25-CA-251056
and	)	25-CA-251084
	)	25-CA-252037
	)	25-CA-253355
International Brotherhood of Electrical Workers, Local Union 538,	)	
	)	
Union.	)	

EMPLOYER'S ANSWER TO

CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Now comes Full Fill Industries LLC ("Respondent"), the named Employer in the above-referenced matter, by and through its Attorney, David B. Wesner of Acton & Snyder LLP, and tenders its Answer to Consolidated Complaint and Notice of Hearing in response to the above-captioned matter.

1. (a) Respondent admits the allegations contained in Paragraph 1(a) of the Consolidated Complaint.

   (b) Respondent admits the allegations contained in Paragraph 1(b) of the Consolidated Complaint.

   (c) Respondent admits the allegations contained in Paragraph 1(c) of the Consolidated Complaint.

   (d) Respondent admits the allegations contained in Paragraph 1(d) of the Consolidated Complaint.

   (e) Respondent admits the allegations contained in Paragraph 1(e) of the Consolidated Complaint.

Exhibit B

(f) Respondent admits the allegations contained in Paragraph 1(f) of the Consolidated Complaint.

(g) Respondent admits the allegations contained in Paragraph 1(g) of the Consolidated Complaint.

(h) Respondent admits the allegations contained in Paragraph 1(h) of the Consolidated Complaint.

(i) Respondent admits the allegations contained in Paragraph 1(i) of the Consolidated Complaint.

2. (a) Respondent admits the allegations contained in Paragraph 2(a) of the Consolidated Complaint.

   (b) Respondent admits the allegations contained in Paragraph 2(b) of the Consolidated Complaint.

   (c) Respondent admits the allegations contained in Paragraph 2(c) of the Consolidated Complaint.

3. Respondent admits the allegations contained in Paragraph 3 of the Consolidated Complaint.

4. Respondent admits the allegations contained in Paragraph 4 of the Consolidated Complaint.

5. (a) (i) Respondent denies the allegations contained in Paragraph 5(a)(i) of the Consolidated Complaint.

   (a)(ii) Respondent denies the allegations contained in Paragraph 5(a)(ii) of the Consolidated Complaint.

   (b) Respondent denies the allegations contained in Paragraph 5(b) of the Consolidated Complaint.

   (c) Respondent denies the allegations contained in Paragraph 5(c) of the Consolidated Complaint.

(d) Respondent denies the allegations contained in Paragraph 5(d) of the Consolidated Complaint.

6. (a) Respondent admits the allegations contained in Paragraph 6(a) of the Consolidated Complaint.

   (b) Respondent denies the allegations contained in Paragraph 6(b) of the Consolidated Complaint. Respondent alleges that, pursuant to its employment policies and its Good Manufacturing Practice requirements which include a Safe Food Quality certification, all employee toolboxes were searched within an audit process.

   (c) Respondent admits the allegations contained in Paragraph 6(c) of the Consolidated Complaint.

   (d) Respondent admits the allegations contained in Paragraph 6(d) of the Consolidated Complaint.

   (e) Respondent denies the allegations contained in Paragraph 6(e) of the Consolidated Complaint.

7. Respondent denies the allegations contained in Paragraph 7 of the Consolidated Complaint.

8. Respondent denies the allegations contained in Paragraph 8 of the Consolidated Complaint.

9. Respondent denies the allegations contained in Paragraph 9 of the Consolidated Complaint.

Full Fill respectfully requests that the Consolidated Complaint be DISMISSED.

Respectfully Submitted
Full Fill Industries LLC, Employer

By:_____
David B. Wesner, Attorney for Employer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5 day of May, 2020 he served a copy of the within Answer on:

Joe DiMichele, Lead Organizer
International Brotherhood of Electrical Workers, Local 538
1290 N. Michigan Ave.
Danville, IL 61832

by causing a copy of the same to be enclosed in an envelope clearly addressed as stated on the within and by causing said envelope to be deposited in a United States Post Office Mail Box in Danville, Illinois, with postage duly prepaid.

David B. Wesner

David B. Wesner
Acton & Snyder LLP
11 E. North Street
Danville, IL 61832
Ph: (217) 442-0350
E-mail: dwesner@acton-snyder.com

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25
SUBREGION 33

FULL-FILL INDUSTRIES, LLC

and

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 538

Cases 25-CA-249830
25-CA-251056
25-CA-251084
25-CA-252037
25-CA-253355
25-CA-256552

ORDER FURTHER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Cases 25-CA-249830, 25-CA-251056, 25-CA-251084, 25-CA-252037, and 25-CA-253355, filed by International Brotherhood of Electrical Workers, Local Union 538 (the Union) against Full-Fill Industries, LLC (Respondent), in which a Consolidated Complaint and Notice of Hearing issued on April 24, 2020, is consolidated with Case 25-CA-256552 filed by the Union against Respondent.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below.

1. (a) The charge in Case 25-CA-249830 was filed by the Union on October 10, 2019, and a copy was served on Respondent by U.S. mail on October 11, 2019.

Exhibit C

(b) The first amended charge in Case 25-CA-249830 was filed by the Union on October 25, 2019, and a copy was served on Respondent by U.S. mail on October 29, 2019.

(c) The second amended charge in Case 25-CA-249830 was filed by the Union on April 6, 2020, and a copy was served on Respondent by U.S. mail on April 7, 2020.

(d) The charge in Case 25-CA-251056 was filed by the Union on October 31, 2019, and a copy was served on Respondent by U.S. mail on November 4, 2019.

(e) The first amended charge in Case 25-CA-251056 was filed by the Union on April 6, 2020, and a copy was served on Respondent by U.S. mail on April 8, 2020.

(f) The second amended charge in Case 25-CA-251056 was filed by the Union on April 21, 2020, and a copy was served on Respondent by U.S. mail on April 22, 2020.

(g) The charge in Case 25-CA-251084 was filed by the Union on October 31, 2019, and a copy was served on Respondent by U.S. mail on November 4, 2019.

(h) The charge in Case 25-CA-252037 was filed by the Union on November 18, 2019, and a copy was served on Respondent by U.S. mail on November 19, 2019.

(i) The charge in Case 25-CA-253355 was filed by the Union on December 12, 2019, and a copy was served on Respondent by U.S. mail on December 16, 2019.

(j) The charge in Case 25-CA-256552 was filed by the Union on February 18, 2020, and a copy was served on Respondent by U.S. mail on February 19, 2020.

2. (a) At all material times, Respondent has been a limited liability company with an office and place of business in Henning, Illinois (Respondent's facility) and has been engaged in the manufacture and non-retail sale of aerosol and pump cooking sprays and oils.

(b) During the calendar year ending December 31, 2019, Respondent in conducting its operations described above in paragraph 2(a), purchased and received at its

Henning, Illinois facility goods valued in excess of $50,000 directly from points outside the State of Illinois.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Dave Clapp	-	Owner
Steve Clapp	-	Owner
Chad Steinbaugh	-	General Manager
Brian Clapp	-	Plant Manager
Lynn Mollica	-	HR Manager
Richard Simpson	-	Maintenance Manager
Jesse Gonzalez	-	Supervisor
Rock Delp	-	Gas House Lead
William Lowe	-	Warehouse Lead

5. (a) About September 4, 2019, Respondent, by Brian Clapp, at Respondent's facility:

(i) engaged in surveillance of employees engaged in Union activities; and

(ii) by taking his phone out while observing employees engaged in Union activities, created an impression among its employees that their Union activities were under surveillance by Respondent.

(b) About October 1, 2019, Respondent, by Rock Delp, at Respondent's facility, by making statements to employees, created an impression among its employees that their union activities were under surveillance by Respondent.

(c) About October 24, 2019, Respondent, by Jesse Gonzalez, at Respondent's facility, destroyed Union literature in the presence of employees.

(d) About October 30, 2019, Respondent, by Brian Clapp and Richard Simpson, at Respondent's facility, threatened to search employee lockers because employees engaged in Union activity.

6. (a) About September 19, 2019, Respondent discharged its employee Rick Johnson.

(b) About October 30, 2019, Respondent searched its employee George Halls' toolbox.

(c) About November 15, 2019, Respondent disciplined its employee Justin Kindle.

(d) About December 10, 2019, Respondent discharged its employee Justin Kindle.

(e) Respondent engaged in the conduct described above in paragraphs 6(a) through 6(d) because the named employees of Respondent formed, joined, and/or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

7. (a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production employees, compounding employees, forklift operators, maintenance employees, laboratory technicians, gas house operators, quality assurance employees, sanitation/janitorial employees, and warehouse employees employed by the Employer at its 400 N. Main Street, Henning, IL 61848 and 1 Creative Way, Rossville, IL 60963 facilities; excluding all office-clerical employees, professional employees, managerial employees, guards and supervisors under the Act, and all other employees.

(b) On December 26, 2019, the Board certified the Union as the exclusive collective bargaining representative of the Unit.

(c) At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

8. (a) About February 13, 2020, Respondent, by Chad Steinbaugh and Lynn Mollica, at Respondent’s facility, denied the request of its employee George Halls to be represented by the Union during an interview.

(b) At all material times, including on February 13, 2020, Respondent’s employee George Halls was in the Unit.

(c) Respondent's employee George Halls had reasonable cause to believe that the interview described above in paragraph 8(a) would result in disciplinary action being taken against him.

(d) About February 13, 2020, Respondent, by Chad Steinbaugh and Lynn Mollica, at Respondent’s facility, conducted the interview described above in paragraphs 8(a) and 8(c) with its employee George Halls, even though Respondent denied the employee's request for union representation described above in paragraph 8(a).

9. By the conduct described above in paragraphs 5(a) through 5(g) and 8(a) through 8(d), Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

10. By the conduct described above in paragraphs 6(a) through 6(e), Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

11. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

The General Counsel further seeks, as part of the remedy for the allegations in paragraphs 6(a), 6(d), 6(e), 10 and 11, that Respondent be required to submit the W-2 reflecting backpay paid to the discriminatees to the Regional Director.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before September 9, 2020**. Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents,** enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is

unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **a date and time to be determined by subsequent order** a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668.

The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: August 26, 2020

COLLEEN M. MAPLES
ACTING REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 25/SUBREGION 33
101 SW Adams, 4th Floor
Peoria, Illinois 61602

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25
SUBREGION 33

Full Fill Industries, LLC	)	
	)	
Employer,	)	Case Numbers 25-CA-249830
	)	25-CA-251056
and	)	25-CA-251084
	)	25-CA-252037
	)	25-CA-253355
International Brotherhood of	)	25-CA-256552
Electrical Workers, Local Union 538,	)	
	)	
Union.	)	

EMPLOYER'S ANSWER TO ORDER FURTHER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Now comes Full Fill Industries LLC ("Respondent"), the named Employer in the above-referenced matter, by and through its Attorney, David B. Wesner, and tenders its Answer to Order Further Consolidating Cases, Consolidated Complaint and Notice of Hearing ("Consolidated Complaint") in response to the above-captioned matter.

1. (a) Respondent admits the allegations contained in Paragraph 1(a) of the Consolidated Complaint.

   (b) Respondent admits the allegations contained in Paragraph 1(b) of the Consolidated Complaint.

   (c) Respondent admits the allegations contained in Paragraph 1(c) of the Consolidated Complaint.

   (d) Respondent admits the allegations contained in Paragraph 1(d) of the Consolidated Complaint.

   (e) Respondent admits the allegations contained in Paragraph 1(e) of the Consolidated

Exhibit D

(f) Respondent admits the allegations contained in Paragraph 1(f) of the Consolidated Complaint.

(g) Respondent admits the allegations contained in Paragraph 1(g) of the Consolidated Complaint.

(h) Respondent admits the allegations contained in Paragraph 1(h) of the Consolidated Complaint.

(i) Respondent admits the allegations contained in Paragraph 1(i) of the Consolidated Complaint.

(j) Respondent admits the allegations contained in Paragraph 1(j) of the Consolidated Complaint.

2. (a) Respondent admits the allegations contained in Paragraph 2(a) of the Consolidated Complaint.

   (b) Respondent admits the allegations contained in Paragraph 2(b) of the Consolidated Complaint.

   (c) Respondent admits the allegations contained in Paragraph 2(c) of the Consolidated Complaint.

3. Respondent admits the allegations contained in Paragraph 3 of the Consolidated Complaint.

4. Respondent admits the allegations contained in Paragraph 4 of the Consolidated Complaint.

5. (a) (i) Respondent denies the allegations contained in Paragraph 5(a)(i) of the Consolidated Complaint.

   (a)(ii) Respondent denies the allegations contained in Paragraph 5(a)(ii) of the Consolidated Complaint.

   (b) Respondent denies the allegations contained in Paragraph 5(b) of the Consolidated Complaint.

(c) Respondent denies the allegations contained in Paragraph 5(c) of the Consolidated Complaint.

(d) Respondent denies the allegations contained in Paragraph 5(d) of the Consolidated Complaint. Respondent affirmatively states that, pursuant to its employment policies and its Good Manufacturing Practice requirements which include a Safe Food Quality certification, all employee toolboxes are searched within an audit process.

6. (a) Respondent admits the allegations contained in Paragraph 6(a) of the Consolidated Complaint.

   (b) Respondent denies the allegations contained in Paragraph 6(b) of the Consolidated Complaint. Respondent alleges that, pursuant to its employment policies and its Good Manufacturing Practice requirements which include a Safe Food Quality certification, all employee toolboxes were searched within an audit process.

   (c) Respondent admits the allegations contained in Paragraph 6(c) of the Consolidated Complaint.

   (d) Respondent admits the allegations contained in Paragraph 6(d) of the Consolidated Complaint.

   (e) Respondent denies the allegations contained in Paragraph 6(e) of the Consolidated Complaint.

7. (a) Respondent denies the allegations contained in Paragraph 7(a) of the Consolidated Complaint. Respondent acknowledges that the National Labor Relations Board certified the following unit of employees of the Respondent: All full-time and regular part-time production employees, compounding employees, forklift operators, maintenance employees, laboratory technicians, gas house operators, quality assurance employees, sanitation/janitorial employees and warehouse employees employed by the Employer at its 400 N. Main Street, Henning, IL 61848 and 1 Creative Way, Rossville, IL 60963 facilities. Said certification specifically excluded the following employees of Respondent from the unit: all office-clerical employees, professional employees, managerial employees, guards and supervisors under the Act, and all other employees.

(b) Respondent admits the allegations contained in Paragraph 7(b) of the Consolidated Complaint.

(c) Respondent denies the allegations contained in Paragraph 7(c) of the Consolidated Complaint.

8. (a) Respondent denies the allegations contained in Paragraph 8(a) of the Consolidated Complaint.

   (b) Respondent admits the allegations contained in Paragraph 8(b) of the Consolidated Complaint.

   (c) Respondent denies the allegations contained in Paragraph 8(c) of the Consolidated Complaint.

   (d) Respondent denies the allegations contained in Paragraph 8(d) of the Consolidated Complaint. Respondent affirmatively states that George Halls voluntarily participated in the interview without the presence of the Union.

9. Respondent denies the allegations contained in Paragraph 9 of the Consolidated Complaint.

10. Respondent denies the allegations contained in Paragraph 10 of the Consolidated Complaint.

11. Paragraph 11 of the Consolidated Complaint is merely a legal conclusion and cannot be construed as a factual allegation. In the event that Paragraph 11 of the Consolidated Complaint is considered a factual allegation, Respondent denies the allegations contained in Paragraph 11 of the Consolidated Complaint.

Full Fill respectfully requests that the Consolidated Complaint be DISMISSED.

Respectfully Submitted
Full Fill Industries LLC, Employer

By: _____
David B. Wesner, Attorney for Employer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 1st day of September, 2020, he served a copy of the within Answer on:

Joe DiMichele, Lead Organizer
International Brotherhood of Electrical Workers, Local 538
1290 N. Michigan Ave.
Danville, IL 61832

by causing a copy of the same to be enclosed in an envelope clearly addressed as stated on the within and by causing said envelope to be deposited in a United States Post Office Mail Box in Danville, Illinois, with postage duly prepaid.

_____
David B. Wesner

David B. Wesner
Evans, Froehlich, Beth & Chamley
44 East Main Street, Suite 310
Champaign, IL 61820
Ph: (217) 359-6494
E-mail: dwesner@efbclaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing General Counsel's Opposition to Employer's Motion to Dismiss Consolidated Complaint and Notice of Hearing has been filed electronically with the Office of the Executive Secretary through the Board's E-Filing System this 9th day of October 2020. Copies of said filing are being served upon the following persons by electronic mail:

David B. Wesner
Evans, Froehlich, Beth & Chamley
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Derek A. Johnson