

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

**CASCADES CONTAINERBOARD
PACKAGING - NIAGARA, A DIVISION OF
CASCADES HOLDING US, INC.**

Cases **03-CA-242367
03-CA-243854
03-CA-248951**

and

**INTERNATIONAL ASSOCIATION O
MACHINISTS AND AEROSPACE WORKERS
DISTRICT LODGE 65, AFL-CIO**

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S
MOTION FOR CLARIFICATION AND MODIFICATION
OF ORDER REQUIRING SUBMISSION OF W-2 FORMS**

Pursuant to Section 102.49 of the National Labor Relations Board's Rules and Regulations, Counsel for the Acting General Counsel (Acting General Counsel) respectfully moves for an Order clarifying and modifying paragraph 2(f) of the Board's Order issued in *Cascades Containerboard Packaging*, 370 NLRB No. 76, slip op. at 4 (Feb. 9, 2021). The Acting General Counsel requests that paragraph 2(f) of the Board's Order be modified to require Respondent to:

Within 21 days of the date of the amount of backpay is fixed by either agreement or Board order, or such additional time as the Regional Director may allow for good cause shown, file with the Regional Director for Region 3 a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

This clarification is necessary as the Order, in its current iteration, is insufficiently specific and increases a risk of errors in reporting to the Social Security Administration (SSA). The Board's Order generally requires Respondent's submission of W-2 forms but not when it must be submitted. The lack of timeliness parameters encourages delay, while setting a specific timeframe increases the overall effectiveness of the remedy.

Although *Cascades*, is the first case explicitly requiring W-2 forms be submitted, the additional language proposed by the Acting General Counsel setting forth a specific time is the Board's customary approach in Orders. *Id.* Indeed, paragraph 2(e) of the same Board's Order provides the basis for the phrasing of the Acting General Counsel's request. *Id.* Backpay reports and W-2 forms are companion documents. Ordering a Respondent to submit the backpay report without concurrently submitting the W-2 form increases the potential for reporting errors to SSA. These reporting errors can incorrectly skew discriminatees' ultimate social security benefits by providing for fewer social security credits, incorrect tax payments, and a smaller social security payout. Indeed, submitting a backpay report without a corresponding W-2 can result in a complete rejection of the submission by SSA. Such a result will cause discriminatees additional, unintended, and unremedied harm. Without clarification of the Board's Order, discriminatees may not be eligible for benefits that they would have otherwise been entitled to but for a Respondent's unlawful conduct.

On balance, the benefits of clarifying the Board's Order to include a time requirement outweigh any alleged detriments. Any arguments that it would be overly burdensome to require the submission of W-2 forms prior to the IRS' mandatory reporting period should be rejected. There is no evidence that it is more effort to create a report early than it would be to create it at the traditional time. Similarly, there should be no weight given to any arguments that it is impossible to generate a report early. To the extent there are concerns regarding employees who have accepted reinstatement, the proposed clarification accounts for such an issue, as continued employment with the Respondent would certainly qualify as reason for the Regional Director to provide Respondent with additional time to submit the W-2. Similarly, severing the employment relationship by a discriminatee declining reinstatement would not prevent the creation of a W-2. Rather, failing to

timely supply the Region with a W-2 for discriminatees that declined reinstatement would cause unnecessary delay in reporting to the SSA and the potential for errors in their benefits.

In sum, without clarification the Board's Order could cause undue harm to discriminatees despite an otherwise favorable remedy. The Acting General Counsel is requesting that the Board's Order be modified to include a timeliness requirement for submission of W-2 forms to reduce the risk of a negative impact to an employee's social security benefits and proposes the following language:

Within 21 days of the date the amount of backpay is fixed either by agreement or Board order, or such additional time as the Regional Director may allow for good cause shown, file with the Regional Director for Region 3 a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.¹

As the Board's addition of this important aspect of the remedy in this case may become a guide for future Board orders and settlements, it is critical that the language in the lead case accomplish the Board's desired goal.

DATED at Buffalo, New York this 2nd day of March 2021.

Respectfully submitted,

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¹ This language is similar to the language currently ordered by the Board regarding Respondent's obligation to file a SSA report with the Regional Director.