

BEFORE
THE NATIONAL LABOR RELATIONS BOARD

<p>FRED MEYER STORES, INC</p> <p>Employer</p> <p>and</p> <p>UNITED FOOD & COMMERCIAL WORKERS, LOCAL 367</p> <p>Charging Party</p>	<p>Case No. 19-CA-32171</p> <p>CHARGING PARTY OPPOSITION TO EMPLOYER REQUEST FOR RECONSIDERATION</p>
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INTRODUCTION

The Employer on October 21, 2010 filed a motion to reconsider the Board's decision in *Fred Meyer Stores, Inc.* 355 NLRB No. 141 (8/26/2010). The Charging Party opposes the motion to reconsider on grounds that the motion is not timely, and even if considered timely, is not supported.

- I. THE MOTION TO RECONSIDER MUST BE FILED WITHIN 28 DAYS OF SERVICE OF THE DECISION; THE MOTION, FILED APPROXIMATELY 55 DAYS LATER IS UNTIMELY.

NLRB Rule and Regulation 102.48 under which the motion was filed dictates that such motions be filed within 28 days of service of the decision. R&R 102.48(d)(2). The Employer's motion to reconsider was filed well beyond 28 days and should be denied on this basis alone.

II. THERE IS NO SUPPORT FOR THE PROPOSITION THAT *NEW PROCESS STEEL* REQUIRED CONSIDERATION ON REMAND BY DIFFERENT BOARD MEMBERS.

The Employer asserts with no support, other than bluster, that the Board on remand was obligated by *New Process Steel* to proceed with different Board members as opposed to a sufficient number of Board members. The Court in *New Process Steel*, 130 S. Ct. 2635, stated only that the case should be remanded for proceeding consistent with its opinion. Its opinion discussed the number of Board members necessary for it to function, but notably failed to dictate that cases decided by two Board members must on remand be decided by a sufficient number of different Board members. The Court of Appeals for the District of Columbia in *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, in remanding stated that the underlying Board decision “be vacated, and the case remanded for further proceedings before the Board at such time as it may once again consist of sufficient members to constitute a quorum.” 564 F.3d at 476 (D.C. Cir. 2009) (emphasis added). The Board properly considered the case on remand by a Board quorum. There is no basis to reconsider its August 26 decision.

III. IN ITS AUGUST 26 DECISION THE BOARD PROPERLY DETERMINED THAT THE EMPLOYER ADMITTED IT HAD REFUSED TO BARGAIN MAKING ADDITIONAL BOARD PROCESS UNNECESSARY AND BURDENSOME.

The Employer suggests in its motion that it had not conceded that it refused to bargain to test the certification. Motion at 3-4. Yet it admitted that it had refused to bargain in its answer to the complaint in this matter. *Fred Meyer Stores, Inc.* 355 NLRB No. 141 n. 4 (8/26/2010). Notably the Employer is not seeking reconsideration to assert that it has been or is now willing to bargain as the Board had suggested. It hasn't.

CONCLUSION

There is no basis to grant the untimely motion to reconsider. It should be denied.

Respectfully submitted this 28th day of October, 2010.



Lawrence Schwerin, WSBA # 4360
Carson Glickman-Flora, WSBA #37608
Schwerin Campbell Barnard Iglitzin & Lavitt LLP
18 West Mercer Street, Ste. 400
Seattle, WA 98119-3971
(206) 285-2828 (phone)
(206) 378-4132 (fax)
schwerin@workerlaw.com
flora@workerlaw.com

CERTIFICATE OF SERVICE

I certify that on this 28th day of October 2010, I caused the original of the foregoing Charging Party Opposition to Employer Request for Reconsideration to be served via UPS overnight delivery to:

Lester Heltzer
Office of the Executive Secretary
National Labor Relations Board
1099 14th Street NW, Suite 11600
Washington DC 20570

And a copy to be sent via UPS overnight delivery to:

Richard J. Alli Jr.
Bullard, Smith, Jernstedt & Wilson
1000 SW Broadway, Suite 1900
Portland, OR 97205



Carson Glickman-Flora

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