

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

SPURLINO MATERIALS, LLC

and

Cases 25-CA-30053 Amended
25-CA-30054
25-CA-30080
25-CA-30104
25-CA-30156
25-CA-30179
25-CA-30362 Amended

COAL, ICE, BUILDING MATERIAL,
SUPPLY DRIVERS, RIGGERS, HEAVY HAULERS,
WAREHOUSEMEN AND HELPERS,
LOCAL UNION NO. 716, a/w INTERNATIONAL
BROTHERHOOD OF CHAUFFEURS, TEAMSTERS,
WAREHOUSEMEN AND HELPERS OF AMERICA

ACTING GENERAL COUNSEL'S MOTION TO
CORRECT INADVERTENT ERROR

Comes now counsel for the Acting General Counsel and respectfully moves that the Board correct an inadvertent error made in its Decision and Order in the above-captioned cases.

1. On December 17, 2007, Administrative Law Judge Ira Sandron issued his decision in the above-captioned cases. In its Decision and Order issued on March 31, 2009 (353 NLRB 1198) a two-member Board adopted the judge's conclusion, *inter alia*, that Respondent violated Section 8(a)(3) and (1) by suspending and later discharging Gary Stevenson. A Decision and Order issued on August 9, 2010 (355 NLRB No. 77) by a three-member Board affirmed the judge's rulings, findings and conclusions and adopted his recommended Order to the extent and for the reasons stated in the decision reported at 353 NLRB 1198, which was incorporated by reference. The judge's Order provided for a make-whole remedy for Stevenson

in the manner set forth in the remedy section of his decision which included making Stevenson whole for any loss of earnings and other benefits suffered as a result of his discriminatory suspension and discharge, with interest. On June 23, 2011, the Court of Appeals for the Seventh Circuit entered its Judgment (645 F.3d 870) enforcing in full the Board's Order. A Compliance Specification and Notice of Hearing issued on December 8, 2011 setting a compliance hearing for February 28, 2012.

2. In its March 31, 2009 Decision, the Board provided in its Notice to Employees that Respondent make employee Gary Stevenson whole for any loss of earnings and other benefits suffered as a result of his discriminatory suspension and discharge, with interest. However, the Board inadvertently failed to provide a make-whole remedy for Stevenson in its Order. The Order provides for a make-whole remedy for Stevenson "in the manner set forth in the amended remedy section" of the decision. The amended remedy section inadvertently failed to include a make-whole remedy for losses suffered by Stevenson as a result of his suspension and discharge. However, footnote 14 of the amended remedy section states that "the backpay remedy for Stevenson's unlawful suspension and discharge shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, supra."

3. Given the above facts, it is clear that the Board's failure to provide a make-whole remedy in its Order for employee Stevenson was an inadvertent error. Therefore, the Acting General Counsel respectfully requests that the Board's Order in the above cases be corrected to provide that the Respondent make-whole Gary Stevenson for any loss of earnings and other benefits suffered as a result of his discriminatory suspension and discharge, with interest.

SIGNED at Indianapolis, Indiana this 5th day of January, 2012.

Respectfully submitted by:



Rebekah Ramirez
Counsel for Acting General Counsel
National Labor Relations Board
Region Twenty-five
Room 238
Minton-Capehart Federal Building
575 North Pennsylvania Street
Indianapolis, Indiana 46204

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Acting General Counsel's Motion to Correct Inadvertent Error was filed electronically on January 5, 2012. On the same date a copy of said filing was served by electronic mail upon the following persons:

A. Jack Finklea
Scopelitis, Garvin, Light, Hanson & Feary, P.C.
10 West Market Street, Suite 1500
Indianapolis, IN 46204
jfinklea@scopelitis.com

Robert J. Brown, Esq.
Thompson Hine LLP
10050 Innovation Drive, Suite 400
Dayton, Ohio 45342-4934
Robert.Brown@thompsonhine.com

Neil Gath, Esq.
Fillenwarth, Dennerline, Groth & Towe LLP
429 E. Vermont Street, Ste. 200
Indianapolis, IN 46202
ngath@fdgtlaborlaw.com



Rebekah Ramirez
Counsel for Acting General Counsel
National Labor Relations Board
Region Twenty-five
Room 238
Minton-Capehart Federal Building
575 North Pennsylvania Street
Indianapolis, Indiana 46204