**Outokumpu Stainless USA, LLC f/k/a Thyssenkrupp Stainless USA, LLC *and* United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC.** Cases 15–CA–070319 and 15–CA–073053

September 7, 2017

DECISION AND ORDER

BY CHAIRMAN MISCIMARRA AND MEMBERS PEARCE AND MCFERRAN

On February 29, 2016, Administrative Law Judge Jeffrey D. Wedekind issued the attached decision. The Respondent filed exceptions[1] and a supporting brief. The General Counsel filed cross-exceptions, and the General Counsel and the Charging Party each filed an answering brief to the Respondent's exceptions. The Respondent filed a reply brief to the General Counsel's answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions, to amend the remedy, and to adopt the recommended Order as modified and set forth in full below.[2]

The General Counsel seeks default judgment based on the Respondent's noncompliance with an informal settlement agreement. He alleges that the Respondent breached the settlement agreement by posting, next to the Board's remedial notice, a side letter that detracted from the effectiveness of the notice, and he contends that entry of default judgment on the previously settled unfair labor practice allegations is warranted. The judge found that the Respondent breached the settlement agreement as alleged, and he granted the motion for default judgment. We agree and affirm.

The settlement agreement was executed by and between the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (Union) and the Respondent[3] to resolve two unfair labor practice charges filed by the Union, on December 7, 2011, and January 24, 2012. Included in these charges were allegations that the Respondent engaged in surveillance and created the impression of surveillance of employees' protected activities, threatened that employees would lose everything and collective bargaining would start from zero if the Union were voted in, unlawfully changed its workplace discussion policy and enforced it disparately, subsequently promulgated in writing an overly broad no-discussion-during-working-hours policy, and disciplined employees John Dees and Mac[k] Royster for violating this overly broad no-discussion policy.[4] The Union filed its initial charge 6 days in advance of a representation election scheduled for December 13 and 14, 2011. To protect the right of employees "to an election that reflects their untrammeled views," and in accordance with Board policy, the election was postponed until the charges could be resolved. *Mark Burnett Productions*, 349 NLRB 706, 707 (2007).

On April 30, 2012, the parties entered into the settlement agreement referenced above. Under the terms of the settlement agreement, the Respondent agreed to rescind the allegedly overbroad no-discussion policy, rescind the discipline issued to employees Dees and Royster and inform them of the same, allow employees to discuss the Union during working hours, and post an official NLRB notice at its facility and on its intranet for 60 days.[5] The following language in the settlement

[1] The General Counsel urges the Board to strike the Respondent's exceptions, arguing that the exceptions fail to comply with the Board's Rules and Regulations. Specifically, the General Counsel contends that all of the Respondent's exceptions fail to designate the precise portion of the record relied upon, and that certain of the Respondent's exceptions either misidentify or fail to identify the portion of the judge's decision to which objection is made so as to render the exception indecipherable. Because the General Counsel maintains that the Respondent has not filed any valid exceptions, he likewise urges the Board to strike the Respondent's brief in support of its exceptions. The Board has discretion in determining compliance with its regulations, and we find that the Respondent's exceptions and brief substantially comply with the applicable rules. See, e.g., *Solutia, Inc*., 357 NLRB 58, 58 fn. 1 (2011), enfd. 699 F.3d 50 (1st Cir. 2012); see also *Zurn Nepco*, 316 NLRB 811, 811 fn. 1 (1995) (declining to strike exceptions where brief sufficiently indicates the portions of the record relied upon). Accordingly, we deny the General Counsel's motion to strike the Respondent's exceptions and supporting brief.

[2] We have amended the remedy and modified the judge's recommended Order consistent with the allegations in the amended complaint and our legal conclusions herein.

[3] At the time the settlement agreement was entered into, the Respondent was referred to as the "Charged Party" since complaint had not issued on the Union's unfair labor practice charges.

[4] The charges also included several additional allegations that did not appear in the settlement agreement. These additional allegations were withdrawn or omitted from an amended charge filed on March 27, 2012.

[5] The agreed-upon notice stated as follows:

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection

agreement sets forth the consequences of noncompliance with the agreement's terms:

> The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a complaint that will include the allegations spelled out above in the Scope of Agreement section. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that all of the allegations of the complaint will be deemed admitted and it will have waived its right to file an Answer to such complaint. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

The Respondent rescinded the allegedly overbroad no-discussion policy, rescinded the discipline issued to Dees and Royster and informed them of the same, and allowed employees to discuss the Union during working hours. On May 17, 2012, the Respondent also posted the remedial notice on its intranet and main bulletin board. On May 7, 2012, however, before posting the notice, the Respondent emailed to its employees and posted on its main bulletin board a letter in response to the unfair labor practice allegations. Once the remedial notice was posted, the letter remained posted in close proximity to the remedial notice throughout the 60-day notice-posting period required by the settlement agreement. The letter stated that unfair labor practice charges were filed by the Union "just prior" to the December 2011 election "to block the election from occurring." The letter blamed the Union for preventing employees from exercising their "right to vote and have a choice" and stated that a Board hearing "would only delay your opportunity to have your voices heard by voting." In addition, the letter asserted that the Respondent "believes it has not violated any laws," emphasized that the Board had not found it "guilty of any of the allegations," and asserted that the allegations against it were resolved by the posting of the remedial notice and that it had not been required to pay any "fines, penalties or other monetary requirements" as a result of the settlement. The Respondent also stated that it had "tried to have your voices heard" in an election in 2010, but the Union at that time had similarly "filed charges that blocked the election."

As more fully set forth by the judge, in September 2012, the Region advised the Respondent that the dissemination of the letter constituted noncompliance with the settlement agreement and subsequently instructed the Respondent to repost the NLRB notice for an additional 60 days with additional notice provisions and language stating that the side letter "did not properly represent" the Board's findings or the purpose of the information in the NLRB notice. On November 29, 2012, the Respondent informed the Region that it was unwilling to do so. The Region then told the Respondent that it was willing to hold off on the additional language "for now" if the Respondent would repost the original NLRB notice for 60 days. Again, the Respondent refused. Subsequently, after formally notifying the Respondent that its side letter constituted a breach of the informal settlement and warning the Respondent that it would issue a complaint and file a motion for default judgment if the Respondent did not remedy the breach within 14 days, the Regional Director issued a complaint on June 28, 2013, alleging that the Respondent had violated Section 8(a)(1) of the Act. The Respondent filed an answer to that complaint, deny-

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Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT threaten you with loss of benefits or tell you that you will lose everything and start from zero if you choose to be represented by or support a Union.

WE WILL NOT make it appear to you that we are watching out for your Union activities.

WE WILL NOT watch you in order to find about [sic] your Union activities.

WE WILL NOT tell you that you cannot talk about or discuss the Union while on working time while we allow you to talk about or discuss other subjects while on working time and WE WILL repeal the rule promulgated in a written discipline on that subject.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL rescind in writing any and all discipline employees received, including that given to employees Mack Royster and John Dees, as a result of a rule prohibiting discussion or talk about the Union during working hours, and WE WILL notify all affected employees that their discipline was removed from our files and that it will not affect them in any way in the future.

WE WILL allow you to discuss or talk about the Union during working hours while we allow you to talk about or discuss other subjects while on working time.

ing the commission of any unfair labor practices and raising affirmative defenses, including a contention that the complaint failed because the Respondent fully complied with the settlement agreement. After the Board denied the Respondent's motion for summary judgment as well as the General Counsel's later motion for default judgment, the General Counsel issued an amended complaint on August 17, 2015, setting forth the same 8(a)(1) allegations as in the original complaint and alleging that the Respondent failed to comply with the terms of the settlement. The Respondent filed an answer to the amended complaint denying the 8(a)(1) allegations and further denying that it had breached or defaulted on the settlement. The case was assigned to the judge for a ruling on whether the dissemination of the side letter constituted a breach of the settlement agreement and whether default judgment was warranted. The judge found, based on a stipulated record, that the Respondent's side letter constituted a breach of the settlement and that default judgment was appropriate pursuant to the terms of the settlement agreement.

We agree with the judge that the Respondent failed to comply with the settlement agreement. Posting or otherwise disseminating to employees a letter or other written communication constitutes noncompliance with a settlement agreement where the communication attempts to "minimize the effect of the Board's notice" and "suggests to employees that the Board's notice is being posted as a mere formality and that Respondent's true sentiments are to be found in its own notice, not the Board's." *Bangor Plastics, Inc.*, 156 NLRB 1165, 1167 (1966), enf. denied 392 F.2d 772 (6th Cir. 1967). As discussed in more detail in the judge's decision, the Respondent's letter was strikingly similar to the letter distributed to employees in *Gould*, *Inc.*, 260 NLRB 54 (1982). In *Gould* as here, the letter stressed that the respondent had not been found guilty of any violation of the law. 260 NLRB at 57. In *Gould* as here, the respondent falsely suggested that the posting of a notice was the only action it was required to undertake pursuant to the settlement agreement. Id.[6] In *Gould* as here, the respondent additionally sought to minimize the effect of the notice by distributing its "spin" on the notice before the notice itself was posted. Id. at 56–57. Finally, in *Gould* as here, the respondent used the letter to blame the union for election delays. Id. at 57–58; see also *Arrow Specialties, Inc.,* 177 NLRB 306, 308 (1969) (finding employer failed to comply with settlement agreement where employer's communications contemporaneous with the agreement "unfairly cast the Union in the role of a culprit"), enfd. 437 F.2d 522 (8th Cir. 1971). Accordingly, we find that the judge correctly determined that Respondent's letter constituted noncompliance with the settlement agreement.

We also find, in agreement with the judge, that the Respondent's noncompliance with the settlement agreement entitles the General Counsel to default judgment. The settlement agreement provides that "in case of noncompliance with any of the terms" of the agreement, the General Counsel may issue a complaint on the settled allegations and file a motion for default judgment on those allegations.[7] The settlement agreement further provides that the Respondent waives the right to file an answer to such complaint and may only raise the issue of whether it defaulted on the terms of the agreement. If the Respondent did default, the Board may find all the allegations of the complaint to be true and issue an order providing "a full remedy for the violations found as is appropriate to remedy such violations."

Here, the Respondent's posting of a side letter violated the terms of the settlement agreement in two ways, which separately and together support a finding of default. First, as explained above, Board precedent is clear that posting a letter that detracts from the effectiveness of the Board's notice, and that suggests that the notice is being posted as a mere formality, constitutes noncompliance with a settlement agreement. *Arrow Specialties*, 177 NLRB at 308; *Bangor Plastics*, 156 NLRB at 1166–1167. Posting such a letter constitutes noncompliance with the *terms* of a settlement agreement. See, e.g., *Gould*, *Inc.*, 260 NLRB at 58; *Arrow Specialties*, 177 NLRB at 308. Given that precedent, by entering into the settlement, the Respondent must be deemed to have agreed *not to post such a letter*; that is, we interpret settlement agreements (as other contracts) as consistent with and conforming to existing Board law, which pro-

[6] In *Gould*, the letter stated: "We will post a Notice to Employees which simply states that we will not violate the labor law in the future." Id. at 57. The letter failed to mention that the respondent was also required to rescind its no-solicitation and no-union-talk rules as well as warnings issued to three employees. Id. In the instant case, the Respondent's letter stated: "[A]lthough Stainless USA believes it has not violated any laws, we agreed to resolve the remaining charges by posting a notice"—failing to acknowledge that the Respondent also agreed to resolve the charges by rescinding its workplace discussion policy and discipline issued pursuant to that policy and by notifying employees Dees and Royster that the discipline against them had been rescinded.

[7] The settlement agreement required the Regional Director to provide the Respondent with notice of noncompliance and 14 days in which to remedy the noncompliance before issuing complaint and filing a motion for default judgment. There are no exceptions to the judge's finding that the Regional Director provided the Respondent with the required 14 days' notice.

hibits precisely the sort of side letter at issue here.[8] Second, insofar as the settlement specifically required the Respondent to post the parties' agreed-upon notice, that provision must be construed (particularly in light of Board law) as requiring the posting of *that* notice *and nothing that detracts from that notice*. The Respondent's posting of a side letter was not an element of the parties' negotiated resolution: it was a unilateral act that tended to frustrate performance of their settlement agreement.[9] Accordingly, we find that the Respondent was required by the settlement agreement to refrain from posting such a side letter.[10] By posting its letter, the Respondent has failed to comply with the settlement agreement, and default judgment is warranted.[11]

Our colleague acknowledges that the Respondent's letter constituted noncompliance with the settlement agreement, but he would deny default judgment on the basis that the side letter did not constitute a breach of the settlement agreement's express terms. We disagree. The Respondent agreed that default judgment would be warranted if it failed to comply with "any of the terms" of the agreement. As we have explained, in light of Board precedent, it is clear that the settlement, including its notice-posting term, required the Respondent to refrain from posting or disseminating the very type of letter the Respondent proceeded to email and post. The Respondent's posting and emailing of the letter therefore constituted a breach of the terms of the settlement agreement warranting entry of default judgment under the terms of the agreement.[12] Under the interpretation of the non-

[8] See *Mastro Plastics Corp. v. NLRB,* 350 U.S. 270, 279 (1956) (agreement properly interpreted "in the light of the law relating to it when made").

[9] Our dissenting colleague argues that our decision will infringe on First Amendment rights. We disagree. Our decision applies to the narrow circumstance where: (1) a party has voluntarily entered into a settlement agreement in an attempt to avoid a hearing on its alleged violation of the Act; (2) that settlement agreement requires the party to post a Board notice; and (3) the party posts a side letter that constitutes a unilateral act that tends to frustrate performance of their settlement agreement. By entering into a settlement agreement requiring the posting of a Board notice, when Board precedent clearly established that posting a side letter detracting from that notice would violate the settlement agreement, the Respondent knowingly, voluntarily, and intelligently waived its First Amendment rights to post such a letter.

[10] We also observe that the Restatement (Second) of Contracts § 205 (1981) discusses a party's duty to perform contractual obligations in good faith. A party to a contract acts in bad faith when it evades the "spirit of the bargain" or engages in "subterfuges and evasions [that] violate the obligation of good faith in performance even though the actor believes his conduct to be justified." See, e.g., *Pacific Coast Metal Trades District Council*, 260 NLRB 1117, 1119 (1982) ("Under common law principles, there is an implied covenant of good faith and fair dealing between the parties to a contract."). Board precedent holding that communications that minimize the effect of a remedial notice posted pursuant to a settlement agreement violate the agreement accords with this common-law principle.

[11] The General Counsel cross-excepts to the judge's failure to strike the answers the Respondent filed to the initial and amended complaints. The General Counsel argues that the answers are incompatible with and precluded by the settlement agreement. We agree with the General Counsel. Again, the settlement agreement states, in pertinent part, that:

> in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such noncompliance without remedy by the Charged Party, the Regional Director will issue a complaint that will include the allegations spelled out above in the Scope of Agreement section. . . . The Charged Party understands and agrees that all of the allegations of the complaint will be deemed admitted and it will have waived its right to file an Answer to such complaint. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement.

Two days after the Respondent filed its answer to the amended complaint, the General Counsel filed a motion with the Board's Division of Judges seeking, in part, to have the Respondent's answers stricken. Judge Wedekind denied this motion in relevant part, noting that the original complaint specifically required the Respondent to file an answer, and, as to both answers, the Respondent retained the right to dispute the allegations that Respondent's actions constituted noncompliance with the settlement agreement. (GC Exh. 1(jj).) Subsequently, in his February 29, 2016 decision, having found that the Respondent's actions did constitute noncompliance with the agreement, the judge found that "the Company waived its right to file an answer to the unfair labor practice allegations in the amended complaint, and those allegations are deemed admitted and are found to be true." He did not, however, strike the Respondent's answers.

Because we find that the Respondent did not comply with the terms of the settlement agreement, we find that the Respondent has waived its right to file answers to the complaint and amended complaint. Accordingly, we strike the Respondent's answers except to the extent they raise issues regarding the Respondent's compliance with the terms of the settlement agreement. See *County Agency, Inc.*, 363 NLRB No. 26, slip op. at 2 fn. 1 (2015).

[12] The dissent contends that our reliance on the Respondent's breach of an implied term of the settlement agreement to find entry of default judgment warranted contravenes the "clear and unmistakable waiver" standard and places our decision at odds with *Graymont PA, Inc.*, 364 NLRB No. 37 (2016). We disagree. As explained above, in accordance with Board law, we are construing the terms of the settlement as a whole—including an express term, the notice-posting provision—to find that the Respondent breached the settlement, triggering default judgment. The dissent muddies the waters by conflating two separate issues: (i) whether, as a matter of law, the Respondent's waiver of its right to contest the allegations of the complaint in the event it failed to comply with any term of the settlement agreement was clear and unmistakable; and (ii) whether, as a matter of fact, the Respondent failed to comply with a term of the settlement agreement. The first issue is decided by looking to the language of the agreement itself. That language is perfectly clear and unmistakable: in the event of noncompliance, "[t]he Charged Party understands and agrees that all of the allegations of the complaint will be deemed admitted and it will have waived its right to file an Answer to such complaint." The second issue is decided by looking at the Respondent's conduct with reference to the terms of the agreement, as interpreted under Board precedent. Again, it cannot be reasonably disputed that by posting its side letter, the Respondent breached the terms of the settlement agreement, including the notice-posting provision. Indeed, our dissenting colleague *agrees* that the posting of the side letter constituted noncompliance with the settlement agreement. Moreover, even assuming the second, factual issue is

compliance provisions advanced by the dissent, in contrast, posting the letter would result only in the settlement agreement being set aside, thereby requiring the General Counsel to litigate the settled allegations from square one. As we explained in *Postal Service,* 364 NLRB No. 116, slip op. at 3 fn. 8 (2016), the dissent's approach reflects a "flawed conception of what it means to 'resolve' a case . . . . We believe, as a general matter, that a case that has been resolved should stay resolved." The correct analysis in this case is the simple one: the settlement agreement states that noncompliance will trigger default, noncompliance occurred, and default judgment is warranted.[13]

## AMENDED CONCLUSIONS OF LAW

By posting and emailing its letter to employees, the Respondent undermined the effectiveness of the NLRB notice and thereby failed to comply with the notice-posting provisions of the parties' April 30, 2012 informal settlement of the Union's unfair labor practice charges. In so doing, pursuant to the noncompliance provisions of the settlement agreement, the Respondent effectively admitted the allegations set forth in the amended complaint, and those allegations are found to be true. Accordingly, we conclude that the Respondent has engaged in surveillance of employees' union activities by taking pictures of the distribution of union leaflets to employees at the entrance and exit gate; prohibited employees from talking about the Union during working time while permitting employees to talk about other nonwork subjects; orally promulgated and maintained a rule prohibiting employees from discussing the Union during working hours; disciplined employees John Dees and Mack Royster because they violated the rule prohibiting employees from discussing the Union during working hours and to discourage employees from engaging in concerted activities; and threatened employees that if they selected the Union as their bargaining representative, they would lose everything and collective bargaining would start from zero. By the foregoing conduct, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and 2(6) and (7) of the Act.

## AMENDED REMEDY

The judge determined that an appropriate remedy for the Respondent's noncompliance with the settlement agreement was an order requiring the Respondent to post for 60 days the NLRB remedial notice appended to the settlement agreement with the addition of language stating that the Respondent "will not post, email, or otherwise distribute any letters or notices to employees that modify, alter, or undermine the effectiveness of the official notices posted pursuant to orders or agreements with the NLRB." The judge's remedy also required the Respondent to post the settlement agreement itself alongside the remedial notice and to email the notice to employees on the same day it is posted.[14] The judge acknowledged that the settlement agreement empowered him to issue an order "providing a full remedy for the violations found as is appropriate to remedy such violations," and he observed that "[s]uch a full remedy would normally include an enforceable order requiring the Company to cease and desist from violating the Act in the same or any like or related manner, and to take certain other affirmative action in addition to posting a notice." Nevertheless, the judge declined to provide a full remedy on the basis that the General Counsel had not expressly requested these additional remedies.

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properly governed by the "clear and unmistakable" standard, the Respondent must be charged with knowledge of the Board's decisions, including the strikingly apposite *Gould* case, supra, which demonstrates that the Respondent was on clear and unmistakable notice that its side letter would constitute noncompliance with the settlement agreement, rendering it vulnerable to default judgment.

Our colleague also asserts that what we are doing is a "denial of due process," "just unfair," and "punitive." To the contrary, the performance provisions of the settlement agreement clearly provided for default judgment in the event of noncompliance with the terms of the settlement agreement and provided that the Respondent would have the opportunity to argue before the Board that it did not default on those terms. In agreeing to that provision, the Respondent accepted the possibility that the Board would find noncompliance sufficient to trigger the default provisions. The Respondent received ample notice throughout these proceedings that the General Counsel considered the dissemination of the side letter to constitute noncompliance with the posting terms of the settlement agreement, and had several opportunities to correct the situation before the General Counsel invoked the default provisions. The Respondent has also now had an opportunity to litigate whether the side notice constituted noncompliance sufficient to trigger the default provisions of the settlement agreement. There is no denial of due process here.

[13] We reject any implication in the dissent that Sec. 8(c) precludes granting default judgment in this case. By its terms, Sec. 8(c) only prohibits protected expressions of "views, argument, or opinion" from constituting or being evidence of an unfair labor practice. It does not prohibit the Board from finding that such an expression constitutes noncompliance with a settlement agreement—as our colleague agrees it does—or from entering default judgment based on this noncompliance. We also reject the dissent's view that Board precedent dictates setting aside the settlement agreement but not entering default judgment. In support of this view, the dissent cites *Arrow Specialties*, supra. However, in *Arrow Specialties*, the Regional Director issued complaint *but did not move for default judgment*. *Arrow Specialties* does not require that we refrain from entering default judgment and instead compel the General Counsel to litigate the settled allegations in this case, where the General Counsel *has* moved for default judgment pursuant to the performance provisions of the settlement agreement.

[14] We amend the judge's recommended remedy and order to clarify that the Respondent must email the settlement agreement along with the notice.

The General Counsel cross-excepts to the judge's decision not to order a full remedy. The Respondent does not specifically oppose such a remedy. Accordingly, we find merit in this exception. It is well settled that the Board has authority to craft appropriate remedies based on the particular facts of the case. See, e.g., *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 898–899 (1984) (Board has "primary responsibility and broad discretion to devise remedies that effectuate the policies of the Act"); *Diamond Walnut Growers*, 340 NLRB 1129, 1132 (2003) (Board may "tailor its remedies to varying circumstances on a case by case basis, in order to ensure that its remedies are congruent with the facts of each case"). Moreover, as the judge recognized, the settlement agreement explicitly authorizes the Board to "issue an order providing a full remedy for the violations found" in case of noncompliance with any of the agreement's terms, and by executing the settlement agreement the Respondent acknowledged and agreed that the Board may do so. Accordingly, we deem it appropriate to order a full remedy, as the General Counsel requests.[15]

ORDER

The National Labor Relations Board orders that the Respondent, Outokumpu Stainless USA, LLC f/k/a Thyssenkrupp Stainless USA, LLC, Calvert, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Placing employees under surveillance by photographing them while they engage in union or other protected concerted activities.

(b) Prohibiting employees from talking about the Union during working time while permitting employees to talk about other nonwork subjects.

(c) Promulgating and maintaining a rule prohibiting employees from discussing the Union during working hours.

(d) Disciplining employees because they violated the rule prohibiting employees from discussing the Union during working hours and to discourage employees from engaging in concerted activities.

(e) Threatening employees that if they select the Union as their bargaining representative, they would lose everything and collective bargaining would start from zero.

(f) Posting notices that modify, alter, or undermine the effectiveness of notices posted pursuant to orders of or agreements approved by the National Labor Relations Board.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the unlawful policies that prohibit employees from talking about the Union during working time while permitting employees to talk about other nonwork subjects, and from discussing the Union during working hours.

(b) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discipline of John Dees and Mack Royster, and within 3 days thereafter, notify the employees in writing that this has been done and that the discipline will not be used against them in any way.

(c) Within 14 days after service by the Region, post at its Calvert, Alabama facility copies of the notice and the settlement agreement attached hereto and marked as "Appendix A" and "Appendix B," respectively.[16] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent next to the settlement agreement and maintained (along with the settlement agreement) for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper copies, the notice and the settlement agreement shall be posted on the Respondent's intranet. Reasonable steps shall be taken by the Respondent to ensure that the notice and settlement are not altered, defaced, or covered by any other material.

(d) On the same day that the signed notice and settlement agreement are posted, email the signed notice and settlement agreement to the last known email address of all current employees and former employees employed

[15] Our dissenting colleague contends that issuing a full remedy is contrary to Board practice in default cases. However, as discussed above, the Respondent did not specifically oppose the General Counsel's request for a full remedy, and the Board is within its authority to issue such a remedy. Further, the cases relied on by the judge and our dissenting colleague were before the Board on a motion for default judgment and there was no indication from the documents filed in those cases that the General Counsel sought a full remedy. By contrast, this matter is before us on exceptions to a judge's decision, and, in his exceptions, the General Counsel expressly requested issuance of an enforceable order requiring the Respondent to cease and desist from violating the Act in the same or any like or related manner and to take certain other affirmative action in addition to posting a remedial notice. Accordingly here, we are not issuing a full remedy sua sponte, but rather, we are doing so at the specific request of the General Counsel, consistent with the default provisions in the settlement agreement.

[16] If the Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

by the Respondent at its Calvert, Alabama facility at any time since July 1, 2011.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 15 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 7, 2017

Mark Gaston Pearce, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

CHAIRMAN MISCIMARRA, dissenting in part.

The General Counsel routinely requires that settlement agreements resolving unfair labor practice charges include a performance clause authorizing entry of default judgment on the settled allegations if the charged party fails to comply "with any of the terms of this Settlement Agreement." The Respondent entered into such a settlement agreement, resolving allegations that it committed certain violations of Section 8(a)(1) of the Act. It is undisputed that the Respondent thereafter complied with all the terms set forth in the agreement, including posting an agreed-upon remedial notice.

However, my colleagues nevertheless enter a default judgment against the Respondent based on the settled allegations, reasoning that the Respondent violated an *implied* term of the settlement agreement by posting a separate letter (which the Board often refers to as a "side letter") that undermined the remedial notice.[1] I agree that the side letter detracted from remedial purposes that were to be served by the Board-required notice, and this warrants setting aside the settlement agreement, consistent with existing Board case law. However, the settlement agreement itself did not prohibit the Respondent from posting a side letter setting forth the Respondent's explanation of the settlement, including the Board-required notice, and nothing stated in the side letter was unlawful. For these reasons, although the Board is within its rights to set aside the settlement—which means the Respondent must litigate the previously settled allegations—I disagree with my colleagues' finding that the Respondent *breached* the settlement agreement's terms, and such a breach must have occurred before the Board can invoke the settlement agreement's default judgment provisions.

In short, I agree that the Board can set aside the settlement agreement, but the Board lacks authority to enter a default judgment in this case. Therefore, in my opinion, my colleagues incorrectly rely on the settlement agreement to deprive the Respondent of its right to defend against the disputed allegations. Accordingly, I respectfully dissent from this aspect of the majority's decision.

## Discussion

The following provision in the informal settlement agreement (the Agreement) is at the center of this case:

> *Performance by the Charged Party with the terms and provisions of this Agreement* shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.
>
> The Charged Party agrees that *in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party,* and after 14 days notice from the Regional Director of the National Labor Relations Board *of such non-compliance without remedy by the Charged Party,* the Regional Director will issue a complaint that will include the allegations spelled out above in the Scope of Agreement section. *Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint.* The Charged Party understands and agrees that all of the allegations of the complaint will be deemed admitted and it will have waived its right to file an answer to such complaint. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings.

[1] My colleagues do not acknowledge that the prohibition against posting a side letter that they read into the settlement agreement is an "implied term" of that agreement, but that is what it is. The settlement agreement contains no such prohibition. It says nothing at all about side letters. Yet the majority finds that by posting a side letter, the Respondent violated the terms of the settlement agreement. Since the settlement agreement contains no such express prohibition, it necessarily follows that the majority has added that prohibition by implication. See also fn. 5, below.

> The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.[2]

The above language makes two things clear. First, under the Agreement, "performance" means performance of "the terms and provisions of this Agreement." Second, only a failure to "perform"—i.e., "non-compliance with any of the terms of this Settlement Agreement"—allows the General Counsel to issue complaint and move for default judgment, and the only defense then available to the Respondent would be that it has not, in fact, "defaulted on the terms of this Settlement Agreement." And again, only if there is a failure to comply with "the terms and provisions of this Agreement" is the General Counsel authorized to file a motion for default judgment and the Board permitted to "find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings."

The performance section of the Agreement may therefore be summarized as follows. The Respondent promises to perform the terms and provisions specified in the Agreement. If the Respondent fails to do so, complaint will issue on the unfair labor practice allegations contained within the scope of the Agreement, the Respondent waives its right to answer that complaint, and default judgment on those allegations may be entered against the Respondent.

The Respondent entered into the Agreement on April 30, 2012. The "terms and provisions" of the Agreement required the Respondent to rescind an allegedly overbroad no-workplace-discussion policy, to rescind discipline issued to two employees allegedly pursuant to that policy, to allow employees to discuss the Union during working hours, and to post a remedial notice for 60 days.[3] It is undisputed that the Respondent performed all these terms and provisions.

The present dispute involves the separate letter that the Respondent posted concurrently with the posting of the Board's remedial notice. When the Respondent posted the remedial notice, it also posted a side letter (i) stating that the settled charges had been filed by the Union to block an election scheduled for December 2011, (ii) accusing the Union of having used similar tactics to block a prior election in 2010, (iii) asserting that the Respondent had not violated any laws and had not been found "guilty" by the Board, and (iv) suggesting that the allegations against it had been resolved solely by the posting of the notice.[4]

I agree with the majority that, under well-established Board precedent, the side letter the Respondent posted next to the remedial notice improperly minimized the effect of the notice and thus constituted noncompliance that permits the Board to set aside the Agreement. See, e.g., *Gould, Inc.*, 260 NLRB 54 (1982). Therefore, in these circumstances, I agree that the Agreement may be set aside to allow for the litigation of the previously set-

[2] Settlement agreement (emphasis added).

[3] As my colleagues note, the charges filed by the Union also "included several additional allegations that did not appear in the settlement agreement," but these were either formally withdrawn or omitted from a subsequent amended charge. Accordingly, the Agreement resolved all extant charges.

[4] In its entirety, the side letter stated:

> As many of you know, the Steelworkers Union filed a handful of unfair labor practice charges against Stainless USA in its ongoing campaign to organize our company. Most of the charges were filed in December 2011, just prior to the election that was scheduled at that time. The union then used the charges to block the election from occurring, which prevented you from exercising your right to vote and have a choice.
>
> Since the charges were filed, the Labor Board has been investigating. Some charges were dropped by the union or dismissed, and Stainless has not been found guilty of any of the allegations. However, due to reasons such as the inability to make a determination based on the facts the agent was able to collect, the Labor Board has determined that some of the charges should be further evaluated at a hearing.
>
> Unfortunately, having a hearing would only delay your opportunity to have your voices heard by voting. Stainless USA has always held the opinion that you deserve the opportunity to vote and we have done everything in our power to move this process along since this campaign has been going on for over three years. Consistent with that goal, although Stainless USA believes it has not violated any laws, we agreed to resolve the remaining charges by posting a notice. Of the 9 charges, the union has withdrawn or the Labor Board has dismissed 3 and the remaining 6 are resolved by the posting. There are no fines, penalties or other monetary requirements as a result of this resolution. Plus now there is again a chance that an election will occur, although not until some time after the 60-day notice posting.
>
> If all this sounds familiar to some of you, the same thing happened in 2010, which was the first time we tried to have your voice heard. At that time, the union filed charges that blocked the election. The Labor Board investigated the union's charges for months. Of the 40 charges filed in 2010, 36 were dismissed or were withdrawn by the union. The Company settled the few remaining charges in order to try to get to a vote. Unfortunately, the union filed newer charges before the December 2011 election that kept that from happening.
>
> We would like to point out that the Labor Board has *not* found the Company guilty regarding the current charges. The Company believes that the charges would have been dismissed after a hearing. By resolving the charges now, however, the election can be pushed forward once again provided the union does not file new charges.
>
> We will continue as always to keep you informed and we look forward to working together to build our company and get into full production with the Melt Shop.

tled unfair labor practice allegations. See, e.g., *Arrow Specialties, Inc.*, 177 NLRB 306, 308 (1969), enfd. 437 F.2d 522 (8th Cir. 1971). Consistent with this precedent, I believe the Board must do likewise here: set aside the Agreement and proceed to a hearing on the allegations.[5]

Prior to today's decision, the Board has never held that a side letter warrants entry of a default judgment, which precludes the Respondent from raising any defenses against the Union's unfair labor practice allegations. Moreover, I believe that the majority misinterprets the Agreement, which only authorizes entry of default judgment if the charged party violates one of the "terms of this Settlement Agreement," that is, one of the specific obligations spelled out in the Agreement itself. Because refraining from posting a side letter is not one of those terms, default judgment may not properly be entered on that basis.

In addition, I believe the entry of a default judgment in the circumstances presented here is contradicted by other important considerations.

First, the default judgment clause in the Agreement waives important constitutional and statutory rights. Under the Fifth Amendment of the Constitution, the Respondent may not be deprived of liberty or property without due process of law, which includes, at a minimum, "the right to notice and meaningful opportunity to be heard." *LaChance v. Erickson*, 522 U.S. 262, 266 (1998). Effectuating this right, Section 10 of the Act affords every respondent the right to notice of the charges against it in the form of a complaint, the right to file an answer to the complaint, and the right to a hearing at which it is entitled to present evidence. NLRA Section 10(b), 10(c). Any finding of an unfair labor practice must be based on the preponderance of the evidence, and such finding may be appealed to an appropriate United States court of appeals. NLRA Section 10(c), 10(f). An agreement to subject oneself to default judgment waives all these rights. And any such waiver must be "clear and unmistakable." *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983).

Second, consistent with the above principles, the Board has previously recognized that it "should be reluctant to impose a remedy by default in the absence of clear language in the noncompliance clause." *Bartlett Heating & Air Conditioning*, 339 NLRB 1044, 1046 (2003). In this regard, the Board specifically indicated that the language of the noncompliance clause was "controlling." Id. While the specific issue in *Bartlett* involved determining the appropriate remedy to order after noncompliance with a settlement agreement had been established, the principles stated there apply with even greater force to interpreting a settlement agreement for the purpose of determining whether there was noncompliance with the

[5] It is important to note that Board precedent does not impose any type of blanket prohibition on posting or expressing an opinion regarding an NLRB remedial notice. Rather, the settlement agreement and applicable Board law permit parties to post or express most anything they desire regarding a remedial notice (for example, explaining the context in which unfair labor practice charges arose and various practical details regarding settlement terms). The only limitations are that the employer may not improperly minimize the effect of the remedial notice or post or make statements that independently violate the Act. If the employer improperly minimizes the effect of the remedial notice, established Board case law provides that the settlement will be set aside. When a settlement is set aside, this does not mean the General Counsel automatically wins and the employer automatically loses. Rather, setting aside a settlement means the parties are required to litigate the case, which would have been the original state of affairs had the parties not entered into the settlement. My colleagues dramatically expand this principle and find that posting a side letter that detracts from a settlement agreement will have two consequences: (i) such a side letter will invalidate the settlement; and (ii) the side letter will extinguish the employer's right to assert any defense against the alleged violations, even though the allegations have never been found by the Board to have merit. I believe my colleagues' approach is objectionable and improper for two reasons.

First, as explained in the text, a posted side letter extinguishes a party's right to defend against unproven allegations only if the party *agreed* to have a default judgment entered against it in these circumstances, and this turns exclusively on the wording of the settlement agreement's default judgment language. I believe a settlement agreement must be limited to its express terms, and nothing in the Agreement in this case says anything about whether or not the Respondent may make statements or post a letter that deals in any way with the Board's remedial notice. Of course, the negotiation and wording of any settlement agreement is completely within the control of the parties. Given that the parties have negotiated and entered into an Agreement—approved by the General Counsel—that does *not* expressly extinguish the Respondent's right to defend against the allegations of the complaint in the circumstances presented here, it is objectionable and unreasonable, in my view, for the Board to "interpret" the Agreement so as to create an implied term that produces such an onerous outcome, when nobody can reasonably claim this was mutually intended by the parties.

Second, we are dealing here with limitations on what a party may say or communicate in writing, and this means that expansive Board-imposed restrictions on speech potentially infringe on First Amendment rights, especially if the restrictions on speech are vague, overbroad and only implied. *Reno v. American Civil Liberties Union*, 521 U.S. 844, 871–872 (1997) (vagueness of content-based regulation of speech "raises special First Amendment concerns because of its obvious chilling effect on free speech"). The Board is an agency of the federal government, and the First Amendment prohibits the federal government from "abridging the freedom of speech." In the circumstances presented here, my colleagues do not merely penalize speech by finding that certain types of side letters require the prior settlement to be set aside (which still permits the Respondent to defend against the alleged violations). Rather, my colleagues find that a posted side letter *extinguishes the Respondent's right to raise any defense*. Again, it bears emphasis that the Agreement itself does not contain *any* restriction against written communications that address matters stated in the remedial notice. In this context, I believe the majority's finding that the Respondent waived its right to mount *any* defense against the alleged violations unconstitutionally chills protected speech in violation of the First Amendment. *Reno v. American Civil Liberties Union*, supra.

terms of the settlement agreement in the first place. In the former context, the Board *has already determined* that default judgment is properly entered. In the latter context—the context presented here—the Board *is determining* whether default judgment should be entered. And before it enters default judgment, the Board must make sure that the respondent clearly and unmistakably waived the vital rights discussed above under the circumstances the case presents. See *Quality Roofing Supply Co.*, 357 NLRB 789, 789 (2011) (applying clear and unmistakable waiver standard in the context of a non-Board settlement and declining to prohibit a party from asserting its rights where it had not clearly and unmistakably waived its right to do so).

Third, the Board cannot reasonably find that the Respondent clearly and unmistakably waived its constitutional and statutory rights. By signing the Agreement, the Respondent waived these rights "in case of noncompliance with any of the terms of this Settlement Agreement." Even assuming that a duty to refrain from posting a side letter that undermines the remedial notice is an implied term of the Agreement, it defies reason to suggest that the Agreement contains "clear language" waiving the Respondent's right to contest the unfair labor practice allegations in "clear and unmistakable" terms based on a violation of this or any other implied term. *Metropolitan Edison Co. v. NLRB*, above; *Bartlett Heating & Air Conditioning*, above.[6]

Fourth, it is important to recognize that the Respondent has a statutory and First Amendment right to express the views set forth in the side letter, i.e., its rationale for agreeing to the settlement and its belief that the Union had attempted to manipulate the timing of the election by filing blocking charges. There is no contention that this communication was an unfair labor practice, nor is there any basis for finding that it was. See *Gould, Inc.*, 260 NLRB at 57 ("The fact that the comments are directed to the terms of the settlement agreement and may be in violation of or in derogation of its terms does not warrant the conclusion that otherwise lawful notices become independent violations of the Act."). In Section 8(c) of the Act, Congress plainly indicated its intent to protect such communications.[7] To state the obvious, given that the statements made in Respondent's side letter were lawful—indeed, affirmatively protected by the First Amendment and Section 8(c) of the Act—the Board cannot enter a default judgment, thereby depriving the Respondent of its right to defend against unresolved allega-

[6] My colleagues painstakingly avoid any overt reference to their reliance on an implied term of the Agreement, but it is uncontroverted that the Agreement nowhere *expressly* precludes the posting of a side letter. Because my colleagues find that posting the side letter violated a term of the Agreement, and because the Agreement contains no reference whatsoever to the type of prohibition relied upon by my colleagues, this *necessarily* means my colleagues are finding that the Respondent violated an implied term in the Agreement. It is true that the Agreement must be read "in the light of the law relating to it when made," *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270, 279 (1956), and I agree that the side letter constitutes noncompliance with the Agreement under applicable Board law, which makes it appropriate to set aside the Agreement. Nevertheless, the Board must rely exclusively on the Agreement when evaluating what constitutes a "default" for purposes of the Agreement. According to the Agreement's plain language, default is triggered only by a particular type of noncompliance—specifically, noncompliance "*with any of the terms* of this Settlement Agreement" (emphasis added). The Agreement makes no mention of side letters, and thus finding that such a letter violates the Agreement necessarily *implies* a term in the Agreement that ostensibly prohibits side letters. It is remarkable and ironic that my colleagues find a clear and unmistakable waiver here—based on an *implied* contractual term—when my colleagues recently declined to find a clear and unmistakable waiver based on *express* contractual terms. *Graymont PA, Inc.*, 364 NLRB No. 37, slip op. at 2–4 (2016). If an express contractual provision fails the "clear and unmistakable" test, then an implied contractual provision must even more clearly fail the same test.

My colleagues respond by parsing the Agreement to apply the "clear and unmistakable waiver" standard only to the sentence stating that "[t]he Charged Party understands and agrees that all of the allegations of the complaint will be deemed admitted and it will have waived its right to file an answer to such complaint." This will not do. The Charged Party/Respondent agreed to waive its constitutional and statutory right to contest the allegations against it *only* in the event that it failed to comply with "any of the terms of this Settlement Agreement." The Respondent complied with all the stated terms of the Agreement, and the Respondent was not on notice that the Agreement also included unstated terms. My colleagues point out that Board decisions condemning side letters are a matter of public record. But nothing in the Agreement put the Respondent on notice that the Agreement extended beyond its four corners to include terms implied from Board case law. The legal term for what the majority is doing is "denial of due process." Most people would put it a different way: it's just unfair. Furthermore, this unfairness is not cured by the fact that before moving for default judgment, the Region notified the Respondent that *it* considered the side letter to constitute noncompliance. The Respondent consented to have default judgment entered against it based on the express terms of the Agreement; the Board cannot reasonably find that the Respondent's agreement extended to subsequent interpretations that were asserted after the fact by personnel in the Board's Regional Office. The terms of the contract the Respondent agreed to were only those terms objectively included in the Agreement, regardless of the Region's subjective understanding of those terms. See *Vallejo Retail Trade Bureau*, 243 NLRB 762, 767 (1979) (subjective understandings of the terms of a contract are irrelevant where the objective terms themselves are unambiguous), enfd. 626 F.2d 119 (9th Cir. 1980). To the extent the Region seeks to add additional, unstated terms to the Agreement *after* its execution, the Respondent clearly is not bound to those additional, unstated terms.

[7] Sec. 8(c) states:

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

tions, to punish the Respondent for making such statements.[8]

Finally, entering default judgment based on the Respondent's side letter has an even more profound consequence: it prevents the Board itself from deciding the merits of the unfair labor practice allegations. At this time, the Board does not have a record upon which it may decide the allegations on their merits. The Charging Party *alleged* that the Respondent committed various unfair labor practices.[9] The Respondent's side notice *alleged* that the Charging Party's true purpose in filing the charges was not to seek redress but to "block" the election.[10] By entering default judgment rather than proceeding to a hearing, my colleagues preclude a determination of whether the Charging Party's allegations have merit. My colleagues also foreclose any determination of whether and to what extent the views expressed in Respondent's side letter were accurate or inaccurate. See *St. James Mercy Hospital*, 307 NLRB 322 (1992) (employer's letter truthfully responding to union's misrepresentation did not invalidate the settlement agreement). Indeed, by imposing a default judgment as the price for posting the side letter, my colleagues create a reverse type of self-fulfilling prophecy: because the Respondent posted a side letter in which it exercised its protected right to maintain that the pending allegations *lack* merit, the Board is now finding—without any consideration of relevant facts or applicable law—that all of the disputed allegations *have* merit.[11]

Settlement agreements play an important role in effectuating the policies of the Act. The prompt and voluntary resolution of unfair labor practice charges promotes industrial peace, conserves the Board's resources, and serves the public interest. *Independent Stave Co.,* 287 NLRB 740 (1987). I recognize that the inclusion of default judgment provisions in our settlement agreements may effectuate the policies of the Act.[12] However, before a default judgment may be entered based on noncompliance with a settlement agreement, the respondent must have expressly *agreed* to the entry of a default judgment and to the particular circumstances that will be deemed noncompliance.

Because the Respondent did not agree to default judgment in the circumstances present in this case, I believe the Board is without authority to enter a default judgment and to divest the Respondent of its right to defend against the disputed allegations. Accordingly, I respectfully dissent from the entry of a default judgment against the Respondent.

Dated, Washington, D.C. September 7, 2017

_____

Philip A. Miscimarra, Chairman

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

[8] It is well established that the Board's remedial authority does not include the right to impose punitive measures, even when parties have committed violations of the Act. The Supreme Court held in *Republic Steel Corp. v. NLRB*, 311 U.S. 7, 11 (1940), that Congress never intended to give the Board "virtually unlimited discretion" to impose "punitive measures," "penalties" or "fines" based on what "the Board may think would effectuate the policies of the Act." See also *Consolidated Edison Co. of New York v. NLRB*, 305 U.S. 197, 235–236 (1938); *NLRB v. Pennsylvania Greyhound Lines*, 303 U.S. 261, 267–268 (1938).

[9] Complaint issued, not following an investigation and determination by the Regional Director that the charges were meritorious, but due to the posting of the side letter.

[10] The potential for abuse inherent in the blocking charge procedure has been noted before. See, e.g., *Bally's Atlantic City*, 338 NLRB 443, 443 (2002) (former Member Cowen, dissenting) (noting that the blocking charge doctrine can be used to "manipulate and compromise the election process"). The Board decided to reevaluate the blocking charge doctrine when it revised its representation-case rules in 2014. I favor a further reconsideration of the Board's blocking charge doctrine for the reasons expressed in my and former Member Johnson's dissenting views contained within the Board's Election Rule, 79 Fed. Reg. 74308 at 74430–74460 (Dec. 15, 2014), but I acknowledge that the Board has declined to materially change its blocking charge doctrine.

[11] Since I do not find default to be appropriate, I need not reach the General Counsel's cross-exceptions arguing that the judge failed to order a full remedy. In this regard, however, I believe that the General Counsel waived his right to argue for a full remedy by failing to do so in his brief to the judge. In his decision, the judge observed that the General Counsel had not requested a full remedy, but had instead requested only reposting and redistribution via email of the remedial notice and "any other relief . . . deem[ed] appropriate to remedy the [Company's] noncompliance with the settlement." Accordingly, the judge ordered the notice reposted and redistributed, with the addition of language to the effect that the Respondent will not post, email or otherwise distribute any letters that detract from the effectiveness of the notice—language that, as requested, remedies the Respondent's noncompliance. The judge correctly applied Board precedent holding that although the General Counsel is empowered to seek a full remedy in the context of a default judgment, the Board will not award such a remedy sua sponte where the General Counsel has not requested a full remedy. See *Midwestern Video Personnel, Inc*., 363 NLRB No. 120, slip op. at 2–3 (2016); *Serenity Dental Spa, P.A.*, 362 NLRB No. 116, slip op. at 3 (2015); *Dreamclinic, LLC*, 361 NLRB No. 112, slip op. at 3–4 (2014). My colleagues fault the Respondent for failing to oppose the General Counsel's belated request for a full remedy, but I would not fault the Respondent for failing to oppose a remedy that the General Counsel had already waived the right to request.

[12] See General Counsel Memoranda 11-04, 11-10 (2011).

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT place you under surveillance by photographing you while you engage in union or other protected concerted activities.

WE WILL NOT prohibit you from talking about the Union during working time while permitting you to talk about other nonwork subjects.

WE WILL NOT promulgate or maintain a rule that prohibits you from discussing the Union during working hours.

WE WILL NOT discipline you for violating a rule prohibiting discussion of the Union during working hours and to discourage you from engaging in concerted activities.

WE WILL NOT threaten you that if you select the Union as your bargaining representative, you will lose everything and collective bargaining will start from zero.

WE WILL NOT post, email, or otherwise distribute any letters or notices to employees that modify, alter, or undermine the effectiveness of the official notices posted pursuant to orders of or agreements approved by the National Labor Relations Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the unlawful policies that prohibit employees from talking about the Union during working time while permitting employees to talk about other nonwork subjects, and from discussing the Union during working hours.

WE WILL, within 14 days from the date of the Board's order, remove from our files any reference to the unlawful discipline of Mack Royster and John Dees, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the discipline will not be used against them in any way.

OUTOKUMPU STAINLESS USA, LLC F/K/A THYSSENKRUPP STAINLESS USA, LLC

The Board's decision can be found at www.nlrb.gov/case/15-CA-070319 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

APPENDIX B

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

**SETTLEMENT AGREEMENT**

**IN THE MATTER OF**

| | |
|---|---|
| **ThyssenKrupp Stainless USA, LLC** | **Case Nos:**<br>**15–CA–070319**<br>**15–CA–073053** |

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

**POSTING OF NOTICES** — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notices to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them in prominent places around its facility, including all places where the Charged Party normally posts notices to employees. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

**INTRANET POSTING** — The Charged Party will also post a copy of the Notice on its intranet and keep it continuously posted there for 60 consecutive days from the date it was originally posted. The Charged Party will send an email to the Region's Compliance Officer at Debra.Warner@nlrb.gov with a link to the electronic posting location on the same day as the posting. If passwords or other log-on information is required to access the electronic

posting, the Charged Party agrees to provide such access information to the Region's Compliance Officer.

**COMPLIANCE WITH NOTICE** — The Charged Party will comply with all the terms and provisions of said Notice.

**SCOPE OF THE AGREEMENT** — This Agreement settles only the following allegations in the above-captioned cases, and does not settle any other cases or matters:

1. Since on or about July 2011, and at all times thereafter, the Employer, through Manager Tom Brennan, unlawfully changed its workplace discussion policy and enforced it disparately.

2. In or about August and September 2011, and at times thereafter, the Employer, through its officers, agents, and representatives, unlawfully engaged in surveillance and creating the impression of surveillance.

3. On September 10, 2011, the Employer, by and through Ruben Rangle, promulgated, in writing, an overly broad no-discussion during working hours policy.

4. On September 10, 2011, the Employer disciplined employees John Dees and Mack Royster for violating an overly broad no-discussion during working hours policy.

5. On or about December 6, 2011, the Employer, through Manager Tom Brennan, unlawfully threatened that employees would lose everything and that collective bargaining would start from zero if the Union was voted in.

It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned cases for any relevant purpose in the litigation of this or any other cases, and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence. By approving this Agreement the Regional Director withdraws any Complaints and Notices of Hearing previously issued in the above cases, and the Charged Party withdraws any answers filed in response.

**PARTIES TO THE AGREEMENT** — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

**AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY** — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes _____ No _____
Initials Initials

**PERFORMANCE** — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a complaint that will include the allegations spelled out above in the Scope of Agreement section. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that all of the allegations of the complaint will be deemed admitted and it will have waived its right to file an Answer to such complaint. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service

upon Charged Party/ Respondent at the last address provided to the General Counsel.

**NOTIFICATION OF COMPLIANCE** — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

**Charged Party**
**THYSSENKRUPP STAINLESS USA, LLC**

By: Name and Title

/s/ John Lambremont
JOHN LAMBREMONT, Attorney

Date 4/30/2012

**Charging Party**
**UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL–CIO, CLC**

By: Name and Title

/s/ Brad Manzolillo
BRAD MANZOLILLO, Organizing Counsel

Date 4/27/12

Recommended By:

/s/ Zachary E. Herlands
ZACHARY E. HERLANDS, Field Attorney

Date 4/30/12

Approved By:

/s/ M. Kathleen McKinney
M. KATHLEEN MCKINNEY, Regional Director, Region 15

Date 4/30/12

**(To be printed and posted on official Board notice form)**

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT threaten you with loss of benefits or tell you that you will lose everything and start from zero if you choose to be represented by or support a Union.

WE WILL NOT make it appear to you that we are watching out for your union activities.

WE WILL NOT watch you in order to find about [sic] your union activities.

WE WILL NOT tell you that you cannot talk about or discuss the Union while on working time while we allow you to talk about or discuss other subjects while on working time and WE WILL repeal the rule promulgated in a written discipline on that subject.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL rescind in writing any and all discipline employees received, including that given to employees Mack Royster and John Dees, as a result of a rule prohibiting discussion or talk about the Union during working hours, and WE WILL notify all affected employees that their discipline was removed from our files and that it will not affect them in any way in the future.

WE WILL allow you to discuss or talk about the Union during working hours while we allow you to talk about or discuss other subjects while on working time.

THYSSENKRUPP STAINLESS USA, LLC

The Board's decision can be found at www.nlrb.gov/case/15-CA-070319 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

*Kevin McClue, Esq.,* for the General Counsel.
*John A. Lambremont, Esq. (Littler Mendelson, P.C.),* for the Respondent Company.
*Brad Manzolillo,* for the Charging Party Union.

DECISION

JEFFREY D. WEDEKIND, Administrative Law Judge. The amended complaint in this proceeding alleges that the Respondent Company failed to comply with the terms of an April 30, 2012 NLRB informal settlement of the alleged unfair labor practices in the above cases. Specifically, the General Counsel alleges that the Company breached the settlement's notice-posting provisions by emailing and posting a letter or "side-notice" to the employees before and during the required 60-day notice-posting period that undermined the effectiveness of the official NLRB notice. The General Counsel contends that, pursuant to the noncompliance provisions of the settlement, it is therefore appropriate to issue a decision finding that the Company has defaulted on the terms of the settlement and ordering it to repost the NLRB notice.

The Company denies that emailing and posting the letter/side-notice violated the terms of the settlement. Accordingly, it contends that a default judgment under the settlement's noncompliance provisions is inappropriate.

On November 16, 2015, the parties filed a joint motion and stipulation of facts and exhibits, requesting that the noncompliance and default allegations and issues be decided without a hearing based on the stipulated record. By order dated the following day, the joint motion was granted and the stipulation of facts and exhibits was approved. Each of the parties thereafter timely filed briefs on or before December 22, 2015.

Having carefully considered the briefs and the entire stipulated record, for the reasons set forth below I find that the Company's distribution and posting of the letter/side-notice constituted noncompliance with the notice provisions of the settlement and that a default judgment and an order requiring reposting of the NLRB notice are therefore appropriate.

## I. THE ALLEGED NONCOMPLIANCE WITH THE SETTLEMENT

### *A. Factual findings*

On May 17, 2010, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial Workers International Union, AFL–CIO (United Steelworkers) filed a petition to represent the production and maintenance employees at the Company's facility in Calvert, Alabama. Approximately 16 months later, on September 11, 2011, the Regional Director approved a stipulated election agreement setting the election for December 13 and 14.

However, beginning shortly before the scheduled election, the Union filed charges alleging that the Company had committed a number of unfair labor practices in violation of Section 8(a)(1) of the National Labor Relations Act. Among other things, the charges alleged that, on various dates between July and December 2011, the Company unlawfully threatened employees that they would lose everything and that collective bargaining would start from zero if the Union was voted in; surveilled and created the impression of surveilling employees; changed and disparately enforced its workplace discussion policy; promulgated an overbroad written no-discussion policy; and disciplined two employees, Mack Royster and John Dees, for violating the overbroad no-discussion policy. In light of these pending charges, the previously scheduled election was "blocked," i.e. postponed and held in abeyance.[1]

On April 30, 2012, prior to issuance of a formal complaint, the parties executed, and the Regional Director approved, a bilateral settlement of the foregoing charge allegations. The settlement was informal in nature, i.e., it did not provide for issuance of formal Board order, and did not contain either an admission or a nonadmission clause.

Under the terms of the settlement, the Company agreed to post an official NLRB notice to employees stating as follows:

> FEDERAL LAW GIVES YOU THE RIGHT TO
>
> Form, join, or assist a union
>
> Choose representatives to bargain with us on your behalf
>
> Act together with other employees for your benefit and protection
>
> Choose not to engage in any of these protected activities.
>
> WE WILL NOT do anything to prevent you from exercising the above rights.
>
> WE WILL NOT threaten you with loss of benefits or tell you that you will lose everything and start from zero if you choose to be represented by or support a Union.
>
> WE WILL NOT make it appear to you that we are watching out for your union activities.
>
> WE WILL NOT watch you in order to find about [sic] your union activities.
>
> WE WILL NOT tell you that you cannot talk about or discuss the Union while on working time while we allow you to talk about or discuss other subjects while on working time and WE WILL repeal the rule promulgated in a written discipline on that subject.
>
> WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.
>
> WE WILL rescind in writing any and all discipline employees received, including that given to employees Mack Royster and John Dees, as a result of a rule prohibiting discussion or talk about the Union during working hours, and WE WILL notify all affected employees that their discipline was removed from our files and that it will not affect them in any way in the future.
>
> WE WILL allow you to discuss or talk about the Union during working hours while we allow you to talk about or discuss other subjects while on working time.

The settlement provided that the Regional Director would send copies of the foregoing notice to the Company; that a responsible company official would then sign, date, and immediately post the notices in prominent places around the facility and on the Company's intranet; and that the Company would keep the notices posted for 60 consecutive days thereafter.

The Company also agreed to "comply with all the terms of the provisions of [the] Notice," i.e., to actually do what the notice stated it would do. Thus, among other things, the Company agreed to repeal the overbroad no-discussion rule, rescind in writing the discipline issued to Royster and Dees, and notify them that the discipline had been removed and would not affect them in any way.

Finally, the Company agreed that certain default procedures would apply "in case of non-compliance with any of the terms of [the settlement]." Specifically, the Company agreed that the Regional Director would issue a complaint on the 8(a)(1) allegations; the General Counsel could thereafter file a motion for default judgment on those allegations; the allegations would be deemed admitted and the right to file an answer waived; the only issue would be whether the Company defaulted on the terms of the settlement; the Board could find all the allegations to be true and issue an order fully remedying them; and a U.S. Court of Appeals could enter a judgment enforcing the Board's order ex parte.

As required by the settlement, the Company subsequently repealed the overbroad no-discussion rule, rescinded the discipline issued to Royster and Dees, and notified them that it had done so. Beginning on May 17, and for 60 days thereafter, the Company also posted the agreed-upon NLRB notice on its main bulletin board next to the time clocks and on its intranet home page.

The Company also distributed and posted its own separate letter or side-notice about the charges and the settlement. The letter was signed by David Scheid, the Company's vice president of human resources, and stated as follows:

> As many of you know, the Steelworkers Union filed a handful of unfair labor practice charges against Stainless USA in its ongoing campaign to organize our company. Most of the charges were filed in December 2011, just prior to the election that was scheduled at that time. The union then used the charges to block the election from occurring, which prevented you from exercising your right to vote and have a choice.
>
> Since the charges were filed, the Labor Board has been investigating. Some charges were dropped by the union or dismissed, and Stainless has not been found guilty of any of the

[1] See generally *Mark Burnett Productions*, 349 NLRB 706, 707 (2007) ("[E]mployees . . . have the right to an election that reflects their untrammeled views. In order to effectuate this right, the Board's blocking charge procedures fulfill its longstanding policy that elections should be conducted in an atmosphere free of *any* type of coercive behavior that could affect employee free choice sufficiently to sway the outcome of the election."). See also NLRB Casehandling Manual, Part Two, Representation Proceedings, secs. 11730–11731 (describing the Board's blocking-charge policy, procedures, and exceptions in more detail).

allegations. However, due to reasons such as the inability to make a determination based on the facts the agent was able to collect, the Labor Board has determined that some of the charges should be further evaluated at a hearing.

Unfortunately, having a hearing would only delay your opportunity to have your voices heard by voting. Stainless USA has always held the opinion that you deserve the opportunity to vote and we have done everything in our power to move this process along since this campaign has been going on for over three years. Consistent with that goal, although Stainless USA believes it has not violated any laws, we agreed to resolve the remaining charges by posting a notice. Of the 9 charges, the union has withdrawn or the Labor Board has dismissed 3 and the remaining 6 are resolved by the posting. There are no fines, penalties or other monetary requirements as a result of this resolution. Plus now there is again a chance that an election will occur, although not until some time after the 60-day notice posting.

If all this sounds familiar to some of you, the same thing happened in 2010, which was the first time we tried to have your voice heard. At that time, the union filed charges that blocked the election. The Labor Board investigated the union's charges for months. Of the 40 charges filed in 2010, 36 were dismissed or were withdrawn by the union. The Company settled the few remaining charges in order to try to get to a vote. Unfortunately, the union filed newer charges before the December 2011 election that kept that from happening.

We would like to point out that the Labor Board has *not* found the Company guilty regarding the current charges. The Company believes that the charges would have been dismissed after a hearing. By resolving the charges now, however, the election can be pushed forward once again provided the union does not file new charges.

We will continue as always to keep you informed and we look forward to working together to build our company and get into full production with the Melt Shop.

The Company emailed the foregoing letter to the employees on May 7, a few days before the Region mailed the official NLRB notices to the Company. The Company also posted the letter on the main bulletin board next to the time clocks the same day, and continued to post the letter there in close proximity to the NLRB notice throughout the 60-day posting period.

The Union initially notified the Region of the Company's letter on May 10. It also subsequently filed a formal charge with the Region on July 30 alleging that the Company's letter "unlawfully misrepresented NLRB procedures, thereby creating the impression that it can engage in unlawful conduct without penalty."

On September 19 or 20, the Region advised the Company by telephone that the dissemination of the letter constituted noncompliance with the settlement and diminished its remedial effect.[2] A few months later, on November 14, the Region also informed the Company by email what remedial steps were required to become compliant. The Region stated that the Company must repost the NLRB notice for another 60 days with the following additional language:

> This notice is being reposted and emailed to you because our May 7, 2012 email to you, which issued just prior to the original Notice Posting required in the settlement agreement we reached with the National Labor Relations Board, did not properly represent the findings of the Board or the purpose of the information communicated to you in the Notice.
>
> WE WILL NOT say negative things to you about the Union in an effort to discourage you from supporting or assisting the Union.
>
> WE WILL NOT post and/or distribute anything to you which changes or lessens in any manner Notices posted because of an Order from or an agreement with the National Labor Relations Board.

By email dated November 29, the Company advised the Region that it was unwilling to take these additional remedial steps. In subsequent emails dated December 6 and 14, the Company explained that it was unwilling to do so because: (1) the Union did not file its charge until well after the posting period had ended; (2) the Company disagreed with the Region's position that the letter constituted noncompliance with the settlement; (3) the Region took an inordinately long time to notify the Company of the proposed remedial steps to remedy the alleged noncompliance; and (4) the additional language proposed by the Region was unconventional, inappropriate, and overbroad.

By email dated December 14, the Region notified the Company that, if it was willing to repost the original NLRB notice for 60 days, the Region "would hold off on [the] additional language for now." However, by email dated December 27, the Company informed the Region that it was likewise unwilling to repost the original notice, primarily for reasons (2) and (3) above.

Approximately 3 months later, on March 27, 2013, the Region formally notified the Company that the letter it had posted and emailed to employees "constituted an unlawful side notice" that "served to undermine the effect of the Board notice" and "defeat[ed] the intent and purpose of the informal settlement." The Region advised the Company that if it did not "remedy" this "breach" of the informal settlement within the next 14 days by reposting the NLRB notice for an additional 60 days as previously discussed, the Region might issue a complaint and thereafter file a motion for default judgment pursuant to the settlement's noncompliance provisions.

The Company did not thereafter repost the NLRB notice. Accordingly, on June 28, 2013, the Regional Director issued a complaint and notice of hearing alleging that the Company had violated Section 8(a)(1) of the Act as set forth in the Union's original unfair labor practice charges.[3]

On July 11, the Company filed an answer denying that it vio-

[2] Apparently for this reason, the Region continued to hold the election in abeyance. And it remains blocked to this day.

[3] The complaint did not allege that the Company's letter/side-notice itself violated the Act. Indeed, the complaint did not specifically mention the settlement or the letter/side-notice.

lated the Act as alleged and asserting various defenses, including that the complaint was barred by the settlement. The following month, on August 15, 2013, the Company also filed a motion for summary judgment with the Board. The motion argued that the complaint should be dismissed because the Company had neither failed to comply with the settlement nor engaged in postsettlement unlawful conduct. However, by unpublished order dated November 22, 2013, the Board denied the motion, stating that the Company had "failed to establish that it is entitled to judgment as a matter of law" (2013 WL 6157179).

Approximately 10 months later, on September 29, 2014, the General Counsel filed a motion for default judgment with the Board pursuant to the noncompliance provisions of the settlement. However, by order dated April 22, 2015, the Board denied this motion as well, stating that "genuine issues of material fact exist which prevent a final determination as to whether the terms of the settlement agreement have been breached" (362 NLRB No. 71).

The Region issued the instant amended complaint about 4 months later, on August 17, 2015. The amended complaint sets forth the same 8(a)(1) allegations set forth in the original complaint. It also specifically alleges that the Company failed to comply with the terms of the April 30, 2012 settlement; that under the agreed upon terms of the settlement the only issue that can be presented in this proceeding is whether the Company thereby defaulted on the terms of the settlement; and that as part of the remedy, the Company should be ordered to repost the NLRB notice along with the settlement documents.[4]

On August 19, the Company filed an answer. The answer again denies that the Company violated Section 8(a)(1) of the Act as alleged. It also denies that the Company breached and defaulted on the settlement, and that it has any obligation to repost the NLRB notice with the settlement. Finally, it also again asserts various defenses, including that the amended complaint is barred by the settlement.

A few days later, on August 21, the General Counsel filed a motion in limine with the Judges Division requesting "an immediate ruling" (1) that the hearing will be limited to whether the Company breached and defaulted on the terms of the settlement by emailing and posting the letter with the NLRB notice; and (2) that the Company's July 11, 2013, and August 19, 2015 answers to the initial and amended complaints must therefore be stricken inasmuch as the Company waived the right to file an answer under the terms of the settlement's noncompliance provisions.

By order dated August 31, 2015, I granted in part and denied in part the General Counsel's motion. Specifically, consistent with the complaint and theory of the case, I granted the General Counsel's motion to limit the hearing to the settlement noncompliance and default issues. I ruled that, because the General Counsel was not seeking to set aside the settlement, the underlying 8(a)(1) allegations themselves would be neither litigated nor decided in this proceeding; rather, the complaint would rise or fall based solely on how the settlement noncompliance and default issues were decided.[5] However, consistent with the Board's April 22, 2015 order,[6] I denied the General Counsel's motion to strike the Company's answers before a determination had been made on those issues.

No party filed an appeal of my foregoing rulings with the Board. Rather, as indicated above, the parties thereafter filed a joint motion requesting that I decide the noncompliance and default issues without a hearing based on a stipulated record.

*B. Analysis*

1. Whether the Company's letter breached the settlement

As indicated by the General Counsel, the Board has found in a number of cases that the posting or distribution of a letter or side-notice to employees along with the official settlement notice constituted noncompliance with the settlement. See *Gould, Inc.,* 260 NLRB 54, 57–58 (1982); *Bingham-Williamette Co.,* 199 NLRB 1280, 1282 (1972); *Arrow Specialties, Inc.*, 177 NLRB 306 (1969); and *Bangor Plastics, Inc.,* 156 NLRB 1165, 1167 (1966), enf. denied 392 F.2d 772 (6th Cir. 1967). See also *Postal Workers Local 735 (USPS)*, 340 NLRB 1363, 1364 (2003); and *News-Texan, Inc.,* 174 NLRB 1035 (1969), enfd. 422 F.2d 381 (5th Cir. 1970).

Further, in the *Gould* case, the Board made this finding under circumstances essentially indistinguishable from those here. In that case, the union filed charges alleging that the respondent employer engaged in various preelection 8(a)(1) violations, including maintaining an overbroad no-solicitation rule and disciplining three employees under that rule; the filing of the charges blocked the scheduled representation election; the parties entered into an informal settlement that required the employer to post an official NLRB notice and to rescind the overbroad rule and discipline issued to the three employees; and the employer thereafter did so. However, the day before posting the NLRB notice, the employer gave its own notice to each

[4] Like the original complaint, the amended complaint does not allege that the Company's letter/side-notice constituted an independent 8(a)(1) violation. Rather, as indicated, it alleges only that the letter/side-notice breached the settlement.

[5] As noted in my order (GC Exh. 1(jj)), the Regional Director apparently decided at the time she issued the original complaint to set aside the settlement and litigate the merits of the unfair labor practice allegations. See fn. 2 of the Board's November 22, 2013 order denying the Company's motion for summary dismissal (noting that the General Counsel's opposition to the motion stated that "[t]he Regional Director of Region 15 determined not to file a motion for Default Judgment and, instead, issued a complaint and scheduled a hearing on the merits of the allegations," and that "the Region plans to amend the complaint to explicitly set aside the informal settlement."). See also GC Exh. 1(m) at 3 fn. 1. However, no such amendment ever issued. Instead, as indicated above, the General Counsel subsequently filed a motion with the Board for a default judgment on the original complaint. And after that motion was denied on the ground it raised factual issues, the Regional Director issued an amended complaint that explicitly and exclusively alleged that the Company's noncompliance defaulted on the terms of the settlement.

[6] See 362 NLRB No. 71, slip op. at 2 fn. 2 (denying the General Counsel's motion to strike the Company's July 11, 2013 answer "without prejudice to the General Counsel raising the motion before the judge, if appropriate, *after the judge rules on the alleged breach of the settlement agreement.*") (emphasis added).

day-shift employee as they left for the workday. The notice stated:

> As I announced this morning the Company and the National Labor Relations Board, on Monday, settled all the outstanding unfair labor practice charges which were blocking the election. We entered into this settlement in order to assure you, our employees, *your right to vote* in the union election.
>
> The major provisions of this settlement are as follows:
>
> 1. The Company did not admit to any violation of the law.
>
> 2. The Company was not found guilty of any violation of the law.
>
> 3. *The election will be held on March 27, 1980.*
>
> 4. We have obtained assurances from the NLRB that they will not permit the [union] to block this new election.
>
> 5. We will post a Notice to Employees which simply states that we will not violate the labor law in the future. (This, of course, is what we have always said!!)
>
> I am sure that in view of the [union's] actions over the past 4 months, everyone clearly understands that the union will deny employees their most basic right to vote in order to satisfy their own selfish ends. On March 27th all employees will finally have the opportunity to reject—once and for all—these outside agitators. Thank you very much for your support during these past months and I hope that you will join with the vast majority of our employees who will *VOTE NO* next Thursday.

Later that same evening, after the NLRB notice had been posted, a revised version of the notice was likewise distributed to the employees working on the night shift. The revised version was the same as the original except that it changed paragraph 4 to read, "We have obtained assurances from the [union] that they will not block this new election." The revised notice was also distributed to the day-shift employees the next morning.

In agreement with the General Counsel, the judge found that the employer's notice breached the terms of the settlement. The judge relied on the following circumstances: (1) the employer's notice stressed that the company had neither admitted nor been found to have violated the Act; (2) the notice falsely portrayed the NLRB notice as simply stating that the company would not violate the labor law in the future, ignoring the portion of the notice requiring rescission of the no-solicitation rules and the discipline to the three employees; (3) the notice was distributed to employees before the NLRB notice was posted and would necessarily influence their view of the NLRB notice when they had an opportunity to read it; and (4) the notice unfairly accused the union of attempting, by filing the 8(a)(1) charges, to deny employees their right to vote, and indicated that the employer had settled the charges to restore that right.[7]

All of these same circumstances are present here. As indicated above, the Company's letter: (1) stated that the Company had "not been found guilty of any of the allegations" and "believes it has not violated any laws"; (2) incorrectly indicated that the Company had "agreed to resolve the . . . charges by posting a notice," ignoring the additional provisions requiring it to repeal or rescind the overbroad no-discussion rule and the discipline issued to Royster and Dees; (3) was both emailed and posted over a week before the NLRB notice was posted, and continued to be posted next to the NLRB notice throughout the required 60-day posting period; and (4) accused the Union of "us[ing] the charges to block the election from occurring" and to "prevent[] you from exercising your right to vote and have a choice," and indicated that the Company settled the charges because it believed employees "deserve the opportunity to vote."

The Company argues (Br. 20) that "more recent" Board decisions establish that its letter/side-notice was permissible, citing *Deister Concentrator Co., Inc.,* 253 NLRB 358 (1980); and *Littler Diecasting Corp.,* 334 NLRB 707 (2001). However, as indicated above, *Gould* issued in 1982, 2 years after *Deister*. Further, both *Deister* and *Littler* are plainly distinguishable. In both cases, the Board emphasized the "significant" additional affirmative remedial obligations the respondents undertook in addition to posting the NLRB notice. In *Deister*, these additional obligations included:

> paying more than $25,000 in backpay to alleged discriminatees, making employees whole for 6-1/2 hours of holiday pay, offering five strikers who had not been reinstated immediate and full reinstatement to their former jobs, placing other employees on a preferential hiring list to be offered the first available positions for which they were qualified, offering four employees immediate and full reinstatement to their jobs, and placing six strikers on a preferential hiring list subject to Respondent's right to deny their reinstatement if it were subsequently ascertained that they had engaged in serious picket line misconduct. [253 NLRB at 359 & n.5.]

And in *Littler*, the settlement required the employer, not only to post a notice, restore work rules, and expunge discipline from employee files, but also to pay backpay to a suspended employee and to bargain with the union. Moreover, the judge and the Board expressly distinguished *Gould* on the grounds that, unlike in that case, the employer's letter did not contain any misstatements, preempt the Board's notice, gloss over the required remedial actions, and disparage or blame the union. 334 NLRB at 708, 710–711.[8]

2. Whether a default judgment is appropriate

As indicated by the Company, in all of the above cases, the General Counsel sought to set aside the settlement and litigate

[7] The Board affirmed the judge's foregoing findings. The General Counsel also alleged in *Gould* that the employer's notice violated Sec. 8(a)(1) of the Act. However, the judge rejected this allegation on the ground that the notice did not contain any threats or promises and was therefore protected by Section 8(c) of the Act. The Board adopted this finding as well.

[8] The judge and the Board in *Littler* also noted that the employer only posted the letter for 1 week of the 60-day notice-posting period. Here, in contrast, the Company both emailed and posted the letter before posting the NLRB notice, and continued to post the letter throughout the 60-day posting period.

the merits of the underlying unfair labor practice allegations. In none of them did the General Counsel seek a default judgment as a result of the respondent's noncompliance with the notice provisions of the settlement. The Company argues that this distinction is important, as a default judgment is an "extraordinary remedy" that "depriv[es] the respondent of the right to defend itself against the settled allegations." It argues that the Board should therefore enforce default language only where the respondent has "clearly and unmistakably waived this right under the specific circumstances claimed to give rise to the default," i.e., the default language should only be applied where the respondent has violated the "express terms of the settlement agreement." (Br. 13 fn. 5, 27–28.) Accordingly, as the settlement here did not expressly prohibit the Company from posting and distributing a letter/side-notice, the Company argues that a default judgment is unwarranted.

The Company's argument has some surface appeal and neither the General Counsel nor the Union address it in their briefs.[9] However, the argument fails to withstand scrutiny for several reasons. First, there is no indication in any of the prior cases that the settlements even contained default provisions, much less that it would have been inappropriate to apply the provisions under the circumstances. Here, as indicated above, the settlement does contain such a provision, stating that a default judgment may be issued in the event of "non-compliance with any of the terms" of the agreement.

Second, like all contracts, settlement agreements include an implied covenant of good faith and fair dealing, i.e., an implied promise that the respondent will perform its stipulated remedial obligations in a manner consistent with the spirit of the agreement and the reasonable expectations of the other parties.[10] Nothing in the settlement or the conduct of the Union here indicates that it agreed to exclude or waive this implied term or that the default provisions would not apply if the Company failed to comply with it.[11]

Third, as discussed above, the Board in the *Gould* case found noncompliance under strikingly similar circumstances. Thus, the Company had clear notice that its letter/side-notice would be considered noncompliance with the settlement's terms.

Finally, in accordance with the settlement, the Regional Director provided the Company with a sufficient opportunity to cure its noncompliance by reposting the notice before the General Counsel sought a default judgment.

Accordingly, pursuant to the noncompliance provisions of the settlement, the Company waived its right to file an answer to the unfair labor practice allegations in the amended complaint, and those allegations are deemed admitted and are found to be true. See generally *Hospital Parking Management*, 363 NLRB No. 101 (2016); and *Shawnee Ready-Mix Concrete & Asphalt Co.*, 363 NLRB No. 88 (2015).

## II. THE ALLEGED UNFAIR LABOR PRACTICES

The following facts are deemed admitted and are found to be true pursuant to the noncompliance provisions of the settlement for the reasons stated above.

The Company is engaged in the production and the nonretail sale of stainless steel. In conducting its operations annually, the Company sold and shipped goods valued over $50,000 from its Calvert, Alabama facility directly to points outside Alabama. At all relevant times, the Company has therefore been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.[12]

About July 2011, the Company engaged in surveillance of employees' union activities by taking pictures of the distribution of union leaflets to employees at the entrance and exit gate.

Since about the same date, the Company prohibited employees from talking about the Union during working time while permitting employees to talk about other nonwork subjects.

About September 10, 2011, the Company orally promulgated and has since maintained a rule prohibiting employees from discussing the Union during working hours.

About the same date, the Company disciplined employees John Dees and Mack Royster because they violated the foregoing rule and to discourage employees from engaging in these or other concerted activities.

About December 6, 2011, the Company threatened employees by telling them they would lose everything and that collective bargaining would start from zero if they selected the Union as their bargaining representative.

## CONCLUSIONS OF LAW

1. By posting and emailing its own letter to employees before and during the 60-day period for posting the NLRB notice as described in Section I above, the Company undermined the effectiveness of the NLRB notice and thereby failed to comply with the notice-posting provisions of the parties' April 30, 2012 informal settlement of the Union's unfair labor practice charges and triggered the noncompliance/default provisions of the settlement.

2. By the conduct described in Section II above, the Company has engaged in unfair labor practices affecting commerce

[9] Cf. *Bartlett Heating & Air Conditioning, Inc.*, 339 NLRB 1044, 1046 (2003) (declining to order a full remedy in a default judgment proceeding in the absence of clear and unambiguous language in the noncompliance clause authorizing such a remedy). The Company made the same arguments against a default judgment in its unsuccessful August 2013 motion for summary judgment (GC Exh. 1(j)). However, as noted above (fn. 5) the General Counsel's opposition to that motion stated that a default judgment was not being sought at that time, and the Board specifically mentioned this in denying the Company's motion.

[10] With respect to contracts generally, see Restatement (Second) of Contracts § 205 (1981); *Centex Corp. v. U.S.*, 395 F.3d 1283, 1304 (Fed. Cir. 2005); and *Tidmore Oil Co. Inc., v. BP Oil Co*., 932 F.2d 1384, 1391 (11th Cir. 1991). With respect to settlement agreements specifically, see, e.g., *Neilson v. Beck*, 103 F.3d 139 (9th Cir. 1996); *Stoney Glen, LLC v. Southern Bank & Trust Co*., 944 F. Supp. 2d 460, 462 (E.D. Va. 2013); *Compass Bank v. Eager Road Associates, LLC*, 922 F.Supp. 2d 818, 826 (E.D. Mo. 2013); and *Kedra v. Nazareth Hospital*, 868 F.Supp. 733, 737 (E.D. Pa. 1994).

[11] As noted above, the Region initially decided not to seek a default judgment under the terms of the settlement's noncompliance provisions, but to instead set aside the settlement. However, the Company does not argue that this is sufficient by itself to establish an implied waiver of the legal right to seek a default judgment under the terms of the settlement's noncompliance provisions. In any event, I find that it is insufficient to do so.

[12] These jurisdictional facts and allegations were expressly admitted in the Company's answer to the amended complaint.

within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

As indicated above, the General Counsel requests that the Company be ordered to repost the NLRB notice for 60 days. Additionally, given the Company's statements about the settlement in its previous letter, and the fact that the letter was emailed to employees as well as posted, the General Counsel requests that the Company be ordered to (1) post the settlement itself along with the NLRB notice; and (2) email the NLRB notice to its employees on the same day it is reposted.

The foregoing remedies are reasonably and appropriately tailored to the circumstances. Contrary to the Company's contention (Br. 11 fn. 4), the NLRB notice has not been rendered "obsolete" by either the previous posting or the passage of time. As discussed above, the previous posting was tainted by the Company's letter/side-notice, and the Union's election petition remains blocked as a result. Thus, reposting is "precisely what is needed." *Postal Workers Local 735,* 340 NLRB at 1365. Further, as indicated by the General Counsel, it is unfortunately not unusual for several years to pass between the unfair labor practices and issuance of a final Board or court order.

The General Counsel also requests "any other relief . . . deem[ed] appropriate to remedy the [Company's] noncompliance with the settlement." Consistent with the Board's orders in similar cases, an additional provision will therefore be added to the NLRB notice stating that the Company will not post, email, or otherwise distribute any letters or notices to employees that modify, alter, or undermine the effectiveness of the official notices posted pursuant to orders or agreements with the NLRB. See *Gould*, 260 NLRB at 66 and cases cited there at n. 24.

The noncompliance provisions of the settlement state that the Board may also issue an order "providing a full remedy for the violations found as is appropriate to remedy such violations." Such a full remedy would normally include an enforceable order requiring the Company to cease and desist from violating the Act in the same or any like or related manner, and to take certain other affirmative action in addition to posting a notice. However, the General Counsel has not requested such additional remedies. Therefore, they will not be included in the order. See *Midwestern Video Personnel, Inc*., 363 NLRB No. 120, slip op. at 2–3 (2016); and *Serenity Dental Spa, P.A*., 362 NLRB No. 116, slip op. at 3 (2015).

Accordingly, based on the above findings of fact and conclusions of law and on the entire record, I issue the following recommended order.[13]

ORDER

The Respondent, Outokumpu Stainless USA, LLC f/k/a Thyssenkrupp Stainless USA, LLC, Calvert, Alabama, its officers, agents, successors, and assigns, shall take the following affirmative action necessary to effectuate the policies of the Act.

1. Within 14 days after service by the Region, post at its Calvert, Alabama facility copies of the notice and the settlement attached hereto and marked as "Appendix A" and "Appendix B," respectively.[14] Copies of the notice provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent next to the settlement for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper copies, the notice and the settlement shall be posted on the Respondent's intranet. Reasonable steps shall be taken by the Respondent to ensure that the notice and the settlement are not altered, defaced, or covered by any other material.

2. On the same day that the signed notice described above is posted, email the signed notice to the last known email address of all current employees and former employees employed by the Respondent at its Calvert, Alabama facility at any time since July 1, 2011. As above, reasonable steps shall be taken by the Respondent to ensure that the emailed notice is not altered, defaced, or covered by any other material.

3. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT threaten you with loss of benefits or tell you that you will lose everything and start from zero if you choose to be represented by or support a Union.

WE WILL NOT make it appear to you that we are watching out for your union activities.

[13] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT watch you in order to find out about your union activities.

WE WILL NOT tell you that you cannot talk about or discuss the Union while on working time while we allow you to talk about or discuss other subjects while on working time, and WE WILL repeal the rule promulgated in a written discipline on that subject.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL NOT post, email, or otherwise distribute any letters or notices to employees that modify, alter, or undermine the effectiveness of the official notices posted pursuant to orders or agreements with the NLRB.

WE WILL rescind in writing any and all discipline employees received, including that given to employees Mack Royster and John Dees, as a result of a rule prohibiting discussion or talk about the Union during working hours, and WE WILL notify all affected employees that their discipline was removed from our files and that it will not affect them in any way in the future.

WE WILL allow you to discuss or talk about the Union during working hours while we allow you to talk about or discuss other subjects while on working time.

OUTOKUMPU STAINLESS USA, LLC F/K/A THYSSENKRUPP STAINLESS USA, LLC

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/15-CA-070319 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

APPENDIX B

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

**SETTLEMENT AGREEMENT**

**IN THE MATTER OF**

| | |
|---|---|
| **ThyssenKrupp Stainless USA, LLC** | **Case Nos:**<br>**15–CA–070319**<br>**15–CA–073053** |

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

**POSTING OF NOTICES** — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notices to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them in prominent places around its facility, including all places where the Charged Party normally posts notices to employees. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

**INTRANET POSTING** — The Charged Party will also post a copy of the Notice on its intranet and keep it continuously posted there for 60 consecutive days from the date it was originally posted. The Charged Party will send an email to the Region's Compliance Officer at Debra.Warner@n1rb.gov with a link to the electronic posting location on the same day as the posting. If passwords or other log-on information is required to access the electronic posting, the Charged Party agrees to provide such access information to the Region's Compliance Officer.

**COMPLIANCE WITH NOTICE** — The Charged Party will comply with all the terms and provisions of said Notice.

**SCOPE OF THE AGREEMENT** — This Agreement settles only the following allegations in the above-captioned cases, and does not settle any other cases or matters:

1. Since on or about July 2011, and at all times thereafter, the Employer, through Manager Tom Brennan, unlawfully changed its workplace discussion policy and enforced it disparately.

2. In or about August and September 2011, and at times thereafter, the Employer, through its officers, agents, and representatives, unlawfully engaged in surveillance and creating the impression of surveillance.

3. On September 10, 2011, the Employer, by and through Ruben Rangle, promulgated, in writing, an overly broad no-discussion during working hours policy.

4. On September 10, 2011, the Employer disciplined employees John Dees and Mack Royster for violating an overly broad no-discussion during working hours policy.

5. On or about December 6, 2011, the Employer, through Manager Tom Brennan, unlawfully threatened that employees would lose everything and that collective bargaining would start from zero if the Union was voted in.

It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned cases for any relevant purpose in the litigation of this or any other cases, and a judge, the Board and the courts may make findings of fact and/or conclusions of

law with respect to said evidence. By approving this Agreement the Regional Director withdraws any Complaints and Notices of Hearing previously issued in the above cases, and the Charged Party withdraws any answers filed in response.

**PARTIES TO THE AGREEMENT** — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

**AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY** — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes _____ No _____
Initials Initials

**PERFORMANCE** — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a complaint that will include the allegations spelled out above in the Scope of Agreement section. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that all of the allegations of the complaint will be deemed admitted and it will have waived its right to file an Answer to such complaint. The only issue that may be raised before the

Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex paste, after service or attempted service upon Charged Party/ Respondent at the last address provided to the General Counsel.

**NOTIFICATION OF COMPLIANCE** — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

**Charged Party**
**THYSSENICRUPP STAINLESS USA, LLC**

By: Name and Title

/s/ John Lambremont
JOHN LAMBREMONT, Attorney

Date 4/30/2012

**Charging Party**
**UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL–CIO, CLC**

By: Name and Title

/s/ Brad Manzolillo
BRAD MANZOLILLO, Organizing Counsel

Date 4/27/12

Recommended By:

/s/ Zachary E. Herlands
ZACHARY E. HERLANDS, Field Attorney

Date 4/30/12

Approved By:

/s/ M. Kathleen McKinney
M. KATHLEEN MCKINNEY, Regional Director, Region 15

Date 4/30/12

**(To be printed and posted on official Board notice form)**

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT threaten you with loss of benefits or tell you that you will lose everything and start from zero if you choose to be represented by or support a Union.

WE WILL NOT make it appear to you that we are watching out for your union activities.

WE WILL NOT watch you in order to find about your union activities.

WE WILL NOT tell you that you cannot talk about or discuss the Union while on working time while we allow you to talk about or discuss other subjects while on working time and WE WILL repeal the rule promulgated in a written discipline on that subject.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL rescind in writing any and all discipline employees received, including that given to employees Mack Royster and John Dees, as a result of a rule prohibiting discussion or talk about the Union during working hours, and WE WILL notify all affected employees that their discipline was removed from our files and that it will not affect them in any way in the future.

WE WILL allow you to discuss or talk about the Union during working hours while we allow you to talk about or discuss other subjects while on working time.

THYSSENKCRUPP STAINLESS USA, LLC

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