

NOT INCLUDED IN  
BOUND VOLUMES

HGB  
Girard, OH

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MID-WEST TELEPHONE SERVICE, INC.

and

WILFREDO PLACERES, DUSTIN PORTER,  
BEN FANNIN, and MICHAEL WILLIAMS

|       |              |
|-------|--------------|
| Cases | 08-CA-038901 |
|       | 08-CA-039168 |
|       | 08-CA-039297 |
|       | 08-CA-039398 |
|       | 08-CA-039334 |

ORDER

On September 21, 2012, the National Labor Relations Board issued a Decision and Order<sup>1</sup> in this proceeding, finding that the Respondent committed several violations of Section 8(a)(1), (3) and (4) of the Act. The Board stated that there were no exceptions to several of the administrative law judge's findings, specifically including the finding that the Respondent violated Section 8(a)(4) by discharging employee Ben Fannin. The Respondent has timely moved for reconsideration of this finding, contending that it did except, and it has submitted a brief in support of its motion.

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

In its motion, the Respondent contends that, although it did not mention in its exceptions document the judge's finding that Fannin's discharge violated Section

---

<sup>1</sup> 358 NLRB No. 145.

8(a)(4), it raised the issue in its brief in support of exceptions by requesting in the concluding sentence that the Board reverse the judge's finding and by addressing the issue in its reply brief. We disagree.

First, contrary to the Respondent's contentions, we find that that the single, summary reference in its exceptions brief, unsupported by any argument, was properly disregarded. See, e.g., *Holsum de Puerto Rico, Inc.*, 344 NLRB 694, 694 fn. 1 (2005) (applying Sec. 102-46(b)(2) of Board's Rules and Regulations).<sup>2</sup> Arguments raised before the Board must be specific enough to "apprise the Board of an intention to bring up the question." *May Department Stores v. NLRB*, 326 U.S. 376, 386 fn. 5 (1945). Here, the judge found that the Respondent violated Section 8(a)(4) by discharging Fannin for filing an unfair labor practice charge. The Respondent did not mention this finding in its exceptions. Although the concluding sentence to its exceptions brief requests that the Board overturn this finding, it makes no argument why the Board should do so. The brief's statement of issues, moreover, includes only issues that have no bearing on whether Fannin was discharged for filing an unfair labor practice charge. Second, the Respondent's reply brief did contain a brief footnote belatedly disputing any connection between Fannin's discharge and his filing of an unfair labor practice charge. But, even assuming that footnote articulated a basis upon which to review the judge's

---

<sup>2</sup> The concluding sentence reads in full: "For the foregoing reasons, MWTS respectfully requests that the Board reverse the ALJ's findings that the Acting General Counsel established a prima facie case under *Wright Line* that MWTS: (1) failed to assign Mike Williams work in violation of Section 8(a)(1) and 8(a)(4) of the Act; (2) discharged Ben Fannin in violation of Sections [sic] 8(a)(1), 8(a)(3), and 8(a)(4) of the Act; and (3) violated the Act by offering its opinion that employees would be better off forming their own union and dismiss the Complaint allegations relating to same." R. Ex. Br. at 16.

finding, under the Board's rules we were not required to consider the matter at that point. See Section 102.46(g) of the Board's Rules and Regulations.

The Respondent cites to *Postal Service*, 833 F.2d 1195, 1202-1203 (6th Cir. 1987), but that case is unavailing. There, the Court held that because the respondents adequately brought the issue of the interpretation of the Postal Reorganization Act to the Board's attention, they did not waive a particular statutory argument that was based on the PRA despite failing to bring that specific argument to the Board's attention. Here, Fannin's discharge in violation of Section 8(a)(4) is a separate and distinct issue from any of the issues discussed in the Respondent's brief. Because the Respondent made no argument why the Board should reverse the judge's finding, it did not properly raise the issue before the Board.

Therefore, having duly considered the matter, we find that the Respondent's motion is lacking in merit and fails to present "extraordinary circumstances" warranting reconsideration under Section 102.48(d)(1) of the Board's Rules and Regulations.

IT IS ORDERED, therefore, that the Respondent's motion for reconsideration is denied.

Dated, Washington D.C., December 10, 2012.

\_\_\_\_\_  
Brian E. Hayes, Member

\_\_\_\_\_  
Richard F. Griffin, Jr., Member

\_\_\_\_\_  
Sharon Block, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD