

NOS. 06-2038, 07-1406, 07-1407

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

NATIONAL LABOR RELATIONS BOARD,

PETITIONER,

V.

CONSOLIDATED BISCUIT COMPANY,

RESPONDENT.

**PETITION OF THE NATIONAL LABOR RELATIONS BOARD
FOR AN ADJUDICATION IN CIVIL CONTEMPT
AND FOR OTHER CIVIL RELIEF**

To the Honorable, the Judges of the United States
Court of Appeals for the Sixth Circuit:

The National Labor Relations Board (“the Board”) respectfully petitions the Court to adjudge the Consolidated Biscuit Company, Inc. (“CBC” or “Respondent”), in civil contempt of the Court’s November 14, 2008 judgment, and for other civil relief. As shown below, the petition alleges that Respondent has violated this Court’s judgment by, inter alia, engaging in surveillance or the appearance of surveillance of union activities; coercively interrogating employees; threatening employees with job loss and other adverse consequences if they select a union as their bargaining representative; unlawfully removing literature from non-work areas; unlawfully limiting access to the premises; and implementing overly broad rules and harassing employees because of their union activities.

In support of its petition the Board, upon information and belief, alleges as follows:

I. On November 14, 2008, the United States Court of Appeals for the Sixth Circuit enforced the Board's Decision and Order in *Consolidated Biscuit Company*, 346 NLRB 1175 (2006), finding that CBC had committed numerous unfair labor practices and ordered a new union election at its Ohio manufacturing facility. The Court's judgment found that CBC had violated 28 U.S.C. §§ 158(a)(1) and (3) by, inter alia, engaging in acts of interference, restraint and coercion of employees in the exercise of their rights guaranteed by 28 U.S.C. § 157, and by engaging in various acts of discrimination. As a result of the unlawful conduct, the Court ordered CBC, in pertinent part, to

1. Cease and desist from:
 - (a) Disciplining, discharging, or otherwise discriminating against employees for engaging in union or other protected activities.
 - (b) Threatening employees with adverse consequences if they select a union as their bargaining representative.
 - (c) Suggesting to employees that selecting a union as their bargaining representative would be futile.
 - (d) Prohibiting or inhibiting the discussion of matters relating to the selection of a union while permitting the discussion of other non work-related subjects.
 - (e) Prohibiting or interfering with the display of support for the [Bakery, Confectionary, and Tobacco Workers and Grain Millers International Union, AFL-CIO ("Union")], verbal dissemination of opinion supporting the Union and/or the distribution of union literature on the exterior of the plant, including company property.
 - (f) Instructing its agent to call the police to interrupt lawful union activity and calling the police to its facility to interfere with employees engaged in lawful activities in support of the Union.

(g) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the [National Labor Relations Act] Act.

II. The Court's November 14, 2008 Judgment has been in full force and effect since its entry and at all material times Respondent, its officers, agents, successors, and assigns have had notice and actual knowledge of the terms thereof.

III. At all material times herein, James M. Appold has been the President and the principal managing officer of CBC. By virtue thereof, James M. Appold has been responsible for compliance with the terms of the November 14, 2008 Judgment. Instead, he has acted in concert and participation with CBC in the violations hereafter alleged.

IV. At all material times herein Respondent's President, James M. Appold, has had notice and actual knowledge of the terms of the Judgment.

V. CBC has disobeyed and failed and refused to comply with the Court's November 14, 2008 Judgment by, inter alia, unlawfully subjecting its employees to surveillance or to the appearance of surveillance with respect to engaging in Union activities; unlawfully interrogating employees about their Union activities; unlawfully removing Union literature from non-work areas; threatening employees with job loss, plant closure, plant relocation, other reprisals because of their support for the Union; implementing an overly broad no-talking rule; unlawfully limiting access of off-duty employees to non-working areas; and harassing employees by falsely accusing them of failing to perform their work properly. More specifically, the Board alleges as follows:

A. On or about December 24, 2008, CBC unlawfully engaged in the surveillance or creating the appearance of surveillance of its employees

- B. On or about January 19, 2009 and February 10, 2009, CBC unlawfully removed union-related literature from non-work areas, including employee break rooms, while permitting non-union related materials to remain in the same non-work areas.
- C. On or about January 27, 2009, February 2, 18 or 19, 2009, CBC threatened employees with job loss, plant closure and plant relocation if the employees selected the Union as their exclusive collective bargaining representative.
- D. On or about March 11, 2009, CBC threatened employees that their immigration papers will be more closely examined or held to a stricter standard than required by law if the employees selected the Union as their exclusive bargaining representative.
- E. On or about February 18, 2009, CBC coercively informed employees that they will be subject to closer scrutiny and surveillance because of their union activities and/or in order to monitor, prevent or restrict them from engaging in union activities.
- F. On or about February 25, 2009, CBC orally promulgated an overly broad no-talking rule by directing employees not to speak with any other employees at the plant because of their union activities and/or in order to prevent or restrict them from engaging in union activities.

- G. On or about February 25, 2009, CBC unlawfully limited access of off-duty employees to non-working areas because of their union activities.
- H. On various occasions in January and February 2009, CBC coercively interrogated employees about union support or union activities.
- I. On or about January 30, 2009, July 14-15, 2009, and August 4-5, 2009, CBC harassed its employees by falsely accusing them of failing to properly perform their work assignments.

VI. By the conduct described in paragraphs V (A) through (I), and by like and related acts and conduct, Respondent has violated and disobeyed, and continues to violate and disobey, the Court's November 14, 2008 judgment and accordingly is, and continues to be, in civil contempt of this Court.

WHEREFORE, the Board respectfully prays as follows:

1. That this Court issue an order requiring the Respondent to serve and file its sworn answer to the allegations of this petition in which it shall admit or deny or meet by affirmative defense each allegation of said petition, and show cause, if any there be, why it should not be adjudged in civil contempt for disobeying and failing and refusing to comply with the November 14, 2008 Judgment of this Court.

2. That the Court issue an order adjudging Respondent CBC in civil contempt of this Court.

3. That upon adjudication, the Court enter an order requiring the Respondent, its officers, agents, successors and assigns, to purge itself of such contempt by:

(a) Fully complying with the Court's November 14, 2008 Judgment and not in any way, by action or inaction, engaging in, inducing, encouraging, permitting or condoning any violation of said Judgment;

(b) Within ten (10) days of entry of this Order, depositing \$100,000 in an interest-bearing account in the registry of the United States District Court for the Northern District of Ohio as a fine to be remitted upon compliance with the steps enumerated in paragraphs 3(c) – (p), below:

(c) Within ten (10) days after receipt of an appropriate Notice to Employees drafted by the Board in English, Spanish and Laotian, signing of the Notices by CBC's President, James M. Appold, on behalf of the Respondent, or if he is incapacitated or deceased, then Vice President John Appold, and posting the Notices in conspicuous places where notices to employees are customarily posted, including employee breakrooms, at its McComb, Ohio facility, for a period of sixty (60) consecutive days, alongside copies of the Contempt Adjudication in all three languages. The notices, which state that the Respondent has been adjudicated in civil contempt and will undertake the action directed by this Court, shall be maintained alongside the Contempt Adjudication in clearly legible condition throughout the posting period and Respondent shall insure that postings are not altered, defaced, or covered by any other material. Respondent shall supply the Board's Regional Director for Region 8 and the Contempt Litigation & Compliance Branch ("CL&CB") with a signed copy of the notices in all three languages. Upon request during the posting period, Respondent shall give the Board's Region 8 and the Union unfettered access to check the notice-posting at the Region's discretion during regular business hours;

(d) Within five (5) days after the Notices have been signed and posted alongside the Contempt Adjudication at its McComb, Ohio facility, converting both the Notices and the Contempt Adjudication in English, Spanish and Laotian to PDFs and posting them on its website, which is located at <http://www.consolidatedbiscuit.com/home.html>, for a period of sixty (60) consecutive days, or if that website has been disabled, then on any new website it may use.

(e) Within ten (10) days after receipt of the Notice and after being signed by Respondent, duplicating and mailing, at its own expense, a copy of each of the notices to all current and temporary employees and all former employees and temporary employees employed by the Respondent at any time at its McComb, Ohio facility since February 1, 2002. A legible copy of the mailing and the list of the names and addresses to whom it was sent shall be provided to Region 8 and the CL&CB with five (5) business days of the mailing.

(f) Within thirty (30) days after receipt of the Notice and the signing by Respondent, publishing the Notice and Contempt Adjudication in English, Spanish and Laotian in the company's newsletter once a quarter during the first year after entry of the Contempt Adjudication and in *The Findlay Courier* twice a week for four (4) weeks. A copy of the publication of each edition of the newsletter and newspaper that the Notices and Contempt Adjudication have appeared shall be provided to Region 8 and the CL&CB within five (5) business days after the last edition has been published.

(g) Within twenty (20) days of receipt of the Notice from the Board, convening during a paid-time meeting, for each of the three shifts at its McComb, Ohio facility, and having James M. Appold, or if he is incapacitated or deceased, then John Appold, reading

said notice and the Contempt Adjudication in English to the employees during each shift. A Spanish language version Notice to Employees and the Contempt Adjudication also shall be read at those meetings by Lead Supervisor Rudy Lomeli or if he is not available, by another individual of similar rank and fluency in Spanish with the prior approval of the Board. In this regard, the Union and the Board shall be afforded a reasonable opportunity to provide for the attendance of a Union official of its choosing and/or Board agents from Region 8 and the CL&CB at any assembly of employees called for the purpose of reading such notices. Within five (5) business days of the readings, CBC shall provide to Region 8 and the CL&CB a list of the names and addresses of all employees, temporary employees, leads, supervisors and managers who attended the readings that indicates the time of the reading for each individual;

(h) Within thirty (30) days of entry of the Contempt Adjudication, conducting training for all leads, supervisory or managerial employees regarding the Court's November 14, 2008 Judgment and the Contempt Adjudication. The training shall reference Respondent's intolerance for violations of the Court's directives. The training materials shall be approved in advance by the Board. Each individual provided with such training shall sign an acknowledgment that he or she understands the Court's directives, and that he or she will conduct himself or herself in all respects consistently therewith. Copies of the aforesaid acknowledgments shall be furnished to Region 8 and the CL&CB within five (5) business days of the training. In this regard, the Board shall be afforded a reasonable opportunity to provide for the attendance of a Board agent from Region 8 and/or the CL&CB at any training occurring during the first year after entry of the Contempt Adjudication. Said training shall continue each year on the anniversary of the Court's

Judgment as well as within five (5) days of the hiring of a new lead, supervisor or manager. Copies of the acknowledgments shall be retained by Respondent and be provided to Region 8 or the CL&CB within five (5) days of a request to do so;

(i) Within fifteen (15) days of entry of the Contempt Adjudication, supplying the Union, at 1041 Connecticut Avenue, Kensington, Maryland 20895, with the names and addresses of its current unit employees, including temporary employees, employed at the McComb facility in Ohio and providing a copy of this list to the Region 8 or the CL&CB at the same time. Should Respondent hire employees after the providing this list and prior to the Regional Director for Region 8 issuing an appropriate certification following a fair and free election, then Respondent shall provide the Union with an updated legible list every two weeks and provide Region 8 or the CL&CB with a copy of this list with five (5) days of a request from the Board.

(j) Within ten (10) days of entry of the Contempt Adjudication, permitting the Union weekly access to all employee breakrooms at the McComb facility for at least one (1) hour for a week for each of the three shifts for the duration of the renewed election to meet with the unit employees during non-work times.

(k) Providing the Union with reasonable notice of any address made by the Respondent to its employees concerning any organizing campaign, a new representation election, the Union or any labor organization. Should the Respondent hold such a meeting of its unit employees, the Union shall be afforded similar access to the unit at the McComb facility to hold its own meeting of unit employees at dates and times comparable to Respondent's meeting(s) within five (5) days of Respondent's meeting. Should the new election be subject to further investigation by the Board, the Union shall continue to have

weekly access to all three shifts during the pendency of the investigation and any litigation before the Board, and if necessary, before the federal courts, until there is a final court order.

(l) Affording the Union the right to deliver a thirty (30) minute speech to employees on working time for each shift prior to any Board election which may be scheduled involving Respondent's unit employees at its McComb facility in which the Union is a participant in a time frame of not more than ten (10) business days before, but not less than forty-eight (48) hours before such an election. Paragraphs (j) through (l) above shall apply for a period of four (4) years from the date of the posting of the Notice provided by the Contempt Adjudication or until the Regional Director for Region 8 has issued an appropriate certification following a fair and free election, whichever comes first.

(m) Should the Union prevail in the election and the Union be certified as the bargaining representative for the unit employees, then on request, grant the Union and its representatives reasonable access to Respondent's McComb facility in nonwork areas, including employee breakrooms, during employees' nonwork time during all three shifts.

(n) Within five (5) days from entry of the Contempt Adjudication, remove and destroy from its files any reference to the discipline concerning William Lawhorn made on or about January 30, 2009, July 14-15, 2009, and August 4-5, 2009; and within three (3) days thereafter, notify him, in writing, that this has been done and that any such discipline or counseling will not be used against him in any way.

(o) File separate sworn statement with the Clerk of this Court, and a copy thereof with the Regional Director of the Board's Region 8 at 1240 East 9th Street, Suite 1695, Cleveland, Ohio 44199-2086, and to the CL&CB at 1099 14th Street, N.W., Suite

10700, Washington, D.C. 20005-3419, in a form supplied by the Board within twenty (20) days after issuance of the Contempt Adjudication and again upon with twenty (20) days of the termination of the posting period and on the anniversary date of entry of the Contempt Adjudication, showing what steps have been taken to comply with the Court's directives.

(p) Paying to the Board all costs and expenses, including reasonable attorneys' fees (the latter calculated at the prevailing market rates in Washington, D.C.), incurred by the Board in the investigation, preparation, presentation and final disposition of this proceeding, including any costs relative to a special master should the Court appoint one; said amount, unless agreed to by the parties, to be fixed by further order of the Court upon submission by the Board of a certified statement of such costs and expenses.

4. That in order to assure against further violations of the Contempt Adjudication, the Court impose a prospective non-compliance fine of \$50,000 against Respondent for each and every future violation of the Contempt Adjudication, and a further fine of \$10,000 per day for each day the Court finds the violations have continued; and impose a prospective fine of \$5,000 per violation and \$2,000 per day for each day the Court finds the violations have continued against any lead, supervisor, manager, officer, agent or attorney of the Respondent who, in active concert and participation with the Respondent, and with notice and knowledge of the Contempt Adjudication, violates said Contempt Adjudication. The fines may only be imposed as a result of the Board instituting a new civil contempt proceeding in this Court, in which the Board shall be required to establish its allegations by clear and convincing evidence. Amounts imposed against leads, supervisors, managers, agents or attorneys shall not be reimbursed by the CBC.

5. That upon the failure of the Respondent to purge itself of contempt, the Court issue a writ of body attachment against any representative or agent of Respondent responsible for non-compliance, and to take such other actions and grant such other relief as may be just, reasonable, and proper to assure compliance with the Contempt Adjudication and as this proceeding in civil contempt may require.

RESPECTFULLY SUBMITTED,

NATIONAL LABOR RELATIONS BOARD

STANLEY R. ZIRKIN
Assistant General Counsel
Contempt Litigation and
Compliance Branch
1099 14th St., N.W., Suite 10700
Washington, D.C. 20005-3419
Direct: (202) 273-3739
stanley.zirkin@nrlb.gov

JOAN A. SULLIVAN
Senior Trial Attorney
Contempt Litigation and
Compliance Branch
1099 14th St., N.W., Suite 10700
Washington, D.C. 20005-3419
Direct: (202) 273-3742
Main: (202) 273-3740
Facsimile: (202)273-4244
joan.sullivan@nrlb.gov

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