

No. 10-2170

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,)
)
 Petitioner,)
)
 v.)
)
 CONSOLIDATED BISCUIT COMPANY;)
 HEARTHSIDE FOOD SOLUTIONS, LLC,)
)
 Respondents.)

FILED
Jan 10, 2011
 LEONARD GREEN, Clerk

C O N S E N T O R D E R

Before: BATCHELDER, Chief Judge; DAUGHTREY and GRIFFIN, Circuit Judges.

The National Labor Relations Board (Board) and Hearthside Food Solutions, LLC, formerly known as Consolidated Biscuit Company, Inc. (Hearthside), having entered into a Stipulation for Entry of a Consent Order, and the Board having filed an unopposed motion for entry of this Consent Order, and there being good cause, it is hereby:

1. **ORDERED** that the Stipulation dated September 9, 2010, is approved and shall be filed.
2. **IT IS FURTHER ORDERED** that Hearthside shall fully comply with this Court's November 14, 2008, judgment and not in any way, by action or inaction, engage in, induce, encourage, permit or condone any future violations of said judgment.
3. **IT IS FURTHER ORDERED** that Hearthside shall not engage in the following actions:
 - (a) Unlawfully remove union-related literature from non-work areas, including employee breakrooms, while permitting non-union related materials to remain in the same non-work areas;
 - (b) Threaten employees with job loss, plant closure and plant relocation if the employees select the Bakery, Confectionary, and Tobacco Workers and Grain Millers

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International Union, AFL-CIO, (Union), or any other labor organization, as their exclusive collective bargaining representative;

(c) Threaten that employees' immigration papers will be more closely examined or held to a stricter standard than required by law if the employees selected the Union, or any other labor organization, as their exclusive bargaining representative;

(d) Coercively inform 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;

(e) Orally promulgate 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;

(f) Unlawfully limit the access of off-duty employees to nonworking areas because of their union activities;

(g) Coercively interrogate employees about union support or union activities;

(h) Harass its employees by falsely accusing them of failing to properly perform their work assignments, issue disciplinary counseling based on such activity, or discriminate in regard to hire or tenure of employment or any other terms or conditions of employment, in order to discourage membership in the Union, or in any other labor organization; and

(i) In any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

4. **IT IS FURTHER ORDERED** that within ten (10) days of entry of this order, Hearthsides shall remove from its files and destroy any reference to the discipline of William Lawhorn detailed in the Board's contempt petition, and that 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.

5. **IT IS FURTHER ORDERED** that Hearthsides shall post for sixty (60) consecutive days in conspicuous places where notices to employees are customarily posted, including employee breakrooms and the cafeteria, in its McComb, Ohio, facility, copies of Notices to Employees that

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have been signed and dated by Rich Scalise, Chairman and Chief Executive Officer of Hearthside, or if he incapacitated or deceased, then by an appropriate official of Hearthside, alongside this Consent Order. The Notices, provided by the Board, and the Consent Order shall be translated by the Board into Spanish and Laotian and all three language versions shall be posted by Hearthside. Hearthside shall maintain the Notices and the Consent Order in clearly legible condition throughout the posting period, insuring that they are not altered, defaced, or covered by any other material.

6. **IT IS FURTHER ORDERED** that Hearthside shall duplicate and mail, at its own expense, copies of the signed Notices and the Consent Order in all three languages to all current employees and all former employees as of November 14, 2008, at their last known address, and to the Union at 10401 Connecticut Avenue, Kensington, Maryland 20895. A legible list of the names and address of all individuals to whom the notice was sent shall be provided to the Regional Director of Region 8, at 1240 East 9th Street, Suite 1695, Cleveland, OH 44199-2086, and to the Contempt Litigation & Compliance Branch (CL&CB) at 1099 14th Street, N.W., Suite 10700, Washington, D.C. 20570, within five (5) business dates of the mailing. A copy of this list provided to the Board shall also be provided to the Union within five (5) business days of the mailing.

7. **IT IS FURTHER ORDERED** that Hearthside shall reimburse the Board for its cost for the translation of the Consent Order and Notice into Spanish and Laotian should the Board be unable to have the translations performed in house.

8. **IT IS FURTHER ORDERED** that within twenty (20) days of entry of this Consent Order, the Chairman and Chief Executive Officer of Hearthside, Rich Scalise, shall read the English language version of the Notice to Employees and this Consent Order to all current employees, managers and supervisors at a safety meeting, during paid time, for each shift at its McComb, Ohio facility. A Spanish language version of the Notice and Consent Order shall be read at those meetings

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by Lead Supervisor Rudy Lomeli, or if he is not available, another individual of similar rank and fluency in Spanish with the prior approval of the Board. In this regard, the Regional Director for Region 8 and the CL&CB shall be afforded ten (10) business days advance notice of the date and times of the readings to arrange for the attendance of their agents as well as the Union's attorney and a Union Official should they choose to attend, at any assembly of employees called for the purpose of the reading of the Notices and Consent Order. Within five (5) business days of the readings, Hearthside shall provide a list of the names and address of all employees, supervisors, and managers who attended the readings that indicate the date and time of the reading for each such individual to the Regional Director of Region 8 and to the CL&CB.

9. **IT IS FURTHER ORDERED** that immediately after the reading of the Notice and Consent Order, Hearthside shall allow the Union thirty (30) minutes in which to address only the employees of Hearthside and to answer any questions that the employees may have. The Board agents may remain in the vicinity at their election.

10. **IT IS FURTHER ORDERED** that Hearthside shall afford 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 Hearthside'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. This provision shall apply for a period of two (2) years from the date of the posting of the Notice provided by the Consent Order or until the Regional Director for Region 8 has issued an appropriate certification following a fair and free election, whichever comes first.

11. **IT IS FURTHER ORDERED** that within thirty (30) days of entry of the Consent Order, Hearthside shall conduct training for all leads, supervisory or managerial employees, regarding the

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Court's November 14, 2008 Judgment and the Consent Order. The training shall reference the Hearthside'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 to the CL&CB within five (5) business days of training conducted within the first year of entry of the Court's order. 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 Consent Order. Said training shall also be provided within ten (10) business days of the hiring of a new lead, supervisor or manager. Refresher training shall continue each year within three (3) business days of the anniversary of the Court's Judgment. Each individual shall sign an acknowledgement form that he or she understands the Court's directives, and that he or she will conduct himself or herself in all respects consistently therewith and the forms shall be retained by Hearthside for three (3) years; and

12. IT IS FURTHER ORDERED that within ten (10) days of the posting of the Notice to Employees, ten (10) days after the posting period has ended, and on the first anniversary date of entry of the Consent Order, Hearthside shall certify to the Director of Region 8 and the CL&CB, in a form provided by the Board, that it has complied with this Consent Order.

13. IT IS FURTHER ORDERED that should new allegations be filed against Hearthside by the Board alleging that it is in contempt of the Court's November 14, 2008 judgment or this Consent Order, and upon a finding by the Court that Hearthside is in contempt, Hearthside shall pay to the Board \$50,000 in compensatory damages for reasonable attorneys' fees incurred by the Board in the investigation and prosecution of the instant case.

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14. **IT IS FURTHER ORDERED** that the compensatory damages referenced in paragraph 13 shall be assessed in addition to any new costs and expenses, including reasonable attorneys' fees, incurred by the Board in the investigation, preparation, presentation and final disposition of any new contempt proceedings.

15. **IT IS FURTHER ORDERED** that this Order shall not preclude the Board from requesting such other remedies as it deems appropriate to remedy contumacious conduct of this Order.

ENTERED BY ORDER OF THE COURT



Clerk

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

Leonard Green
Clerk

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Filed: January 10, 2011

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Re: Case No. 10-2170 , *NLRB v. Consolidated Biscuit Company, et al*
Originating Case Nos. : 8-CA-33402 : 8-CA-33502-2 : 8-CA-33630 :
8-CA-33645 : 8-CA-34040 : 8-RC-16402

Dear Sir or Madam,

The Court issued the enclosed order today in this case.

Sincerely yours,

s/Mary C. Patterson
Case Manager
Direct Dial No. 513-564-7014

Enclosure

No mandate to issue