

ThyssenKrupp Stainless USA, LLC, a wholly owned subsidiary of Outokumpu 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

April 22, 2015

ORDER DENYING MOTION¹

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA
AND HIROZAWA

The General Counsel seeks a default judgment in this case pursuant to the terms of a settlement agreement. The Union filed unfair labor practice charges on December 7, 2011, and January 24, 2012, alleging that the Respondent violated Section 8(a)(3) and (1) by changing its workplace discussion policy and enforcing it disparately; engaging in surveillance and creating the impression of surveillance; promulgating in writing an overly broad “no-discussion during working hours policy” and disciplining two employees pursuant to that policy; and threatening that employees would lose everything and that collective bargaining would start from zero if the Union were voted in. On April 30, 2012, the Union and the Respondent entered into a settlement agreement resolving these charges.

Pursuant to the terms of the settlement agreement, the Respondent agreed to post a settlement notice and to take the affirmative actions described in the settlement agreement and settlement notice. On May 7, 2012, the Respondent emailed a letter to employees that discussed its position regarding settling the charges (the “Side Notice”); the Respondent also posted the letter on its main bulletin board. On May 17, 2012, the Respondent posted the settlement notice on its main bulletin board and on the Respondent’s intranet, where it remained until July 18, 2012. The settlement agreement contained the following performance clause:

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 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. 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.

On September 19, 2012, the Region informed the Respondent that its Side Notice constitutes noncompliance with the settlement agreement. The Region and the Respondent discussed the Region’s proposed remedial steps to address the alleged noncompliance, but the Respondent declined to comply with the Region’s ultimate requirement that it repost the Board’s notice for an additional 60 days to remedy its alleged breach. On March 27, 2013, the Region notified the Respondent that it would reinstate the charges if the Respondent did not repost the settlement notice for 60 days. The Respondent did not respond.

Accordingly, on June 28, 2013, the Regional Director issued an order consolidating cases, consolidated complaint, and notice of hearing. The Respondent filed a timely answer. On August 15, 2013, the Respondent filed a Motion for Summary Judgment arguing that the complaint should be dismissed because it had neither failed to comply with the settlement agreement nor engaged in postsettlement unfair labor practices. On November 22, 2013, the Board denied the Respondent’s motion.

On September 29, 2014, pursuant to the performance clause in the settlement agreement, the General Counsel filed this Motion for Default Judgment, along with a supporting brief asserting that the Respondent had defaulted on the terms of the settlement agreement. On October 1, 2014, the Board issued an Order Transferring Proceeding to the Board and Notice to Show Cause why the motion should not be granted. On October 15, 2014, the Respondent filed a response and memorandum in

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

opposition to the Motion for Default Judgment, disputing the allegation that the settlement agreement had been breached.

Having duly considered the matter, we find that default judgment is not appropriate under the circumstances of this case because, based on the conflicting representations of the parties, genuine issues of material fact exist which prevent a final determination as to whether the terms of the settlement agreement have been breached.²

² In denying the Respondent's Motion for Summary Judgment, we noted that the "propriety of setting aside the settlement agreement" was

Accordingly, we deny the General Counsel's Motion for Default Judgment and remand this proceeding to the Regional Director for Region 15 for further appropriate action.

"an issue for the judge to decide in the first instance, based on a more complete record regarding, for example, the posting of the notice and letter, and the Respondent's compliance with the affirmative settlement terms."

Having denied the General Counsel's Motion for Default Judgment, we similarly deny his motion to strike the Respondent'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.