

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued February 3, 1995 Decided March 3, 1995

No. 93-1831

GLOVER BOTTLED GAS CORP., VOGEL'S INC.,
NEW YORK PROPANE CORP., SYNERGY GAS CORP.,
AND SYNERGY GROUP, INC.,
PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD,
RESPONDENT

Appeal from the National Labor Relations Board
and Cross-Application for Enforcement

Clifford P. Chalet argued the cause for petitioners.

Vincent J. Falvo, Attorney, National Labor Relations Board, argued the cause for respondent. With him on the brief were *Linda Sher*, Acting Associate General Counsel, *Aileen A. Armstrong*, Deputy Associate General Counsel, and *Peter Winkler*, Supervising Attorney, National Labor Relations Board.

Before: WALD, SILBERMAN, and TATEL, *Circuit Judges*.

Opinion for the Court filed *PER CURIAM*.

PER CURIAM: This petition essentially presents factual issues arising out of a National Labor Relations Board back pay proceeding, which tend to be heavily fact bound. The Board's order, determining that the employer engaged in unfair labor practices, has already been enforced by the Second Circuit, *NLRB v. Glover Bottled Gas Corp.*, 905 F.2d 681, 683 (2d Cir. 1990) (the employer's facility is in New York). The employer was held to have, *inter alia*, treated returning strikers as new employees, withheld benefits, refused to bargain with the union, and engaged in retaliatory discharge against union members. Two of the issues raised before us—whether petitioner had made bona fide offers of reinstatement to two discriminatees Leone and Cabral through questionnaires of availability and whether the calculation of another discriminatee's back pay award should be performed pursuant to the traditional *F.W. Woolworth* quarterly formula—were actually

decided by the Second Circuit, and are, therefore, *res judicata*. See *Glover*, 905 F.2d at 686; *Glover Bottled Gas Corp.*, 292 N.L.R.B. 873, 887 (1989). None of the rest of the factual issues come close to raising a legal question (substantial evidence on the whole record), and we therefore wonder why the employer would bring his second petition to either court of appeals. Perhaps the interest rate the Board employs to calculate back pay is too low.

For the foregoing reasons, the petition is therefore denied, and the Board's cross-application for enforcement is granted.

So ordered.