

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
SAN FRANCISCO BRANCH OFFICE

MEDCO HEALTH SOLUTIONS OF SPOKANE, INC.

and

Case 19-CA-30143

UNITED STEELWORKERS LOCAL 12-369,  
affiliated with UNITED STEEL, PAPER AND  
FORESTRY, RUBBER, MANUFACTURING,  
ENERGY, ALLIED INDUSTRIAL AND SERVICE  
WORKERS INTERNATIONAL UNION, AFL-CIO

*Daniel R. Sanders, Esq.*, for the General Counsel.

*Todd A. Lyon, Esq.*, (*Reid, Pederson,  
McCarthy & Ballew, LLP*),  
of Seattle, Washington, for the Union.

*John J. Peirano, Esq.*, (*McElroy, Deutsch,  
Mulvaney & Carpenter, LLP*),  
of Morristown, New Jersey, and  
*John J. Shea, Esq.*, for the Respondent.

BENCH DECISION

Statement of the Case

**WILLIAM G. KOCOL**, Administrative Law Judge. This case was tried in Spokane, Washington on August 22, 2006. I granted Respondent's motion to defer this case under *Collyer Insulated Wire*, 192 NLRB 837 (1971) and I issued a Bench Decision pursuant to Section 102.35(a)(10) of the Board's Rules and Regulations setting forth findings of facts and conclusions of law. In accordance with Section 102.45 of the Board's Rules and Regulations, I certify the accuracy of the Bench Decision; it is attached as Appendix A.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>1</sup>

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<sup>1</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

**EXHIBIT A**

**ORDER**

The complaint is dismissed, provided that jurisdiction is retained for the limited purpose of entertaining a timely motion for further consideration upon a showing that either (a) that the dispute has not, with reasonable promptness after the issuance of this Bench Decision, either  
5 been settled or promptly submitted to arbitration or (b) the arbitrator reached a result that is repugnant to the Act.

Dated, Washington, D.C., September 12, 2006.

10  
  
15 William G. Kocol  
Administrative Law Judge

**EXHIBIT A****BENCH DECISION**

JUDGE KOCOL: The following shall constitute my bench  
5 decision in this case, pursuant to the Board's Rules and  
Regulations.

10 Jurisdiction in this case is admitted by Respondent,  
right, Mr. Peirano, in the filing and service of the  
charge?

15 MR. PEIRANO: Admitted, Your Honor.

JUDGE KOCOL: All right. The parties in this case  
20 have had a fairly long -- someone mentioned 1990, if I  
caught the year right -- harmonious relationship. I'm not  
25 aware of any unfair labor practice findings by the Board  
involving these units.

The parties have had collective bargaining  
30 relationships. There is a contract now in effect. The  
contract now in effect clearly covers the alleged unlawful  
35 implementation allegations here.

Respondent has agreed to arbitrate the allegations  
40 concerning the unlawful refusal to provide information and  
Respondent is also willing to concede and will concede in  
arbitration that the recognition clause in the respective  
45 collective bargaining agreements will allow the arbitrator  
to resolve the refusals to provide information.

50 This, in my view, is a major distinguishing factor

from some of the prior cases where a Respondent is willing to arbitrate just the underlying alleged unfair labor practices, but not the refusal to provide information, and this will allow all the issues to be presented to the arbitrator.

The employer, the Respondent, here has also agreed to waive any timeliness allegation that they might otherwise have in the Com -- I'm sorry -- in the respective collective bargaining agreements concerning the filing of grievances covering the allegations in this complaint and another factor I take into account is that, on the face of the Complaint, the pertinent refusal to provide information allegations were not made at a time sufficiently in advance of the alleged unilateral implementation that would have allowed the union an opportunity to meaningfully use that information in deciding whether or not to bargain.

And so, for all those reasons, I am going to grant the motion to defer this case to arbitration.

Within a few days after I get the transcript in this hearing, I'll issue a short written decision in accordance with the Board's Rules and Regulations, adopting what I've just said as my bench decision in this case.

Any other matters for the parties?

MR. LYON: Yes, Your Honor.

JUDGE KOCOL: Yes? Okay, Mr. Lyon.

5 MR. LYON: Yes. Just in terms of a clarification of  
Your Honor's order, I think it would be helpful for the  
parties to identify the issues, if we can, for  
10 arbitration.

JUDGE KOCOL: All the substantive allegations of the  
15 Complaint, including the refusal to -- All right. Let's  
be more specific. You're right, Mr. Lyon. What I'm  
talking about is the allegations in Paragraph 6 of the  
20 Complaint. Those cover the refusal to provide  
information. 6 and 7, actually, cover that. And 8 and 9  
25 cover the alleged unilateral changes. So thank you for  
raising that. I'll clarify that by specifically referring  
30 to those paragraphs in the Complaint.

MR. LYON: Okay.

35 JUDGE KOCOL: All right. Thank you all for your  
courtesy and cooperation.

The hearing is now closed.

40 **(Whereupon, at 11:40 A. M., the hearing in the above-  
entitled matter was closed)**

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