

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: June 27, 2001

TO : Victoria E. Aguayo, Regional Director
William M. Pate, Jr., Regional Attorney
James A. Small, Assistant to Regional Director
Region 21

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: CR&R, Inc. 530-2025-0000-0000
Case 21-CA-34177 530-6050-0100-0000
530-6067-4033-0000
530-6067-4055-0000

This case was submitted for advice as to whether liability insurance coverage for vehicles is a mandatory subject of bargaining if changing the coverage result in an employee termination.

FACTS

CR&R, Inc. (the "Employer") operate a waste removal and recycling business. The Package and General Utility Drivers, Local 396, International Brotherhood of Teamsters, AFL-CIO (the "Union") represent drivers, truck maintenance workers and machine operators employed by the Employer.

On or about August 2, 2000,¹ the Employer issued driver Mario Ramos a 3-day suspension allegedly because after the Employer changed the liability insurance coverage on its vehicles Ramos was ineligible to drive. The new policy rendered any one involved in three accidents during the calendar year 2000 outside the scope of the policy's coverage.

The Union and the Employer met twice after the suspension to discuss insuring Ramos under the new policy. During the first meeting on August 8, the Employer acknowledged that Ramos would remain eligible to drive had the new policy not changed the coverage requirement. During the second meeting on August 15, the Employer informed the Union that it was terminating Ramos because he was involved in three accidents during the year 2000.² Prior to the

¹ All dates refer to 2000 unless otherwise noted.

August 2 suspension, the Employer did not bargain with the Union over this decision. On September 13, the Union filed the instant 8(a)(5) charge.

ACTION

We conclude that complaint should issue, absent settlement, alleging that the Employer violated Section 8(a)(1) and (5) because the Employer unilaterally changed the drivers' qualifications when it changed its liability insurance coverage to a policy that set a different standard to be an eligible driver.

In First National Maintenance, the Court held that there were three types of managerial decisions:³ category one - decisions having only an indirect and attenuated effect on the employer-employee relationship such as promotions and advertisement, product designs or financial arrangements, which does not require mandatory bargaining; category two - decisions directly effecting the employer-employee relationship such as recall and layoff rights, work rules and quotas, which does require mandatory bargaining; and category three - decisions that directly impact employment but its focus and concern is profit, wholly apart from the employment relationship, which does not requiring bargaining over the decision but over its effects.⁴ A qualification for a unit job is a condition of employment, a category two decision, and thus a mandatory subject of bargaining.⁵

We first conclude that the Employer made two distinct decisions when it changed its liability insurance. Vehicle

² The Union filed a grievance over the termination but the Employer claims the grievance is untimely and has thus far refused to arbitrate the matter. It has also refused to defer the charge to the grievance-arbitration process.

³ First National Maintenance, 101 S.Ct. at 2580.

⁴ Ibid. In First National Maintenance, the Court held the managerial decision a category three type. The Court ruled that although the employer had no obligation to bargain with the union about its decision to end a contract with a customer, it was required to bargain over the effects of that decision.

⁵ Scott-New Madrid-Mississippi Electric, 323 NLRB 421, 425 (1997).

liability insurance typically involves not only vehicles, but also the vehicles' drivers. Although the Employer asserts that it made a single decision, viz., it changed only the liability coverage of its vehicles, the Employer also clearly changed driver coverage at the same time. This second change was clearly evidenced by the Employer's admission that Ramos' driver status change, from eligible to ineligible, solely because of the new insurance policy. In sum, the Employer decided to change how its vehicles would be insured by also deciding to change the type of drivers for those vehicles.

One of the Employer's changes meets the criterion for a category one decision. How an Employer decides to insure its vehicles does not fall within the subject areas of "wages, hours or terms and conditions of employment." The Employer selected what it perceived to be the best policy and coverage to protect its vehicles. Thus, that decision would appear privileged because it is akin to advertisement or promotions type decisions and does not require mandatory bargaining.

On the other hand, the second Employer decision meets the criterion for a category two decision. How an Employer determines employee qualifications for unit jobs does fall within the subject area of "wages, hours or terms and conditions of employment." As noted above, the Employer not only selected the coverage for the vehicles, it also set the eligibility for the drivers eligible for the vehicles. The Employer raised the qualifying-standard, changing Ramos' driving status from eligible to ineligible because of the new policy. Since that change required bargaining, the Employer violated Section 8(a)(5) by unilaterally making that second decision.

Assuming for the sake of argument that the Employer did make a single decision, our conclusion remains the same regarding the Employer's duty to bargain. Since Ramos lost his job because of that decision, the decision directly impacted employment. Thus, that decision meets the criterion for a category three decision. Therefore, even if it the Employer has no duty to bargain over the decision, it must bargain over the effects, in this case, how the new policy affected the drivers' eligibility to drive.

Accordingly, the Employer violated Section 8(a)(5) because it unilaterally changed the drivers' qualifications when it changed its liability insurance coverage to a policy that set a different standard to be an eligible driver.

B.J.K.