JD(ATL)-33-08
Worcester, MA

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

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY AND ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY AND ALLIED INDUSTRIAL AND SERVICE WORKERS, LOCAL 2285

and Case 1-CB-10833

WYMAN-GORDON COMPANY

Don C. Firenze, Esq. and *Scott F. Burson, Esq.* for the General Counsel.
Maydad D. Cohen, Esq. and *Alfred Gordon, Esq.* (*Pyle, Rome, Lichten, Ehrenberg & Liss-Riordan, P.C.),* of Boston, Massachusetts, for the Respondents.
Joseph C. Devine, Esq. (*Baker & Hostetler LLP*), of Columbus, Ohio, for the Charging Party.

DECISION

Statement of the Case

JOHN H. WEST, Administrative Law Judge. This case was tried in Boston, Massachusetts, on June 25, 2008. The charge was filed by Wyman-Gordon Company (W-G) on November 26, 2007, an amended charge was filed by WG on February 29, 2008 and the complaint was issued on March 31, 2008. As here pertinent, it alleges that United Steel, Paper and Forestry, Rubber, Manufacturing, Energy and Allied Industrial and Service Workers International Union (International Union), and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy and Allied Industrial and Service Workers, Local 2285 (Local Union with both the International and the Local jointly referred to as the Union or Respondents) have failed and refused to bargain collectively with WG in violation of Section 8(b)(3) of the National Labor Relations Act, as amended (Act), by since October 29, 2007 failing and refusing to execute a written contract containing an agreement reached on March 30, 2007. In their separate Answers to the complaint both the International Union and the Local Union take the same positions, namely that they did not violate the Act as alleged because the parties did not reach an agreement with the terms that the General Counsel asserts; that the parties either reached an agreement with the correct retiree eligibility date of 2007 for the retiree bridge healthcare benefit or, in the alternative, the parties failed to have the requisite meeting of the minds regarding the proper eligibility date of the retiree bridge healthcare benefit; that the written contract that WG has requested that the Respondents sign does not contain the agreement the parties reached in collective bargaining; and that the Respondents have refused to execute the written contract

WG has presented because the written contract differs from the agreement the parties reached in collective bargaining.[1]

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by Counsel for General Counsel, the Union, and the Charging Party on August 15, 2008, I make the following

Findings of Fact

I. Jurisdiction

WG, a corporation, with offices and places of business in Worcester, Grafton and Millbury, Massachusetts, (referred to herein as the Massachusetts facility) has been engaged in manufacturing and distributing structural and isothermal forgings. The complaint alleges, it is admitted and I find that during the calendar year ending December 31, 2007, WG in conducting its business operations at the facilities described above, purchased and received at its Massachusetts facilities goods valued in excess of $50,000 directly from points outside the Commonwealth of Massachusetts, and sold and shipped from its Massachusetts facilities goods valued in excess of $50,000 directly to points outside the Commonwealth of Massachusetts. I find that WG is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

At the outset of the trail the parties stipulated to the receipt of eleven joint exhibits. Joint Exhibit 1 is the 1992/1995 contract between the parties. Joint Exhibit 2(a) is the 1995/1997 contract. Joint Exhibit 2(b) is the so-called group insurance side letter referenced in the 1995/1997 contract. Joint Exhibit 3(a) is the 1997/2002 contract. Joint Exhibit 3(b) is the group insurance side letter referenced in the 1997/2002 contract. Joint Exhibit 4(a) is the 2002/2007 contract. Joint Exhibit 4(b) is the so-called group insurance side letter referenced in the 2002/2007 contract. Joint Exhibit 5 is the tentative agreements reached by the parties with respect to the 2002/2007 contract. Joint Exhibit 6 is the tentative agreements reached by the parties with respect to the 2007/2012 contract. Joint Exhibit 7 is the cover letter and WG's proffered integrated contract for the 2007 to 2012 contract which was sent to the Union on July 9, 2007. Joint Exhibit 8 is a letter sent by WG's attorney, Ronald Linville, to the Unions' attorney Maydad Cohen, on October 29, 2007. Joint Exhibit 9 is the Union's economic proposals for the 2002/2007 contract. Joint Exhibit 10 is the Unions' economic proposal for the 2007/2012 contract which were given by the Union to WG on March 26, 2007. And Joint Exhibit 11 is the following six paragraphs of stipulations of fact by the parties:

1) Prior to the 1992-1995 contract, all retirees who qualified for a pension received

[1] Affirmatively, the Respondents assert that the complaint fails to state a claim upon which relief may be granted because (1) the written contract WG presented to Respondents for signing differed from the agreement the parties reached in collective bargaining, which was to move the eligibility dates for the retiree healthcare bridge benefits forward to 2007, meaning that to be eligible for this benefit the member, among other things, had to be 50 as of 2007, and (2) the parties never reached a proper meeting of the minds regarding the terms of the collective bargaining agreement; specifically, the parties failed to reach a meeting of the minds as to the proper eligibility date for the retiree healthcare bridge benefit.

health benefits for life.

2) In the 1992-1995 contract, it was agreed for the first time, in Art. XXIX, that any employee who was hired after January 1, 1992 would not receive health care benefits upon retirement.

3) Joseph Carlson is an International Representative for the International Steelworkers and was the chief negotiator for the Respondents in the negotiations for the 2002-2007 contract and the 2007-2012 contract. Carlson does not recall receiving or reading the group insurance side letter to the 1997-2002 contract, which defines the health care benefits for retirees, prior to April 15, 2002.

4) The Union presented its written economic proposals for the 2002-2007 contract to the Employer on or about March 21, 2002.

5) The Employer made no proposals with respect to retiree health benefits for the 2002-2007 contract.

6)During the term of the 2002-2007 contract, two bargaining unit employees, Jim Carota and Robert Jakubasz, retired but were not given retiree health benefits by the Employer. Carota and Jakubasz had been hired before January 1, 1992, had not reached age 50 by the end of 1997 but had reached it by the end of 2002. The Union only learned of this denial of retiree health benefits some time about October 2007.

The Union pointed out that while it was willing to stipulate to the admission of the contract for 2002-2007 and side letter referenced in that contract, "we are not admitting that those are valid agreements between the parties. We'll just be calling them the contracts because that's what the document looks like and appears to be." (transcript page 10)

The parties also stipulated to the admission of Respondents' Exhibits 1, 2, and 3. Respondents' Exhibit 1 is a charge filed with the National Labor Relations Board (Board) on January 17, 2008 by the Union against WG in Case 1-CA-44418 alleging that "[t]he Company has violated the Act by refusing to execute a collective bargaining agreement with the proper amendment to the eligibility date for the retiree medical bridge plan." Respondents' Exhibit 2 is a March 24, 2008 letter from Region 1 of the Board dismissing the charge.[2] Respondents' Exhibit 3 is a May 13, 2008 letter from the Board's Office of General Counsel in Washington, D.C. denying Respondents' appeal of the dismissal of the charge received herein as Respondents' Exhibit 1.[3]

Carlson, who -as indicated above - is an International Staff Representative of the International Union, testified that he was the Union's chief spokesperson during negotiations with WG for the 1997, 2002, and 2007 contracts; that before the 1997 negotiations there had

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[2] The dismissal letter indicates "[y]our charge alleges that … eligibility for medical benefits for … [specified] retirees … should have been changed from 'must be age 50 or older in 1997 ….' to 'must be age 50 or older in 2007 …' The evidence adduced during the investigation, however, was insufficient to demonstrate that the Employer ever agreed to eligibility on this changed basis."

[3] As here pertinent, this letter indicates "[v]iewing the evidence in the light most favorable to the Union, it could not be established that the Employer agreed to the change in eligibility language for retiree health benefits as you contend." General Counsel's Exhibit 6 is a copy of the Appeal which Respondents filed in Case 1-CA-44418 with the Board's Office of General Counsel in Washington, D.C. Counsel for General Counsel contends that it should be treated as a position paper by Respondents and an admission of a party opponent in that allegedly nowhere in their appeal do Respondents mention that WG allegedly, expressly agreed in 2002 to change the date in the side letter referring to retiree healthcare from 1997 to 2002.

been a lawsuit, which predated him, over the retiree health insurance; that at one time the entire bargaining unit had health insurance for life; and that during the negotiations for the 1997-2002 contract the parties worked to find a way "to get retiree health bridge for those people who, during that period of time, needed it and it satisfied a need of the company for economic reasons not to have to cover everybody all the way out" (transcript page 100). Carlson then gave the following testimony on direct:

> Q …. You said something in your answer that I want to explore a little bit. When you talked about covering a certain group of people, you said the words that we would need to do it subsequently. What did you mean when you said you would need to do it subsequently?
>
> A We would need to do that at the expiration of each agreement. You, … would need to … have the discussion and make sure the dates got moved so that people were covered, … so the next block of people would fall into … the next terms of the agreement. [Id.]

Carlson further testified that that portion of page 5 of Joint Exhibit 3(b) which reads "[r]etired with a pension from May 1, 1997 and thereafter, must be age 50 or older in 1997 and have at least 10 years of service" accurately reflects the eligibility requirements the Union agreed to in 1997.

On cross-examination Carlson testified that during the 1997 negotiations there was a discussion that it would be necessary to move the retiree healthcare eligibility dates in the 2002-2007 contract. Carlson then gave the following testimony:

> Q I'm trying to find out if your testimony is that in … reaching agreement on the 1997 contract, the parties went further than that and agreed on something for the successor contract, the 2002/2007 contract, namely that you would qualify for your pension if you reached 50 in 2002?
>
> A Maybe if, if this is an answer, yes, but not without discussion in 2002. …. [Transcript page 109]

Further, Carlson testified that he read the retiree healthcare side letter referenced in the 1997-2002 collective bargaining agreement before the 2002 negotiations[4]; and that in General Counsel's Exhibit 4, which is an affidavit he gave to the Board on January 18, 2008, he indicated "I do not recall ever receiving or reading the health care side letter for the 1997-2002 contract."

Paul Bartholomew, who is a forge helper and has worked at WG for 28.5 years, testified that he is a member of Local 2285; that he has been President of the Local since November 2004; that before that he was Vice President of the Local for 7 years; that before becoming Vice President he was on the bargaining committee since 1992; and that he was present at all of the 1997 bargaining sessions.

On cross-examination Bartholomew testified that in the 1997 negotiations he thought that the retiree healthcare benefit would move forward in blocks of five years

[4] Counsel for General Counsel pointed out that this was contrary to the parties' stipulation described above.

> Because at the time during those negotiations, it was a mechanism that was proposed by the company to diminish their funding for retiree healthcare, for the future. By separating groups of employees in that block of five years, it would reduce or diminish their fund, their future funding because they only had to fund for a certain block of bargaining unit employees. [Transcript page 154]

Bartholomew also testified that WG would reduce their funding more if the 1997 never changed to 2002 and 2007 in that eventually no one would be eligible if the 1997 date remained constant; and that with respect to whether or not WG wanted these people off the books, "[o]ur understanding was that was a mechanism to provide retiree insurance for the people who retired during the course of that agreement" (Id.).

Thomas Wallace, WG's Human Resources manager, testified that he held that position since March 2003; that before that he was the labor relations manager from March 13, 2002; that he attended that last negotiating meeting for the 2002-2007 contract; that the Union's retiree healthcare proposal was withdrawn; that Peter Quill is a member of the negotiating committee and he was present during the 2002 negotiations; that Bartholomew was the Vice President of Local 2285 in 2002 and at the time or the trial herein he was the President of Local 2285, and he was present during the negotiations in 2002; that contrary to the Unions' assertion, it is not true that it was 18 months before they received a copy of the 2002 group insurance side letter; that in April 2002 WG and Union representatives, including Carlson and the negotiating committee, met in a conference room at the Grafton facility where all the documents and side letters were laid out and the parties signed those documents which required signatures; that while the group insurance side letter did not require signatures, it was referenced in the contract and it was there at the meeting; that following this meeting WG mailed copies to Carlson; that Charging Party's Exhibit 1 is a May 8, 2002 cover letter that he sent to Union Staff Representative Carlson along with the collective bargaining agreement and all of the side letters; that the cover letter reads in part "I have also enclosed a copy of the healthcare attachment …."; and that this portion of the cover letter refers to a side letter, Joint Exhibit 4(b), referred to in the collective bargaining agreement, Joint Exhibit 4(a).[5]

On cross-examination Wallace testified that he started at WG 9 days before collective bargaining negotiations with Respondents ended in 2002; that consequently there were bargaining sessions that he did not attend; that he had no involvement in the negotiations in 1997 between WG and the Respondents; that he was present the last day of negotiations for the 2002-2007 collective bargaining agreement; that he did remember that there was some discussion at the bargaining table on March 22, 2002 but he did not remember exactly what was said; that he remembered that the outcome of the discussion was "that the benefits as they existed in 1997 would remain … exactly as they existed in 1997 …. as we put in the documents, yes" (transcript page 39); that he believed that the Union was the one who brought up retiree healthcare on March 22, 2002; that he personally made some notes of the 2002 negotiation sessions which he attended; that WG had Mark Antonetti taking notes at the negotiation sessions; that he prepared Joint Exhibits 4(a) and 4(b); that several weeks after he started

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[5] Article XXVII in Joint Exhibit 4(a) reads as follows:

INSURANCE

The parties have agreed upon insurance coverage as described in a Manual entitled 'Wyman-Gordan Group Insurance Plan' and dated March 25, 2002. Such Manual constitutes a part of this Agreement as though incorporated herein.

The Company shall not be required to contribute to retiree healthcare for any employee hired after January 1, 1992.

working for WG he took the tentative agreements reached in 2002 and incorporated them into the 2002-2007 collective bargaining agreement; and that he did not review negotiating notes in preparing Joint Exhibits 4(a) and 4(b) but rather he "did it strictly off of the tentative agreements." (transcript page 44)

On redirect Wallace testified that once he created Joint Exhibits 4(a) and (b), and before he sent them to the Union, he gave the Union an opportunity to look at them; and that while the Union did not have any comments with regard to the group insurance side letter, there were a couple of minor corrections, described as a typo, of the collective bargaining agreement itself.

Linville testified that he is an attorney with the law firm of Baker and Hostetler; that he was WG's chief negotiator in the 2002 negotiations with the Union; that WG had a designated note taker during negotiations, namely Antonetti, who was a lawyer in Baker and Hostetler in Washington, D.C.; that Antonetti would have his notes typed, and he and others would review Antonetti's notes to make sure that they accurately reflected what occurred at the bargaining session; that the notes were finalized either the night of the bargaining session or the next day; that the final session finished late so he reviewed the notes over a weekend; that during the 2002 negotiations when WG and the Union exchanged economic proposals retiree healthcare was discussed briefly, with the Union proposing that the Company pay the full cost of retirees and dependents; that retiree healthcare was not substantively discussed until the very end of bargaining on March 22, 2002, which was the final day of bargaining; that on the final day of bargaining WG presented the Union with the tentative agreement; that the Union took a break and when it returned the Union said that the package was acceptable and the committee would make a unanimous recommendation; that Carlson said that the package would have the full support of the International; that Carlson then said "I need to make one slight clarification. And he said even though we haven't had any discussion on this issue, I want to make sure that the retiree, I think he said retiree health, but that the retiree issue would carry forward and remain intact" (transcript page 53); that there was no other discussion on this issue; that several of the WG representatives at the table agreed[6]; that the retiree healthcare language in the 1997 group insurance plan referenced in the collective bargaining agreement, namely "[r]etired with a pension from May 1, 1997 and thereafter, must be age 50 or older in 1997 and have at least 10 years of service" was carried forward in 2002 …. [s]o that at some point there would be a decline and ultimately elimination of the retiree healthcare benefit once … there were no longer anybody that was … 50 in 1997" (transcript page 63); that there were a number of people who were not 50 in 1997 so they would not be eligible for this 5-year bridge benefit; that the involved language in the 2002 insurance plan, namely "[r]etired with a pension from May 1, 1997 and thereafter, must be age 50 or older in 1997 and have at least 10 years of service" is identical to the language that was in the 1997 plan, which was incorporated by reference into the … 2002 agreement" (transcript page 64); and that as indicated on numbered page 2 of Joint Exhibit 9, the Union's 2002 economic proposals included "[t]he company shall pay full cost of future retiree/spouse and dependents health care for life."

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[6] The last page of General Counsel's Exhibit 2, which is WG's notes of this bargaining session, contains the following:

JC:	States that this is an agreement that we will go forward with the unanimous recommendation of the committee and the full support of the International.
	Requests slight clarification again on the discussion of retiree benefits, understanding that there was no discussion of these benefits and they carry forward and remain intact.
RL, MD, DL:	State agreed.

On cross-examination Linville testified that while he was chief negotiator for WG during the 2002 and 2007 negotiations, he was not present in any capacity for the 1997 negotiations; that during the 2002 and 2007 negotiations there were sidebars between management and the Union and if it was agreed that they were off the record discussions, then they would not be reflected in the notes; and that sometimes during the 2002 and 2007 negotiations if the parties reached agreement during a sidebar, that agreement would be reflected in the notes when the parties got back to the table.

Michael Stewart, who is the recording secretary for Local 2285, testified that Respondent's Exhibit 4 are his handwritten notes of the March 22, 2002 negotiating session between the Union and WG; that he tried to write word for word what was discussed at the negotiation session; and that on page 9 of Respondent's Exhibit 4 the following appears:

> JC [Carlson] Upon review of document, this is an agreement, we will go forward unanimously with the agreement of Staff. An issue of importance. Retiree health insurance document and side agreement, understand no discussion for changing, comes forward and remains intact. All agreed?
>
> RL [Linville] We agree
> &
> MD [Mark Damien]

Stewart further testified that Respondent's Exhibit 5 is Company handout 21 which are tentative agreements dated March 22, 2002 and which is the date he received that document.[7]

On cross-examination Stewart testified that he believed that the word he wrote in the right margin on the last page of Respondent's Exhibit 5, namely "clarify" refers to Article XXVII[8] because he "had a question what was agreed to or incorporated." (transcript page 92); and that he did not know whether he wanted WG or the Union to provide the clarification he sought.

Subsequently, Stewart testified that he did not recall exactly when he wrote the word "clarify" but it was probably during the Union's caucus in between.

Carlson testified that in the 2002 negotiations the Union's initial proposal was for health insurance for everybody, everywhere, for all times; that on the last day of negotiations for the 2002-2007 contract during a Union caucus the consensus was that the Union needed to be sure that the next group of people would be covered regarding the retiree health insurance, which had not been covered to that point; that he did not recall exactly what he said to the WG representatives after this Union caucus; that he recalled that he described in some way the Union's desires and WG's representatives agreed; that he understood the Union's proposal to be "[t]hat we would have the five-year bridge for five additional years for the next group of people" (transcript page 105); that the date would move forward so that it would have to be 2002; that in preparing for the 2002 negotiations he did not read the collective-bargaining agreement cover to cover and he did not read the side letter agreement because he was relying on the bargaining committee and he would have read portions of the collective-bargaining

[7] On the last page the following appears: "II. WITHDRAWN, …., Article XXVII, Insurance, all other Company and Union proposals not previously agreed or incorporated herein, …."

[8] The full language appears in note 7, supra.

agreement in going over proposals; that after the 2002 negotiations were complete, he did not recall at any point actually seeing the updated side letter agreement; and that it is possible that he did see it but he did not have any specific recollection of seeing it.

On cross-examination Carlson testified that during the 2002 negotiations in a caucus the Union bargaining committee determined that they had to make certain that WG realized that the healthcare side letter had to change its date for eligibility from reaching 50 in 1997 to reaching 50 in 2002; that to make this point to WG, he believed that what was said was that "we had to move the date ahead or we had to move it ahead and keep it all intact" (transcript page 110)[9]; that even though when union members lose retiree healthcare it is a big deal, he was not sure when he testified at the trial herein, that he used the terms 'moved the date' during the 2002 negotiations; that the last caucus was the first time this matter was brought up; that when he got the contract to execute he did not look to see whether the date had been moved[10]; that he did not know if they put anything in writing about the proposal to change the eligibility date; that he did not review Joint Exhibit 4(b) which is the involved 2002 side letter; that the retiree healthcare negotiated in 2002 was included in a handout, Charging Party's Exhibit 2, the Union passed out to the membership to discuss the changes; that the handout does not mention the date being changed[11]; that he did not recall whether he had a copy of involved side letter, Joint Exhibit 4(b), in front of him when he signed the 2002-2007 collective bargaining agreement; that it is not his practice to sign a document that he has not looked at; that he recognizes Charging Party's Exhibit 1 for what it is, namely a May 8, 2002 letter to him from Wallace enclosing the 2002-2007 collective bargaining agreement and, as here pertinent, a copy of the healthcare attachment; and that the 2002 side letter was the one "that never got read" (transcript page 129).

Bartholomew testified that he attended all of the 2002 bargaining sessions as Vice President of the Local; that in 2002 Paul Soucy was President of the Local; that in 2002 the Union, as part of the first package it gave to WG, proposed retiree healthcare for all employees;

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[9] In an affidavit Carlson gave to the Board on January 18, 2008, General Counsel's Exhibit 4, he indicated as folllows:

> I am an International Rep for the International Steelworkers. I have been the chief negotiator for the Union in the last three contract negotiations with Wyman-Gordon with respect to the north Grafton unit. My understanding and that of my Union brothers has always been that the limitation of '1997' in the phrase '50 or older in 1997' in the retiree health bridge benefits provision was a reference to the first year of the contract and not to 1997 as such. At the March 22, 2002 negotiation session I brought up the matter of retiree health benefits at the end of the session. I explained that we wanted the retiree health benefit bridge to remain in effect and roll over into the new agreement. The Employer agreed. I do not recall ever receiving or reading the health care side letter for the 1997-2002 contracts. The Local officials tell me that 75% of the current unit was hired before 1992. At the negotiation at which we reached agreement, or thought we had reached agreement, on the 2007-2012 contract, the Employer asked us about retiree health care. I said that we could live with the status quo. Ron Linville, the Employer's attorney, said 'Terrific!' There was no Employer representative in a position of authority at the 1997 negotiations who held a similar position at the 2007 negotiations.

[10] Carlson agreed that retiree healthcare was a very impotent consideration and normally speaking, as a negotiator, it would behoove the person who entered into a verbal agreement to make sure to look at the side agreement before executing the collective bargaining agreement.

[11] The following appears on the first page of the handout: "[r]etiree health insurance - five year bridge remains in effect."

that retiree healthcare was not talked about very frequently across the bargaining table and he believed that it was not brought up again until the last hours of the last day of bargaining; that during the latter part of this bargaining session WG handed the Union its final proposals and the Union committee caucused to go over what had been agreed to up to that point in time; that during the caucus one of the committeemen, Dave Soucy, asked why the retiree healthcare was not part of the terms that they had in front of them; that they all agreed that it needed to be part of the package if they were going to agree to a contract; that Carlson told the Union committee that when they reconvene it would be one of the things he would mention to the Company; that at the end of the caucus the Union bargaining committee agreed that it would propose to WG that "whatever language was current, the dates … that it would remain intact and that those dates for eligibility would move forward" (transcript page 136); and that when the bargaining session reconvened

> The proposal was, to the best of my recollection, Joe Carlson said retirement - - retiree healthcare is very important to us, we need to move those dates forward, if we keep it intact, remain, move those eligibility dates forward, we have an agreement. And the company agreed. (Id.)

Bartholomew then gave the following testimony on direct:

> Q And so what was your understanding of the proposal that the company accepted?
>
> A That the five-year bridge language that was, became part of he 1997/2002 collective bargaining agreement, would remain the same and the eligibility dates would move forward.
>
> Q <u>And what does that specifically mean, the eligibility dates would move forward?</u>
>
> A That means it would be, at five-year blocks, the initial language was negotiated, it was created for five-year blocks of employees, that that date of 1997 would move five years, that eligibility date. [Transcript page 137 with emphasis added]

Bartholomew further testified that after the tentative agreement was reached in 2002 the bargaining committee convened to prepare for a ratification meeting the following morning; that Charging Party's Exhibit 2 is a brief summation of what was agreed to which was given to the members who attended the ratification meeting on March 24, 2002; that there were several questions from the floor during the ratification meeting about retiree health insurance (As indicated above, the entry on the summary regarding this topic reads "[r]etiree health insurance - five year bridge remains in effect."); that the question was do we have retiree healthcare when we retire during the years of this agreement, do we have retiree healthcare and what are the conditions; that he responded "yes" (transcript page 139) to this question; that, to the best of his recollection, the President of the Local, Paul Soucy, told the members present at the ratification meeting "yes, if you retire during the term of this agreement, you will have retiree healthcare under the bridge language" (Id.); that he was aware that as part of the 2002/2007 collective bargaining agreement there was a side letter regarding health insurance; and that he believed that he did not see a copy of the healthcare side letter, Respondent's Exhibit 6, until October 2003.[12] Bartholomew then gave the following testimony on direct:

[12] On voir dire Bartholomew testified that Soucy gave him this copy of the Group Insurance Plan, Respondent's Exhibit 6, in October 2003 to review to see if it accurately reflected the agreement of the parties; that portions of the document are italicized; that he did review it; and

Continued

Q As you sit here today, do you see a problem with this particular document?

A Yes.

Q And where is that problem?

A The problem is on page …. four, I believe. It states middle of page, retiree medical eligibility.

Q And what specifically do you see is the problem?

A The dates on where it reads retired with a pension from May 1st, '97, 1997, so on. [Transcript page 148]

Bartholomew further testified that in October 2003 he did not review Respondent's Exhibit 6 line by line, word by word; that to the best of his knowledge this was the first time he saw the involved side letter; and that, with respect to Charging Party's Exhibit 1, which is the May 8, 2002 letter to Carlson from Wallace (carbon copied to Local President Soucy) enclosing - as here pertinent - the involved side letter, it is possible that he saw the involved side letter at that time but he did not recall.

On cross-examination Bartholomew testified that he was not sure why the Union did not, on the last day of negotiations, ask that the alleged agreement to change the retiree healthcare date from 1997 to 2002 be put in writing as part of the written tentative agreements; that the only reference to retiree healthcare insurance in Charging Party's Exhibit 2, the handout in the 2002 ratification meeting, is "[r]etiree health insurance - five year bridge remains in effect"; and that it was not indicated in the handout that 1997 would be changed to 2002

> Because when we initially instituted this language into the collective bargaining agreement in 1997, it was the Union's belief that, that … language would move forward in blocks, blocks of five years. So to actually put it, put it in dates, at the time we were putting this document together, I didn't think it was necessary or we, as a group, probably didn't think it was necessary. [Transcript page 153]

Bartholomew further testified that when the people got together to sign the 2002-2007 collective bargaining agreement he did not recall if he saw the group insurance side letter there; and that a lot of the things covered in the 2002-2007 Group Insurance side letter are listed in the handout given to members at the ratification meeting, Charging Party's Exhibit 2.

On redirect Bartholomew testified that his "understanding [of the agreement reached in 2002 regarding the retiree health insurance] … is that the bridge language remains in effect, that being five years, and that eligibility dates would move in blocks of five years" (transcript page 160); and that the agreement reached as to the eligibility date of the retiree health plan in 2002 was "[t]hat the 1997 date in the previous collective bargaining agreement would move to 2002." (transcript page 161)

The Charging Party and the Respondents entered into the following stipulation:

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that he did not see a problem with it.

on or around April the 30th, 2002, is the date on which the collective bargaining agreement which is Joint Exhibit 4(a) was executed along with the memoranda of understanding that, not the healthcare one but the other ones that there was testimony about. [Transcript page 163]

Quill, who has worked for WG for 28 years, is a member of Local 2285 and is the "grievance man" at the Worcester plant, testified that he controls grievances to Step 2; that on June 22, 2004 he filed a grievance, Respondent's Exhibit 7, after two WG employees who retired the year before with the major medical plan coverage were told that the Fallon Major Medical Plan would be phased out and no longer be offered through WG, and they would be covered by a Fallon Preferred Care PPO; that he believed that the PPO is inferior to major medical, and the collective bargaining agreement gave these two retirees the right to choose between a comprehensive medical plan and a HMO; that WG settled the grievance by keeping the Fallon Major Medical plan in place and making the two retirees whole; and that there was never a question as to the eligibility of the two involved retirees for the retiree bridge plan.

Wallace testified that he attended all of the bargaining sessions for the 2007-2012 contract; that the Union made written proposals with respect to retiree healthcare; that retiree healthcare was discussed orally at more than one of those bargaining sessions; that it was first discussed in the Unions' initial economic proposal when the Union went through all of their proposals; that retiree healthcare was discussed on March 29, 2007 when WG's spokesman, Linville, said that WG was not going to reinstitute retiree healthcare; that later the Union responded with the Union's spokesperson, Carlson, saying that the Union "would withdraw their proposal on retiree healthcare and … that that was a big move on the Union's part and he expected the company to consider that when we came back with our counterproposals" (transcript page 28); that Quill and Bartholomew were present during the 2007 negotiations; that in the 2007 negotiations for the 2007-2012 collective bargaining agreement he prepared many of the tentative agreements and subsequent to the negotiations he prepared the draft strike through version of the collective-bargaining agreement as well as the memorandums of understanding; that with respect to retiree healthcare, an attachment was prepared based on the tentative agreements; that the Group Insurance Plan effective April 1, 2007 is part of the 2007-2012 collective bargaining agreement, Joint Exhibit 7; that he refers to this document as the group insurance side letter or the MOU (memorandum of understanding) for healthcare; that he created this document; that page 4 of the group insurance side letter or the MOU did not change from the 2002-2007 document because the parties did not agree to change it, the Union withdrew its proposal for retiree medical[13]; that when Carlson withdrew the Unions' proposal for

[13] As here pertinent, page 4 of the side letter attached to the 2007-2012 collective-bargaining agreement contains the following:

RETIREE MEDICAL

EILGIBILITY

Retired with a pension from May, 1997 and thereafter, must be 50 or older in 1997 and have at least 10 years of service.

Service Time	Maximum Availability of Coverage
10-14 years	1 year
15-19 yrs.	2 years
20-24 yrs.	3 years
25-29 yrs.	4 years
30 or more	5 yrs.

….

Continued

retiree medical, Carlson, as chief spokesman for the Union, on March 29, 2007 said "that this was a big move for the Union and they expected us to respond appropriately … with our counter proposals" (transcript page 36); that Joint Exhibit 10 is the Union's economic proposals which were given to WG on March 26, 2007; that while the Union did not specifically propose to change the language "50 in 1997," the Union did propose on page "2" in Joint Exhibit 10 to "[d]elete the word 'not' [emphasis added] in the 2nd paragraph of article XXVII page 71"[14] and to include the following language: "The Company shall pay full cost of future retiree/spouse and dependents health care for life"; that WG had a couple of meetings with the Union after the Union would not sign the contract in 2007 and the Union indicated that it wanted retiree healthcare; and that WG told the Union "you don't have it and we haven't had it for some time" (transcript page 29).

On cross-examination Wallace testified that he attended every negotiation session for the 2007-2012 collective bargaining agreement; that on March 29, 2007 Carlson withdrew the Unions' retiree healthcare proposal saying that the Union was "staying with what they had, the current contract language, that it and was a big move on their part, significant movement from the Union's part, and that they expected us to respond appropriately with our counterproposal since they had moved this much" (transcript page 41); that he understood "current contract language" to mean the language that was in the side letter that had been in place since 1997, which language was in the 2002-207 collective bargaining agreement which had not expired at the time of the March 29, 2007 meeting; and that there was a negotiation session on March 30, 2007.

On redirect Wallace testified that WG's designated note taker at the 2007 negotiating sessions was Matt Domenico; that Domenico would take the notes and type them; that he would review Domenico's notes to make sure that they were accurate; and that Domenico's notes were accurate.

On recross Wallace testified that he did not believe that WG's note takers took notes at sidebars.

Linville testified that he was WG's chief negotiator in the 2007 negotiations with the Union; that the note taking procedure during the 2007 negotiations was the same as during the 2002 negotiations, except the note taker was a different person; that Domenico worked for Wallace; that General Counsel's Exhibit 3 are WG's notes of the March 29, 2007 negotiating session, he reviewed them for accuracy at the time, and they accurately reflect what occurred at the bargaining table; that with respect to healthcare benefits, Carlson initially made the same proposal that he originally made in the 2002 negotiations, namely that WG pay the full cost of retiree health for future retirees and spouses; that during some sidebar discussions WG told Carlson that WG was not going to make any changes in retiree health care; that on March 29, 2007 (1) WG made a package counterproposal to the Union and "Carlson and his team [were told] that the retiree healthcare issue was not an issue that we could reopen or go back on …. we weren't going to make any changes on retiree health …." (transcript page 57), (2) there was

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Cost

The Company will pay the full cost of the medical plan elected for retiree and eligible dependents.

….

[14] As indicated above, the second paragraph of this article of the 2002-2007 collective bargaining agreement reads: "The Company shall not be required to contribute to retiree healthcare for any employee hired after January 1, 1992."

a break and the Union then gave WG a responsive counterproposal package, (3) when Carlson got to retiree health Carlson said "that they would live with the current contract language" (Id.), and (4) as Carlson was leaving the room at the end of the session, Carlson said something to the effect that "dropping retiree health, dropping their proposal on retiree health was a very big issue to them and he wanted us to give them credit for it in the rest of the economic package" (Id.); that at the March 30, 2007 session WG responded to the Union's March 29, 2007 counterproposal and he told the Union regarding retiree health that it would be "current contract language …. and both parties were in agreement that it was current contract language" (transcript page 58); that during the 2007 negotiations, he believed before March 29, 2007, the parties spent some time going through each and every MOU and side letter to make sure that they had them all; that Joint Exhibit 4(b) was one of the side letters he and Paul Bartholomew passed back and forth across the table; that the entry on the last page on General Counsel's Exhibit 3, WG's notes of the March 30, 2007 negotiating session, namely Linville stating "CCL on retire health care" means current contract language on retiree healthcare; and that there was a practice in the 2002 and 2007 negotiations that any change from the prior agreement was signed off in a tentative agreement.

Carlson testified that the six people in the Union bargaining committee who are Local 2285 members probably have between them 120 years of service at WG, and probably collectively have 60 years of experience being on the bargaining committee; that in 2007 the Union's initial proposal with regard to retiree health would probably have been for health insurance for everybody on the roster who was currently employed as a member of Local 2285; that he recalled very little about the discussions regarding retiree healthcare during the 2007 negotiations, except for what took place at the very end when he told Linville that the Union could live with the status quo in the health insurance and Linville responded in the affirmative; and that he did not think that this discussion was on the record in that it might have occurred when the Union was leaving one room or the other.

On cross-examination Carlson testified that when he was preparing for the 2007 collective bargaining negotiations he was sure that he looked at the group insurance side letter but he did not notice at that point that the date in the side letter was wrong; that Joint Exhibit 4(b) contains healthcare benefits, dental plan, retiree medical, sickness and accident, dependent care reimbursement, life insurance, and AD&D (accidental death and dismemberment) all of which are pretty important to the Union's membership; that he would have had the base document, Joint Exhibit 4(b) available so he would know what the changes were; that the way the involved negotiations work is that the parties work off the base document and they make changes to that document; that the phrase current contract language means that the parties are going to stick with what is currently part of the contract; that he did not believe that Linville said on March 29, 2007 something to the effect that retiree healthcare is absolutely not to be reinstated, the company is not willing to reopen this issue, we would be willing, we would keep the current contract language; that he remembered telling the WG representatives on March 29, 2007 that taking retiree health insurance off the table was a big move for the Union, so you need to move towards the Union; that when he made this statement he was referring to the Union's initial proposal attempting to cover the entire bargaining unit; that shortly after this statement he made the status quo statement; that during the 2007 negotiations he never mentioned the date or moving the date; that he did not remember Linville saying anything about keeping the current contract language for retiree health insurance; and that to him "status quo was meant to how we had been doing it. And current contract language would mean absolutely no change." (transcript page 126)

Subsequently, Carlson gave the following testimony:

JUDGE WEST: But [']live with the status quo['], if I understand what's going on here, we have two mistakes, the first being before executing the 2002 agreement, someone didn't make sure that the side agreement spoke to the Union's concerns. In other words, there wasn't movement of the date from '97 to 2002. That's the first mistake, right?

THE WITNESS: Yes.

JUDGE WEST: And now in 2007, you're saying status quo. Status quo to the 2002 agreement, status quo to an agreement that didn't move the date in the first place, that's the second mistake. Is that correct?

THE WITNESS: That would be true. [Transcript page 126]

Bartholomew testified that a ratification meeting was held for the 2007-2012 proposed contract on March 31, 2007; that as President of the Local, he chaired the meeting; that the issue of retiree healthcare insurance was raised at the ratification meeting when one of the members asked him if they still had the retiree healthcare fringe benefit; and that he responded "yes" (transcript page 152).

Bartholomew gave an affidavit to the Board on January 18, 2008, General Counsel's Exhibit 5. As here pertinent, it reads as follows:

I am a forge helper for Wyman-Gordon at its North Grafton facility. I have worked for the Co. for 28 years. I am the President of Steelworkers Local 2285. Under the 1995-1997 contract, employees who were hired on or after April 1, 1992 were not eligible for retiree health benefits, but employees hired before that day were eligible for retiree health benefits as long as they lived. In the 1997-2002 contract a side letter was agreed to which provided up to five years of retiree health coverage for employees who 'Retired with a pension from May 1, 1997 and thereafter, must be age 50 or older in 1997 and have at least 10 years of service.' The successor contract was for the period 2002-2007. Agreement was reached on the 2002-2007 contract on March 22, 2002 (this was the 8th bargaining session.) Joe Carlson, the International Rep was our chief negotiator in these negotiations. I took part in these negotiations (I was the Local's Vice-President at the time). At a Union caucus close to midnight on March 22, Dave Soucy, our grievance man, brought up the issue of the retiree health benefit. When we resumed negotiations, Carlson said that retiree health benefits were very important to the employees. He said we need to move the dates and then we would have an agreement. Mark Damien, the V.P. of Human Resources, said 'O.K.' or 'Agreed' or something similarly short and to the point. I kept bargaining notes, but I did not write down anything about this exchange concerning retiree health benefits. In our handout to the employees at the ratification vote it said. "Retiree health insurance - five year bridge remains in effect.' The Employer drafted the 2002-2007 side letter which included the retiree health benefits provisions. However, the Co. failed to revise the above-quoted language to read 'must be age 50 or older in 2002,' which is what it should have read. The Employer only sent the Union a copy of the 2002-2007 side letter in October, 2003. I reviewed this document but I have no explanation as to why I failed to detect the above mistake. I agree that Jim Carota and Robert Jakubasz would have qualified for retiree health benefits under the 2002-2007 contract on the Union's understanding of it. However, the Union only learned that they had not received these benefits from discussions with the Employer over this issue in about October, 2007. Under the Employer's view of retiree health benefits in 2007-2012, about 10 employees would qualify. On the Union's view an

> additional 51 would qualify. There are about 470 employees in the unit. There were from 10 to 12 bargaining sessions over the 2007-2012 contract. In our original proposals in these negotiations our only proposal concerning health was health benefits for all employees for life. At the last bargaining session, which was held on March 30, 2007, we withdrew this proposal. In a sidebar that day between me, Carlson, Dave Lewis (the employer's Vice-President of H.R.), the Employer's attorney, and another Employer figure whose identity I cant' recall, Carlson asked if the five-year bridge remained in effect and either Lewis or the Employer's attorney (or both) said, 'Yes.' Our handout to the employees at the ratification vote the next day said the same thing about retiree health benefits as was said in the 2002 handout. About a week after the ratification of the 2007-2012 contract, employee Tom Sweeney brought to the Union's attention the fact that the Employer had just told him that when he qualified for a pension he would still not get retiree health benefits. This was the first time we had notice of what the Employer's 'understanding' of what the retiree health entitlement is under the contract. The Employer only sent us its draft of the 2007-2012 health care benefits side letter in July, 2007.

Analysis

Respondents have filed a Motion to Strike portions of the brief of Counsel for General Counsel for alleged misstatements of facts and law. First, Respondents contend

> Inexplicably and without any citation, the General Counsel claims that 'Changing the date as the Union proposes would extend retiree health benefits to a substantially larger number of new retirees than the Employer's formulation would.' ... [Citation to General Counsel's brief omitted] There is absolutely no evidence in the record regarding the number of retirees who would receive retiree health benefits if the correct eligibility date was inserted into the side letter. Since there was no evidence regarding this issue provided at the hearing, this misstatement should be struck from the brief. Moreover, the Judge should not accept this unsupported proposition as a reflection of what could happen if the correct eligibility date is inserted nor should the Judge rely on this unsupported claim when ruling on whether there was a meeting of the minds.

As noted above, the Board affidavit (General Counsel's Exhibit 5) of Bartholomew, who is President of Local 2285, contains the following: "[u]nder the Employer's view of retiree health benefits in 2007-2012, about 10 employees would qualify. On the Union's view an additional 51 would qualify." Other than to point out that Respondents are in error with respect to this assertion, there is no need to rely on what is in or what may have been left out of the two above-described affidavits in deciding the outcome of this proceeding.

Respondents then go on to allege eight additional misstatements on the part of Counsel for General Counsel in his brief. Under the Administrative Procedure Act, 5 U.S.C. §557(c)(1), and under section 102.42 of the Board's Rules parties may submit a brief which contains proposed findings and conclusions. In other words, a brief is argument. It is how that party views the evidence of record. Respondents may not view the evidence the same way. In light of the conclusion reached in the next-preceding paragraph, it has not been shown that any portion of the brief of Counsel for General Counsel should be stricken. Accordingly, Respondent's Motion to Strike Portions of Counsel for General Counsel's brief is hereby denied.

As noted above, the complaint alleges that Respondents have failed and refused to bargain collectively with WG in violation of the Act by failing and refusing to execute a written contract containing an agreement reached on March 30, 2007.

Linville's testimony that WG wanted "a decline and ultimately elimination of the retiree healthcare benefit once … there … [was] no longer anybody that was …, 50 in 1997" (transcript page 63) is not refuted. Carlson conceded that for economic reasons WG did not want "to have to cover everybody all the way out." (transcript page 100) On March 22, 2002, which was the last day of negotiations on the 2002-2007 contract, Carlson said that there was no discussion of retiree health and he wanted these benefits to be carried forward and remain intact.[15] WG agreed. The testimony that some of Respondent's witnesses gave about what was said at this negotiation session regarding retiree healthcare is equivocal. WG's and the Unions' notes about what was said at this negotiation session are almost identical. The notes are credited. WG and the Union agreed that in the 2002-2007 collective-bargaining agreement the retiree healthcare benefits would be carried forward and remain intact. The language regarding retiree healthcare in the 1997-2002 collective-bargaining agreement was carried forward into the 2002-2007 collective-bargaining agreement and it remained intact.[16]

In *Vallejo Retail Trade Bureau*, 243 NLRB 762, 767 (1979) the Board, as here pertinent, affirmed the conclusion of the Administrative Law Judge that

> … the expression 'meeting of the minds' in contract law does not literally require that both parties have identical subjective understandings on the meaning of material terms in the contract. Rather, subjective understanding (or misunderstandings) as to the meaning of the terms which have been assented to are irrelevant, provided the terms themselves are unambiguous 'judged by a reasonable standard.' [Citations omitted.]

As pointed out on page 79 of L. Simpson's HANDBOOK OF THE LAW OF CONTRACTS, HORNBOOK SERIES, West Publishing (1954),

> *Effect of Acceptor's Failure to Inform Himself of Content of Offer*
>
> Where an offeree signs a clear unequivocal written contract, negligently failing to inform himself … [of the] content of the contract, as by failing to read it before signing, he will be bound by its terms though he was under a misapprehension as to the extent of such terms….14 By signing, the offeree has made apparent to the offeror that he accepts the proposal contained in the writing with knowledge of its contents. One who has induced an offeror to believe that his offer has been accepted is in no position later to deny liability on the ground of mistake induced by his own negligence. [Footnote omitted] Not actual mental assent, but assent as objectively manifested is the operative test of a contract.
>
> _____
>
> 14 Restat. Contracts, Sec. 70.

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[15] As noted above, WG's notes of this bargaining session, General Counsel's Exhibit 2, contain the following: " … there was no discussion of these benefits and they carry forward and remain intact." Respondents' notes of this bargaining session, Respondent's Exhibit 4, contain the following: " … understand no discussion for changing, comes forward and remains intact."

[16] The meaning of "carried forward" is just that, namely "carried forward into the … [subsequent collective-bargaining] agreement." *Teamsters Local 287 (Reed & Graham)*, 272 NLRB 348, 349 (1984). And with respect to "remain intact," it is noted that WEBSTER'S NEW WORLD DICTIONARY, THIRD COLLEGE EDITION, 1988, defines "remain," as here pertinent, "to continue; go on being," and "intact" to mean "with nothing missing or injured; kept or left whole; sound; entire; unimpaired."

What happened in 2002, namely the signing of the 2002-2007 collective-bargaining agreement by the Union, trumps any alleged, unwritten, unilateral understanding (or misunderstanding) the Union claims it had prior to this signing with respect to retiree healthcare. Here, there was no mutual mistake regarding the 2002-2007 collective-bargaining agreement. All along WG wanted to eventually eliminate retiree healthcare. That intent remained constant. WG did not change the pertinent eligibility retiree healthcare language from 1997 through the 2002-2007 and 2007-2012 collective-bargaining agreements. In my opinion, there was no unilateral mistake on the part of the Union. As pointed out by the Administrative Law Judge, with Board approval, in *North Hills Office Services*, 344 NLRB 523, 525 (2005)

> In the case of unilateral mistake, there is considerable authority to the effect that if in the expression of the intention of one of the parties to an alleged contract there is error, and that error is unknown to and unsuspected by the other party, that which was so expressed by the one party and agreed to by the other is a valid and binding contract which the party not in error may enforce. A party to a contract cannot avoid it on the ground that he made a mistake where the other contractor has no notice of such mistake and acts in perfect good faith. *Health Care Workers Local 250,* 341 NLRB 1034, 1040 (2004), …; *Apache Powder Co.*, 223 NLRB 191 (1976).

So even if there was a unilateral mistake on the part of the Union in 2002, which I do not believe is the case, the Union cannot avoid the 2002-2007 collective bargaining agreement or its aftermath ("current contract language" in the 20027-2012 collective-bargaining agreement negotiations with respect to the pertinent retiree healthcare language).

With respect to the 2007-2012 collective-bargaining agreement, Carlson testified that he told Linville at the end of the negotiations on that contract that the Union could live with the status quo on the retiree healthcare insurance. Linville testified that at the last negotiating session, March 30, 2007, the parties agreed with respect to retiree healthcare that it was current contract language. WG's negotiating notes contain the following: "3/30/07, RL: We owe you a response to your proposals. … - CCL [current contract language] on retire health care."

WEBSTER'S NEW WORLD DICTIONARY, THIRD COLLEGE EDITION, 1988, defines status quo to mean the existing state of affairs at a particular time. Linville's testimony regarding what was said at the March 30, 2007 meeting was unequivocal. On the other hand, Carlson's equivocal testimony - namely that he did not believe and he did not remember - about what Linville said does not refute what Linville testified he said on March 30, 2007. Additionally, WG's notes corroborate Linville regarding what he said on March 30, 2007. I credit the testimony of Linville regarding what was said about retiree healthcare at the end of the negotiation sessions for the 2007-2012 collective bargaining agreement. I do not credit the equivocal testimony of Carlson on this point. The parties agreed to keep the current contract language regarding retiree healthcare. Even if Carlson's differentiation between the meanings of status quo vis-à-vis current contract language were to be accepted, the asserted differentiation - in the context of the circumstances existing here - would be meaningless. Carlson asserts that to him "status quo was meant to how we had been doing it. And current contract language would mean absolutely no change." (transcript page 126) In light of the approach taken for the 2002-2007 collective-bargaining agreement, the terms are not different in any meaningful way.[17]

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[17] As pointed out by the Board in *Windward Teachers Assn.*, 346 NLRB 1148, 1150 (2006)

> The expression 'meeting of the minds' is based on the objective terms of the contract, not on the parties' subjective understanding of those terms. See *Hempstead Park Nursing Home,* 341 NLRB 321, 323 (2004). It does not require that both parties

Continued

If one were to accept the assertions of certain of Respondents' witnesses regarding their awareness when they (a) signed the contract in 2002 and (b) agreed to the subsequent contract in 2007, Respondent would still be bound by the 2002-2007 collective-bargaining agreement and its aftermath (the parties agreement to keep the current contract language, regarding eligibility for retiree healthcare, at the end of the 2007 negotiations.) I do not credit the assertions that Respondents, when they signed the contract in 2002, were not aware of what they were agreeing to with respect to retiree healthcare. I do not credit the assertions that Respondents, when they agreed to the 2007-2012 contract, were not aware of what they were agreeing to with respect to retiree healthcare. Could it be that after Respondents agreed to the 2007-2012 collective-bargaining agreement someone brought to Respondents' attention that not just a few people would be affected but many would be affected by the eligibility retiree healthcare provision during the term of the 2007-2012 agreement? All we know for sure is that the Respondents, after reaching agreement, refused to sign the 2007-2012 collective-bargaining agreement. Perhaps, to their way of thinking, it would be easier for Respondents to explain to their membership that the Federal government is requiring the Union to sign the 2007-2012 collective-bargaining agreement, rather than to have to tell their membership that they knowingly agreed to the involved terms. The parties reached agreement on the 2007-2012 collective-bargaining agreement and it was ratified.

Conclusions of Law

By since about October 29, 2007 failing and refusing to execute the March 30, 2007 collective-bargaining agreement, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(3) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Respondents shall forthwith execute the collective bargaining agreement reached with the Employer on March 30, 2007; and shall give retroactive effect to the provisions of said collective bargaining agreement from April 1, 2007.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[18]

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have an identical understanding of the agreed-upon terms. See *Ebon Services,* 298 NLRB 219, 223 (1990), enfd. mem. 944 F.2d 897 (34d Cir 1991); *Longshoremen ILA Local 3033 (Smith Stevedoring)*, 286 NLRB 798, 807 (1987). Where the parties have agreed on the contract's actual terms, disagreements over the interpretation of those terms do not provide a defense to a refusal to sign the contract. See *Teamsters Local 617 (Christian Salvesen),* 308 NLRB 601, 603 (1992).

[18] 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.

ORDER

The Respondents, their officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to execute the above-described March 30, 2007 written collective bargaining agreement.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Execute forthwith the written collective bargaining agreement embodying the final and binding agreement reached with the Employer on March 30, 2007.

(b) Give retroactive effect to the provisions of the collective bargaining agreement reached with the Employer on March 30, 2007.

(c) Within 14 days after service by the Region, post at its Local 2285 union office in Milford, Massachusetts copies of the attached notice marked "Appendix."[19] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by Wyman-Gordon at its Worcester, Grafton, and Millbury, Massachusetts facilities at any time since October 29, 2007.

(d) Sign and return to the Regional Director sufficient copies of the notice for posting by Wyman-Gordon Company at all places where notices to employees are customarily posted.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C., September 11, 2008.

_____
Judge John H. West
Administrative Law Judge

[19] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail and refuse to sign the written collective-bargaining agreement containing the final and binding agreement (for the involved bargaining unit employees of Wyman-Gordon at its Worcester, Grafton, and Millbury, Massachusetts facilities) reached with that employer on March 30, 2007.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL immediately sign the written collective bargaining agreement containing the final and binding agreement (for the involved bargaining unit employees of Wyman-Gordon at its Worcester, Grafton, and Millbury, Massachusetts facilities) reached with that employer on March 30, 2007.

WE WILL give retroactive effect to the provisions of the collective-bargaining agreement reached with Wyman-Gordon on March 30, 2007.

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY AND ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY AND ALLIED INDUSTRIAL AND SERVICE WORKERS, LOCAL 2285

Dated _____ By _____
(Representatives) (Titles)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

10 Causeway Street, Boston Federal Building, 6th Floor, Room 601
Boston, Massachusetts 02222–1072
Hours of Operation: 8:30 a.m. to 5 p.m.
617-565-6700.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 617-565-6701.