

**United Steelworkers of America, AFL-CIO-CLC
and United Steelworkers of America, AFL-
CIO-CLC, Local Union No. 5503 and Ingersoll-Rand Company. Case 22-CB-5104**

17 June 1985

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS**

On 25 January 1985 Administrative Law Judge William A. Gershuny issued the attached decision. The Respondents filed exceptions and a supporting brief, and the Charging Party filed a reply brief.¹

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondents, United Steelworkers of America, AFL-CIO-CLC and United Steelworkers of America, AFL-CIO-CLC, Local Union No. 5503, Bethlehem, Pennsylvania, and Phillipsburg, New Jersey, respectively, their officers, agents, and representatives, shall take the action set forth in the Order.

¹ The General Counsel's unopposed motion to strike an unsigned document entitled "Exceptions to the Decision" is granted.

² The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

DECISION

STATEMENT OF THE CASE

WILLIAM A. GERSHUNY, Administrative Law Judge. A hearing was conducted in Newark, New Jersey, on November 26, 1984, pursuant to a complaint issued September 13, 1984, based on a May 14, 1984, charge, alleging a union refusal, in violation of Sections 8(b)(3) and 8(d) of the Act, to execute a written contract embodying agreed-upon terms.

On the entire record, including my observation of witness demeanor, I make the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. JURISDICTION AND LABOR ORGANIZATION

The complaint alleges, the answer as amended admits, and I find that Charging Party Ingersoll-Rand Company is an employer subject to the Act and that Respondents

are labor organizations within the meaning of Section 2(5) of the Act.

II. UNFAIR LABOR PRACTICE

The facts are simple and largely undisputed.

For many years, Local 5503 has represented a unit of production and maintenance employees, presently numbering 750, at Ingersoll-Rand's Phillipsburg, New Jersey plant. The most recent contract expired October 15, 1983.

Negotiations on a successor contract began on September 8, 1983, with the Employer proposing, *inter alia*, a number of changes in the current contract's medical benefits package which, as in the past, covered both active employees and retirees. Union negotiators objected to what they perceived as a reduction in health benefits for retirees, no agreement was reached, and the employees struck on October 16.

On November 1, the Employer put into effect its proposals for retiree medical benefits changes and so notified the Union and all retirees. To date, the Union has filed no unfair labor practice charge or court action challenging this benefit change.

Negotiations resumed during the strike on November 2, and on November 10 the negotiators reached tentative agreement on all terms of a contract which would be submitted to the membership on November 12 for ratification. The Employer, at the Union's request, prepared a summary of contract changes agreed upon and submitted it to the union negotiators on November 11, the day before the ratification vote. This 12-page document, entitled "Highlights of the Settlement Offer from Ingersoll-Rand," states on the first page that the Employer's final offer includes a "new medical plan formula covering the same services and supplies as today"; on the second page, a detailed summary of that plan as it impacts on "employees who have *already retired*"; and, on the third page, a similar summary relating to "employees *retiring under the new contract*."

The union officials did not protest to the Employer the inclusion of those provisions in the summary, they distributed the document to all persons at the ratification meeting prior to the vote, and they did not inform the membership that it had not agreed to changes in retiree medical benefits. Present at this meeting were active employees and retirees, although retirees were not eligible to vote.

The union negotiators did not support the contract, but made no recommendations to the membership. Both active employees and retirees opposed changes in the medical benefits plan, but the contract was ratified and the strike ended by a 35-vote margin.

Thereafter, Local 5503 refused to execute a memo of agreement submitted by the Employer unless retiree benefit changes were deleted.

In this proceeding, Local 5503 contends that it lawfully refuses to execute the contract because retiree benefit changes had not been a part of the November 10 tentative agreement which the membership ratified on November 12.

The testimony of two of the Union's 10 negotiators was presented.

Chief Negotiator and Local Union President Yoder testified that he had not read that portion of the "Highlights" document referring to retiree benefit changes before having it distributed to the members; that he did not use it as a reference in orally describing the contract changes to the members at the November 12 meeting; that changes in retiree benefits were not discussed and, hence, not agreed to at the November 1 negotiating session; that the parties agreed on November 10 that any proposal not agreed to was "dropped"; that, earlier, when the Employer unilaterally implemented the retiree changes effective November 1, retirees were told by Yoder that the Union did not have to negotiate over retiree benefits and that it would "take them to court"; that changes in retiree benefits were not discussed at the November 12 ratification meeting because retirees "thought" the court would settle that problem; and that suit had been filed shortly thereafter in the district court.

Chief Shop Steward Garcia (chairman of the negotiating committee's language subcommittee) testified that benefit changes for active employees but not retirees were discussed on November 10; that he had read the "Highlights" document before the vote, but said nothing about the reference to retiree benefit changes in the document given to the membership; and that he thought the Employer's proposal for retiree benefit changes had been dropped on November 10, even though the Company had begun to implement those very changes only 10 days earlier.

I am unable to credit their testimony that the November 10 agreement did not include a proposal for changes in retiree health benefits. Based on my observation of their demeanor on the witness stand, I had the clear impression that each was evasive and less than candid. Yoder's testimony was disturbingly vague for a man of his position and experience and it was contradicted by the statement of his counsel (no litigation had yet been commenced) and by his August 15, 1984 affidavit (he *did* use "Highlights" as a reference in explaining contract changes on November 12 to the membership; he was "receiving pressure inside the Union not to sign the agreement no matter what"; and he tried to make other contract changes after ratification). Equally important, however, is the fact that his conduct and that of Garcia on November 12 at the ratification meeting belies their testimony at the hearing that retiree benefit changes had not been agreed to on November 10—experienced union officials do not, without objection or comment, give to the membership just before a ratification vote a document entitled "Highlights of the Settlement Offer from Ingersoll-Rand," whose first 3 pages pointedly refer to retiree benefit changes, unless that document accurately reflects the terms of the contract they had in fact agreed to submit to the membership for ratification.

At the same time, I credit the testimony of Boylan, the Employer's director of industrial relations, which was

clear and convincing, based on my observation of his demeanor on the stand, and consistent with the undisputed facts concerning the Company's one-package proposal covering benefit changes for both employees and retirees and the Union's unrestricted use, for purposes of the ratification vote, of the "Highlights" document which details such contract changes.

Accordingly, I find that the November 10 agreement included retiree benefit changes and conclude that the Union's refusal to execute a written contract embodying those changes is violative of Sections 8(b)(3) and 8(d) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹

ORDER

The Respondents, United Steelworkers of America, AFL-CIO-CLC and United Steelworkers of America, AFL-CIO-CLC, Local Union No. 5503, their officers, agents, and representatives, shall

1. Cease and desist from refusing to bargain in good faith with Ingersoll-Rand Company by refusing to sign a collective-bargaining agreement embodying the terms and conditions of employment on which agreement was reached with Ingersoll-Rand Company on November 10, 1983, including revised retiree medical benefits.

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

(a) Sign a written contract embodying the terms and conditions of employment agreed upon with Ingersoll-Rand Company on November 10, 1983, including revised retiree medical benefits.

(b) Post at its business offices and meeting halls copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to 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.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

¹ 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.

² 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 MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain in good faith with Ingersoll-Rand Company by refusing to sign a collective-bargaining agreement embodying the terms and conditions of employment on which agreement was reached

with Ingersoll-Rand Company on November 10, 1983, including revised retiree medical benefits.

WE WILL sign a written contract embodying the terms and conditions of employment agreed upon with Ingersoll-Rand Company on November 10, 1983, including revised retiree medical benefits.

UNITED STEELWORKERS OF AMERICA,
AFL-CIO-CLC AND UNITED STEEL-
WORKERS OF AMERICA, AFL-CIO-CLC,
LOCAL UNION No. 5503