

Passavant Health Center and Elizabeth Major and Donna Jean Weiss, Petitioners and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 538. Cases 6-RD-881 and 6-RD-882

10 February 1986

**RULING ON ADMINISTRATIVE
APPEAL AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS
DENNIS, JOHANSEN, AND BABSON**

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 538 (the Union) is the certified collective-bargaining representative of two separate units of employees employed at the Employer's Zelenople, Pennsylvania health care facility. The first of these units consists, inter alia, of licensed practical nurses and nurses aides, and the second of service and maintenance employees.

In late 1983 the Union and the Employer began negotiations for a new collective-bargaining agreement covering both units to replace their existing contract which was due to expire on 31 October of that year. Failing to reach agreement, approximately 2 weeks after the existing contract expired, the employees went on strike. The Employer hired replacements.

Subsequently, pursuant to charges filed by the Union in Case 6-CA-16988, the Regional Director issued a complaint on 3 February 1984 which alleged that the Employer had engaged in several violations of Section 8(a)(1) and (5) of the Act. Specifically, the complaint alleged that since November 1983 the Employer had violated Section 8(a)(5) of the Act by refusing to provide the Union with certain necessary and relevant information it requested during the negotiations and the subsequent strike; and Section 8(a)(1) of the Act by telling employees that they could not return to work following a strike unless they resigned from the Union, that unless they resigned from the Union and returned to work by a date certain they would have no jobs, and that if they went on strike its contract proposal to the Union "would go into the garbage."

Approximately 4 months later, on 1 June 1984, the petitions in Cases 6-RD-881 and 6-RD-882 were filed seeking to decertify the Union as collective-bargaining representative of both units. Because of the outstanding complaint in Case 6-CA-16988, on 21 June 1984 the Acting Regional Director dismissed the petitions subject to reinstatement upon final disposition of the complaint allegations. A three-member panel of the Board denied the Pe-

tioners' requests for review of the Acting Regional Director's dismissal on 15 August 1984.¹

Thereafter, on 15 March 1985, the Union and the Employer entered into a non-Board strike settlement agreement. Under the terms of the agreement the Employer agreed to execute a new collective-bargaining agreement covering both units effective the same day, and the Union in turn agreed to withdraw all of its unfair labor practice charges against the Employer.² The Regional Director subsequently approved withdrawal of the charges subject to the execution of a separate, informal Board settlement agreement providing that the Employer would post a 60-day notice to employees stating that it would not refuse to supply the Union with necessary and relevant information, that it would bargain with the Union, and that it had executed a collective-bargaining agreement with the Union. This settlement agreement, which also contained a nonadmission clause, was executed by the parties on 1 April 1985 and approved by the Regional Director 2 days later.

Thereafter, on 5 April 1985, the Regional Director issued orders denying the Petitioners' pending motions to reinstate the decertification petitions. The Regional Director denied the motions on the ground that "inasmuch as the parties have now negotiated and executed a new collective-bargaining agreement effective 15 March 1985, the general contract bar rules apply and the petitions [are] barred."

The Petitioners subsequently filed timely requests for review of the Regional Director's orders, which the Board granted on 8 August 1985.

Having fully considered the Regional Director's orders, the Petitioners' briefs in support of their requests for review, and the Union's brief in opposition, we reverse the Regional Director. The Board held in *City Markets*, 273 NLRB 469 (1984), that the original filing date of a petition, rather than the date of the request for its reinstatement, will con-

¹ Chairman Dotson, dissenting, would have granted review and reinstated the petitions and held them in abeyance pending final disposition of the unfair labor practice allegations.

² Pursuant to charges filed by the Union in Cases 6-CA-17480 and 6-CA-17590, by the date of the settlement the original complaint in Case 6-CA-16988 had been amended to allege various additional violations by the Employer of Sec. 8(a)(1) and (5) of the Act. The amendments alleged that the Employer had violated Sec. 8(a)(5) of the Act since mid-June 1985 by refusing to provide the Union with certain additional necessary and relevant information during the strike; and Sec. 8(a)(1) of the Act by telling employees in November 1983 that it did not need a union and would not have the Union return, by telling employees in April 1984 that it decided not to recall union stewards and officers, and by telling employees in late May 1984 that it had instructed its supervisors to prepare false documents to support its position in connection with the investigation of an unfair labor practice charge. Under the terms of the settlement, the Union agreed to withdraw all of these charges as well as its charges in Case 6-CA-16988.

trol for purposes of applying the Board's contract-bar rules where the petition was dismissed subject to reinstatement after blocking charges have been resolved. Here, the petitions were originally filed on 1 June 1984, after the parties' existing contract had expired on 31 October 1983, and well before the new contract was executed on 15 March 1985. Thus, contrary to the Regional Director's finding, there is clearly no contract bar to reinstating the petitions. Accordingly, insofar as all complaint allegations have been withdrawn, and the terms of the settlement agreement satisfied,³ we find that the petitions should be reinstated.

ORDER

The National Labor Relations Board orders that the petitions in Cases 6-RD-881 and 6-RD-882 be reinstated and directs the Regional Director to resume processing them in accordance with Section 11730.8 of the Board's Casehandling Manual,

³ Cf. *City Markets*, supra. Although the instant case, unlike *City Markets*, involves a settlement agreement, we find that fact does not require a different result here because the settlement agreement does not constitute an admission by the Employer that it committed any unfair labor practices. See, e.g., *Carlsen Porsche Audi*, 266 NLRB 141, 151 fn 19 (1983).

and to notify the parties that such action has been taken.

MEMBER JOHANSEN, dissenting.

Contrary to my colleagues, I would not order the decertification petitions reinstated. Although the Union requested withdrawal of all unfair labor practice charges, which the Board approved as part of an informal Board settlement, it is clear that the Union did so only on the assumption that the Employer would be required to recognize and bargain with it. Thus, both the non-Board strike settlement the parties executed and the subsequent informal Board settlement provided that the Employer would bargain and execute a new collective-bargaining agreement with the Union. To now reinstate the decertification petitions would for all practical purposes deprive the Union of what it settled for.¹ Further, it would clearly discourage unions from agreeing to any such settlements in the future.

Accordingly, I dissent.

¹ At the very least, therefore, the Union should have the option of having the informal Board settlement set aside in which case the unfair labor practice complaint would be reinstated and the petitions would be "blocked" for that reason.