

Yarway Corporation and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 169. Case 4-CA-13928

28 September 1984

ORDER REMANDING PROCEEDING TO THE REGIONAL DIRECTOR

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

Upon a charge filed by the Charging Party on 24 August 1983, the Regional Director for Region 4 of the National Labor Relations Board issued a complaint on 30 April 1984 against the Company, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act by failing and refusing to reinstate employees William Brady and Warren Duckrey to their former or substantially equivalent positions because they engaged in an economic strike

On 29 May 1984 the Respondent filed a "Motion for Summary Judgment and To Dismiss the Complaint" and supporting memorandum with attached exhibits. The Respondent contends that the facts do not establish an unfair labor practice, that an arbitrator considered and resolved a contractual issue factually parallel to the instant unfair labor practice issue, and that the Board should defer to the arbitration decision in light of *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955), and *Olin Corp.*, 268 NLRB 573 (1984)

On 31 May 1984 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause

On 14 June 1984 the Charging Party filed an opposition to the Motion for Summary Judgment asserting that the arbitrator did not consider the statutory issues, the contract and unfair labor practice issues are not factually parallel, and the arbitration decision is contrary to Board policy

On 14 June 1984 the General Counsel filed a response to the Notice to Show Cause in which he asserts deferral to the arbitrator's award is appropriate and that the complaint and charge should be dismissed, and requests that the Board remand the proceeding to the Regional Director. On 21 June 1984, the Charging Party filed a "Response and Motion to Strike Counsel for the Acting General Counsel's Response to the Order to Show Cause and Request that Proceeding be Remanded to Regional Director." The Charging Party alleged, inter alia, that it did not argue the statutory issues during arbitration in reliance on representations of counsel for the General Counsel that the statutory issue would be pursued through Board processes

Having duly considered the matter, the Board grants the General Counsel's request to remand the case to the Regional Director,¹ and the above proceeding is remanded to the Regional Director for further appropriate action

¹ The Board, therefore, finds it unnecessary to rule on the Respondent's Motion for Summary Judgment