

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

Advice Memorandum

DATE: December 10, 2003

TO : Joyce Ann Seiser, Acting Regional Director
Region 30

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

SUBJECT: Milwaukee Dustless Brush Company
Case 30-CA-16394-1

530-6033-7008
530-6067-0150
530-6067-2020
530-6067-2060-1800
530-6067-2060-8400
530-6067-2060-8800
530-6067-2080-6200

This case was submitted to Advice to determine whether: (1) the Employer's "final offer" was a good faith offer; (2) whether the Employer was privileged to revert to this final offer, when the Union rejected-- by way of non-ratification votes-- subsequent modifications of this offer; and (3) whether the parties were at impasse when portions of that final offer were implemented. We conclude that the Employer's "final offer" was a substantively good faith proposal, that the Employer otherwise bargained in good faith, that the Employer was privileged to revert to this good faith offer, following the Union's rejection of subsequent modifications of said offer, and that the parties were at impasse when portions of this proposal were implemented. Accordingly, the charge should be dismissed, absent withdrawal.

FACTS

The Employer is a small, family owned manufacturer of industrial brushes with approximately 28 bargaining unit employees. The Union has represented these employees since 1990. The most recent contract between the parties was due to expire on June 30, 2002.

Bargaining for a successor contract began on June 11, 2002. The Employer began negotiations by reading a statement that made it clear that changes were needed in the upcoming contract due to its dire economic condition. On June 27, the parties agreed to extend the contract to December 31, 2002, except that during the extension, there would be no wage increase and the Employer would no longer make contributions to the MSAs (medical savings accounts). During the June negotiations, the Employer explained its

financial hardships and provided information and documentation to the Union regarding its financial situation. The Union acknowledged that the Employer was facing financial difficulties and needed drastic changes.

Bargaining was suspended from June 27 until December 9, 2002. On December 9, the parties resumed negotiations. The Company's first proposal made several key changes to the previous contract including the following:

- The Employer would have the right to hire part time employees, who would work a maximum of 28 hours per week and who would not be subject to the Union security clause.
- There would be no guarantee of the number of hours an employee would work.
- Overtime would only be paid after 40 hours in a week.
- Vacations would be reduced to a maximum of 3 weeks.
- The contractual limitation on the Employer's right to subcontract would be removed.¹
- No full time employee would be laid off while part time employees were working.
- Change the Medical Plan language to permit the Employer to change insurance carriers and plans provided the coverage and cost to employees is reasonably comparable to the current plan.
- Reduce the number of personal hours from 34 to 17.
- Reduce the hourly wage to employees' current rate up to a maximum of \$16.50 for Team Leaders and \$11.50 for all other employees.²
- Freeze Pension plan benefit accrual as of December 31, 2002.

Other aspects of the previous contract would remain the same, including a no strike or lockout clause.

On December 10, 2002, the parties met again. The Union rejected the Employer's initial proposal except for

¹ The expired contract stated in the management rights clause that the Employer could not subcontract work if it would result in the layoff of employees.

² The pay rates for team leaders were between \$14.28 and \$17.11 and the pay rates for other employees were between \$9.00 and \$19.38. The total average wage was \$12.30 and with Employer's offer the total average wage was reduced to \$11.19.

the following areas: the Union proposed different break times, agreed to becoming smoke-free and agreed to the Employer's proposed dental plan. The Union would not agree to any of the key changes noted above.

Later in that session the Employer made another proposal. The Employer's new proposal made the following modifications³:

- Overtime would be paid after *10 hours in a day and 40 hours in a week.*
- The Employer agreed to the Union's proposed break periods.
- No full-time employee would be laid off or *scheduled for less than 34 hours per week while part-time employees are working.*
- The Employer proposed that it would have the right to change insurance carriers and plans during the term of the agreement provided it consults with the Union before making these changes. **The Employer removed the language about the costs and benefit levels being comparable to the existing plan.**

All other aspects of the Employer's original proposal remained the same.

The next bargaining session was held on December 16, 2002. The Union began the meeting by stating that the Employer's proposal was discussed with the Union membership. The Union reiterated past concessions it had made, but continued to state that it would not agree to any of the key changes that the Employer had proposed and stated that the Employer was looking for too many concessions. Following an Employer caucus, the Employer gave the Union another proposal with a few changes. In response to the Union's demand for a one-year contract, the Employer offered a two-year contract, with a clause that the Union could reopen the contract after a year if the Employer's pre-tax profit exceeded 5% of total annual sales. In response to the Union's concern about health insurance language, the Employer added language to the health insurance section that the Employer would have to bargain with the Union before making any health insurance changes. Lastly, the Employer included in its proposal, for the first time, a clause that the Employer's decision

³ The information in italics is new to the Employer's proposal. The information in bold was removed from the Employer's initial proposal.

to discipline or terminate an employee for productivity issues would not be subject to arbitration.⁴

Later at this same bargaining session, the Union presented another proposal. Among other things, it agreed to the Employer's health insurance language and proposed reduced vacation and time off as well as reduced wage rates although to levels higher than the Employer's proposed reductions. The Union would not, however, agree to any of the Employer's other key items. After a caucus, the Employer rejected the Union's counterproposal and stated that its most recent offer was its "final" offer.

The next day the written final offer was sent to the Union (the "December 16 offer"). This offer contained the following provisions, which are the key issues in these negotiations:

- The Employer may hire part time employees to work a maximum of 28 hours and the part time employees would not be required to join the Union.
- No guaranteed number of hours, although no full time employee would be laid off or work less than 34 hours when part time employees are working.
- No limitation on subcontracting.
- The Employer could discipline or terminate employees for productivity reasons and would not be subject to arbitration.
- Wages for Team Leaders would be a maximum of \$16.50 and for all other employees the maximum would be \$11.50.
- Pension plan benefit accrual would be frozen as of December 31, 2002.

On December 19, 2002, the Employer's December 16 offer was voted down by the Union membership 25 to 0. At a meeting on December 23, the Union informed the Employer that the membership had rejected the Employer's proposal and asked the Employer to reconsider its final offer. The Employer refused and stated that it felt the parties were at impasse. The Union disagreed. Another meeting was set for December 30.

After the December 23, 2002 meeting the Employer sent the Union a recap of negotiations thus far. The Employer declined to change its offer. The Employer stated that it

⁴ The Employer claims that this was done because of the statement the Union made pertaining to it arbitrating and winning every productivity-based discipline and termination.

was willing to meet on December 30 to listen and respond to the Union's questions and proposals, but would not change its final offer.

No agreement was reached at the December 30 meeting. The Employer suggested the use of a mediator. The two parties met with federal mediator Gary Lisiecki on January 6, and 15, 2003.⁵ The parties discussed productivity standards and the Employer's desire to achieve \$100,000 in cost savings. The Union made a new proposal on economics but refused to agree to the Employer's other key proposals. When the Employer refused to move on those issues, the Union withdrew its economic proposal. As a result of those meetings, on January 23, the Employer made another "final" offer to the Union (the "January 23 offer"). That offer generally tracked the December 16 offer on the key issues but the Employer increased its wage offer by adopting the Union's proposed three-tiered wage scale of \$16.50, \$13.00 and \$11.50.⁶

The parties discussed production standards at a February 4 session and met again on February 13. The Union presented the Employer with a counterproposal. The Union proposed to limit the number of hours part-time employees could work to 20 hours a week and to require part-time employees to join the Union after 240 hours. The Union proposed a maximum of 4 weeks of vacation and added a mandatory progressive discipline process for productivity-based discipline. The Union otherwise rejected key provisions of the January 23 offer. The Union said that it would reject the Employer's last proposal and get strike authorization.

During this session, the Employer gave the Union a handwritten letter that limited the duration the January 23 offer would be in effect:

In an effort to get an agreement the Company is setting February 20, 2003 as the deadline for accepting the final offer made to the Union on January 23, 2003. If the offer is not accepted by February 20, 2003, that offer shall be considered withdrawn and shall be replaced with

⁵ All dates hereafter are in 2003 unless otherwise indicated.

⁶ The average total wage would be reduced to \$11.56. In the prior contract it was \$12.30 and the Employer's offer reduced it to \$11.19.

the original offer the Employer made in December 2002 [the December 16 offer].

A membership meeting took place that afternoon and the vote was 21 to 2 to reject the Employer's January 23 offer and 22 to 1 to strike if deemed necessary.

On February 26, the Employer and Union met again with the mediator. The Employer stated that the December 16 proposal was the offer on the table. The Union agreed to the Employer's proposal to freeze the pension and reduce the personal hours to 17 hours.

This left four issues on which the parties were apart: (1) part-time employees joining the Union; (2) guarantee of hours; (3) subcontracting; and (4) weeks of vacation. Lisiecki asked if the Employer would bend on two issues (part-time employees and vacation) if the Union would move on the other two issues (guarantee of hours and subcontracting). Lisiecki indicated to the Employer that the Union committee would feel comfortable taking such an offer back to the membership. A compromise was discussed on these grounds. Lisiecki asked the Employer to prepare a proposal that would reflect the discussions of this meeting.

The Employer prepared a proposal that it sent to the Union on February 27, along with a cover letter. This proposal increased the Employer's maximum weeks of vacation offer to four weeks and provided that part-time employees must join the Union after 240 hours and were limited to 24 hours a week, all as the Union had proposed. It continued to contain an unlimited subcontracting clause, and to insist on unilateral authority to change hours of work, although it offered to give the employees two weeks notice of any change. Finally, while still refusing to allow arbitration for productivity-based discipline, the Employer agreed to the Union's proposal that such discipline would be subject to a mandatory progressive disciplinary procedure.

The Employer's cover letter noted that the December 16th proposal, which was the Company's "original final offer," should not be considered withdrawn. It further noted that the compromise proposal reflected the mediator's attempt "to resolve the current impasse in negotiations." On March 4, the membership rejected the compromise proposal 21 to 4 and voted 23 to 2 to go on strike if deemed necessary.

On March 7, Jonathan Levine, the Employer's negotiator called the Union's negotiator, International Representative

Dennis Latus. According to Levine, the Union had nothing new to say, the Union had no offer to make and would not make an offer. Latus did not dispute Levine's assertions in this regard, but said that in that same conversation he had said that if the Employer wanted to compromise on the open issues, the parties would have an agreement, but if the Employer implemented its offer then the Union would go on strike and there would be no reason to meet.

Also, on March 7, Robert Nuernberg, president of the local Union, met with Kevin Puera, Vice President for the Employer and set up a meeting for March 10. Puera asked Nuernberg why the employees were not accepting the Employer's offer. Nuernberg stated there were only three issues. He stated that he could get the employees to agree to the contract if the hours of work, subcontracting and freezing the pension were addressed.⁷ Puera stated that he would have to talk to George Hunt, owner of the Employer.

On March 10, the Union, Employer and Lisiecki met. At this meeting Levine began by confirming what he had heard on March 7, that the Union had rejected the February 26 proposal, that the Union had nothing new to say or offer and would strike if the Employer implemented. Levine said the Employer felt that it was financially necessary to implement portions of the December 16 "final" offer. These portions were the two-tiered wage scale, the pension freeze, and the removal of the two holidays. The Employer stated that it was not implementing any other portions at that time. The Union announced it was going on strike, and did not assert that it was confused about which offer was being implemented. The employees have continued to be on strike to this date. The Employer has continued its operations using replacement workers, managers, supervisors and at least one employee who crossed the picket line.

ACTION

We agree with the Region that the Employer's December 16 offer constituted a good faith final offer. We further conclude that the Employer was privileged to revert to that December 16th offer when the Union rejected subsequent Employer offers that were more advantageous to the Union, since the Union rejected those offers knowing that the consequence of that rejection was the reinstatement of the December 16th offer. Finally, in agreement with the Region,

⁷ Nuernberg neither offered proposals nor stated that the Union was willing to move from its current position, only that if an agreement was reached on these issues the Union would agree to the contract.

we conclude that the parties were at impasse when portions of the December 16 offer were implemented on March 10, 2003.

**1. The Employer's December 16th "Final Offer"
Constituted A Good Faith Offer**

The Board draws a distinction between lawful "hard bargaining" and unlawful "surface bargaining." In order to ground a surface bargaining claim the government must prove the *totality* of an Employer's conduct evidenced no intent to reach a final agreement.⁸ The Board may find bad faith bargaining based solely upon the content of an employer's proposals if a party's bargaining position and proposals "indicate an intention by the [employer] to avoid reaching an agreement."⁹ Thus, although the Board will not determine whether a proposal is acceptable or unacceptable to a party, it will "consider whether, on the basis of objective factors, a demand is clearly designed to frustrate agreement on a collective-bargaining contract."¹⁰

In A-1 King Size Sandwiches,¹¹ the Board found a Section 8(a)(5) violation because the employer's proposals "would strip the union of any effective method of representing its members...further excluding it from any participation in decisions affecting important conditions of employment."¹² The Board further noted that, if

⁸ Public Service Company of Oklahoma, 334 NLRB 487 (2001), enfd. 318 F.3d 1173 (10th Cir. 2003).

⁹ A-1 King Size Sandwiches, 265 NLRB 850 (1982), enf'd 732 F.2d 872 (11th Cir. 1984), cert. den. 469 U.S. 1034; Litton Microwave Cooking Products, 300 NLRB 324, 327 (1990), enf'd 949 F.2d 249 (8th Cir. 1991), cert. den. 112 S.Ct. 1669 (1992).

¹⁰ Reichhold Chemicals, 288 NLRB 69 (1988), aff'd in relevant part, 906 F.2d 719 (D.C. Cir 1990).

¹¹ 265 NLRB at 850, and 857-860 (Board affirms surface bargaining decision where employer proposed a management rights clause which included: unilateral control during the term of the contract over merit increases; manning; scheduling and hours; layoff, recall, and the granting and denial of leave; promotion, demotion and discipline; the assignment of work outside the unit; and changes of past practice; all which would not be subject to the grievance procedure, together with a no-strike clause.)

¹² 265 NLRB at 859, quoting San Isabel Electric Services, Inc., 225 NLRB 1073, 1080 (1976).

accepted, the proposed contract would have left the union with fewer rights than if it relied solely upon its certification, which would require the employer to bargain each time it sought to change an existing term or condition of employment, and which gave the union the right to strike in protest of such actions and in protest of conduct violative of the employees' other legal rights. 265 NLRB at 860.¹³

Here, the Union's assertion of bad faith is based on the December 16th proposals themselves, not on other evidence of bad faith conduct on the Employer's part. Indeed, the Employer's conduct seemed to evince quite a measure of good faith. As noted by the Region the Employer: (1) sought the assistance of and cooperated with a Federal mediator; (2) met with the Union at reasonable times and places; (3) explained the business justification for its proposals; (4) answered questions and information requests; and (5) modified its proposals to address the Union's concerns.

As in A-1 King Size Sandwiches, supra, any bad faith charge would necessarily be grounded on the Employer's proposals. In that regard, we agree with the Region that the Employer's proposals did not amount to bad faith bargaining. It proposed a single change in the management rights clause, i.e., allowing unlimited subcontracting; it also proposed unilateral control of the hours of work, together with excluding production-based discipline from compulsory arbitration. Even in the context of the continuing no-strike clause, the combination of these provisions does not give the Employer unfettered control over fundamental terms and conditions of employment, such that the Union would be stripped of any effective method of

¹³ See also South Carolina Baptist Ministries, 310 NLRB 156, 157 (1993), where the Board noted that the employer's unyielding opposition to arbitration, in combination with sweeping provisions in its management rights clause arrogating to it the exclusive right to change or abolish job classifications, to discipline and discharge without just cause, to change unilaterally all existing working conditions and fringe benefits not provided for in the contract, to use leased employees and non-unit employees to perform bargaining unit work, and to promulgate and enforce rules governing work and non-work employee conduct, both during and outside working hours, would leave the union with fewer rights than imposed by law without a contract.

representing these employees.¹⁴ Rather, under the December 16th proposal, the Union would be entitled to resist, and compel arbitration regarding any non-subcontracting decisions that transfer unit work, any decision to hire part-timers to work more than 28 hours, a layoff or diminution in hours below 34 hours when part-time employees are working, as well as all non-productivity employee discipline. While the Employer, under admitted financial distress, is attempting to drive a hard bargain, its proposals are less draconian than those which the Board recently concluded were insufficient to ground a surface bargaining charge,¹⁵ and not nearly as sweeping as those proposals which the Board has found sufficient to ground a bad faith bargaining charge (See fns. 10& 12). Moreover, perhaps the most telling evidence that the Employer was not proposing these terms to frustrate bargaining is the fact that it was willing in subsequent proposals to modify and increase the package it would offer. In all these circumstances, we conclude that the Employer's December 16th offer was neither made in bad faith nor did its terms singly or in combination substantively constitute a bad faith proposal.

¹⁴ We reject the Union's assertion that a statement by Employer negotiator Levine made at the December 30 bargaining session proves that the December 16 proposal was advanced to frustrate bargaining. The Union claims that, at that session, Levine stated that he understood why the Union rejected the Employer's December 16 proposal and that he would have had a heart attack if the Union had agreed to the Employer's "final" offer. Such a statement may well reflect Levine's belief that the Union would not initially "agree" to any Employer proposal that included concession even though, in the Employer's view, it was necessitated by the Employer's dire economic condition. Moreover, this statement, was made early in the resumed bargaining when Levine certainly anticipated that it would be met by Union counterproposals. Indeed, this "final offer" was twice modified consistent with Union counterproposals. In these circumstances, Levine's opinion that the Union would initially reject a proposal because of its economic "give backs" in no way supports the Union's contention that this proposal itself, dictated by fiscal necessity, was advanced to frustrate bargaining.

¹⁵ APT Medical Transportation, Inc., 333 NLRB 760 (2001) (a combination of employer proposals, i.e., a broad management-rights clause that included the right to subcontract, a no-strike clause, and a purely internal grievance procedure with no arbitration).

2. The Employer Acted in Good Faith in Replacing the Rejected January 23 Proposal with the December 16 Proposal, when the Union Knew that Was the Consequence of the Rejection

Neither the withdrawal of prior proposals,¹⁶ nor their substitution with less advantageous proposals, i.e. regressive proposals,¹⁷ constitutes a per se absence of good faith in a bargaining relationship. Regressive bargaining is unlawful only if it is intended to frustrate bargaining and impede the parties from reaching an agreement.¹⁸ The Board will examine the parties' explanations for any regressive changes in position and determine whether they were undertaken in bad faith and designed to impede agreement.¹⁹

In White Cap, Inc., supra, approximately 7 months after the parties had begun bargaining, the employer notified the union that it would be withdrawing six wage and benefits proposals if the package it had proposed was not ratified by a date certain. The contract was not ratified and the employer ultimately implemented its subsequent final proposal that did not include the six wage and benefit proposals. The Board concluded that the employer had advanced a good-faith explanation for the change in its bargaining proposal, i.e., that it was seeking timely ratification of a contract, and thus by doing so had not engaged in unlawful regressive bargaining. In a similar case, Telescope Casual Furniture, Inc., supra, the Board held it was lawful for an employer to simultaneously propose one "final" proposal and a less favorable alternative proposal, which would be implemented if the union did not accept the final proposal. The Board reasoned the alternative proposal was not advanced for the purpose of frustrating bargaining but rather to press the union to come to an agreement.

We conclude that the Employer here similarly reverted in February to its December 16 proposal not to frustrate

¹⁶ White Cap, Inc., 325 NLRB 1166, 1169 (1998), rev. denied 206 F.3d 22 (D.C. Cir. 2000).

¹⁷ Telescope Casual Furniture, Inc., 326 NLRB 588, 589 (1998).

¹⁸ Id.

¹⁹ White Cap, supra at 1169, citing to Merrell M. Williams, 279 NLRB 82, 83 (1986), and O'Malley Lumber Co., 234 NLRB 1171, 1179 (1978).

bargaining but to press the Union to an agreement. On January 23, the Employer presented the Union with a modification of its December 16th proposal, which was more advantageous to the Union. The ultimatum presented on February 13 gave the Union clear warning that if it did not accept the January 23rd proposal by February 20th, the Employer would be returning to the December 16th proposal. It was also clearly designed to press the Union for, rather than avoid, a contract, for the parties would have had a contract, if the Union accepted the January 23 proposal. However, on the afternoon of February 13th, the Union voted down the January 23rd proposal. Thus, the Employer was privileged under White Cap when, at the next bargaining session on February 26, consistent with its ultimatum, it announced that the December 16th proposal was the proposal that was on the table.

3. The Employer Acted in Good Faith by Advancing the Alternative February 27 Compromise Proposal While at the Same Time Continuing to Maintain its December 16 "Original Final Offer" on the Table as its Final Offer.

Ultimately on February 27, the Employer offered a compromise on the open issues designed by the mediator. In the cover letter forwarding this proposal to the Union, the Employer carefully noted that the submitted proposal was designed to "resolve the current impasse" and that the December 16th proposal was the offer on the table and was not to be considered withdrawn. Thus, the Employer reaffirmed its February 26th statement, consistent with the February 13 letter, that the December proposal was its final offer. The clear import of the February 27th letter was that if the compromise was not agreed to by the Union, the offer that was on the table was the December 16th offer. This also meant that in the context of a bargaining impasse this would be the proposal that would be implemented. Indeed, the Employer could have had no other reason to refer to the December 16th offer in its February 27 letter than to put the Union on notice of the consequences should it fail to accept the compromise. The statement of fact, that the December 16th offer was the offer that was on the table, was not made to frustrate bargaining, but rather was lawfully made to pressure the Union to come to an agreement, in much the same way as the alternative proposal was presented in Telescope, supra.²⁰ In these

²⁰ The lack of a date certain for the acceptance of the mediator's proposal is of no moment, as it is clear that that proposal was rejected by the membership. Thus, the only proposal that could be on the table after that rejection was the December 16th proposal. Indeed, on March

circumstances, it is clear that the Union's rejection of the alternative brokered compromise proposal resulted in the Employer's continued maintenance of its December 16 proposal.

4. The Parties Were at Good Faith Impasse over the December 16 Proposal on March 10, 2003

Where there is a valid impasse, an employer may implement terms of its last offer presented to the union.²¹ A genuine impasse in negotiations exists when, despite the parties' best efforts to achieve an agreement, neither party is willing to move from its position.²² However, "a finding of impasse presupposes that the parties prior to the impasse have acted in good faith."²³ An employer that enters into negotiations with a closed mind and an inflexible position fails to bargain in good faith.²⁴

We agree with the Region here that the parties were at a good faith impasse on March 10. As discussed above, the Employer's conduct through February 26 was in good faith. On that date, with the assistance of the mediator, the Employer made its February 26 alternative compromise proposal that the Employer believed the Union would find acceptable. Again, that alternative represented movement from the Employer's January 23 proposal.²⁵ By March 10th

10th when the Employer implemented portions of this proposal, the Union failed to note any confusion as to which proposal would be implemented, rather it simply noted it was going on strike.

²¹ Taft Broadcasting Co., 163 NLRB 475, 478 (1967), enf'd sub nom. Television Artists AFTRA v. NLRB, 395 F.2d 622 (D.C. Cir. 1968).

²² CJC Holdings, Inc., 320 NLRB 1041, 1044 (1996), enfd. 110 F.3d 794 (5th Cir. 1997) (Table).

²³ Circuit-Wise, Inc., 309 NLRB 905, 918 (1992).

²⁴ Clesco Mfg. Div. of Cleveland Sales Co., 292 NLRB 1151 (1989), enf'd per curiam 915 F.2d 1570 (6th Cir. 1990) (employer unlawfully entered post-settlement negotiations with a fixed mind where it never varied its position on a contract termination date).

²⁵ We agree with the Region and reject the Union's contention that the Employer was not committed to this February 26 proposal. Although the Employer never referred to the February 26 offer as its own, when submitted, the Union voted on the proposal and labeled it as a "company

when the Employer announced it was going to implement portions of its December 16th proposal, the Union membership had already voted down the Employer's February 26th offer, which the parties clearly understood was a last ditch attempt brokered by the mediator to address the last four open issues. Neither the Union nor the Employer had ever expressed any willingness to negotiate those four issues, outside the parameters of the brokered compromise. Indeed, Nuerenberg's statement to the Employer on March 7th that the parties could have a contract if they could agree on the open issues neither amounted to a request to bargain, nor did it include any proposal or willingness on the part of the Union to move on these issues. It quite simply was a statement of fact that the parties were deadlocked on these issues. In all these circumstances, we agree with the Region that the parties were at impasse on March 10th.

Further, on that date, we cannot conclude that it would be unlawful for the Employer to implement portions of the December 16 proposal. That proposal was clearly the only outstanding proposal on the table, we have concluded above that that proposal was made in good faith, and we have also concluded the parties were at impasse. Therefore, we conclude that the Employer was privileged to implement those portions of the December 16th proposal that were implemented on March 10. The Region should dismiss the charges, absent settlement.

B.J.K.

proposal." There is no suggestion that either party doubted the Employer would have adhered to the compromise had the Union accepted it. When questioned by the Region regarding the offer during the investigation of the charge, Levine stated that he was "surprised that [the Region had] any question about the Company's commitment to this offer. By the rules of federal mediation, that offer could not have been made to and voted on by the Union membership without the Company's compromise and consent."