

2000.² On January 1, the Employer implemented the modification announced in the November 22, 1999 memorandum.

On April 18, Local 79 filed an unfair labor practice charge on behalf of the LPN unit alleging that the Employer violated Section 8(a)(5) of the Act when, in February, it deleted two sections of the agreement concerning payments of health insurance premiums upon employee layoffs and/or authorized leaves of absence. Local 79 maintains that this was never a subject of bargaining and that it never agreed to the deletion of these sections. On July 19, Local 79 amended its original charge to add an allegation that the Employer violated Section 8(a)(5) as to both the LPN and S/M units when it dealt directly with unit employees on November 22, 1999, and made unilateral changes to the flex plan. This amended charge was filed outside of the 10(b) period. The Region has decided that the amended charge is closely related to the original charge with respect to the LPN unit and issued its August 25 complaint with respect to all allegations concerning that unit.³

ACTION

We conclude that the amended charge, as it pertains to the S/M unit, is closely related to the original charge. Accordingly, the Region should issue complaint, absent settlement, alleging that the Employer violated Section 8(a)(5) by dealing directly with S/M unit employees and by making unilateral changes to the flex plan provided for in the S/M collective-bargaining agreement.

Under established "relation back" rules, a subsequent charge will not be deemed barred by Section 10(b) if it is "closely related" to a timely filed charge.⁴ In Redd-I, Inc.,⁵ the Board enunciated the test for amending new allegations into a timely filed charge:

² All subsequent events occurred in 2000.

³ Three other unions representing bargaining units within the hospital filed similar timely charges over the November 22, 1999 memorandum and the implementation of changes to the flex plan. The Region has issued complaint with respect to these other unions.

⁴ See Wilmington Fabricators, Inc., 332 NLRB No. 2, slip op. at 3 (2000) (citing Redd-I, Inc., 290 NLRB 1115 (1988)).

⁵ 290 NLRB at 1118.

- (1) Whether the otherwise untimely allegations are of the same class as the violations alleged in the pending timely charge, i.e., the same legal theory;
- (2) whether the otherwise untimely allegations arise from the same factual situation or sequence of events as the allegations in the pending timely charge, i.e., similar conduct, usually during the same time period with a similar object; and
- (3) whether the respondent would raise the same or similar defenses to both allegations, i.e., respondent would have preserved similar evidence and prepared a similar case in defending against the otherwise untimely allegations as it would in defending against the allegations in the pending timely charge.

In the instant case, we conclude that given the Region's determination that the amended charge meets the standards set forth above with respect to the LPN unit, it also meets them with respect to the S/M unit. The amended charge alleges the same class of violations regarding the S/M unit as it does for the LPN unit allegations that are closely related to the timely charge, i.e., violations of Section 8(a)(5) resulting from the Employer's conduct with respect to the flex plan. The charges also stem from the same factual situation in that they involve deletions from and/or changes to the flex plan provisions of the bargaining agreements of both units, and require an interpretation of what the parties agreed to during their contract negotiations. Although bargaining for the two units took place through separate negotiations resulting in separate bargaining agreements, the units' contract negotiations occurred within the same time frame, and the Employer's unilateral modification to the flex plan affects the same contract provisions for both units. Further, the Employer's notification (November 22, 1999) and implementation (January) of the flex plan modification affected employees in both the LPN and S/M units on the same day. Finally, the Employer's defense to the amended allegations has been similar to the defense it raised to the original charge, i.e., that since the Union agreed to the flex plan, it agreed to give the Employer "flexibility" to implement such changes or deletions.

Furthermore, we note that even though the S/M unit was not named in the original charge, this fact alone does not require dismissal of the amended allegations with respect to that unit if the Redd-I test is met. In Braswell Motor Freight Lines, Inc.,⁶ the Board allowed an amended complaint

⁶ 196 NLRB 76 (1972), enfd. 486 F.2d 743 (7th Cir. 1973).

that included allegations regarding an employer's conduct at its Atlanta, Georgia, and Jackson, Mississippi, facilities, when the original charge addressed only the employer's Chicago, Illinois, facility. Significantly, the Board's decision thus demonstrates that complaint amendments may include conduct that arises in different locations, and in bargaining units other than the one that was the subject of the original charge. Enforcing the Board's decision, the Seventh Circuit Court of Appeals based its ruling on the facts that:

When the testimony concerning the specific unfair labor practices is viewed in the context of the respondent's past relationship with the Teamsters, it is clear that the company's conduct at the three locations was part of an overall plan to resist organization by the Teamsters. Too, the specific allegations in the complaint with respect to the Atlanta and Jackson terminals were of the same class and character as those set out in the original charge.⁷

Thus, the fact that the untimely amended charge in this case named a unit other than the one named in the timely charge does not bar complaint issuance if the Redd-I criteria are met. Complaint amendment is also appropriate when the allegations concern a pattern of unlawful conduct. Specifically, "direct dealing and making unilateral changes in terms and conditions of employment may be aptly considered part and parcel of the [Employer's] overall pattern of unlawful conduct, namely, ignoring the Union with which it was statutorily required to deal as the exclusive representative of its bargaining unit employees."⁸

⁷ NLRB v. Braswell Motor Freight Lines, Inc., 486 F.2d 743, 746 (7th Cir. 1973). The Board has repeatedly quoted and cited the Seventh Circuit's opinion in this regard with approval. See, e.g., Nickles Bakery of Indiana, 296 NLRB 927, 928 n.7 (1989); Well-Bred Loaf, 303 NLRB 1016 n.1 (1991); Jennie-O Foods, 301 NLRB 305 (1991). The Board has noted, however, that a sufficient factual relationship may be found "whether or not the charge specifically alleges the existence of an overall plan on the part of the employer." See Ross Stores, Inc., 329 NLRB No. 59, slip op. at 2 (1999) (quoting Recycle America, 308 NLRB 50 n.2 (1992)).

⁸ Columbia Portland Cement Co., 303 NLRB 880, 884 (1991), enfd. 979 F.2d 460 (6th Cir. 1992). In Columbia Portland

In National Steel & Shipbuilding Company,⁹ the ALJ applied the Redd-I criteria to an amended charge which sought to add additional unions as charging parties to the original, timely filed charge. In National Steel, seven different unions had traditionally engaged in coordinated bargaining with the employer, resulting in seven separate collective bargaining agreements covering separate units.¹⁰ After deciding to bargain independently, one of the unions eventually filed a Section 8(a)(5) charge alleging that the employer had engaged in bad-faith bargaining.¹¹ The charging union then filed an amended charge outside of the 10(b) period to include the other six unions.¹² Complaint issued on the amended charge, alleging that the employer bargained in bad faith as to all seven unions by proposing and insisting on regressive union security proposals.¹³

In deciding whether the amended charge was barred by Section 10(b), the ALJ applied the Redd-I test and found that the amended charge was closely related to the original timely filed charge.¹⁴ The ALJ found that the allegations

Cement Co., Section 10(b) was not at issue. Rather, the employer argued that the Board was precluded from issuing complaint alleging unlawful unilateral changes to wages and grievance processing, since the underlying charge did not mention those specific allegations. 303 NLRB at 884. The Board analogized the employer's contention to allegations facing dismissal under Section 10(b). Id. Noting that the employer waived any 10(b) defense, the Board nonetheless applied the Redd-I test, and further found that the employer had engaged in an "overall pattern" of unlawful conduct by refusing to deal with the union as it was required to do. Id. (citing Nickles Bakery of Indiana, 296 NLRB at 928 n.7).

⁹ 324 NLRB 1031 (1997).

¹⁰ 324 NLRB at 1032.

¹¹ Id. at 1032, 1033.

¹² Id. at 1033.

¹³ Id.

¹⁴ Id. at 1042. Because the Board agreed with the ALJ's finding that the employer had not bargained in bad faith,

raised in both charges were of the same class, involved parallel factual situations and raised the same defenses by the employer.¹⁵ She specifically noted that the unions were involved in the same negotiation meetings and took the same position with regard to the employer's contract proposals.¹⁶

Here, while the LPN and S/M units bargained separately for separate contracts, the Employer's allegedly unlawful unilateral modification affects the same flex plan provisions contained in both bargaining agreements. Likewise, the modification had the same effect on the employees of both units and was announced and implemented on the same day.¹⁷ Furthermore, the amended charge was filed by the same union that represents both bargaining units.¹⁸

For all of these reasons, we conclude that the amended charge is closely related to the original charge even though the original charge referred only to the LPN unit. Accordingly, the Region should issue complaint, absent settlement, on behalf of the S/M bargaining unit, alleging that the Employer violated Section 8(a)(5) by dealing directly with unit employees and by unilaterally changing the flex plan.

B.J.K.

it did not pass on the employer's cross-exception that the complaint was barred by Section 10(b). Id. at 1031, n.1.

¹⁵ Id. at 1042.

¹⁶ Id.

¹⁷ Thus, the Employer's actions were part of a "plan of conduct."

¹⁸ Compare National Steel, above, where the ALJ permitted untimely amendment by one union to add allegations even concerning other unions and units.