

New Process Steel, LP¹ and District Lodge 34, International Association of Machinists and Aerospace Workers, AFL–CIO. Case 25–CA–30632

September 30, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAMBER AND MEMBER LIEBMAN

This case is before the Board² on cross-motions for summary judgment. The General Counsel seeks summary judgment on the ground that the Respondent, New Process Steel, LP, admittedly withdrew recognition from the Union on September 12, 2007, in violation of Section 8(a)(5) and (1), because such withdrawal was barred by a binding collective-bargaining agreement. The Respondent seeks summary judgment on the ground that it lawfully withdrew recognition from the Union, pursuant to a petition signed by a majority of unit members, because the parties never reached a final binding agreement. Thus, the outcome of this case depends on whether the collective-bargaining agreement at issue was a binding contract. For the following reasons, we find that the Respondent violated the Act by its withdrawal of recognition.

Upon a charge filed by the Union on March 10, 2008, the General Counsel issued a complaint on May 29, 2008, against the Respondent alleging that it violated Section 8(a)(5) and (1) of the Act. The Respondent filed an answer to the complaint on June 6, 2008, admitting that it withdrew recognition from the Union but denying that the parties reached a binding collective-bargaining agreement.³

On July 10, 2008, the General Counsel filed a Motion for Summary Judgment with the Board. On July 15, 2008, the Board issued an order transferring the proceed-

ing to the Board and a Notice to Show Cause why the motion should not be granted. On July 29, 2008, the Respondent filed a Cross-Motion for Summary Judgment and Opposition to the General Counsel's Motion for Summary Judgment, and on August 8, 2008, the General Counsel filed an Opposition to the Respondent's Cross-Motion.

Ruling on the Motion and Cross-Motion for Summary Judgment⁴

In *New Process Steel, LP*, 353 NLRB 111 (2008), the Board found that the Respondent and the Union reached a binding collective-bargaining agreement, effective August 12, 2007, and that the Respondent unlawfully repudiated that agreement on September 11, 2007. The Respondent admits that it withdrew recognition from the Union on September 12, 2007, an act barred by the parties' binding contract. Accordingly, we grant the General Counsel's Motion for Summary Judgment, and we find, as a matter of law, that the Respondent unlawfully withdrew recognition from the Union on September 12, 2007, in violation of Section 8(a)(5) and (1). We also deny the Respondent's Cross-Motion for Summary Judgment.

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges, the Respondent admits, and we find that at all material times New Process Steel, LP, has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The complaint alleges, the Respondent admits, and we find that the Union at all material times has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Contract Case*

The Union was certified as the exclusive bargaining representative for a unit of the Respondent's employees on August 25, 2006. On August 9, 2007, after 11 months of contract negotiations, the Union accepted and signed the entire proposed agreement. The Respondent, however, stated that it would not sign the agreement until it was ratified. On August 12, 2007, the Union ratified the contract according to its established internal procedures.⁵

⁴ Both parties agree that there are no substantial and material issues of fact warranting a hearing.

⁵ According to its established procedures, the Union presents the contract to unit employees, who vote for or against the contract by secret ballot. If a majority of unit members votes in favor of the contract, it is ratified. If a majority votes against the contract, the Union conducts a secret-ballot strike vote. If the strike vote does not carry by a 2/3 majority, the contract is deemed accepted. Here, a majority of

¹ In several of the General Counsel's submissions to the Board, including its Motion for Summary Judgment, the Respondent is identified as New Process Steel of Indiana, Inc. The Respondent's correct name, as reflected in the caption above, is New Process Steel, LP.

² Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

³ The Respondent also alleged in its answer that the Union violated Sec. 8(b)(3) by refusing to bargain in good faith. The Respondent did not pursue this claim in its cross-motion for summary judgment or in its opposition to the General Counsel's motion. We therefore find that the Respondent has abandoned this claim. We also note the General Counsel's assertion, which the Respondent does not dispute, that the Regional Director dismissed the Respondent's Sec. 8(b)(3) charge and the dismissal was upheld on appeal.

The Union then informed the Respondent that the agreement was accepted, and the Respondent signed it.

In the following weeks, the Respondent learned that the contract was not accepted by a majority vote of unit members. On September 11, 2007, the Respondent informed the Union by letter that because a majority of bargaining unit members voted against the agreement, it was never ratified, and thus the parties never reached a binding contract. The Respondent therefore refused to recognize or honor the contract's provisions.

The Union filed an unfair labor practice charge alleging that the Respondent unlawfully repudiated the contract. We adopted the judge's findings that the Respondent did not have standing to dispute the Union's ratification procedures, the parties reached a binding agreement, and thus the Respondent violated Section 8(a)(5) and (1) by repudiating that agreement.⁶

B. Withdrawal of Recognition

On September 12, 2007, the day after the Respondent repudiated the collective-bargaining agreement, the Respondent informed the Union that it had received a petition signed by a majority of bargaining unit members disavowing their support for the Union, and thus it was withdrawing recognition from the Union.⁷ It has long been settled that contracts of definite duration for terms up to 3 years will bar an election for their entire period. See *General Cable Corp.*, 139 NLRB 1123, 1125 (1962). Moreover, the Supreme Court has confirmed that, under Board precedent, a union is entitled to a conclusive presumption of majority status during the term of any collective-bargaining agreement up to 3 years. *Auciello Iron Works, Inc. v. NLRB*, 517 U.S. 781, 786 (1996). Thus, the Respondent unlawfully withdrew recognition from the Union during the term of a binding contract.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of the employees in the unit, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices by withdrawing recognition from the Union, we shall order it to cease and desist and

to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of the unit employees.

ORDER

The National Labor Relations Board orders that the Respondent, New Process Steel, LP, Butler, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition during the term of a collective-bargaining agreement with District Lodge 34, International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the following unit:

All full-time and part-time production and maintenance employees employed by Respondent at its Butler, Indiana facility, but excluding all office clerical employees, professional employees, sales representatives, managerial employees, team leaders, guards, supervisors as defined by the Act, and all other employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Recognize and, on request, bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the employees in the unit set forth above.

(b) Within 14 days after service by the Region, post at its facility in Butler, Indiana, copies of the attached notice marked "Appendix."⁸ Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all cur-

unit members voted against the contract, but they failed to carry the strike vote by a 2/3 majority. Thus, the contract was accepted.

⁶ See *New Process Steel*, supra.

⁷ The validity of the employees' petition is not in dispute.

⁸ 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."

rent employees and former employees employed by the Respondent at any time since September 12, 2007.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT withdraw recognition from District Lodge 34, International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the following unit:

All full-time and part-time production and maintenance employees employed by us at our Butler, Indiana facility, but excluding all office clerical employees, professional employees, sales representatives, managerial employees, team leaders, guards, supervisors as defined by the Act, and all other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the above unit.

NEW PROCESS STEEL, LP