

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

IRVING READY-MIX, INC.

And

Cases 25-CA-31485
25-CA-31490 Amended
25-CA-31548

CHAUFFEURS, TEAMSTERS & HELPERS,
LOCAL UNION NO. 414, a/w INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

ACTING GENERAL COUNSEL'S BRIEF
IN SUPPORT OF CROSS EXCEPTIONS

Comes now Counsel for Acting General Counsel and respectfully submits to the Board this Brief in Support of Cross Exceptions to the Administrative Law Judge's Decision.

I. STATEMENT OF THE CASE

Pursuant to charges filed by the Chauffeurs, Teamsters & Helpers, Local Union No. 414, a/w International Brotherhood of Teamsters (herein called "the Union"), pursuant to the provisions of the National Labor Relations Act (herein called "the Act"), an Order Consolidating Cases, Consolidated Case and Notice of Hearing, was issued on August 26, 2010.¹ An Amendment to the Complaint issued on September 14. The Complaint alleged that Irving Ready-Mix, Inc. (herein called "the Respondent") violated Sections 8(a)(1) and (5) of the Act. An administrative hearing was held before Administrative Law Judge Paul A. Bogas on September 29 and 30, in Fort Wayne, Indiana.

¹ All dates hereafter are 2010, unless otherwise noted.

On December 17, Judge Bogas issued his decision finding that the Respondent had violated Sections 8(a)(1) and (5) of the Act by ceasing to recognize and bargain with the union, upon the expiration of the parties' collective bargaining agreement. The Judge rejected the Respondent's argument that the parties' relationship was covered by Section 8(f) of the Act. Further, as a result, the Judge found that the Respondent dealt directly with bargaining unit employees, when it announced new terms and conditions of employment and unilaterally changed those terms and conditions, including pension benefits, which further violated Section 8(a)(1) and (5) of the Act. Additionally, Judge Bogas held that the Respondent violated Section 8(a)(1) of the Act by inquiring of an employment applicant if he would be willing to cross the Union's picket line.

However, the Judge failed to make a finding that the employees June 1 to June 14, strike was cause and prolonged by the Respondent's unfair labor practices.

A. Did The Judge Err When He Failed Address Whether The Union's Strike Was Caused And Prolonged By the Respondent's Unfair Labor Practices

While noted above, the Judge found that the Respondent engaged in numerous unfair labor practices in violation of Section 8(a)(1) and (5) of the Act, he specifically failed to address whether the Union's strike, which lasted from June 1, until about July 14, was caused and prolonged by the Respondent's unfair labor practices. In his decision, the Judge stated: "A resolution to this issue, however, is not necessary either to determine whether the Respondent committed any of the violations alleged in the complaint, or to order the relief sought by the Acting General Counsel." Regardless, of the Administrative Law Judge's assertion, that the determination of the employees' status as unfair labor strikers is unnecessary, both the employees and the Union are entitled to such a finding and the resulting protections afforded Unfair Labor Practice Strikers over economic strikers.

On June 1, the Union began a strike against the Respondent because the parties had failed to reach a new collective bargaining agreement prior to the expiration of the collective bargaining agreement on May 31. Initially, the striking employees carried signs which stated: “Teamsters Local 414 On Strike Only Against Irving Ready Mix, Inc.” (TR 76-77, GC’s Exhibit 13) Later that afternoon the Respondent sent a letter to the Union’s President, George Gerdes, notifying him that it was withdrawing recognition from the Union (TR 77-78, GC’s Exhibit 23). Additionally, on the same date, the Respondent sent letters to the employees notifying them that it was withdrawing representation from the Union. Further, the letter invited employees to return to work, stating that it would discuss terms and condition of employment upon their return. Finally, in this letter, the Respondent informed the employees that it was changing the health insurance benefits it had enjoyed under the expired collective bargaining agreement (GC’s Exhibit 8). As a result of the Respondent’s actions, on or about June 3, 2010, the strikers began to display new signs, which read: “Employees of Irving Ready Mix On Unfair Labor Strike. . . Teamsters Local 414.” The strike continued until the Union made an unconditional offer to return to work on July 14 (TR 78-79, GC’s Exhibit 14)..

Unquestionably, the Respondent’s June 1, letter, converted the Union’s economic strike into an unfair labor practice strike. In addition, throughout the duration of the strike, the Respondent made unilateral changes to the employees’ terms and conditions of employment, dealt directly with unit employees, and asked a job applicant if he would be willing to cross the Union’s picket line. As such, the Respondent’s action, including its failure to bargain in good faith with the Union, not only violated the National Labor Relations Act, but also caused and prolonged the Union’s unfair labor practice strike. The Board has recognized that the withdrawal of recognition has the effect of prolonging a work stoppage and converts the work stoppage into an unfair labor practice strike. In American Linen Supply Co., 297 NLRB 137, 146 (1989), the Board held that: “. . . withdrawal of recognition deprives employees of their

bargaining representative and thereby precludes the possibility of reaching agreement on a contract and impedes the settlement of the erstwhile economic strike. See also: Rose Printing Co., 289 NLRB 252 (1988), Sandersons Farms, 271 NLRB 1481.

Despite the Judge's statement that it was not necessary to make a decision on the issue of whether or not the employee's engaged in an unfair labor strike, Counsel for Acting General Counsel, respectfully disagrees.

The Board has long held that unfair labor practice strikers are entitled to special protections not conferred upon economic strikers. In Allied Mechanical Services, 332 NLRB 1600, 1609 (2001), the Board held:

. . . Respondent was not at liberty to threaten to terminate or to terminate any of its striking employees because they failed to 'immediately' return to work in response to the owners letters. As unfair labor practice strikers, they could not lawfully be discharged, or threatened with discharge or other disciplinary action, other than for misconduct causing them to lose the protection of the Act.

Without the cloak of unfair labor practice strikers, the Respondent is free to take additional actions against these employees, which would be inconsistent with their status as unfair labor practice strikers. This concern is particularly acute, given that the Judge has already found that the Respondent has violated the Act, by unlawfully withdrawing recognition, dealing directly with bargaining unit employees, and making unilateral changes to their terms and conditions of employment. It is not unforeseeable, that these employees may, in the future, require such protections.

The General Counsel respectfully excepts to the Judge's failure to make a ruling on this portion of the Consolidated Complaint.²

B. The Judge's Inadvertent Failure To Remedy His Finding That The Respondent Engaged In Direct Dealing.

The Administrative Law Judge found that the Respondent dealt directly with employees after unlawfully withdrawing recognition from the Union. However, he failed to provide a remedy for this violation through the rescission of the Respondent's June 1 and June 14, letters to employees altering their terms and conditions of employment.

C. The Judge Failed To Find And Order And Appropriate Remedy For The Union's Unfair Labor Practice Strike

As enumerated above, General Counsel has excepted to the Judge's failure to find that the Union engaged in an unfair labor practice strike that was cause and prolonged by the Respondent's unfair labor practices. Acting General Counsel respectfully requests that the Board grant this Exception and provide a remedy and order that protects the employees rights as unfair labor practice strikers.

D. The Judge's Inadvertent Failure To Address In His Proposed Notice the Rescission of the Respondent's Unlawful June 1 and June 14, Letters to Employees

As noted above, the Administrative Law Judge failed to remedy his finding that the Respondent dealt directly with employees. As such, Acting Counsel for General Counsel specifically requests that the following language be added to the Judge's proposed notice:

WE WILL RESCIND the June 1 and June 14, letters sent to bargaining unit employees changing their terms and conditions of employment.

It is axiomatic that the Judge's Notice should fully reflect all violations found and all remedies ordered. The purpose of such a notice is to inform employees of the substantive obligations of the Order issued by the Board against a respondent. A Notice to Employees also serves to inform employees of their statutory rights and should contain assurances from the respondent that it will not repeat the unfair labor practices of which it has been found guilty. In

addition, the Notice should inform employees of all remedies the respondent will undertake to cure its unfair labor practices. Hickmott Foods, Inc., 242 NLRB 1357 (1979)

However, in a fuller sense, it is the Board's responsibility to craft a notice that fully reflects all violations found by the Judge, and all remedial measures to be required by Respondent. Therefore, it is urged by General Counsel, that the Board modify the Judge's proposed notice to be consistent with his factual and legal findings.

III. CONCLUSION

For the reasons stated above and based on the record as a whole, the Board is requested to correct the Administrative Law Judge's omitted findings and conclusions referred to herein and to find the conduct raised by these issues in these Cross Exceptions and Brief in Support of Cross Exceptions to be violations of the Act and to order an appropriate remedy for the violations. In addition, the Board is requested to conform the Judges Remedy and Order with this.

DATED AT Indianapolis, Indiana this 28th day of January, 2011.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the General Counsel's Answering Brief to Respondent's Exceptions to the Administrative Law Judge's Decision, General Counsel's Exceptions to the Administrative Law Judge's Decision and General Counsel's Brief in Support of Exceptions has been electronically filed with the Board and further certifies that she caused a copy to be served via electronic mail on January 28, 2011 and by Regular Mail upon the following persons, addressed to them at the following addresses:

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