UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PACCAR, INC., d/b/a PETERBILT MOTOR COMPANY, Respondent, vs. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW AND UAW LOCAL 1832, Charging Parties.	)	No. 26-CA-23225

CHARGING PARTIES, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW AND UAW LOCAL 1832's MOTION FOR RECONSIDERATION OF THE BOARD'S DECISION AND ORDER AND MEMORANDUM IN SUPPORT

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Comes now the Charging Party, the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, UAW and UAW Local 1832 "the Union," pursuant to NLRB Rule 102.48(d)(1), and respectfully moves this Board for reconsideration of its July 15, 2011 Decision and Order that the Respondent's 8(a)(5) and (1) violations did not make the subsequent lockout unlawful.

I. SUMMARY OF THE ARGUMENT

The Union submits that the Board's Decision contains two material errors warranting reconsideration. The Board erred in finding that after the Respondent's July 16 refusal to provide the requested information, the Union failed to claim that it was precluded from evaluating the Respondent's proposals or formulating its own counterproposals because it lacked the requested information. The Board also erred in finding that in a communication to its members after the lockout began, the Union claimed there were over 150 issues that remained to be resolved, but it did not claim that the Respondent was failing to provide necessary information. As these findings formed the basis of the Board's conclusion that there was "no evidence in the record that the withholding of the requested information materially affected the progress of bargaining," this case presents extraordinary circumstances that warrant the Board's reconsideration.

II. RELEVANT BACKGROUND

Since 1973, UAW Local Union No. 1832 has represented the production and maintenance employees of Respondent Peterbilt's (a division of PACCAR, Inc) Madison, Tennessee facility. (Hearing Transcript "Tr." 30, 31, 222-223). The parties have had a tumultuous collective bargaining history peppered by work stoppages, including Respondent lockouts during both the 1998 and 2002 negotiations. (Tr. 31, 224, 325). With the contract set to expire on June 20, 2008, the parties began

negotiating for a new contract on April 30, 2008. (Tr. 32, 33, 144, 224, 324). The Respondent's outsourcing, tiered health care and three tiered wage proposals became the main obstacles to reaching an agreement. (Tr. 40). When Respondent's representatives claimed that the Madison plant was the highest cost facility of all PACCAR facilities, the Union requested information regarding costs for the other PACCAR facilities. (Tr. 55, 153, 229, 272, 377; GC Ex. 4).

On June 20th, the day the contract was set to expire, the Respondent's proposals regarding outsourcing, insurance and the three-tiered wage scale remained unchanged. (Tr. 61, 62). The Respondent presented its last and final offer at midnight. (Tr. 157, 274). Union negotiators did not believe the parties were at impasse and reminded the Respondent Company it had not responded to the outstanding information requests. (Tr. 63, 156, 174, 232).

Union bargaining representatives met with the entire membership on June 22, 2008. (Tr. 64). While each member received a letter outlining the status of negotiations, Union negotiators explained that there were still some serious issues left open on the table, including the outstanding data requests about labor costs. (Tr. 64, 157; GC Ex. 5). After outlining the Respondent's final offer and its position regarding unlimited outsourcing rights and the three tiered wage proposals, the membership voted to continue bargaining and not to vote on acceptance of the agreement. (Tr. 65-67, 157-158, 277). The Respondent locked out the employees reporting for work on Monday, June 23, 2008. (Tr. 67, 234, 275, 394). The parties continued to negotiate over the next days and exchanged several letters in regards to the outstanding information requests. On July 16, 2008, the Respondent confirmed that it would not provide the requested data for the other PACCAR facilities. (Tr. 79, 166, 402; GC Ex. 12). Further negotiations were fruitless. (Tr. 79-82, 129, 131, 407). The Respondent permanently closed the Madison plant on April 6, 2009. (Tr. 19).

The Union filed unfair labor practice charges against the Respondent with Region 26 of the NLRB. (General Counsel's "GC" Ex. 1(a)). After submitting the case to Advice, the Region issued a complaint finding the Respondent had unlawfully refused to furnish the Union with information necessary and relevant to bargaining and that the lockout, although lawful at its inception, had become tainted as a result of the Respondent's July 16, 2008 refusal to provide the requested information.[1] (GC Ex. 1(g) ¶¶ 10, 11, 12, 13). Trial was held on June 8-10, 2010. (ALJ Decision, p. 2). Administrative Law Judge Keltner Locke found that the requested information was relevant, that the Respondent had violated the Act by failing and refusing to furnish the requested information as of July 16, 2008, and that this violation rendered the legal lockout illegal as of July 16, 2008. (ALJ Decision, p. 11).

The Respondent filed exceptions to the ALJ's decision with the National Labor Relations Board and both the Counsel for the Acting General Counsel and the Union filed Answering Briefs.

On July 15, 2011, the Board issued its Decision and Order finding that although the Respondent had unlawfully refused to provide the requested, relevant information in violation of 8(a)(5) and (1) of the Act, those violations did not make the lockout unlawful.[2] The Union respectfully submits the Board's Decision contains material errors warranting reconsideration under Section 102.48(d)(1) of the Board's Rules and Regulations.

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[1] Unfair labor practice charges against the Respondent related to overall surface bargaining and to the closure of the plant were dismissed by Region 26 of the NLRB.

[2] Although the Board's Decision and Order was dated July 15, 2011, according to the notice provided by the NLRB Deputy Executive Secretary, not all parties were served "due to a technical error in the Board's case processing system." As a result an Amended Affidavit of Service for July 27, 2011 was issued in this case. Service on the Union was postmarked July 27, 2011.

II. ISSUES FOR RECONSIDERATION

1. Whether the Board erred when it found that there was "no evidence that [the Union] ever claimed after the Respondent refused on July 16 to provide the requested information, that it was precluded from evaluating the Respondent's proposals or formulating its own counterproposals because it lacked the requested information."

2. Whether the Board erred when it found that in a "communication to its members after the lockout began, the Union claimed there were over 150 issues that remained to be resolved, but it did not claim that the Respondent was failing to provide necessary information."

III. ARGUMENT

A party to a proceeding before the Board may, because of extraordinary circumstances, move for reconsideration. NLRB Rule 102.48(d)(1). The Union submits that these two material errors warrant the Board's reconsideration of it's Decision and Order finding that there was no evidence in the record demonstrating that the withholding of the requested information materially affected the progress of bargaining. (NLRB Decision and Order, Case 26-CA-2322, July 15, 2011, p. 5).

In support of the Board's determination that there was "no evidence that the outstanding information request was a stumbling block to bargaining," the Board held that there was "no evidence that [the Union] ever claimed, after the Respondent refused on July 16 to provide the requested information that it was precluded from evaluating the Respondent's proposals or formulating its own counterproposals because it lacked the requested information." (Id. at p. 4). This finding is contrary to the evidence in the record.

According to credited testimony[3] in the record, during the August 19, 2008 bargaining sessions the parties discussed specific obstacles to an agreement, including the need for the information relative to the other facilities and the issues surrounding outsourcing. (Tr. 130-131). During both the August 19, 2008 and the August 20, 2008 sessions, the Assistant Director for UAW Heavy Truck Department, Tim Bressler, told Respondent's representatives that the information requested would make a difference in how the Union considered the Respondent's proposals and how it made counterproposals. (Tr. 130-131). It is undisputed that the Union raised the outstanding information request as an issue at the August 19, 2008 bargaining session. Contrary to the Board's finding, such evidence establishes that after July 16, 2008 the Union did in fact claim that it was precluded from evaluating the Company's proposals or formulating its own counterproposals because it lacked the requested information.

In further support of its Decision and Order, the Board also found that in a communication to its members after the lockout began, the Union claimed there were over 150 issues that remained to be resolved, but it did not claim that the Respondent was failing to provide necessary information.

This "communication" referenced by the Board was provided to the entire membership during a meeting on June 22, 2008, the day before the June 23, 2008 lockout began. (Tr. 64, 67, 234, 275, 394; GC Ex. 5). While the Board was correct that the letter itself did not mention the Respondent's refusal to provide the requested information, the evidence in the record showed that

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[3] The Board noted that it had carefully examined the record and found no basis for reversing the credibility determinations of the ALJ who found that his "observations of the witnesses [led him] to resolve any conflicts in the testimony by crediting that of Union Representatives Bressler and Bolte." (ALJ Decision, p. 6, lines 1-2; See also ALJ Decision p. 4, line 35 and p. 8, lines 7-8). The ALJ also specifically rejected the account of the Respondent's chief negotiator. (ALJ Decison, p. 6, line 9; See also ALJ Decision p. 7, line 19, finding the negotiator's action was disingenuous and did not enhance her credibility).

during that membership meeting the Assistant Director for UAW Heavy Truck Department, Tim Bressler, told the entire membership about the outstanding information requests that had been made in response to the Company's claims the Madison facility had the highest costs per hour of all of PACCAR facilities. (Tr. 66). He also specifically explained how it was difficult to effectively negotiate without the labor costs data that had been requested and indicated the Union needed the information in order to verify the claim of Madison having the highest costs and to consider the Company proposals and make counterproposals that would put it in a competitive position. (Tr. 66-67, 158). Bressler told the membership, "When you're tasked with being the highest cost and you don't know what that - - that level is or what the bar is being set at, it's pretty tough to negotiate underneath it." (Tr. 158). "There's got to be validity and credibility in what's being said." (Tr. 153). After Bressler's explanation, there was a motion by the membership not to vote on the agreement. (Tr. 277). As a result, the ALJ concluded that the "Union had a very substantial need to determine the accuracy of the claim that the Madison facility's operating expenses were the highest of all four truck plants." (ALJ Decision, p. 11, lines 21-22).

The Union does not dispute that as of June 22, 2008, there were many unresolved issues on the table, but as Tim Bressler, a veteran negotiator who had been involved in every UAW heavy truck negotiation since 2004 testified, "[T]ypically big issues don't get settled until the last hours." (Tr. 156). He stated he had been in numerous negotiations and often times "things get put to bed at the last minute." (Tr. 156). The ALJ correctly found, "Respondant's failure to provide the requested information had a substantial adverse impact on the negotiating process and placed an obstacle in the way of settlement." (ALJ Decision, p. 11, line 26-28).

Addressing the "circumstances of this case," the Board held that there was an "insufficient

link between the Respondent's refusal to turn over the requested information and the continuation of the lockout." But as outlined above, the Board made material errors in reviewing the "circumstances of this case." The record is clear. After the Respondent's July 16, 2008 refusal to provide the requested information, the Union continued to emphasize the need for the requested information in subsequent negotiations. The ALJ found, "The information requested related to a quite central matter, whether the Union would make wage concessions." (ALJ Decision, p. 11, lines 18-19). "Without the requested information, the Union lacked the means to evaluate what concessions it needed to make and what concessions would be unnecessary." (ALJ Decision, p. 11, lines 22-24). Consistent with the Board's Decision and Order in *KLB Industrustries, Inc. d/b/a National Extrusion & Manufacturing Company and International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America,* Cases 8-CA-37672 and 8-CA-37835, the Union submits the "Respondent was not entitled to lock out unit employees for refusing to accept proposed wage and benefit concessions while at the same time failing to fulfill its statutory duty to respond to the Union's information request...." *National Extrusion & Manufacturing Company,* 357 NLRB No. 8 at 5 (July 26, 2011).

IV. CONCLUSION

For the foregoing reasons, the Union respectfully requests that the Board reconsider its July 15, 2011 Order and Decision finding that the Respondent's 8(a)(5) and (1) violations did not make the subsequent lockout unlawful and affirm Judge Locke's rulings, findings, and conclusions in their entirety.

Respectfully submitted

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STATEMENT OF SERVICE

I, Deborah Godwin, hereby certify that a copy of the foregoing was filed electronically via the NLRB's E-Filing System on August 24, 2011, and that a copy was also served electronically via electronic mail, on August 24, 2011, upon all interested parties in this case, which include the following:

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S/ Deborah Godwin
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