United States Government

NATIONAL LABOR RELATIONS BOARD
Region 3
Niagara Center Building, Suite 630
130 S. Elmwood Avenue
Buffalo, New York 14202
Telephone: (716) 551-4931 Facsimile (716) 551-4972
Web Site Address: http://www.nlrb.gov

May 2, 2012

[redacted]
United Steel, Paper and Forestry, Rubber, Manufacturing,
Energy, Allied-Industrial and Service Workers
Five Gateway Center
Pittsburgh, PA 15222

Re: American Steamship Company and Liberty Steamship Company
Case 03-CA-071001

Dear [redacted]

We have carefully investigated and considered your charge that AMERICAN STEAMSHIP COMPANY & LIBERTY STEAMSHIP COMPANY has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have decided to dismiss your charge for the reasons discussed below.

Your charge alleges that the Employer violated Section 8(a)(1) and (3) of the Act by refusing to reinstate economic strikers upon the Union's unconditional offer to return to work. The investigation revealed that the Employer declined to reinstate the strikers only because it hired permanent replacements. Although you allege that the Employer's decision to convert the temporary strike replacements to permanent status was unlawful, the investigation failed to reveal evidence that the Employer's actions were unlawfully motivated. In this regard, the investigation established that, at the time that the Employer decided to convert the replacements to permanent status, the Union had been on strike for approximately 18 months, and had advised the Employer that employees were willing to remain on strike indefinitely. Faced with the high cost of maintaining a temporary workforce indefinitely and the need to ensure continuity in its operations, the Employer made a legitimate business decision to convert the strike replacements from temporary to permanent status. Further, the investigation failed to reveal any evidence that the Employer misled the Union about the status of the replacement workers or willfully concealed from the Union its intentions regarding the conversion. On the contrary, the investigation revealed that the Employer made no representations to the Union about the status of the replacement workers and the Union never inquired as to the status of the strike replacements during the two-year interval between the Union's commencement of the strike and its unconditional offer to return to work. Because the investigation failed to demonstrate that the Employer unlawfully converted the temporary strike replacements to permanent status, it had no duty to reinstate the strikers upon the Union's unconditional offer to return to work. Accordingly, I am dismissing your charge.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision to dismiss your charge was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, or by delivery service. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax. To file an appeal electronically, go to the Agency's website at www.nlrb.gov, click on **File Case Documents,** enter the NLRB Case Number, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on May 16, 2012. If you file the appeal electronically, we will consider it timely filed if you send the appeal together with any other documents you want us to consider through the Agency's website so the transmission is completed by **no later than 11:59 p.m. Eastern Time** on the due date. If you mail the appeal or send it by a delivery service, it must be received by the Office of Appeals in Washington, D.C. by the close of business at **5:00 p.m. Eastern Time** or be postmarked or given to the delivery service no later than May 15, 2012.

Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. A request for an extension of time may be filed electronically, by fax, by mail, or by delivery service. To file electronically, go to www.nlrb.gov, click on **File Case Documents**, enter the NLRB Case Number and follow the detailed instructions. The fax number is (202)273-4283. A request for an extension of time to file an appeal **must be received on or before** May 16, 2012**.** A request for an extension of time that is mailed or given to the delivery service and is postmarked or delivered to the service before the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/Rhonda P. Ley
RHONDA P. LEY
Regional Director

Enclosure

cc GENERAL COUNSEL
OFFICE OF APPEALS
FRANKLIN COURT BUILDING
NATIONAL LABOR RELATIONS BOARD
1099 14TH STREET, NW
WASHINGTON, DC 20570

[redacted]
AMERICAN STEAMSHIP COMPANY
500 ESSJAY RD
WILLIAMSVILLE, NY 14221-8226

[redacted]
JONES DAY
77 W WACKER DR
STE 3500
CHICAGO, IL 60601-1701

Form NLRB–4767

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
Room 8820, 1099 - 14th Street, N.W.
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

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Case Name(s).

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Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

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(Signature)