



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
OFFICE OF THE GENERAL COUNSEL  
Washington, D.C. 20570

June 14, 2012

[REDACTED]  
[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]:

Your appeal from the Regional Director's refusal to issue complaint has been carefully considered. The appeal is denied substantially for the reasons in the Regional Director's letter of May 2, 2012.

The evidence was insufficient to establish that the Employer's decision to convert its temporary replacements into permanent replacements was motivated by an "independent unlawful purpose" as required under *Hot Shoppes, Inc.*, 146 NLRB 802 (1964). Specifically, the evidence did not reveal evidence of animus in the Employer's decision to convert the temporary replacement workers to permanent employment status. Rather, the evidence demonstrated that the Employer had a substantial business justification for taking that action in that the strike had already lasted for almost a year and a half, and during that time, the Employer incurred significantly increased labor costs utilizing temporary replacements. Further, on belief that the 18-month strike might continue indefinitely (whether stated by a Union official or not), the Employer sought to insure that it would have a stable workforce, without continuing to incur the significant premium that it was paying an employment agency for temporary replacements.

With regard to the Employer failing to inform the Union that it had permanently replaced the strikers despite the fact that the Employer had ample opportunity to so notify the Union, the Board has stated that an employer has no duty to inform the strikers before hiring permanent replacement workers to fill their positions. *See Armored Transfer Services, Inc.*, 287 NLRB 1244, 1251 n. 21 (1988). However, an employer's affirmative attempt at secrecy can be

evidence that it harbored an independent unlawful motive in hiring the permanent replacements. *See Avery Heights II*, 350 NLRB 214 (2007).

Here, although the Employer did not tell the Union that it had hired permanent replacements, the facts of the instant case are distinguishable from those in *Avery Heights*, where the evidence supported that the Employer affirmatively attempted to keep information about the replacements secret, and additional compelling evidence supported the Employer's unlawful motive. In sum, in *Avery Heights II*, the Board, following a remand from the Second Circuit, found it significant that the employer had actively concealed the fact that it had hired permanent replacements from the union and had lied to the union about its plans for hiring permanent replacements. In the instant case, the totality of the evidence supports that the Employer did not affirmatively keep information about the replacements workers from the Union, and instead, as soon as the Union made an unsolicited offer to return to work, the Employer informed the Union that it had indeed hired permanent replacements. Furthermore, in *Avery Heights*, the employer elected to permanently replace the strikers less than one month after the beginning of the strike, while in the instant matter, the Employer waited nearly 18 months to permanently replace the strikers, and during that period, the Employer was engaged in bargaining with the Union. Additionally, in the instant case, the Employer chose to permanently replace the strikers at a time that made business sense, at the beginning of a new sailing season and after the January 2011 bargaining session in which there was evidence that the labor dispute would not end in the near future. Consequently, there is no evidence that the Employer attempted to hide the conversion of temporary workers to permanent workers in secrecy, as did the Employer in *Avery Heights*, or that it planned the conversion to preclude the strikers' return to work.

As for your evidence that the Employer indicated in an unemployment hearing that it was not hiring permanent replacements, this representation was made at the start of the strike, and enough time elapsed that it would be reasonable for the Employer to change its mind based on the intervening events. Accordingly, in the absence of an independent unlawful purpose, further proceedings are unwarranted.

Sincerely,

Lafe E. Solomon  
Acting General Counsel

By: 

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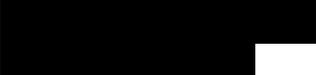
Yvonne T. Dixon, Director  
Office of Appeals

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

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