

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SILGAN PLASTICS CORPORATION

and

Cases 25-CA-031870  
25-CA-063058  
25-CA-065281  
25-CA-068259  
25-CA-072644  
25-CA-074946

UNITED STEELWORKERS, AFL-CIO-CLC,  
LOCAL UNION 822, a/w UNITED STEELWORKERS,  
AFL-CIO-CLC

MOTION TO REMAND CASES  
TO REGION TWENTY-FIVE

Comes now Counsel for the General Counsel and respectfully submits this Motion to Remand Cases to Region Twenty-Five for further processing. In support of this Motion, the General Counsel states that:

1. Based upon charges filed by United Steelworkers, AFL-CIO-CLC, Local Union 822, a/w United Steelworkers, AFL-CIO-CLC (the "Union"), the Region issued an Order Consolidating Cases and Consolidated Complaint on March 28, 2012, alleging that Silgan Plastics Corporation ("Respondent") had violated the National Labor Relations Act. After issuance of the consolidated complaint, an unfair labor practice hearing was conducted before Administrative Law Judge Paul Bogas regarding the instant cases on April 18-20, 2012.

2. Following the underlying unfair labor practice hearing, Judge Bogas issued a decision on September 20, 2012, regarding the instant cases which found that Respondent had violated Section 8(a)(1) and (5) of the Act. Respondent filed exceptions to the Judge's decision, which exceptions are currently pending before the Board.

3. On October 17, 2013, Respondent and the Union entered into a global non-Board settlement agreement which resolves the primary allegations contained in the matter pending before the Board (as well as a newer matter pending before the Region in Case 25-CA-103473). Specifically, the parties have agreed to execute a successor collective-bargaining agreement with favorable language and economic items regarding the terms and conditions of the bargaining unit. The parties further agreed that all of the pending unfair labor practices charges would be withdrawn as part of that settlement. The new collective-bargaining agreement was ratified by the Union's membership on December 2 but effectiveness of the agreement is dependent upon the Region's approval of the Union's withdrawal request pursuant to the terms of the non-Board settlement agreement.

4. The Union has pointed out that the Board has long had a policy of encouraging the non-litigious resolution of disputes. In Wallace Corp. v. NLRB, 323 U.S . 248, 254 (1944), the Court found that "the purpose of such attempted settlements has been to end labor disputes, and so far as possible to extinguish all the elements giving rise to them." On many occasions, the Board has reiterated its commitment to private negotiated settlement agreements and its policy of encouraging parties to resolve disputes without involving the Board. See, e.g., Texaco, Inc., 273 NLRB 1335, 1336-1337 (1985); Combustion Eng'g, Inc., 272 NLRB 215 (1984); Coca-Cola Bottling Co., 243 NLRB 501, 502 (1979).

5. The Union has further argued to the Region, without objection from Respondent, that the non-Board settlement agreement entered into by the parties here meets the factors set forth in Independent Stave Co., 287 NLRB 740 (1987). The Union has pointed out that both the Union and Respondent have agreed to be bound by the non-Board settlement agreement, which resolves all of the contract negotiations between the parties (including Respondent's alleged

unilateral changes to health insurance). The non-Board settlement agreement and new collective-bargaining agreement were the product of months of negotiations between the parties, not fraud or coercion, and both parties made significant concessions to arrive at mutual agreement. Further, apart from the present charges and the related one currently pending before the Region, there is no history of violations of the Act by Respondent nor any indication that Respondent has breached prior settlement agreements. With regard to the reasonableness of the non-Board settlement, the Union has pointed out that a significant amount of litigation at considerable expense to the parties remains in both these charges and the related matter pending before the Region. The central area of dispute between the Respondent, the Union, and the General Counsel is whether or not a contractual waiver survives the expiration of the contract, which is an area of the law that has been in flux and there is no guarantee that a different judge (in the matter currently pending before the Region), the Board, or a subsequent court on appeal would adopt the legal analysis used by Judge Bogas. Given this uncertainty, the risks of litigation weigh in favor of approval of the non-Board settlement agreement. See Roselle Shoe Corp., 135 NLRB 472 (1962). Finally, the Union points out that the new collective-bargaining agreement covers substantially all of the same individuals who might be eligible for a remedy under the pending charges and the wage increases and bonuses encompassed within the scope of that agreement far outweigh any financial remedy that might be available through the present Board proceedings. In fact, the remedy for the unilateral changes to health insurance as found by Judge Bogas in the instant cases and those alleged by the Region in the complaint in Case 25-CA-103473 is estimated at about \$77,000 while the wage increases and bonuses total about \$515,000 for the entire bargaining unit. The non-Board settlement agreement and new collective-bargaining agreement were carefully constructed and are the successful product of a

mature and cooperative bargaining relationship and substantially remedy the unfair labor practice charges pending before the Board and the Region.

6. The Regional Director, after reviewing the non-Board settlement agreement, has determined that the terms of the agreement meet the standards set forth in Independent Stave and effectuate the purposes and policies of the Act. The Regional Director therefore intends to approve the withdrawal of the charges and dismiss the complaint if this matter is remanded to the Region.

WHEREFORE, Counsel for the General Counsel respectfully moves that the Board issue an order remanding these cases to the Region so that the Regional Director can take further appropriate action.

SIGNED at Indianapolis, Indiana, this 7<sup>th</sup> day of February 2014.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion to Remand Cases to Region Twenty-Five has been filed electronically with the Office of the Executive Secretary through the Board's E-Filing System this 7<sup>th</sup> day of February 2014. Copies of said filing are being served upon the following persons by electronic mail:

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