A.D. 05243

UNITED STATES GOVERNMENT
National Labor Relations Board

Memorandum

TO Bernard Gottfried, Regional Director
Region 7

DATE JUN 3 1986

FROM Harold J. Datz, Associate General Counsel
Division of Advice

RELEASE

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512-5036-6761
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SUBJECT Voss Steel Corporation
Case 7-CA-25413

This Section 8(a)(1) and (3) case was submitted for advice on the issue whether an employer violated the Act by discharging an employee who had been locked out, after the lockout but before the Employer had recalled him to work.

We concluded that the Employer failed to meet its burden of showing that the employee had abandoned his job with the Employer; accordingly, the Employer violated Section 8(a)(1) and (3) by discharging him.

While it appears that there is no case specifically on point, we would argue that the legal principles underlying Laidlaw Corporation 1/ should apply to a lockout situation. In Laidlaw, the Board relied on the Supreme Court's holding in NLRB v. Fleetwood Trailer Co., 389 U.S. 375 (1967) that "by virtue of Section 2(3) of the Act, an individual whose work ceases due to a labor dispute remains an employee if he has not obtained other regular and substantially equivalent employment, ... " 2/ Consequently, it held that economic strikers retain the right as employees to be reinstated upon making an unconditional application therefor, as vacancies arise, so long as the strikers had not abandoned their jobs with the employer for other regular and substantially equivalent employment. Because employees who are subject to a lockout have not left their jobs of their own volition, as in a strike situation, the argument for the preservation of employees' reinstatement rights in the case of a lockout is all the more compelling than in a pure Laidlaw situation. Thus, under this argument, a locked-out employee, as an individual "whose work ceases due to a labor dispute," remains an

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1/ 171 NLRB 1366 (1968), enf'd, 414 F.2d 99 (7th Cir. 1969), cert. denied, 397 U.S. 920.

2/ Laidlaw, above, 171 NLRB at 1368 (emphasis added).

employee so long as he has not obtained other regular and substantially equivalent employment.

In this case, the Employer contends that the employee abandoned his job based solely on his failure to submit certain insurance forms, which the Employer had requested. 3/ The employee admits that he had not filed those forms, but he claims that he did not want insurance and so he saw no need to complete the forms. The Employer also claims the employee's father told it that the employee had obtained employment elsewhere. The employee's father denies saying this. In addition, the employee claims that he called the Employer asking for work repeatedly from the date on which the Employer announced the reopening of the plant to sometime after his discharge.

We would argue that the Employer has not met its burden of showing the employee's abandonment of his job under Laidlaw. 4/ The employee's failure to file the insurance forms provides little support for the Employer's contention, especially in view of the employee's claim that he repeatedly called the Employer for work. Further, the Employer's assertion that it was told by the employee's father that the employee had taken another job, even if credited, 5/ is not sufficient to show that the employee had abandoned his job with the Employer. Thus, even if the employee had obtained another job, this fact, in the absence of evidence that the new job was substantially equivalent to his employment with the Employer, would not satisfy the Employer's burden of showing job abandonment. 6/

Accordingly, the Region should issue a Section 8(a)(1) and (3) complaint, absent settlement, based on the foregoing analysis.

H. J. D.

3/ Apparently, the Employer directed employees to submit either applications for insurance or a form waiving insurance coverage.

4/ See U.S. Minerals Product Co., 276 NLRB No. 22 (1985).

6/ See Fleetwood Trailer, above.