United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: August 22, 1986

TO : Joseph A. Szabo, Regional Director
Region 30

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

536-2581-3370-0100

SUBJECT: Lo Dal Inc.
Case 30-CA-9263

International Brotherhood of
Teamsters, etc. Local 328

These cases were submitted for advice as to whether an employer and a union violated Section 8(a)(1) and (3) and Section 8(b)(1)(A) and (2), respectively, by entering into an agreement that was applied retroactively to deny an employee seniority credit to which he was arguably entitled under the contract. [1]

FACTS

Charging Party William Bednarz was employed by Lo Dal Inc. (the Employer) in a unit represented by Teamsters Local 328 (the Union) from about 1971 to 1980. In 1980 he accepted a supervisory position with the employer and left the bargaining unit. He was laid off from a management position on January 7, 1986.

At that time the Employer and the Union were parties to a collective bargaining agreement, which expired on January 15, 1986 and which provided "Supervisors who return to. . . the bargaining unit shall have seniority rights in accordance with Sections 3 and 4 of this Article." Sections 3 and 4 define "Departmental Seniority" and "Plant Seniority," respectively, for all employees. In the past, supervisors have returned to the unit with full seniority pursuant to these provisions. No supervisor had been away from the unit for more than two years when he returned,

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[1] These cases were submitted together with Clipper City Lodge No. 516, District 10, Int'l. Ass'n of Machinists (Manitowoc Engineering Co., Case 30-CB-2527, which involves a similar issue. That case will be dealt with in a separate memorandum.

however. The contract contained no time limit as to the exercise of this right.

Immediately after his layoff, Bednarz asked the Employer to give him a job in the bargaining unit with his full seniority. The Employer raised the issue with the Union during a negotiation session for a replacement contract. The Union objected to a supervisor returning to the unit with full seniority after a six year absence. During negotiations the parties agreed to modify the contractual provisions regarding supervisors' rights to return to the unit with their seniority; the new agreement provides that supervisors would retain such rights only for two years. Based on this new agreement, Bednarz was told he would not be credited with seniority if he returned to the unit.

Bednarz alleges that the retroactive application of the new agreement to deny him seniority credit was arbitrary and therefore violative of the Act.

ACTION

We noted that there is no evidence that the parties' resolution of Bednarz' request was influenced by hostility toward Bednarz. We further concluded that the resolution agreed to by the Union and the Employer was within the wide range of reasonableness accorded parties in the administration of a contract. In these circumstances, we decided, there is no basis for concluding their conduct was unlawful and the charge should be dismissed, absent withdrawal.

Initially, we noted there is no evidence to suggest that the decision to deny Bednarz full seniority was based on Bednarz' union activity or lack thereof or on any other invidious hostility to Bednarz. Consequently, the charge against the Employer is viable, if at all, only if the Union violated its duty of fair representation by entering into the agreement to limit supervisors' right to return to the unit with full seniority. See Ford Motor Co. v. Huffman, 345 U.S. 330, 343 (1953).

Inherent in a union's authority to negotiate and administer a contract on behalf of the employees it represents is the "discretion to make such concessions and accept such advantages as, in the light of all relevant

considerations, they believe will best serve the interests of the parties represented." Ford v. Huffman, 345 U.S. at 337-338. If a union acts in a manner contrary to the provisions of an existing collective bargaining agreement or with invidious discrimination toward a represented employee or group of employees, it violates its duty of fair representation. Red Ball Motor Freight, Inc., 157 NLRB 1237, 1244 (1966), citing Miranda Fuel Co. Inc., 140 NLRB 181 (1962). But it has long been recognized that conflicts between classes of employees inevitably arise in the application of a contract and the union's resolution of such conflicts must be accorded a "wide range of reasonableness. . . subject always to complete good faith and honesty of purpose in the exercise of its discretion." Ford v. Huffman, 345 U.S. at 338. In evaluating a union's interpretation of a contract it is not necessary to determine whether the union chose the more "meritorious" position. The union has satisfied its duty of fair representation if its choice is reasonable, not contrary to the face of the contract and not inconsistent with past practice. United Steel Workers of America (Miami Copper Co., 190 NLRB 43, 43 (1971). Accord, Washington-Baltimore Newspaper Guild, Local 35 (CWA), 239 NLRB 1321, 1322 (1979).

In the instant case, the collective bargaining agreement was silent on the question of whether a supervisor's right to return to the bargaining unit with full seniority existed without limit as to the length of time the supervisor had been out of the unit. Past practice did not definitively resolve the question presented by Bednarz' case because the supervisors who had previously returned to the unit with full seniority pursuant to the clause had been away from the unit for no more than two years. Moreover, no matter what position the Union took, employees would be disadvantaged. If it sided with Bednarz, unit employees whose seniority status would be displaced by Bednarz would be disadvantaged.[2] If it

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[2] It is not clear whether "full seniority" meant that the supervisor received credit only for the seniority he or she had accrued as a unit member or that the supervisor also was credited with time in the Employer's employ as a supervisor. To the extent that it meant the latter, the Union could reasonably be concerned that unit employees would lose seniority status as a result of the supervisor's credit for employment not earned in the unit.

chose to protect the seniority status of current employees, Bednarz would be disadvantaged.

In any event, the Union decided that six years was "too long" to retain full seniority rights. We concluded that inasmuch as this position was a reasonable resolution of an unresolved point and was not inconsistent with past practice, the Union acted within its discretion. Accordingly, the charge should be dismissed, absent withdrawal.

H.J.D.