

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

UNITED STEELWORKERS OF
AMERICA, AFL-CIO-CLC and its
LOCAL UNION NO. 4544

and

Case 8--CB--8138

THE GENERAL METALS POWDER COMPANY

Nancy Recko, Esq. of
Cleveland, OH, for the
General Counsel.

Carolyn T. Wonders, Esq.,
of Akron, OH, for the
Respondent.

DECISION

Statement of the Case

IRWIN H. SOCOLOFF, Administrative Law Judge: Upon a charge filed on April 11, 1996, and amended on July 9, 1996, by The General Metals Powder Company, against United Steelworkers of America, AFL-CIO-CLC and its Local Union No. 4544, herein called the Respondents, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 8, issued a Complaint dated July 16, 1996, alleging violations by Respondents of Section 8(b)(3) and Section 2(6) and (7) of the National Labor Relations Act, as amended, herein called the Act. Respondents, by their Answer, denied the commission of any unfair labor practices.¹

¹ Also, at the commencement of this proceeding, Respondents moved for dismissal of the Complaint allegations against the International Union, as it was not named as a party to this case until the amended charge was filed on July 9, 1996, more than 6 months after Respondents and the Company allegedly reached full agreement on the terms of a new contract which the Unions are, now, accused of refusing, unlawfully, to sign. However, the Complaint alleges that the unfair labor practice conduct occurred on and after January 17, 1996, when Respondents refused to execute the contract, and not on November 15, 1995, when terms were reached. Accordingly, the amended charge, naming the International Union as a party Respondent, was filed within the Section 10(b)

Pursuant to notice, trial was held before me in Akron, Ohio, on December 10,
5 1996, at which the parties were represented by counsel and were afforded full
opportunity to be heard, to examine and cross-examine witnesses, and to introduce
evidence. Thereafter, the General Counsel and the Respondents filed briefs which have
10 been duly considered.

15 Upon the entire record in this case, and from my observations of the witnesses, I
make the following:

20 Findings of Fact

25 I. Jurisdiction

The General Metals Powder Company is an Ohio corporation engaged in the
manufacture of friction material at its Akron, Ohio, facility. Annually, the Company
30 derives gross revenues in excess of \$50,000, from the sale and shipment of its products
directly to points located outside the State of Ohio. I find that the Company is an
35 employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the
Act.

40 II. Labor Organizations

Respondents are, each, labor organizations within the meaning of Section 2(5)
45 of the Act.

III. The Unfair Labor Practices

limitations period prescribed by the Act.

A. Background

Respondents, the International Union and Local 4544, have represented the
 5 Company's production and maintenance employees since 1952, and, on their behalf,
 have entered into a series of collective-bargaining agreements with the Employer. The
 most recent contract was in effect for the period September 4, 1992, until November 14,
 10 1995. The parties reached apparent agreement on the terms of a new contract on
 November 15, 1995, but, beginning January 17, 1996, Respondents refused to sign a
 15 final draft of that agreement, as presented by the Company, because of the absence of
 two provisions which last appeared in the parties' 1988, to 1991, contract, and which
 were not included in the successor agreement adopted in 1992. The provisions at
 20 issue, as found in the 1988, contract, are as follows:

ARTICLE 21

Insurance and Pensions

* * * *

30 Section 1(L) The company will provide, at its expense, the
 prescription drug plan in effect for all employees who retire
 between ages 62 and prior to age 65. This provision shall
 be retroactive to include the last employee only to retire
 35 prior to September 15, 1988.

* * * *

40 Section 2. . .
 Company will provide all future retirees with a
 \$5,000.00 paid-up life insurance policy, effective September 16
 1988.

45 It is undisputed that the foregoing matters were not the subject of negotiations leading to
 the November, 1995, agreement, which Respondents, now, refuse to sign.

In the instant case, the General Counsel contends that, by refusing, since

January, 1996, to sign the new contract, Respondents have acted in violation of Section 8(b)(3) of the Act. Respondents urge that the parties did not agree, either in the negotiations leading to the 1992, contract, or in the negotiations which resulted in apparent agreement in 1995, to deletion of the 1988, to 1991, contract clauses at issue. Thus, according to Respondents, pursuant to past practice, they remained part of the basic agreement between the parties, and Respondents are privileged to withhold signature from the draft of a purported agreement which omits those provisions.

B. Facts²

During negotiations leading to the 1988, to 1991, agreement, referred to by the parties as the "brown book," the provision for prescription drug coverage for retirees was adopted for the first time. A retiree life insurance benefit had been included in prior contracts and, by the "brown book" agreement, the benefit was increased from \$3,000, to \$5,000.

The "brown book" expired on September 15, 1991, and, in anticipation thereof, the parties entered into negotiations to achieve a successor contract. Respondents' negotiating team included Chief spokesman Herbert Stottler, staff representative for the International Union, and Local Union officials Charles Daugherty, Chris Ellis and Jerry Taylor. For the Company, attorney Harley Kastner served as principal spokesperson. In the course of a long period of bargaining, the subject of insurance was paramount. The Company insisted on, and eventually won, an entirely re-written Article 21, Insurance and Pensions, and its proposals did not include provisions for prescription

² The fact-findings contained herein are based upon a composite of the documentary and testimonial evidence introduced at trial. The record is generally free

drugs, or life insurance, for retirees. According to Stottler, however, the Company never expressly proposed to eliminate those benefits. Stottler further testified that it was the practice of the parties, established during the course of their bargaining history, to retain contractual provisions which were not expressly changed by subsequent agreement.

The parties reached tentative agreement in May, 1992, but that accord did not survive a ratification vote by the Local Union's membership. However, a revised contract was ratified in early June, and was immediately implemented by the Company, prior to execution. Thereafter, Company Attorney Kastner prepared a memorandum summarizing the agreements that had been reached and ratified, and he also prepared a complete contract for signature by the parties. Neither document contained the retiree benefit provisions at issue, or made reference to same, but, rather, they set forth an "entire rewrite" of the contractual Insurance and Pension provision which did not include either a prescription drug plan or life insurance for retirees.

Prior to execution, at the direction of International Union Staff Representative Stottler, the Local Union officials who had served on the bargaining committee proof-read the proffered new contract. Thereafter, at a meeting held on September 4, 1992, both the summary and the contract, as tendered by Kastner, were signed by representatives of the Company and the appropriate officials of Local Union No. 4544. Although Stottler had been informed of the meeting, and its purpose, he did not attend. However, the Local Union officials, Daugherty, Ellis and Taylor, signed the ratified contract without expressing any reservations.

Ultimately, Stottler did sign the summary, but not the 1992, contract. He testified

of significant testimonial conflict.

that "I don't know why I didn't sign it," and that his failure to sign the document was not because of any belief that it did not set forth, accurately, the agreement of the parties.

5 Nor, during the life of the contract, did either Respondent raise any concerns about the implementation and effectuation of the agreement, or express reservations about its validity.

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During the effective period of the 1992, to 1995, contract, the parties entered into various memorandum agreements modifying terms of the contract, including, on several occasions, extensive revisions to its insurance and prescription drug plans. The memoranda do not reference the retiree benefits at issue here, and it is undisputed that, during negotiation of the memorandum agreements, Respondents did not raise the subject of retiree benefits. All of the memoranda were signed by the appropriate representatives of Local 4544. Stottler, on behalf of the International Union, who had signed the 1988, contract, but, as noted, did not sign the 1992, agreement, signed most, but not all, of the memoranda

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By letter from the International Union dated August 31, 1995, Respondents notified the Company of their desire to terminate the contract "in accordance with its provisions as of November 14, 1995." Thereafter, in the Fall, the parties commenced negotiations, and, again, Kastner and Stottler acted as chief spokes persons. Local Union officials Ellis, Keith Sherbourne and Hugh Sloane also served on Respondents' bargaining team. During the course of negotiations, both Company proposals, and those of Respondents, referenced the article and section numbers of the 1992, contract. Neither side made proposals concerning a prescription drug plan, or life insurance plan, for retirees. After some 5 or 6 bargaining sessions, at a meeting held on or about November 15, 1995, attended by Stottler, the parties reached full agreement on a new

contract. Shortly thereafter, the agreement was ratified and, again, was implemented by Respondent, immediately, and prior to execution.

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Kastner prepared, and sent to the Local Union, a draft of the new contract in late November, or early December. Upon receipt, Sherbourne complained to the Company about the inclusion of certain provisions, contending that they had not been negotiated. After review of his bargaining notes, Kastner agreed that the subject provisions should not have been included, and they were stricken. Respondents did not raise any other issues concerning the draft agreement and, accordingly, Kastner prepared a new draft, deleting the above-referenced matters.

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On January 17, 1996, Kastner tendered to Respondents a revised draft of the new contract, for signature. At that time Sloane complained about the lack of an exhibit summarizing benefits, as contained in the "brown book." Kastner responded, stating that a summary was not necessary, and had not been part of the 1992, agreement. When Respondents said that they would not sign the contract without such an exhibit, Kastner said that he would consider the matter.

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Respondents, apparently, soon abandoned their insistence on the preparation of a benefits summarization exhibit. However, on February 5, the Unions raised new matters. On that date, Sherbourne and Ellis advised the Company that Respondents would not sign the new agreement unless the prescription drug plan for retirees, and the retirees' life insurance benefit, as contained in the "brown book," were inserted into the new contract. The Company would not accede to those demands. On March 7, 1996, Kastner met with Stottler and asked him to sign the agreement, as tendered. Stottler refused to do so, absent the inclusion of the retiree benefits. At a meeting with Kastner

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held on April 10, Respondents, again, on the same grounds, refused to sign the new contract.

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Respondents urge herein that, as the 1992, contract, was signed, only, by Local Union officials, and not, also, by a representative of the International Union, it is not, and was not, a valid collective-bargaining agreement between the parties, at all. In this connection, Respondents point out that, historically, the parties have styled their agreements as contracts between the Company and the United Steelworkers of America, AFL-CIO, "on behalf of itself and members of Local Union No. 4544," as mandated by the International Union. Re-opener notices have been sent by a representative of the International, and its staff representative has served as chief spokesman during contract negotiations. Also, the staff representative plays a significant role in the administration of the contractual grievance procedure.

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Nonetheless, at no time prior to execution of the 1992, contract, did either Respondent advise the Company that signature by the International was a condition of agreement.

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C. Conclusions

I find entirely lacking in merit Respondent's contention that the 1992-1995, agreement, was not a contract at all, because, by happenstance, it was not signed by a representative of the International Union. That contract was negotiated and approved by both Respondents, was ratified by the affected membership and, thereafter, was accepted, applied and administered by both Respondents. In these circumstances, the post-expiration claim of invalidity defies logic, and flies in the face of the conduct of the parties, over a period of years, as governed by that agreement.

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The parties reached full and complete accord on the terms of a successor

contract on or about November 15, 1995, and that agreement was quickly ratified.

During the course of negotiations leading to conclusion of the contract, neither side

5 proposed the inclusion of a prescription drug plan, or a life insurance plan, for retirees.

Indeed, those items had not appeared in an agreement since the 1991, expiration of the

"brown book." Following ratification of the 1995, contract, and over a period of months,

10 Respondents had ample opportunity to proof read the draft agreement, and they did so.

As a result, corrections were made at their request. At no time did they raise the subject

15 of the retiree benefits now at issue. Nevertheless, since early 1996, and continuing to

date, Respondents have refused to sign the new agreement unless the Company

agrees to insert provisions granting prescription drug and life insurance benefits to

20 retirees, as they existed in the contract which expired almost 5 years before.

25 In justification of their position in 1996, Respondents argue that the subject

provisions "should have been" included in the preceding contract, negotiated, proofread

and approved by them in 1992. Yet, Respondents have not shown that this was what

30 was negotiated then. Moreover, it was incumbent on the Respondents, at that time, to

review the 1992 draft agreement to insure that the wording reflected the results of

35 negotiations. They had ample opportunity to do so. Notwithstanding, this matter was not

raised until 1996. As noted in a recent opinion of the United States Court of Appeals for

the Fifth Circuit, involving a union's claim, in a similar context, following collective-

40 bargaining negotiations:³

. . . there must come a time for repose in all agreements. . .
 when grown-ups are deemed to accept responsibility for
 45 their own acts--and omissions--and post hoc second bites
 at the proverbial apple can no longer be taken. . .

That admonition in mind, I conclude that, since January, 1996, Respondents have

³ NLRB v. E-Systems, Inc., 154 LRRM 2225 (5th Cir. 1997).

violated Section 8(a)(5) of the Act by refusing to sign the agreement negotiated in 1995, because it lacked retiree benefit provisions neither agreed to in 1995, nor set forth in the predecessor agreement, but which, in Respondent's entirely unsubstantiated view "should have been" included in the earlier contract and carried over into the new one.

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Conclusions of Law

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1. The General Metals Powder Company is an employer engaged in commerce, and in operations affecting commerce, within the meaning of Section 2(2), (6) and (7) of the Act.

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2. Respondents, United Steelworkers of America, AFL-CIO-CLC and its Local Union No. 4544, are labor organizations within the meaning of Section 2(5) of the Act.

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3. By refusing, on and after January 17, 1996, to execute the written contract reflecting their collectively bargained agreement with the Company, covering the historical production and maintenance employee unit, Respondents have engaged in unfair labor practice conduct within the meaning of Section 8(b)(3) of the Act.

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4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, and conclusions of law, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:⁴

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ORDER

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Respondents, United Steelworkers of America, AFL-CIO-CLC and its Local Union No. 4544, Akron, Ohio, their officers, agents and representatives, shall:

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1. Cease and desist from:

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(a) Refusing to execute the written contract reflecting their collectively bargained agreement with the Company, as presented by the Company on January 17, 1996.

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(b) In any like or related manner, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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2. Take the following affirmative action necessary to effectuate the policies of the Act:

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(a) Upon request, execute, and give full force and effect to, the written contract reflecting the collectively bargained agreement with the Company, covering the

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⁴ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions and Order,

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historical production and maintenance employee unit, as presented by the Company on January 17, 1996.

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(b) Post at their Akron, Ohio, offices, copies of the attached notice marked "Appendix."⁵ Copies of said notice, on forms provided by the Regional Director for Region 8, after being duly signed by Respondents' representative, shall be posted by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced or covered by any other material.

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(c) Furnish the Regional Director for Region 8 with signed copies of the notice for posting by the General Metals Powder Company, at its Akron, Ohio, facility, if willing, in places where notices to employees are customarily posted.

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(d) Notify the Regional Director for Region 8, in writing, within 20 days from the date of this Order, what steps Respondents have taken to comply herewith.

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Dated, Washington, DC March

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and all objections thereto shall be deemed waived for all purposes.

⁵ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGEMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

Irwin H. Socoloff
Administrative Law Judge

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APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to execute our collectively bargained agreement with the Company, as presented by the Company on January 17, 1996, covering the historical unit of production and maintenance employees.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, execute, and give full force and effect to, the written contract reflecting the collectively bargained agreement with the Company, as presented by the Company on January 17, 1996.

UNITED STEELWORKERS OF AMERICA, AFL-
CIO-CLC and LOCAL UNION NO. 4544

(Labor Organization)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered with any other material. Any questions concerning this notice, or compliance with its provisions, may be directed to the Board's Office, 1240 East 9th Street, Room 1695, Cleveland, Ohio 44199-2086, Telephone 216-522-3729.

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