

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

CERTAINTEED CORP.

and

Case

08-CA-073922

**UNITED STEELWORKERS INTERNATIONAL
UNION, LOCAL 363, A/W UNITED STEEL, PAPER
AND FORESTRY, RUBBER, MANUFACTURING,
ENERGY, ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION**

**RESPONSE OF THE ACTING GENERAL COUNSEL
TO NOTICE TO SHOW CAUSE**

On May 31, 2012, the Region issued a Complaint and Notice of Hearing in the above-captioned case. On June 14, 2012, the Respondent filed an Answer To Complaint, as well as Respondent's Motion To Dismiss Complaint. The Acting General Counsel filed a Reply In Opposition To Respondent's Motion To Dismiss The Complaint, dated July 3, 2012. On August 17, 2012, an Order Transferring Proceeding to the Board and Notice to Show Cause issued under the signature of the Executive Secretary, by direction of the Board.

The Complaint alleges that the Respondent acted in violation of Section 8(a)(5) and (1) of the Act by failing and refusing to bargain with the Charging Party Union concerning the implementation of a new policy banning smoking from the workplace and the effects of that policy on bargaining unit employees. The Respondent, by Human Resource Manager Edward Miller, orally and by letter announced its refusal to bargain with the Union regarding the Respondent's announced "Tobacco-Free Workplace Policy."

The Respondent, in its Motion to Dismiss, maintains that its unilateral action is justified based on its interpretation of Article XXIX of the contract (Management Rights). The Respondent also relies upon the grievance provisions of the contract at Article XVI, arguing that the grievance procedure is broad enough to cover any disputed issues related to the management rights clause and thus that the case should be deferred.

The Acting General Counsel, for the reasons fully developed in its Reply In Opposition To Respondent's Motion To Dismiss The Complaint, dated July 3, 2012, respectfully submits that the Respondent's Motion To Dismiss should be denied and that an Administrative Law Judge should determine the merits of this genuine issue at hearing.

Respectfully submitted,

/s/ Gregory M. Gleine

Gregory M. Gleine (OH 72468)
Counsel for the Acting General Counsel
National Labor Relations Board
1240 E. 9th St., Room 1695
Cleveland, OH 44199
(216) 522-8185
gregory.gleine@nrlb.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically and served by regular mail on August 24, 2012 to the following:

RUTHIE L. GOODBOE, Esq.
OGLETREE DEAKINS NASH
SMOAK & STEWART, PLLC
34977 WOODWARD AVENUE, SUITE 300
BIRMINGHAM, MI 48009

MARK A. HYDE
CERTAINTEED CORPORATION
11519 US ROUTE 250 N
MILAN, OH 44846

CHRISTOPHER MARTINEZ, Staff Rep.
UNITED STEEL WORKERS UNION, AFL-
CIO DISTRICT 1, SUBDIVISION 4
955 COMMERCE DR
PERRYSBURG, OH 43551-5261

ROBERT COHEN
CERTAINTEED CORP.
750 E SWEDES FORD ROAD
VALLEY FORGE, PA 19482

OFFICE OF THE EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
1099 14TH ST NW
WASHINGTON, DC 20570-0001

Respectfully submitted,

/s/ Gregory M. Gleine

Gregory M. Gleine (OH 72468)
Counsel for the Acting General Counsel
National Labor Relations Board
1240 E. 9th St., Room 1695
Cleveland, OH 44199
(216) 522-8185
gregory.gleine@nrlrb.gov