

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

AMERICOLD LOGISTICS, LLC,

Employer,

and

KAREN COX,

Petitioner,

and

RETAIL, WHOLESALE AND
DEPARTMENT STORE UNION, UFCW,
LOCAL 578,

Union - Intervener.

Case No. 25-RD-108194

**OPPOSITION TO UNION'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S
DECISION AND DIRECTION OF ELECTION IN CASE NO. 25-RD-108194**

I. Summary Statement of Position

Notwithstanding the Union-Intervenor's efforts to misdirect and mislead the National Labor Relations Board ("Board") in its Request for Review, the sole legal issue in this case can be simply stated: Is a Recognition Bar entitled to greater deference by the Board than a Certification Bar such that it can be extended beyond the one year period of the Certification Bar? As correctly determined by Regional Director Rik Lineback, the answer to that pure legal question is a resounding "No." In his decision, the Regional Director stated that the *Lamons Gasket* Board "did not intend a recognition bar to extend beyond a year from the date of recognition." Decision & Direction of Election, Case 25-RD-108194, July 26, 2013, at 2. Accordingly, this is not a case, as Union-Intervenor asserts, where the question is whether the

parties had an adequate time to bargain. That question is especially irrelevant given the undisputed factual record in this case. Indeed, the parties must have had an adequate time to bargain as reflected by the fact that they actually reached an agreement through the collective bargaining process—an agreement, it must be noted, that was overwhelmingly ratified by the members of the bargaining unit. Its position that it is entitled to more time to bargain, which would bar the RD petition, is simply a ploy to deny Petitioner and her supporters the right to vote and test the Union’s support. That ploy should be rejected. Accordingly, Americold Logistics, LLC (“Americold” or “Company”) requests that the Board deny the Request for Review filed by the Retail, Wholesale and Department Store Union, UFCW, Local 578 (“Union” or “RWDSU”).

II. STATEMENT OF FACTS

The Company’s post-hearing brief filed in Case No. 25-RD-102210, attached hereto as Exhibit 1, describes the facts as they stood on May 7, 2013. Since then, the parties engaged in seven additional bargaining sessions, raising the total number of bargaining sessions to twenty-one over a nearly nine-month period.¹ See Union Ex.1. 8; Tr.1. 71:10-25; Union Ex.2. 1A-1C., Tr.2. 27:25-28:3-25; 31:10-11. The parties reached a tentative agreement on June 26, 2013, which was ratified by union members on June 29, 2013—one day after the filing of this instant decertification petition. See Union Ex.2. 3.

The fact that these negotiations have been conducted in good faith by both parties is not an issue before the Board. Throughout the negotiations, the Union has never accused the

¹ The Union’s argument that the parties have not engaged in bargaining for six months is simply incorrect. There is no dispute over the fact that when the decertification petition was filed, the parties had been bargaining for nearly 9 months (from October 9, 2013 to June 28, 2013). See Union Ex.1. 8. Moreover, the Regional Director concluded that the parties have surpassed the six month of bargaining required before the recognition bar can be lifted. Accordingly, the Union’s last-ditch attempt to discount this length of bargaining time should be wholly ignored.

Company of failing to bargain in good faith, nor filed any 8(a)(5) unfair labor practice charges against the Company.

Finally, although it is not the Company's intention to quibble over the basic facts, it must correct a statement made by the Union in its Request for Review. The Union blames the Company for the delay in bargaining between May 22, 2013, and June 25, 2013, by arguing that this break in time was wholly attributable to the Company and insinuating that the Company purposefully choose dates after June 18, 2013 (the anniversary of the date of voluntary recognition). *See* Union Request for Review, at p. 2, 7-8. What the Union fails to include in its Request for Review is the fact that the Company choose the dates for the June bargaining session based off a list of dates *that the Union provided*. *See* Union Ex.2. 2A. This is not a case where the Union sought to meet in early June and the Company pushed off bargaining until after June 18, 2013; rather, in May, the Union proposed 9 bargaining dates in June—5 of which were on or after June 18, 2013—and the Company choose the dates of June 25 and 26, 2013 from the 9 proposed dates. *See id.* The accusation that the Company delayed bargaining to facilitate the potential filing of a decertification petition is without merit.

III. LEGAL ARGUMENT

A. The Recognition Bar Cannot Extend Beyond the One-Year Certification Bar

The Board should affirm the Regional Director's decision because a recognition bar cannot run longer than the one-year certification bar. In this case, Ms. Cox filed her decertification petition on June 28, 2013, which was over one year after the Union was voluntarily recognized on June 18, 2012. *See* Union Ex.1. 2. Had the Union been certified on June 18, 2012, instead of voluntarily recognized, there would be no dispute over whether a decertification election was barred: the decertification petition would have been filed one year

after the date of certification and processed without protest. Thus, by seeking to prohibit the processing of Ms. Cox's decertification petition, the Union is seeking more protection under the recognition bar than it would have received under the certification bar—a perverse result that was never intended by the Board.

The Board has always viewed certification bars as providing the highest level of protection for unions. In *Lamons Gasket*, the Board repeatedly stated that a union could only receive the “legal advantage” of a 12-month bar if it was certified by the Board through a Board-run election. *See, e.g.*, 357 NLRB No. 72, slip op. at 4. The Board also noted that it “has permitted unions to petition for an election after being voluntarily recognized in order to obtain certification and the attendant statutory advantages flowing therefrom.” *Id.* at 3 n. 6. Thus, the Board was crystal clear about the fact that a 12-month bar—one of the benefits of Board certification—was not intended for unions that were voluntarily recognized: “An election remains the only way for a union to obtain the Board certification and its attendant legal benefits. Neither the pre-*Dana* law nor the law after today equates the processes of voluntary recognition and certification following a Board-supervised election.” *Id.* at 10. Therefore, the Board cannot allow the RWSDU to receive the legal advantage of a bar greater than 12 months when it was not certified by the Board. To do so would raise the status of a recognition bar higher than that of the certification bar, which was not the Board's intention in *Lamons Gasket*.

Moreover, the Union argues that by starting the “reasonable period of bargaining” from the date of the first bargaining session, the Board did not preclude a recognition bar from running longer than the one-year certification bar. This argument is without precedent or merit. As the Regional Director noted, the specific scenario at issue here—“whether the recognition bar can be extended up to a year after the first contract negotiation meeting, when that date is more than a

year after the date of voluntary recognition”—was neither before nor addressed by the *Lamons Gasket* Board. Decision & Direction of Election, at p. 2. Moreover, as evidenced by the Board’s overruling of *Dana Corp.*, 351 NLRB 434 (2007) in *Lamons Gasket*, the Board did not anticipate that there would be such a lengthy period of time between the date of voluntary recognition and the first bargaining session—and that this lengthy delay would be used by unions to claim greater protection from the recognition bar than they would be entitled to under the certification bar.

In *Dana Corp.*, the Board changed the recognition bar doctrine by holding that a recognition bar will only be imposed if: (1) employees receive notice of the voluntary recognition and their right to file a decertification petition within 45 days; and (2) no petition was filed within 45 days of such notice. *Id.* (also applicable to representation petitions filed by rival unions). When the Board overturned this decision, it explained that the *Dana Corp.* rule suspended meaningful bargaining for at least 63 days, which created a “lengthy period of uncertainty” that undermined the relationship between the employer and the union and “unnecessarily interfere[ed]” with the bargaining process. *See id.* at 9-10. To show how unpalatable a two-month delay was to the Board, it also noted that “[i]f an employer refused to agree on dates for bargaining to begin for that length of time, we likely would find a failure to bargain in good faith.” *Id.* at 9.

What the Board in *Lamons Gasket* made strikingly clear is that it anticipates that bargaining will start very shortly after the date of voluntary recognition. Accordingly, when it decided to measure the length of a “reasonable period of bargaining” from the date of the first bargaining session, the Board did not foresee that this date would be several months after the date of voluntary recognition—and could drag the recognition bar out longer than the one-year

certification bar. Thus, as rightfully concluded by the Regional Director, “a review of *Lamons Gasket* in its entirety leads [to the conclusion] that the Board did not intend a recognition bar to extend beyond a year from the date of recognition.” Decision and Direction of Election, at p. 2.

B. A reasonable period of bargaining has clearly elapsed.

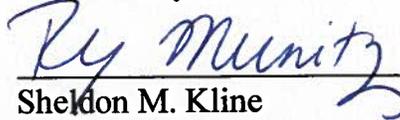
Even if analyzed under *Lee Lumber* standards, the Board should find that a “reasonable period of bargaining” has elapsed and that no bar prevents the processing of Ms. Cox’s decertification petition. The *Lee Lumber* standards boil down to one issue that must be analyzed in every case: did the union have “enough time to prove its mettle in negotiations, so that when its representative status is questioned, the employees can make an informed choice...”? 334 NLRB 399, 405 (2001). Here, the answer is clear. The Union does not need any more time to prove what it can do for its members—the parties reached a tentative agreement by the time that the decertification petition was filed. What additional time could the Union need to bargain? Accordingly, the Board should find that a reasonable period of bargaining has been met and that Ms. Cox’s decertification petition can be processed.

III. CONCLUSION

For the above-stated reasons, the Board should deny the Union's Request for Review.

Dated: August 30, 2013

Respectfully submitted,

A handwritten signature in blue ink that reads "Ryan J. Munitz". The signature is written in a cursive style and is positioned above a horizontal line.

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BEFORE THE NATIONAL LABOR RELATIONS BOARD**

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Case No. 25-RD-108194

CERTIFICATE OF SERVICE

I certify that on August 30, 2013, a copy of Americold's Opposition to the Union's Request for review was sent, via e-mail and first class mail, to the following parties:

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Exhibit 1

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE
SUBREGION THIRTY-THREE

AMERICOLD LOGISTICS, LLC,

Employer,

and

KAREN COX,

Petitioner,

and

RETAIL, WHOLESALE AND
DEPARTMENT STORE UNION, UFCW,
LOCAL 578,

Intervener.

Case No. 25-RD-102210

AMERICOLD LOGISTICS, LLC'S POST-HEARING BRIEF

I. Introduction

By its undersigned attorneys, Americold Logistics, LLC ("Americold" or "Company") provides its post-hearing brief on the sole issue presented to Alexander M. Hadjuk, Hearing Officer at the National Labor Relations Board ("NLRB" or "Board"), at the fact hearing held in the above-captioned case: whether or not the Board should extend the recognition bar beyond the initial six months. Americold, Ms. Karen Cox, and Local 578 of the Retail, Wholesale and Department Store Union ("RWDSU" or "Union") agree that the standard set out in *Lamons Gasket Co.*, 357 NLRB No. 72, slip op. at 10, n. 34 (2011) governs the analysis in this case.

Before the Board will allow the majority status of a union that was voluntarily recognized to be challenged, the company and the union must engage in a "reasonable period of bargaining,"

which is defined “to be no less than 6 months after the parties’ first bargaining session and no more than 1 year.” *Lamons Gasket*, 357 NLRB at 10. To determine whether the “reasonable period of bargaining” has elapsed after the first six months of negotiations, the Board considers the following five factors: (1) whether the parties are bargaining for an initial contract; (2) the complexity of the issues being negotiated and of the parties’ bargaining process; (3) the amount of time elapsed since bargaining commenced and the number of bargaining sessions; (4) the amount of progress made in negotiations and how near the parties are to concluding an agreement; and (5) whether the parties are at impasse. *Id.* at 10 n. 34 (citing *Lee Lumbar & Building Material Corp.*, 334 NLRB 339, 402 (2001)). The burden is on the Union to prove that the recognition bar should be extended. Tr. 20:16-23.

In regards to the first and fifth factors, the parties agree that this is a first contract, *see* Tr. 40:11-13, and that the Company and the Union are not at impasse, Tr. 186:15-20. Accordingly, this post-hearing brief will only discuss the remaining three factors.

II. Statement of Facts

Americold operates cold storage facilities throughout the country, including two facilities in Rochelle, Illinois that are located approximately a half mile apart from each other—one on Americold Drive and the other on Caron Road (collectively, the “Rochelle facilities”). Tr. 22:15-25:1. Operationally, the facilities are the same: they are both storage warehouses where employees receive, sort, and ship customer product. Tr. 142:3-6.

In Spring 2012, the RWDSU asked Americold to voluntarily recognize it as the bargaining representative of the warehouse workers at the Rochelle facilities. *See* Tr. 30:17-18. Soon after, on June 7, 2012, representatives from the Company and the Union met with an independent third party, Reverend Catherine Jones, who conducted a voluntary card check and certified that the Union had signed authorization cards from a majority of the employees at the

Rochelle facilities. Tr. 31:18-32:2; *see also* Union Ex. 1. The parties then signed a Recognition Agreement, in which Americold recognized the RWDSU as the exclusive collective bargaining representative for the warehouse employees at its Rochelle facilities. *See* Union Ex. 2.

On July 30, 2012, the RWDSU sent a list of information requests to the Company, which the Company responded to on August 16, 2012. *See* Union Exs. 3-4. Negotiations, however, did not commence until October 9, 2012, approximately four months after the Union was first recognized. *See* Union Ex. 8. The Union agreed that the Company neither caused nor added to the gap and was available to commence the negotiation process prior to the October 2012 start date. Tr. 99:2-5; 157:21-23. Since October 2012, the Company and the Union have engaged in fourteen bargaining sessions: October 9-11, 2012; November 27-29, 2012; March 4-6, 2013; March 11-13, 2012; April 9, 2013; and April 16, 2013. *See* Union Ex. 8; Tr. 71:10-25. As discussed further below, for the first seven to eight weeks of what became a three-month gap in negotiations, the parties had not intended to meet because of the holidays, scheduling conflicts, and their mutual unavailability. *See infra* Section III.B. Moreover, in addition to the above-listed bargaining sessions, the parties also engaged in substantive communications outside of formal negotiations, particularly regarding the issue of health insurance. Tr. 115:6-9; 146:2-20; 169:14-170:15.

As discussed in Section III.A., there is nothing particularly complex about these negotiations, even though the bargaining unit spans two facilities. Tr. 141:18-142:6; 148:13-15; 150:1-6. A traditional bargaining structure was used and the parties bargained off of a model agreement, which was used as the foundation for all of the proposals that the parties negotiated over. Tr. 72:24-73:24; 141:9-17; 157:3-13.

Finally, as discussed further in Section III.C., despite the significant progress that has been made in these negotiations, Americold and the RWDSU still have many issues to bargain over before a tentative agreement is reached. For example, the economic issues that are extremely important to Americold, such as wages and health insurance, still remain open issues, as well as the Union's demand for a defined benefit plan. *See, e.g.*, Tr. 142:11-143:3.

III. Legal Argument

As discussed above, the three *Lee Lumbar* factors at issue in this case are: (1) the complexity of the issues being negotiated and of the parties' bargaining process; (2) the amount of time elapsed since bargaining commenced and the number of bargaining sessions; and (3) the amount of progress made in negotiations and how near the parties are to concluding an agreement.

A. **The Complexity of the Issues Being Negotiated and of the Parties' Bargaining Process**

One factor that the Board considers when determining whether to extend the recognition bar past the initial six month period is the complexity of the issues being negotiated and the procedures used by the bargaining parties. "When the issues being bargained are complex, or when the parties have structured negotiations so as to invite more employee input, it stands to reason that, other things being equal, those negotiations likely will take longer than when the issues are less complex and the structure is more streamlined." *Lee Lumbar*, 334 NLRB at 403.

With respect to the bargaining process, the parties have not implemented any unique bargaining procedures—the Union and Company representatives at the bargaining table have full authority to reach a tentative agreement. Unlike *MGM Grand Hotel*, 329 NLRB 464 (1999), the Union has not sought employee input on proposals throughout the bargaining process. *See Lee Lumbar*, 334 NLRB at 403 (citing 329 NLRB 464) (discussing complex bargaining process in

MGM Grand Hotel where union formed committees comprised of union representatives and employees to “study each aspect of the contract, evaluate employee satisfaction with existing terms, and draft and evaluate proposals”). Rather, here, the RWDSU will not share proposals with employees until after the Company and the Union have reached a complete tentative agreement. Tr. 72:24-73:24.

With respect to the complexity of the issues being negotiated, it is the Company’s position that the issues here are not at all complex. Tr. 148:13-15. At the first bargaining session in October 2012, Americold presented the Union with a model agreement. Tr. 141:9-17. Using a model agreement is advantageous for both parties because its provisions have passed the test of time and have been accepted by other unions who represent the same type of employees at Americold; accordingly, the use of this agreement should accelerate the bargaining process, particularly with respect to resolving non-economic issues. As the Board has recognized, “negotiating from an existing agreement” is much less complex than “drafting an innovative ‘living contract’ from the ground up.” *Lee Lumbar*, 334 NLRB at 403. The model agreement has served as the foundation for almost all of the provisions that the Company and the Union have tentatively agreed to. Tr. 157:3-8. And although the model agreement has been tweaked, it has not been heavily modified by the parties throughout the course of negotiations.¹ Tr. 157:9-13.

¹ Dennis Williams, the Business Agent for the Central States Council of the RWDSU, contested the Company’s assertion that the model agreement provided the framework for most proposals by alleging that the management rights clause that the parties tentatively agreed to was significantly different from the one in the model agreement. *See* Tr. 77:22-78:13. However, based on his comparison of the two proposals, Robert Hutchison, Americold’s Vice-President of Labor Relations, testified that two proposals were, in fact, the same. Tr. 156:14-157:2; 164:25-165:6.

The Union suggested that negotiations were complicated by the fact that there are two Rochelle facilities (Americold Drive and Caron Road), which has resulted in significant differences in seniority, scheduling, and overtime. Tr. 36:18-37:26; 46:23-48:3. It is the Company's position, however, that there is nothing exceptional about the fact that the bargaining unit is divided between two facilities; rather, a two-building facility is the Company's business model. Tr. 141:18-24; 150:1-6. Tr. 142:3-6. Ultimately, having two facilities does not result in any complexities that could impede the bargaining process. Tr. 141:25-42:2.

B. The Amount of Time Elapsed Since Bargaining Commenced and the Number of Bargaining Sessions

The second factor that the Board considers when deciding whether to extend the recognition bar is how many times the parties have met and the amount of time that has passed since the start of negotiations. Here, the parties have met fourteen times since October 2012: October 9-11, 2012; November 27-29, 2012; March 4-6, 2013; March 11-13, 2012; April 9, 2013, and April 16, 2013. *See* Union Ex. 8; Tr. 71:10-25. Although the length of time for which the parties would meet varied, the parties would often meet for full day sessions (until 5:00 or 6:00 p.m.). *See* Tr. 147:24-148:4. Regardless of the exact length of the bargaining sessions, it is clear that each session lasted for a significant period of time (that is, no two hour sessions were held). *See* Tr. 111:9-14.

Based on our research, when the Board finds that parties have not engaged in a "reasonable period of bargaining," the parties will have met far fewer than fourteen times. *See, e.g., Town & Country Plumbing & Heating*, 352 NLRB No. 139, slip op. at 6 (2008) (finding parties have not met for reasonable period of bargaining when parties had had only three, 2-hour bargaining sessions, plus one limited exchange outside of bargaining, over approximately six months); *see also Am. Golf Corp.*, 355 NLRB No. 42, slip op. at 3 (2010) (finding reasonable

period of bargaining not met when parties met around six to eight times during a six month period). In fact, when the parties had held sixteen bargaining sessions over a six month period (during this time, the parties reached two tentative agreements but were unable to get the contract ratified), the Board found that a reasonable period of bargaining had elapsed and the recognition bar did not bar the election. *Lagrasso Bros., Inc.*, 2012 NLRB Reg. Dir. Dec Lexis 122, Case No. 07-RD-087446, at *7-8 (Sept. 26, 2012).

In addition to face-to-face bargaining sessions, the parties also engaged in communications through telephone and e-mail outside of the bargaining context. Tr. 115:6-9; 146:2-20; 169:14-170:15. Although some of these communications involved scheduling, the Company and the Union also had substantive conversations regarding their bargaining positions on certain issues. Tr. 146:2-20. For example, the parties have spoken on the phone about health insurance (specifically, the differences between the proposed health insurance plans and the Union's pricing model). Tr. 64:16-65:14; 170:2-15.

As noted above, the parties did not begin negotiations until October 9, 2012, which was four months after the RWDSU was first recognized. *See* Union Exs. 2, 8. The Company never rejected any requests from the Union to bargain prior to this first bargaining session, nor did Americold ever tell the Union that it would not be ready to bargain until October. Tr. 99:2-5; 157:21-23. This four month delay was unusual because in the Company's experience, parties typically meet for bargaining within a few weeks of recognition. Tr. 139:13-23. Part of this delay was due, in part, to the fact that Americold did not receive the Union's information requests until over a month after the recognition (typically, the Company receives union information requests shortly after recognition). Tr. 140:2-20.

After the parties' bargaining sessions in November, the Company and the Union were not able to find dates in December because of the holidays and because there were no days when both sides' negotiators were available. *See* Tr. 147:5-8. Despite the Union's insistence that it was available "any day" in December, it is the Company's understanding that Americold offered bargaining dates to the Union in December, but the Union was unavailable to meet during the proposed times.² Tr. 48:20-22; 61:7; 102:25-103:2; 151:1-4. Thus, the Union's attempt to blame the Company for the parties' failure to meet during December is simply not accurate and disingenuous. *See id.*

Because the parties could not find any dates in December that were mutually acceptable, the parties decided to schedule negotiations sometime on or around January 20, 2013. *See id.; see also* Tr. 61:8-9; 145:8-9; 151:7-9. Thus, in November, the parties jointly agreed not to meet for a period of approximately seven to eight weeks. Tr. 153:2-8.

In January 2013, shortly before the parties were scheduled to meet, the wife of the Company's chief negotiator, Michael Nelson, was diagnosed with a serious illness. Tr. 147:8-12; 152:2-2-6; *see also* Union Ex. 6. Accordingly, Mr. Nelson was unable to travel to Rochelle for the negotiations and had to cancel the January bargaining sessions. *See id.* Mr. Nelson's wife's diagnosis was entirely unexpected; he could not have foreseen that he would be unable to meet in January. *See* Tr. 152:2-6.

Americold and the Union then planned to meet on February 4-6, 2013. Tr. 153:20-21. However, Mr. Nelson was unable to travel again because his wife was starting chemotherapy. Tr. 153:21-24. The parties scheduled dates for March 2013, with the intention of getting the

² This is not the only time that the Union was unavailable to meet. For example, Union officials rejected certain dates in March and April 2013 because they were unavailable. Tr. 177:9-25.

contract wrapped up. Tr. 154:3-4. To make up for the missed sessions in January and February, the parties doubled the number of times that they typically met in a month and held a total of six bargaining sessions in March. *See* Tr. 154:6-7. And most recently, the parties held two bargaining session in April. Overall, over a six month period, Americold and the RWDSU have met for fourteen bargaining sessions, as well as engaged in numerous communications outside of the bargaining context.

C. The Amount of Progress Made in Negotiations and How Near the Parties Are to Concluding an Agreement

The final issue to consider is how much progress has been made in negotiations and how close the parties are to reaching an agreement. If the parties are not close to reaching an agreement after bargaining for at least six months, regardless of the progress that has been made, the Board will not provide the parties with more time to negotiate because “giving them a bit more time for negotiations is unlikely to enable them to conclude an agreement.” *Lee Lumbar*, 334 NLRB at 405.

Although nobody can predict whether the parties are close to an agreement, there are still many important issues to be resolved. Tr. 158:9-10. At the hearing, Mr. Hutchison declined to speculate regarding how close the parties were to a tentative agreement, given the fact that the parties have not begun negotiating over economic issues. Tr. 148:16-19; 149:16-25. Economic issues, such as wages and benefits, as well as issues related to performance and productivity, are the most important issues to the Company because they are directly related to the economics of the facilities’ operations. Tr. 142:11-143:3. The Company does not want to risk losing business by increasing customer costs due to the increased operations costs that result from negotiations.

Id.

Based on the document created by Roger Grobstich, the RWDSU's International Representative, the pending issues that the parties still need to resolve include:

1. Wages
2. Health Insurance
3. Short Term Disability, Long Term Disability, Life Insurance, etc.
4. Dental Insurance
5. Vacations (3 sections; 3 sections have been resolved, not tentatively agreed to)
6. Term of Agreement
7. Production Standards & Incentives
8. Miscellaneous Proposal³

Union Ex. 5; Tr. 57:22-23; 58:6-13.

Wages, as discussed above, is an incredibly important issue to the Company that the parties have yet to discuss. The onus is on the Union to submit a wage proposal; typically, the Company waits for the Union to make the first proposal concerning wages (otherwise, the employer would be bargaining against itself). Tr. 145:14-17. At the hearing, Mr. Williams alleged that the Union gave the Company a wage proposal during the April 16, 2013 bargaining session. However, on cross examination, Mr. Williams admitted that the "wage proposal" was, in essence, a blank sheet of paper, providing no percentage increases or new proposed wage scales. Tr. 68:19-21; 86:1-16; *see also* Tr. 145:6-10.

Health insurance, an important issue for both parties, also remains an open issue. Tr. 89:10-11; 142:11-15. The Company submitted a health insurance proposal to the Union in

³ This issue remains pending, but it is not clear what this proposal may refer to. Tr. 95:17-20.

October 2012; however, around February or March 2013, the Union proposed that the employees switch to the RWDSU's health insurance plan. Tr. 145:18-22. Currently, the Company is waiting on the Union to provide it with additional information regarding the pricing of the Union's plan: on April 16, 2013, the Union said that it would get back to Mr. Hutchison the next day regarding the pricing of an "employee plus one" option, but the Company has yet to receive any such information. *See* Tr. 171:2-4. Additionally, the Union's allegation that it did not receive the information it needed to determine this pricing issue until April 16, 2013, is without any merit. *See* Tr. 65:21-66:18; 155:25-156:3. The information requested by the Union—a list of the level of health insurance coverage each employee has—was actually sent to the Union twice: first via e-mail in March 2013 and again on April 16, 2013. Tr. 156:3-10; 172:2-20. In fact, when the Union requested this information again in April, it admitted that this information had previously been received and that the documents may have been overlooked. Tr. 156:11-13.

Additionally, the parties have yet to reach an agreement on production standards and incentives. The model agreement has a provision that deals with these topics, which unions typically agree to without much negotiation; the Union, however, wishes to negotiate over this issue and has submitted a proposal to the Company that is not in line with the model agreement. *See* Tr. 158:11-18. Production standards and Americold's ability to incentivize employees is a very important issue to the Company because the Company's ability to remain competitive is directly tied to its efficiency. Tr. 158:21-159:16.

Furthermore, the parties have not reached an agreement concerning short term disability, long term disability, life insurance, and dental insurance. *See* Tr. 91:1-13; 92:7-10. Moreover, three sections of the vacation proposal have yet to be resolved. Tr. 92:11-13. As with other benefits, these issues are of significant interest to the Company. Tr. 143:11-143:3. Finally,

although the term of the agreement has been discussed generally, neither party has proposed a one year, three year, or five year agreement. Tr. 93:25-94:8.

The list prepared by Mr. Grobstich, however, is not a complete list of all of the pending proposals. Tr. 143:11-144:17. Americold and the Union discussed the Union's desire to include a defined benefit pension plan in the contract. Tr. 144:8-13. Although the Union has not yet submitted a formal proposal concerning the defined benefit plan, it has not yet advised the Company that it is no longer interested in including such a plan in the contract. Tr. 144:13-17. Negotiations concerning a defined benefit plan will take an extensive amount of time, as there are many issues (such as funding requirements or whether to have a single employer or multi-employer plan) that will need to be resolved. Tr. 148:24-149-9.

During rebuttal on the second day of the hearing, Mr. Williams indicated that the Union had withdrew its request for a defined benefit plan when he stated that the resolution of the 401K plan proposal meant that there would be no further discussions about either the 401K or the defined benefit plan. Tr. 183:16-184:25. Curiously, on the first day of the hearing, Mr. Williams did not have any knowledge of the Union's desire to include a defined benefit plan in the contract. *See* Tr. 82:17-83:2. Accordingly, on cross examination, the Company's attorney indicated his surprise that Mr. Williams could testify that the resolution of the 401K plan was able to resolve an issue that Mr. Williams was not previously aware of. Tr. 185:4-22. Eventually, Mr. Williams admitted that a 401K and a defined benefit plan are not the same. Tr. 185:17-22.

In sum, despite the progress that has been made over the past six months of negotiations, there are still many significant issues that Americold and the RWDSU must resolve before the parties reach a tentative agreement.

IV. Conclusion

Americold will continue to meet with the Union in good faith—the next bargaining sessions are May 8-10, 2013—and remains hopeful that an agreement will be reached. The fact that these negotiations have been conducted in good faith by both parties is not the issue before the Board, however. The only issue that the Board must address is whether, under the *Lee Lumber* and *Lamons Gasket* standards, the recognition bar that the Union has enjoyed since October 9, 2012, should be extended. Americold will continue to negotiate with the Union whether the bar is extended or not and will do so unless and until the RWDSU is supplanted as the employees' bargaining representative. Only the Board can determine whether the facts, as developed by the hearing officer during the two days of hearings, support a legal extension of the recognition bar. While Americold is neutral on the subject, an unbiased review of those facts likely leads to the conclusion that the Board should not extend the recognition bar in this case.

Dated: May 7, 2013

Respectfully submitted,



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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE
SUBREGION THIRTY-THREE

AMERICOLD LOGISTICS, LLC,

Employer,

and

KAREN COX,

Petitioner,

and

RETAIL, WHOLESALE AND
DEPARTMENT STORE UNION, UFCW,
LOCAL 578,

Intervener.

Case No. 25-RD-102210

CERTIFICATE OF SERVICE

I certify that on May 7, 2013, a copy of Americold's post-hearing brief was sent, via e-mail and first class mail, to the following parties:

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