

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMERICAN RED CROSS,
HEART OF AMERICA
BLOOD SERVICES REGION

and

Cases 33-CA-15821
33-CA-15896
33-CA-16144
33-CA-16204
33-CA-16207
33-CA-16229
33-CA-16246
33-CA-16247
33-CA-16248

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES (AFSCME),
COUNCIL 31, AFL-CIO

MOTION TO REMAND

Counsel for the General Counsel moves that the National Labor Relations Board issue an order remanding this matter to the Regional Director of Region 25 for further processing, including the approval of a withdrawal request submitted by American Federation of State, County and Municipal Employees (AFSCME) Council 31, AFL-CIO, here called the Union. In support of this motion, Counsel for the General Counsel states as follows:

1. On July 20, 2011, the Third Amended Consolidated Complaint in this matter issued. The case was tried before an administrative law judge on seven dates between August 8 and 16, 2011. (The Region also petitioned for and eventually obtained from the U.S. District Court for the Central District of Illinois, injunctive relief on the allegations at issue in the Third Amended Consolidated Complaint.)

2. On November 4, 2011, the ALJ issued his Decision finding Respondent violated the Act by: (1) discontinuing its matching contribution to unit employees' 401(k) plan contributions; (2) suspending employees' merit pay increases; (3) closing its defined pension plan to new employees; (4) announcing and making changes to its health insurance benefits; (5) promoting team leaders to team supervisor and having them continue to perform bargaining unit work; (6) reassigning truck loading and unloading assignments from the Mobile Unit Assistants to the General Supply Clerks; (7) decreasing the number of personal time off (PTO) hours an employee can carry-over from year to year from 160 hours to 120 hours; (8) assigning or otherwise authorizing non-unit employees to performing bargaining unit work, such as drawing blood from donors; (9) failing and/or refusing to bargain with respect to the discipline of unit employees; and (10) failing to provide the Union with information it requested regarding unit employee discipline and discharge.

3. To remedy the above violations, the Judge ordered Respondent to: (1) rescind the above-described unilateral changes and restore the status quo ante; (2) bargain in good faith with the Union as the certified bargaining representative of unit employees for at least six months after it has rescinded its illegal unilateral changes; (3) provide the Union with the information it requested with regard to employee discipline and discharge; and (4) make employees whole for any loss they may have incurred as a result of the unlawful conduct. Respondent excepted to these findings. These exceptions are currently pending before the Board.

4. On December 12, 2013, Charging Party Union requested to withdraw all underlying charges in the instant matter. The withdrawal is based on a non-Board settlement reached by the parties, including the parties' recently executed collective-bargaining agreement which consists of both economic and non-economic components. The settlement provides for lump sum payments to current and former employees in the approximate amount of \$678,875. The

settlement also provides for increases in employees' base hourly wages for 2013 totaling \$392,878, and for 2014 and 2015 totaling \$107,290. The parties agree that the total potential liability associated with the charges is approximately 1.3 million dollars. The total economic portion of the settlement (\$1,179,043) represents approximately 90% of the potential liability.

5. Approving the withdrawal request based on the non-Board settlement agreement and the three-year collective-bargaining agreement effectuates the purposes and policies of the Act. The parties' settlement also comports with the requirements of *Independent Stave*, 287 NLRB 740 (1987). First, all parties agree to be bound by the agreement. Unit employees overwhelmingly supported and ratified the collective-bargaining agreement, demonstrating their satisfaction. Second, the settlement is reasonable in light of the violations alleged, risks inherent in litigation, and the stage of litigation. Given the stage and posture of this case – pending before the Board on the ALJ's recommendation that violations be found -- the risk of litigation is low. Nevertheless, the parties' agreement is reasonable in light of the violations alleged, as it includes rescission of certain unilateral changes, restoration of terms and conditions of employment, substitution of benefits, contract language addressing outstanding issues, and a backpay payout of approximately 90% of the Respondent's total potential liability. Third, there is no evidence of fraud, coercion, or duress in reaching the settlement agreement. Fourth, other than the allegations in the instant cases which span nearly 5 years, the Respondent does not have a history of violations of the Act, nor is there any evidence that the Respondent has breached prior unfair labor practice settlements. In these circumstances, and particularly because of the labor peace and stability achieved by the three-year collective bargaining agreement and the non-Board settlement agreement, the parties' agreement satisfies the requirements of *Independent Stave*.

6. Counsel for the General Counsel submits that approval of the withdrawal requests and dismissal of the Third Amended Consolidated Complaint is appropriate.

WHEREFORE, in light of the above, and in the interest of effectuating the policy of the Board in honoring appropriate settlements of disputes by the parties thereto, Counsel for the General Counsel requests that the Board remand the instant proceeding to the Regional Director for further processing.

Dated: January 14, 2014

/s/ Ahavaha Pyrtel

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CERTIFICATE OF SERVICE

I hereby certify that service of a true and correct copy of the attached Counsel for the General Counsel's Motion to Remand was served electronically on the following parties on January 14, 2014.

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