

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

**PACIFIC COAST SUPPLY, LLC d/b/a
ANDERSON LUMBER**

and

Case 20–CA–189966

**CHAUFFEURS, TEAMSTERS AND HELPERS,
LOCAL 150, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS**

Matthew C. Peterson, Esq., for the General Counsel.

Mark S. Spring, Esq. (Carothers DiSante & Freudenberger LLP), for the Company.

Costa Kerestenzis, Esq. (Beeson Tayer & Bodine), for the Union.

DECISION

JEFFREY D. WEDEKIND, Administrative Law Judge. The complaint in this case alleges that Pacific Coast Supply, LLC d/b/a Anderson Lumber made certain unlawful statements to its employees in November 2016, during its negotiations with Teamsters Local 150 over a successor collective-bargaining agreement, regarding the reinstatement rights of employees who engage in an economic strike.¹

There are two specific statements at issue, one written and the other oral. The written statement was in a letter the Company distributed to employees at a series of meetings on November 16 regarding the status of the contract negotiations and the Company's last bargaining proposal. It stated:

In the event of an economic strike, the Company can hire permanent replacements. More specifically, if the Company hires permanent replacements who are filling the jobs of any employees that chose to strike, when the striking employees apply to return to work, the strikers are not automatically entitled to reinstatement at that time.

The oral statement was made to the employees by the Company's president, Curt Gomes, during the same meetings. Gomes said:

¹ The General Counsel and the Company submitted the case for decision on a stipulated record. The Union did not join the stipulation, but did not object to it. The stipulation was approved by order dated May 1, and the General Counsel and the Company thereafter filed briefs on June 19. The Board's jurisdiction is uncontested and established by the stipulated facts.

The Company has the right to hire replacement workers and those who strike are not entitled to reinstatement when the strike ends. We understand that you have a legal right to strike. We will not retaliate against any employees who decide to strike. However, we do plan to do what is necessary to keep our business running and service our customers if any type of strike or slowdown occurs.

The General Counsel alleges that both statements violated section 8(a)(1) of the National Labor Relations Act (NLRA) because they implied that striking employees would be deprived of their reinstatement rights in a manner inconsistent with *Laidlaw Corp.*, 171 NLRB 1366, 1369–1370 (1968), *enfd.* 414 F.2d 99 (7th Cir. 1969), *cert. denied* 397 U.S. 920 (1970).

As indicated by the Company, however, the statements did nothing of the sort. Rather, they were entirely consistent with *Laidlaw*. As the Board stated in *Rivers Bend Health & Rehabilitation Service.*, 350 NLRB 184, 185 (2007), “If, at the conclusion of an economic strike, the strikers' positions are filled by permanent replacements, the employer is legally justified in not reinstating the strikers under *Laidlaw* and its progeny. . . .” See also *Gibson Greetings, Inc. v. NLRB*, 53 F.3d 385, 389 (D.C. Cir. 1995) (“[A]n economic striker who is permanently replaced . . . loses his right to immediate reinstatement.”); and *Teamsters Local 162 v. NLRB*, 568 F.2d 665, 668 (9th Cir. 1978) (“Returning economic strikers do not have an absolute right to reinstatement. If those strikers have been permanently replaced, the Act does not compel an employer to discharge the replacements when the work stoppage ends, in order to rehire those strikers who seek to return.”).

Instead, “economic strikers who unconditionally apply for reinstatement at a time when their positions are filled by permanent replacements . . . are entitled to full reinstatement upon the departure of replacements . . .” *Laidlaw*, 171 NLRB at 1369–1370. See also *Curtin Matheson Scientific, Inc.*, 228 NLRB 996, 1003 (1977) (“[W]hen the economic strike ends the strikers, if they signify their intent to return, are entitled to reinstatement or reemployment as vacancies occur . . .”), *enfd.* 602 F.2d 759 (6th Cir. 1979); and *NLRB v. American Olean Tile Co.*, 826 F.2d 1496, 1499 (6th Cir. 1987) (“Economic strikers who unconditionally apply for reinstatement are entitled to reinstatement when replacements leave the strikers' former positions or when vacancies occur for which they are qualified.”).

Here, consistent with the foregoing caselaw, the Company informed employees that it could hire permanent replacements during an economic strike and would not have to reinstate the strikers when the strike ended or at the time they offered to return.² Although the Company did

² As indicated above, the oral statement did not distinguish between economic strikes, which protest the employer’s unfavorable employment terms, and unfair labor practice strikes, which protest, at least in part, the employer’s unfair labor practices. As the D.C. Circuit recently noted, the “categorization carries significant consequences,” as “economic strikers run the risk of replacement if, during the strike, the employer takes on permanent new hires,” whereas “employees who engage in an unfair labor practice strike are entitled to reinstatement to their former positions . . . at the conclusion of the strike, even if the employer has hired replacements.” *Spurlino Materials, LLC v. NLRB*, 805 F.3d 1131, 1137 (D.C. Cir. 2015), *enfg.* 357 NLRB 1510 (2011). However, the General Counsel does not argue that the oral statement was unlawful for

not additionally explain that the strikers would eventually be entitled to reinstatement when vacancies occur, it was not required to do so. See *Eagle Comtronics, Inc.*, 263 NLRB 515, 515–516 (1982) (employer’s statement that economic strikers “could be replaced with applications on file” was lawful even though it did not “fully detail[] the protections enumerated in *Laidlaw*” by informing employees that strikers would have a right to reinstatement as vacancies became available).³

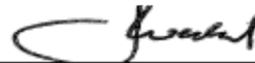
Fern Terrace Lodge, 297 NLRB 8 (1989), the primary case cited by the General Counsel, is distinguishable. In that case, the company told employees that “[a]n employer has the legal right to permanently replace the striking employees, and the replaced striker is not automatically entitled to his job back *just because* the strike ends” (emphasis added). Here, in contrast, the Company told employees that strikers are not automatically entitled to reinstatement “*when*” the strike ends or “*at th[is] time*” they offer to return. The distinction may seem a fine one, but it is determinative under Board precedent. See *Novi American*, 309 NLRB 544, 545–546 (1992) (distinguishing *Fern Terrace* and finding no violation where the employer stated that “striking employees can be replaced by permanent replacements, and may not have a job when the strike is over,” as the employer “was simply informing employees that when a strike ends, strikers may not have a job to which they can *immediately* return”).⁴

Accordingly, the Company’s statements did not violate the Act.

ORDER⁵

The complaint is dismissed.

Dated, Washington, D.C., July 6, 2017



Jeffrey D. Wedekind
Administrative Law Judge

this reason. In any event, it is clear from the context that, like the written statement, the oral statement referred to economic strikes. See *Novi American, Inc.*, 309 NLRB 544, 545 (1992).

³ *Eagle Comtronics* is the “leading case defining the extent of an employer’s obligation, on informing employees that economic strikers may be replaced, to provide an accurate summary of employee rights under *Laidlaw*.” *Rivers Bend*, 350 NLRB at 184.

⁴ See also *Care One at Madison Ave., LLC v. NLRB*, 832 F.3d 351, 361 (D.C. Cir. 2016) (upholding the Board’s distinction between employer statements that striking employees risk “loss of a *job*,” which the Board finds unlawful, and statements that striking employees risk “loss of *job status*,” which the Board finds permissible, notwithstanding that the distinction “may seem picayune.”)

⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.