

United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: January 17, 2017

TO: Margaret J. Diaz, Regional Director
Region 12

FROM: Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Aramark Uniform Services, LLC
Case 12-CA-181762

530-6067-2080-6900
530-6050-4133-3700

The Region submitted this case for advice about whether the Employer bargained in bad faith by refusing to reinstate an employee pursuant to the terms of a grievance settlement where the Employer had (b) (6), (b) (7)(C) the employee a (b) (6), (b) (7)(C) time, based on a separate reason, after (b) (6), (b) (7)(C) initial (b) (6), (b) (7)(C) and the Union failed to grieve the (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

We conclude that the Region should issue complaint, absent settlement, alleging that the Employer violated Section 8(a)(5) by refusing to honor the terms of the grievance settlement.

FACTS

Aramark Uniform Services, LLC (the “Employer”) rents, leases, and sells various products nationwide including uniforms, linens, towels, mops, and floor mats. It also operates industrial laundry services through “Market Centers,” including one in Tampa Florida. Teamsters Local 70 (the “Union”) is the recognized bargaining agent for the (b) (6), (b) (7)(C) of the Tampa Market Center.

The “Employee” had been employed as the (b) (6), (b) (7)(C) for the Tampa Market Center from (b) (6), (b) (7)(C) until (b) (6), (b) (7)(C) and subsequent (b) (6), (b) (7)(C) for (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C), 2016¹ and (b) (6), (b) (7)(C) respectively. The Union grieved the (b) (6), (b) (7)(C) At the Step 2 grievance meeting on (b) (6), (b) (7)(C), the Employee admitted that (b) (6), (b) (7)(C) had not (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) when (b) (6), (b) (7)(C) took (b) (6), (b) (7)(C) to the (b) (6), (b) (7)(C), even though (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) On (b) (6), (b) (7)(C) the Employer issued a (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) notice to the Employee for (b) (6), (b) (7)(C) based on (b) (6), (b) (7)(C) admission at the Step 2 grievance meeting that (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C)

¹ All dates are in 2016.

(b) (6), (b) (7)(C) The Employee did not appeal this (b) (6), (b) (7)(C) within 10 days as required by the contract, and the Union never filed a grievance.

On (b) (6), (b) (7)(C), during settlement discussions, the Employer offered (b) (6), (b) (7)(C) the Employee with a (b) (6), (b) (7)(C). Because the Union declined the offer, the grievance was scheduled to be heard before the Piedmont Grievance Committee on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). On (b) (6), (b) (7)(C) while waiting for the hearing to be called, the Employer's Labor Relations Director asked the Union's Business Agent if the Union would agree to the Employee's (b) (6), (b) (7)(C). The Union declined. Later in the day, the Labor Relations Director asked the Union if it still wanted to settle the grievance, and the Union Business Agent said that it did, but only with (b) (6), (b) (7)(C) for the Employee. The Business Agent then proposed that the (b) (6), (b) (7)(C) be reduced by (b) (6), (b) (7)(C). The Labor Relations Director then offered (b) (6), (b) (7)(C) in the (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), respectively, which the Business Agent declined.

The parties signed a settlement agreement later in the afternoon. By its terms, the agreement rescinded the Employee's (b) (6), (b) (7)(C) and made (b) (6), (b) (7)(C) whole for (b) (6), (b) (7)(C). The agreement also addressed how the Employee will conduct (b) (6), (b) (7)(C) on the job the future, requiring that (b) (6), (b) (7)(C) "agree[] to provide 'immediate' notice to the Company (per policy) in the event of any mechanical and/or safety issues related to (b) (6), (b) (7)(C)." While the parties were signing the agreement, the Employer's Labor Relations Director asked the Business Agent when the Union wanted the Employee to be (b) (6), (b) (7)(C), and the Business Agent suggested (b) (6), (b) (7)(C). The Labor Relations Director responded that (b) (6), (b) (7)(C) would need to make some calls. The Business Agent then suggested (b) (6), (b) (7)(C) and the Labor Relations Director said (b) (6), (b) (7)(C) would get back to the Union.

On (b) (6), (b) (7)(C), the Business Agent called the Employer's Group Manager to inquire about the Employee's (b) (6), (b) (7)(C). The Group Manager informed the Business Agent that the Employer would not (b) (6), (b) (7)(C) the Employee because the Union never filed a grievance over the Employee's (b) (6), (b) (7)(C). The Union protested that the parties had a signed grievance settlement agreement to (b) (6), (b) (7)(C) the Employee. As part of (b) (6), (b) (7)(C) explanation as to why the Employer would not abide by that agreement, the Employer's Group Manager brought up prior decisions of the Piedmont Grievance Committee in the Union's favor, including one Union victory based on the Employer's misspelling.

Later that day, the Business Agent sent a letter to the Employer's Group Manager asking that the Employer (b) (6), (b) (7)(C) the Employee pursuant to the settlement agreement. The letter explained that the Union did not believe that it needed to grieve the (b) (6), (b) (7)(C) because "[a] company cannot (b) (6), (b) (7)(C) an individual who has already been (b) (6), (b) (7)(C) almost three weeks prior." Thus, when

the Employee was (b) (6), (b) (7)(C) for the (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) “was (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and therefore the action was improper/ null and void.”

The Employer never responded to the Union’s letter, and the parties have not communicated further about the grievance. The Union has not sought to enforce the grievance settlement through arbitration or Section 301 litigation.

On (b) (6), (b) (7)(C) the Union filed a related charge in Case 12-CA-172662 alleging, *inter alia*, that the Employer has been unlawfully making unilateral changes by (b) (6), (b) (7)(C) with temporary workers. The parties settled the charge by the Employer’s hiring of a bargaining unit (b) (6), (b) (7)(C). The Regional Director approved the Union’s subsequent withdrawal request on (b) (6), (b) (7)(C).

ACTION

We conclude that the Employer violated Section 8(a)(5) by negotiating the parties’ grievance settlement in bad faith when it had no intention of (b) (6), (b) (7)(C) the Employee pursuant to the terms of the agreement. The Region should issue complaint, absent settlement, alleging that the Employer’s bad faith actions threaten the viability of the parties’ bargaining relationship and obstruct the overall function of the process of grievance resolution.

The Board examines a respondent’s overall conduct rather than separately analyzing components of its behavior to determine whether it has bargained in bad-faith.² Thus, if the employer’s overall scheme is unlawful, the Board will find that it violated Section 8(a)(5) even if the employer’s interim actions are themselves lawful.³

Under this big picture approach, the Board will find bad faith when an employer engages in *pro forma* bargaining while deliberately concealing its overarching plan

² See, e.g., *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603 (1984) (“It is necessary to scrutinize an employer’s overall conduct to determine whether it has bargained in good faith.”).

³ *NLRB v. Insurance Agents’ International Union*, 361 U.S. 477, 506 (1960) (Frankfurter, J., separate opinion) (“Activities in isolation may be wholly innocent, lawful and ‘protected’ by the Act, but that ought not to bar the Board from finding, if the record justifies it, that the isolated parts ‘are bound together as the parts of a single plan (to frustrate agreement). The plan may make the parts unlawful.”) (quoting *Swift & Co. v. United States*, 196 U.S. 375, 396 (1905)).

from the union during bargaining. Thus, for instance, in *Royal Plating & Polishing Company*, the Board held that the employer violated Section 8(a)(5) by “engaging in ostensible collective-bargaining negotiations with the [u]nion” for a successor contract, while hiding its true intentions in negotiations and prior decision to sell the plant.⁴

Similarly, the Board has found that an employer violates the Act when it enters into a settlement agreement without any intention of honoring its terms. In *Dilling Mechanical Contractors, Inc.*, the employer entered into a non-Board settlement agreement promising to use the hiring procedure therein in exchange for the union withdrawing its unfair labor practice charge.⁵ However, the employer knew at the time it signed the agreement that it was committed to use another company for its hiring needs, and subsequently deliberately breached the agreement. In finding that the employer violated the Act, the Board concluded that the employer’s illusory promise to the union at the time it entered into the settlement agreement was to blame for foreclosing the employees’ other areas of seeking redress.⁶

For the same reasons, in *U.S. Steel*, the Board refused to administratively defer to the parties’ prearbitration grievance settlement that ostensibly rescinded the

⁴ 160 NLRB 990, 992 (1966); *see also Waymouth Farms, Inc.*, 324 NLRB 960, 961-62 (1997) (holding that the employer violated Section 8(a)(5) by misrepresenting its intentions and plans regarding plant relocation during negotiations for a plant closure agreement), *enforced in relevant part*, 172 F.3d 598 (8th Cir. 1999). *Cf. Stonewall Cotton Mills v. NLRB*, 129 F.2d 629, 631 (5th Cir. 1942) (upholding the Board’s 8(a)(5) finding where employer merely went through the formalistic motions of collective bargaining until stalemate, noting “the efforts at bargaining were not real efforts but mere shadow boxing to a draw. . .”).

⁵ 348 NLRB 98, 103 (2006).

⁶ *Id.* at 104 (“Absent [the employer’s] illusory settlement promises and its actions specifically aimed at avoiding fulfilling those promises, the May 1995 union-affiliated applicants would have had a timely determination of their hiring discrimination claims and, if justified, a Board order remedying any unfair labor practices found.”). *Compare Gal Construction, Inc.*, 239 NLRB 234, 236 (1978) (employer did not violate Section 8(a)(1) and (5) by refusing to comply with a grievance settlement because there was a genuine misunderstanding between the parties about what the agreement meant; the employer’s interpretation was reasonable, the union “was misled only by its mistaken assumption,” and the employer “did not say otherwise to the union”).

discriminatee's discharge.⁷ The employer knew at the time it entered into the agreement that it had no intention of upholding the terms of the agreement because it all along secretly planned to rely on a separate, second reason for discharging the same discriminatee immediately before (b)(6), (b)(7)(C) reinstatement. The ALJ explained that had the union known that the discriminatee would not be reinstated, it never would have agreed to the settlement, and "[w]here one party induces the other to settle a grievance by failing to disclose a material fact. . . , the proceedings cannot be said to have been 'fair and regular'."⁸ Moreover, because the Act "encourages good faith and honesty in dealings between the parties to a collective-bargaining relationship, the putative grievance settlement here is 'clearly repugnant' to the principles and policies of the Act."⁹

We note that complaint is not automatically required when a party to a collective-bargaining agreement fails to abide by a contractual dispute resolution mechanism. Such disputes often arise when a party, usually an employer, refuses to process a grievance or class of grievances to arbitration. When a party acts in bad faith by refusing to comply with the terms of a grievance settlement, or analogously, when it refuses to bring a grievance or class of grievances to arbitration, the Board determines whether such refusal threatens the viability of the parties' collective-bargaining relationship or "obstruct[s] the overall functioning of the process of grievance resolution."¹⁰ When evaluating such a refusal, the Board considers a number of factors. The number of the grievances the respondent refuses to arbitrate and the variety of issues encompassed are highly significant.¹¹ The Board has also

⁷ *U.S. Steel*, 340 NLRB 153, 159 (2003), *enforced*, 112 F. A'ppx 64 (D.C. Cir. 2004).

⁸ *Id.* at 159.

⁹ *Id.*

¹⁰ *See, e.g., Airport Aviation Services*, 292 NLRB 823, 830 (1989).

¹¹ *Compare Exxon Chemical Co.*, 340 NLRB 357, 359 (2003) (employer violated 8(a)(5) by refusing to arbitrate three grievances that "implicated a range of contractual issues, not a narrow class of issues, and constituted the totality of collective-bargaining issues pending between the parties"), *enforced* 386 F.3d 1160 (D.C. Cir. 2004); *Martin Marietta Energy Systems*, 316 NLRB 868, 868-69 (1995) (employer violated 8(a)(5) by refusing to process over 1,000 grievances, which constituted over one third of all grievances and included a variety of unilateral changes); *3 State Contractors*, 306 NLRB 711, 715 (1992) (employer violated 8(a)(5) by refusing to arbitrate two grievances based on its position that it would only arbitrate the grievances it decided should go to arbitration) *to Velan Valve Corp.*, 316 NLRB 1273,

taken into account the respondent's presence of good faith with respect to its decision not to arbitrate,¹² and, relatedly, whether the respondent expressed its commitment to collective bargaining and good-faith dealing after refusing to use the arbitration process.¹³ Finally, the Board has also considered that the union could still seek relief through the grievance-arbitration process.¹⁴

1274 (1995) (employer did not violate 8(a)(5) by refusing to arbitrate one grievance); *Cherry Hill Textiles*, 309 NLRB 268, 268-69 (1992) (employer did not violate 8(a)(5) by refusing to arbitrate one grievance), *enforced*, 7 F.3d 221 (2d Cir. 1993); *GAF Corporation*, 265 NLRB 1361, 1364-65 (1982) (employer did not violate 8(a)(5) by refusing to arbitrate a single grievance).

When the Board in *B.N. Beard Company*, 231 NLRB 191, 191 (1977) denied the General Counsel's motion for summary judgment for failure to file a timely answer, it stated that an employer's refusal to implement a discharge settlement agreement concerning a single grievance "might be viewed" as an 8(a)(5) violation, and remanded the case for a further record, which ultimately did not reach this issue (248 NLRB 198, 198 n.4 (1980)). However, this mere speculation is old and tentative and should not be relied on in this case. See *Danny's Foods, Inc.*, 260 NLRB 1445, 1448 n.10 (1982); *Verizon New York, Inc.*, Case 3-CA-26376, Advice Memorandum dated October 26, 2007, at p.3.

¹² See *Velan Valve Corp.*, 316 NLRB at 1274 (explaining in its dismissal of the 8(a)(5) charge that it was clear that the employer's argument for not bringing the grievance to arbitration was "one that is based on a reasonable and good-faith interpretation of the contract," contrasting it to the respondent who violated the NLRA in *3 State Contractors*, 306 NLRB 711, which the *Velan Valve Corp.* Board described as "effectively arrogat[ing] to itself the determination of which grievances should be arbitrated"); *GAF Corporation*, 265 NLRB at 1365 (dismissing the 8(a)(5) charge in part based on the employer's "good-faith and reasonable explanation" that a separate pension benefit claims provision was meant to be used rather than the parties' grievance-arbitration provisions).

¹³ See *Exxon Chemical Co.*, 340 NLRB at 359 (finding an 8(a)(5) violation in part because in contrast to the employer in *Velan Valve Co.*, 316 NLRB 1273, Exxon provided no assurances of its commitment to the contract and good-faith dealing).

¹⁴ See *Velan Valve Corp.*, 316 NLRB at 1274 (explaining that dismissal was appropriate in part because the union had the option under Section 301 to sue to compel arbitration).

Here, the Employer violated Section 8(a)(5) by inducing an agreement that it secretly knew it would not uphold. As in *Royal Plating & Polishing Company*, the Employer here went through the motions of bargaining and reached an agreement while hiding from the Union its secret overarching plan with respect to the main issue between the parties during negotiations, namely, that it never intended to (b) (6), (b) (7)(C) the Employee. Evidence that the Employer misled the Union into believing that the Employee would be immediately (b) (6), (b) (7)(C) includes: the settlement agreement term presupposing (b) (6), (b) (7)(C), by which the Employee agreed that (b) (6), (b) (7)(C) would provide immediate notice in the event of any future (b) (6), (b) (7)(C); the fact that the Employer's Labor Relations Director asked the Union Business Agent at the time they executed the agreement when the Union would like the Employee to (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and the Employer Group Manager's rationalization of the Employer's refusal to abide by the grievance settlement by pointing to prior instances in which the Employer perceived that the Union had won grievances based on technicalities.

This case is also strikingly similar to *Dilling Mechanical Contractors, Inc.* and *U.S. Steel* in which the employers, to obtain grievance settlements, withheld from the unions their intent to violate the agreements. Additionally, as in *U.S. Steel*, it is clear here that the Union never would have entered into the grievance settlement without the promise of (b) (6), (b) (7)(C) and the settlement is "clearly repugnant to the principles and policies of the Act" because the Employer promised (b) (6), (b) (7)(C) without disclosing its hidden plan to (b) (6), (b) (7)(C) the Employee for (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) unrelated reason. Thus, abdicating the Board's jurisdiction in order to defer to the contract grievance process would be inappropriate.

While the Employer's bad faith in this case involves one grievance settlement, the egregiousness of the Employer's bad faith in undermining the parties' settlement negotiations clearly threatens the viability of the parties' collective-bargaining relationship and "obstruct[s] the overall function of the process of grievance resolution." It is clear that the Employer lacked good faith in its decision not to honor the grievance settlement and did not express its commitment to collective bargaining and good-faith dealing in the future. While the parties were able to settle a subsequent Board charge, the Group Manager also indicated that the Employer's bad-faith behavior was payback for the Union's victories before the Piedmont Grievance Committee, thus demonstrating the Employer's willingness to act dishonestly in its future dealings with the Union whenever the Union wins a future grievance, or perhaps as continued payback for the grievances the Union has already won. Thus, because the Employer's duplicitousness did not involve a refusal to bring a grievance to arbitration or a simple refusal to comply with a grievance settlement, but rather revealed a lack of respect for the bargaining process itself, thereby undermining the Union's trust in that process and amounting to a failure to bargain under the Act, we find the line of cases cited above in notes 10-14 inapplicable.

Finally, the Union in this case may not be able to seek full relief through the grievance-arbitration process or a Section 301 lawsuit. Here, the Union justifiably did not believe it would be required to grieve the (b) (6), (b) (7)(C) because the Employee had already been (b) (6), (b) (7)(C) at the time, and the Employer treated the (b) (6), (b) (7)(C) as without separate effect when it offered on (b) (6), (b) (7)(C) within the appeal deadline, to (b) (6), (b) (7)(C) the Employee. However, it is possible that an arbitrator or court in a potential Section 301 action could determine that the only thing technically before it is the parties' settlement as to the first (b) (6), (b) (7)(C), and that the Employee could not be (b) (6), (b) (7)(C) because the Union failed to grieve the (b) (6), (b) (7)(C). Thus, as in *Dilling Mechanical Contractors, Inc.*, the Employer's unlawful scheme in this case may have foreclosed the Union's alternative means of redress. Because the Employer should not profit from its bad faith, it is appropriate for the Board to assert jurisdiction over this case.

Accordingly, the Region should issue complaint, absent settlement, alleging that the Employer violated Section 8(a)(5) by refusing to honor the terms of the grievance settlement.

/s/
B.J.K.

ADV. 12-CA-181762.Response.Aramark. (b) (6), (b) (7)(C)