

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 6

GIANT EAGLE, INC.

and

Case 06-CA-188991

UNITED FOOD AND COMMERCIAL WORKERS,  
INTERNATIONAL UNION, LOCAL 23, CLC

GENERAL COUNSEL'S MOTION TO REMAND CASE  
TO THE REGIONAL DIRECTOR TO PROCESS WITHDRAWAL REQUEST

Pursuant to Section 102.47 of the National Labor Relations Board's Rules and Regulations, Counsel for the General Counsel respectfully moves that the Board remand the above-captioned case to the Regional Director to process a request by United Food and Commercial Workers International Union, Local 23, CLC ("the Union") to withdraw the charge that it filed against Giant Eagle, Inc. ("Respondent") in the above-captioned case. In support of this Motion, Counsel for the General Counsel states as follows:

1. On March 14, 2018, Administrative Law Judge ("ALJ") David Goldman issued a decision in this matter, concluding that Respondent had violated Section 8(a)(1) of the Act by a) conditioning the pre-election disclosure of wage and benefits information on employees' seeking and securing a written waiver from the Union of the right to file charges and objections over the disclosure of the wage and benefit information; b) conditioning consideration of an employee's application for promotion on employees' seeking and securing a written waiver from the Union of the right to file charges or objections if the employee were granted the promotion; and c) announcing to its employees an intent to change their retirement benefits.

2. On April 11, 2018, Respondent filed timely exceptions to the ALJ's decision. The exceptions are currently pending before the Board.

3. At sole issue in this case is Respondent's conduct related to a unit of eight catering department employees at a single store ("Settlers Ridge") from among the 35 stores that Respondent operates in the greater western Pennsylvania area. As accurately described in the ALJ's decision, the alleged unfair labor practices set forth in paragraph 1(a) and (b) above arose prior to certification of the Union as the representative of the catering department employees at Settlers Ridge. The alleged unfair labor practice set forth in paragraph 1(c) above arose following certification, but prior to the commencement of contract negotiations. Respondent's former counsel, who committed the violations in paragraphs 1(a) and 1(b) on a one-time basis, has since retired and no longer represents Respondent.

4. Notwithstanding their extensive bargaining efforts, the parties were unable to reach a final agreement on a contract before the employees in the Settlers Ridge catering department unit filed a decertification petition. Following receipt of the petition, the Union disclaimed any interest in representing that unit of eight employees.

5. Thereafter, the parties continued to negotiate new collective bargaining agreements covering the store clerks and meat department employees at 35 of Respondent's grocery stores. In August 2018, the parties' negotiations culminated in two "master contracts," neither of which covers the Settlers Ridge catering department employees.

6. At the successful conclusion of bargaining for the two master contracts, the parties orally agreed to withdraw various unfair labor practice charges that they had filed during the course of bargaining. Notwithstanding the absence of a written non-Board settlement agreement concerning this case, the parties' oral agreement to resolve all outstanding unfair labor practice charges in the context of reaching an agreement on new master contracts satisfies the Board's test for determining whether a non-Board settlement effectuates the purposes of the Act, as set forth in *Independent Stave Co.*, 287 NLRB 740 (1987).

7. In *Independent Stave Co.*, the Board held that the following four factors should be considered in evaluating the appropriateness of non-Board settlement agreements *vis a vis* the Board's purposes and policies: (1) whether the parties have agreed to be bound by the settlement agreement, and

the position taken by the General Counsel regarding the settlement; (2) whether the settlement is reasonable in light of the violations alleged, the risks inherent in litigation, and the stage of litigation; (3) whether there has been any fraud, coercion, or duress by any party in reaching the settlement; and (4) whether the respondent has a history of violations of the Act or has breached past settlement agreements.

8. Here, the parties' oral non-Board settlement effectuates the purposes of the Act. First, the parties' reached the settlement, which they refer to as a "global settlement," at the conclusion of protracted and often difficult bargaining, with the stated purpose of ending all outstanding disputes between them. Consistent with that intent, both parties filed with the Regional Director requests to withdraw their respective charges. The General Counsel's position in these circumstances, which is a partial factor under *Independent Stave*, is that the parties' post-settlement conduct shows that they intend to be bound by their oral non-Board agreement. Most notably, Respondent has refrained from engaging in any unlawful conduct related to the Settlers Ridge catering department employees and charges filed concerning other locations were deemed to be non-meritorious. The Union, too, has reiterated that it has lost interest in pursuing the matter in light of the decertification effort in the Settlers Ridge catering department, as indicated by its disclaimer of interest in representation of the unit. For all of these reasons, Counsel for the General Counsel submits that the parties' oral non-Board agreement satisfies the first prong of the Board's *Independent Stave* test.

9. As to the second factor of the Board's evaluation of non-Board settlements, whether the settlement is "reasonable" in all of the surrounding circumstances, Counsel for the General Counsel believes that this factor, too, is satisfied. Here, the employees in the Settlers Ridge catering unit exercised their rights under the Act to file a decertification petition following a year of unsuccessful bargaining in that unit and the Union acceded to those employees' wishes by disclaiming interest in the catering unit. Respondent committed the unfair labor practices in a small unit that no longer wished to be represented by the Union. As of this date, only three of the original eight catering department employees at Settlers Ridge are still employed there. Further, the primary "bad actor" for Respondent, whose idea it was to demand written waivers from employees in exchange for wage information and an employee's promotion

consideration, no longer represents Respondent. The parties wish to set aside all acrimony borne of their difficult negotiations for all units and start afresh with a renewed commitment toward labor peace. In these circumstances, Counsel for the General Counsel submits that the parties' oral non-Board settlement is reasonable and that the second prong of the *Independent Stave* analysis has been met.

10. The third factor under the *Independent Stave* analysis, whether there has been any fraud, coercion, or duress by any party in reaching the settlement agreement, is easily satisfied. There is no assertion, much less evidence, that fraud or coercion played any part in the subject oral non-Board settlement. To the contrary, as described above, the parties are eager to set aside their dispute and further cultivate a mutually beneficial bargaining relationship.

11. Finally, as to the fourth *Independent Stave* factor, the parties' settlement is appropriate where Respondent has no history of previous violations of the Act. Nor does Respondent have a history of breaching settlement agreements. Thus, all four of the *Independent Stave* factors for analyzing the appropriateness of non-Board settlement agreements are satisfied in this case.

12. On August 13, 2018, the Union submitted to the Regional Director of Region 6 a written request to withdraw its charge against Respondent in this matter, based on its having disclaimed interest in the Settlers Ridge catering department bargaining unit after the employees sought to decertify the Union and on the parties' successful conclusion of bargaining as to all other classifications. Respondent similarly requested withdrawal of its charges against the Union, approval of which is dependent upon the granting of this Motion to Remand and the Regional Director's ability to approve the Union's withdrawal request herein.

13. Respondent does not object to the Union's request for withdrawal of the charge in this matter and has advised the Region that it intends to promptly withdraw its exceptions to the ALJ's decision if this Motion to Remand is granted.

14. A grant of this Motion to Remand so that the Regional Director can approve the Union's withdrawal request is not inconsistent with Board precedent. In a recently unpublished decision, for example, the Board granted a charging party union's request to withdraw its charge – over the opposition

of the respondent and the General Counsel – for far less compelling reasons. See, *Loshaw Thermal Technology*, Case 05-CA-158650. In that matter, as here, the charging party sought to withdraw its charge following the ALJ's decision finding that the respondent had violated the Act. Unlike here, however, the request to withdraw the charge was not based on any settlement agreement by the parties, but on the charging party's mere assertion that it possessed limited financial resources and did not wish to use additional monies to pursue the case. Nevertheless, by Order dated December 14, 2018, the Board granted the charging party union's request to withdraw its charge.

15. In the instant case, where the Union no longer wishes to pursue the underlying charge involving a unit of employees it no longer represents, and in the interests of fostering an enhanced collective-bargaining relationship between the parties and avoiding unnecessary costs to the Agency and the parties, the Regional Director of Region 6 wishes to approve the Union's withdrawal request.

**BASED ON THE FOREGOING**, Counsel for the General Counsel respectfully requests that this case be remanded to the Region for the processing of the Union's withdrawal request.

Dated at Pittsburgh, Pennsylvania, this 24th day of January, 2019.

Respectfully submitted,



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