



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

March 12, 2019

[REDACTED]

UNITED STEEL, PAPER AND
FORESTRY, RUBBER,
MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
AFL-CIO, CLC
60 BLVD OF THE ALLIES RM 807
PITTSBURGH, PA 15222

Re: Oracle Packaging
Case 09-CA-209777

Dear [REDACTED]

Your appeal from the Regional Director's refusal to issue complaint has been carefully considered. The appeal is denied substantially for the reasons in the Regional Director's letter of June 8, 2018.

The charge alleges that the Employer violated Sections 8(a)(1), (3) and (5) of the National Labor Relations Act, by refusing to execute a valid and ratified agreement, engaging in regressive bargaining, and locking out bargaining unit members in support of its unlawful bargaining position.

We determined that the evidence disclosed by the investigation did not establish a violation of the Act, as alleged. In this regard, contrary to your assertion on appeal, the evidence shows that the parties continued bargaining even after the November 8, 2017 date in which you assert a tentative agreement was reached. Notably, on November 10, 2017, the Union made a counteroffer to the Employer's sympathy-strike proposal. With respect to the regressive bargaining allegation, a party may rescind a specific tentative agreement and substitute an alternate or even regressive proposal provided it has "good cause" to do so. Here, the Employer's proposal of a new sympathy strike clause was not bad-faith bargaining because the Employer had good cause for making this late substitution, namely the apparent unavailability of the bargaining representative from another union also representing employees at the same facility, which heightened the potential for new sympathy strikes. Moreover, contrary to your assertion on appeal, this alleged regressive bargaining was solely limited to a single clause (sympathy strikes), rather than an entire tentative contract. Given these overall circumstances, we cannot

find that the Employer's subsequent lockout was unlawful because it was in support of a valid sympathy-strike proposal. Accordingly, further proceedings are unwarranted.

Sincerely,

Peter Barr Robb
General Counsel



By:

Mark E. Arbesfeld, Director
Office of Appeals

cc: MATTHEW T. DENHOLM
ACTING REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS
BOARD
550 MAIN ST RM 3003
CINCINNATI, OH 45202-3271



OGLETREE, DEAKINS, NASH SMOAK
& STEWART, P.C.
111 MONUMENT CIR STE 4600
INDIANAPOLIS, IN 46204



LLFLEX, LLC D/B/A ORACLE
PACKAGING
1225 W BURNETT AVE
LOUISVILLE, KY 40210-1879

kh