

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Dallas Airmotive, Inc.

Respondent,

V.

International Association of Machinists and
Aerospace Workers, AFL-CIO, District 776

Charging Party

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Case 16-CA-192780

**REPLY TO COUNSEL FOR GENERAL COUNSEL'S ANSWERING
BRIEF TO RESPONDENT'S EXCEPTIONS TO ALJ'S DECISION**

Urging the denial of employees' right to vote on whether they wish to be represented defies the explicit terms of the ACT. Respondents' employees are facing unionization based upon a litany of inappropriately applied presumptive standards that fly in the face of statutorily mandated employee choice. That outcome should not stand. Counsel for General Counsel (CGC) promotes such a results oriented outcome in response to Dallas Airmotive's Exceptions to the Administrative Law Judge's Decision.

1. The "Substantially Completed" Test Does not Compel a Time Explicitly Favorable to the Union's Claimed Majority Status.

Before the DFW Center was nearing ready for occupancy, Respondent's plan for the building's use was in flux. Until the summer of 2016, it did not have a final plan for total consolidation of all of their local facilities. However, after that decision was made in mid-2016, along with it came the general announcement of the plan for full consolidation of its operations into the new DFW Center. Then, the process of full

consolidation was begun. "Substantial completion" must be viewed in light of the full consolidation of operations after the decision was announced.

The Administrative Law Judge, rather fortuitously, selected the date Charging Party made demand for recognition and Respondent's refusal as the date for substantial completion of the consolidation. At best, on that date, substantial completion only applied to the movement represented by the transfer of employees from Forrest Park. But in light of the announcement of *full* consolidation, the plan and the process was only partial at that time. Ultimately, a solid majority of employees that were consolidated into DFW Center did not transfer into the facility from Forest Park.

Transferring various work groups that specialize in the major repair and overhaul of jet engines is not merely a matter of scheduling a local moving company. The logistics involved in assuring continuity in the safe, efficient and varied operations at DFW Center were crucial. Ultimately, the consolidation of each engine line and supporting departments had to result in one goal, that re-worked and tested engines were assuredly airworthy. CGC spends an inordinate amount of time focused on testimony and events that occurred prior to the decision and announcement of the full consolidation. Once that decision was made and announced, the consolidation moved forward in an orderly and proper manner consistent with the goal of the end of work process – safe jet engines.

The Administrative Law Judges' decision that "substantial completion," by happenstance, fell on the date Charging Party claimed majority status will drive peculiar decision making. Practically applied, to protect the majorities' right of self-determination, the message is not to transfer represented employees until the end of a

consolidation process! This message disregards rightful and a proper business decision making process and similarly pays little attention to upholding the statutory mandate of employee choice in representation. Such forced decision making (waiting until the end to transfer represented employees) may hint of union animus. However, there was no such finding in the case at hand. Respondent made an announcement of full consolidation of its facilities workforce. It then implemented that decision. The particular order of transfer should not be haphazardly analyzed to achieve a particular result. Rather, substantial completion of the consolidation is when all engine lines were moved into the DFW Center. With that done, employees rights under the explicit terms of the ACT should be protected. Those immediate rights should not be cast aside for those long past who first secretly voted at the Forest Park location some 50 plus years ago.

2. The Clear and Unmistakable Waiver Test Ignores the Parties Bargained for Agreement

CGC asserts that the Administrative Law Judge properly ignored particular terms of the parties' 2015 Closure Agreement and found them meaningless to their ongoing relationship. That argument disregards Respondent's citation to a long list of recent appellate decisions directing that properly negotiated agreements and their terms, must be applied without reliance on a presumption that again favors recognition and denies employee free choice. The terms of the bargained for 2015 Closure Agreement was reached at Charging Party's demand, against warnings from Respondent that it was premature. With that background, the agreement should not be disregarded for a test

that will deny employees the right to cast a secret ballot vote on whether or not to be represented.

3. Employees moved out of Forest Park 1 to 3 years before the Consolidation was Implemented, Should Not be Presumed to be Union Supporters

In a further effort to string together numerous presumptions and inferences resulting in a Union majority, CGC argues that employees transferred out of Forest Park in 2014, two years before the announcement of the full consolidation of operations to DFW Center, should be counted as supporting union representation. The inference being pushed appears to be: once represented by the union, always represented by the union. Having worked in non-union facilities for a significant amount of time, without objection or challenge from Charging Party, there cannot and should not be yet another inference or presumption that employees who transferred out of Forest Park years earlier are supporters of the union.

Similarly, newly hired employees cannot by some artifice be said to pledge support for Charging Party. Without some further presumption, there is no evidence to support such conclusion. The string of presumptions must be long to achieve CGC's urged position of denying employee input and choice into representation.

4. Why Exclude Honeywell TFE Employees from the Numbers?

The underlying Decision also seeks to achieve the basis for majority support through subtraction. The Honeywell TFE production line employees, transferred to the DFW Center from the Grapevine facility, are oddly excluded from the unit found to be appropriate by the Administrative Law Judge. These are employees that work on fixed wing engines. They are employees utilizing and relying upon all of the same support

departments that the other included production lines use – accessory, cleaning, component repair, maintenance, NDI, preservation, quality control, scheduling, test cell and warehouse. The employees work side by side with these other employees working on jet engines. Subtracting them from the numbers brings required union recognition one step closer but, from a different angle.

CGC points out that Honeywell TFE employees need not be included in the appropriate bargaining unit. In continuing to champion the myriad of presumptions against employee free choice but this time by subtraction, CGC states: “There is no presumption in the manufacturing industry that a wall-to-wall unit is the only appropriate unit.” CGC Answering Brief, p. 13. While possibly a true statement, such argument further points out that presumptions appear to be applied only for finding majority support for Charging Party. What becomes more and more obvious is that the myriad of presumptions in this matter are all contrary to employee freedom of self-determination.

In addition, the exclusion of the Honeywell TFE line is internally inconsistent with the Administrative Law Judge’s own findings. Ultimately, according to the Administrative Law Judge, the Honeywell TFE line was excluded from the unit found appropriate because it purportedly had no history with Forest Park (regardless of how attenuated). However, in footnote 9 of the Decision, Judge Steckler noted that the Rotorcraft (helicopter) engine lines were moved out of Respondent’s Neosho, Missouri facility to Heritage Park, including the Pratt and Whitney lines. As testified to by David Daniel, Vice President of Human Resources, those engine lines were being moved into DFW Center within the week of the Hearing, never having even an attenuated relation

to Forest Park. The same is true – no relation to Forest Park - of the Pratt and Whitney (PW100) and APU lines. The appropriate unit finding, however, included all production employees working on all engine lines, including Rotorcraft, APU's and the Pratt and Whitney product line (PW 100), but excluded the Honeywell TFE line.¹ That conclusion is internally inconsistent and inherently flawed. All production employees working on all engine lines would make up the appropriate unit. Otherwise, all of the engine lines which had no relationship to Forest Park should be excluded. It cannot be some of one but not the other. Otherwise, the basis upon which the Honeywell TFE line was excluded is meaningless.

5. The Shutdown Agreement is Unambiguous – Employees Would be Moved to a Facility in the DFW Metroplex. DFW Center is in the Heart of the DFW Metroplex.

The clear and unambiguous language of the 2015 Shutdown Agreement is that Forest Park employees would be moved to a facility in the DFW Metroplex. CGC asserts that there is:

“...no controversy as to the understanding and effect of the agreement as to the movement of employees to Heritage Park or Love Field facilities. Those facilities had been operating for years and had set policies and the former unit employees were expected to be in the minority at those facilities. However, there is controversy as to the applicability of the agreement to the employees who transferred to DFW Center....”

CGC Answering Brief, p. 16.

¹ In the body of her original Decision, the Administrative Law Judge's excluded the Pratt and Whitney engine line employees from the appropriate unit, but in her finding included them in the appropriate unit. However, by Errata dated February 12, 2019, the Administrative Law Judge clarified that the Pratt and Whitney line employees were included in her appropriate unit finding.

The inference made is this: had the represented Forest Park employees been transferred to Heritage Park or Love Field pursuant to the 2015 Shutdown Agreement, there would be no disputed case as is present in this matter – there would be no controversy. But, because the employees were transferred to the new DFW Center, the 2015 Shutdown Agreement is somehow inapplicable or should not be applied as written.

The very terms of the 2015 Shutdown Agreement reflect both the absurdity of the CGC's argument and the applicability of the Agreement to this case. Specifically, the 2015 Shutdown Agreement stipulated that Forest Park employees "shall be given priority consideration for positions associated with work transferred out of the facility to other facilities in the DFW Metroplex." Joint Exhibit 25. This language was agreed upon, all the while Respondent was telling Charging Party that the entire agreement was premature. It was premature because Respondent was not sure where the work would be transferred. However, it would be transferred somewhere in the DFW Metroplex! Somehow, those facts are lost within all the gymnastics of presuming majority support for the union.

6. Analysis of Case Authority Must Take into Account the Underlying Facts, Not Just the Outcome.

The case authority urged by CGC ignores distinguishing facts specifically relied on by the Board in reaching its conclusions. Those cases and their distinguishing facts include:

- *Harte & Co.*, 278 NLRB 946 (1986). *Harte* was a relocation case where the collective bargaining agreement remained in place following the relocation.

This is a consolidation of multiple operations. There is also a negotiated shutdown agreement in the instant case.

- *Rock Bottom Stores*, 312 NLRB 400 (1993). *Rock Bottom* is another relocation case with an existing and ongoing collective bargaining agreement. Again, there was no applicable shutdown agreement in *Rock Bottom*.
- *Central Soya Co.*, 281 NLRB 1308 (1986). In *Central Soya*, the employer outright failed to bargain over the transfer of employees and unilaterally moved represented employees to a new location. Here, Respondent bargained an applicable shutdown agreement and transferred employees according to the terms of that agreement.
- *United Steelworkers of America, AFL-CIO, Local 7912*, 338 NLRB 29 (2002). No applicable shutdown agreement considered in this case; existing collective bargaining agreement impacted decision on unit determination and duty to bargain.
- *ADT Security Service*, 355 NLRB 1388 (2010), *enfd.* 689 F3d 628 (6th Cir. 2015). No shutdown agreement in place; rather the existing collective bargaining agreement followed employees to the new location.

The cases urged by CGC are distinguishable and do not support the conclusion that employees consolidated into DFW Center further to the 2015 Shutdown Agreement should be denied their statutory rights of self-determination.

7. Denying Essential Statutory Rights by Stringing Together Presumptions and Inferences to get to a Majority -- followed by Accretion – is Untenable.

The path to denial of Respondent's employees' voting rights is littered with presumptions and inferences only favorable to the outcome of the underlying Administrative Law Judge's decision. That decision is in error. CGC reiterates distinguishable authority, inapplicable presumptions and improper inferences to support that result. As set forth in Respondent's Exceptions and Brief, the Underlying Administrative Law Judge's Decision should be overturned and the employees at DFW Center should be allowed to express their desires on future representation by the union via a secret ballot election – all of it, as intended under the explicit directive in the ACT.

Dated this 19th day of April 2019.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served this 19th day of April, 2019, to all counsel of record via electronic filing and via email.

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