

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

AMALGAMATED SUGAR CO. LLC

and

**Cases: 27-CA-243789
27-CA-248764**

**BAKERY CONFECTIONERY, TOBACCO
WORKERS & GRAIN MILLERS,
LOCAL 284g, AFL-CIO**

**RESPONDENT’S REPLY TO COUNSEL FOR GENERAL COUNSEL’S OPPOSITION
TO RESPONDENT’S MOTION FOR SUMMARY JUDGMENT**

I.

The Opposition has not disputed any material fact in the motion which would constrain the Board from deciding the legal issue involved. The facts and information set forth in the motion are accepted by the parties, leaving only the legal issue to be decided.

The Opposition simply recites the allegations in the Complaint and states the ALJ must decide whether Respondent engaged in the conduct alleged. This is precisely what an arbitrator would do, barring resolution by the parties of the allegations in the grievance arbitration process – something they have so often done in the past and are currently doing.

The case is ripe for decision on the reach and scope of *United Parcel* and *United Technologies* and the admonition that the decision apply retroactively “to cases at whatever stage.”

II.

- A) The Opposition rests principally on the Board’s decision in *Jos T. Ryerson & Sons, Inc.*, 199 NLRB 461 (1972) (“Ryerson”).
- B) The case deals with section 8(a)(1) allegations, and not section 8(a)(3) allegations, arising under a collective bargaining agreement relating to wage increases,

promotions, and job assignments. The section 8(a)(3) allegations in the instant case are historically tailored for deferral to arbitration, and *Ryerson* is not precedent that precludes their deferral.

- C) In *Ryerson*, the general manager is alleged to have told the recording secretary of the union: “If you continue to block these grievances up you will have a hard time with the company and the men in the warehouse.”
- D) The Board held that this statement was not coercive or improper interference and dismissed the Section 8(a)(1) allegation. “This Board has often recognized that candid, even course, discourse is an expected part of successful grievance processing.” *Citing Crown Central Petroleum Corporation*, 177 NLRB322 (1969), *enf.* 430 F2d 724 (1970). (“Grievance meetings arising out of disputes between employer and employee are not calculated to create an aura of total peace and tranquility where compliments are lavishly entertained”) at 731. Under *Ryerson*, the Section 8(a)(1) allegations in Paragraph 5 of the amended complaint are not coercive or improper interference, and, as in *Ryerson*, must be dismissed.
- E) Alternatively, on the issue of deferral, *Ryerson* is notably distinguishable because the highest level of leadership at the facility was involved in the alleged Section 8(a)(1) allegation against union leadership – not supervisors as in this case. The highest level of leadership, Respondent’s general counsel and its plant manager, were not involved in any allegation and have committed under oath to the grievance arbitration process for all the allegations. This supports deferral in the instant case.

III.

In attempting to distinguish *United Parcel*, the Opposition focuses upon the portion of the decision relating to deferral to an arbitration award. The Opposition ignored *United Parcel's* specific adoption and application of *United Technologies* and its standards for pre-arbitral deferral. These standards are set forth and discussed fully in Respondent's motion, and the material facts contained therein are not disputed in the Opposition.

IV.

There will always be some degree of animosity by employers in the grievance and arbitration process and even employees and their representatives. Case law recognizes this. For it to rise to the level of a statutory, non-deferrable violation, however, the use of the machinery must have become "unpromising or futile." The Opposition has failed to establish this legal requirement or even allege it.

Respectfully submitted this 24th day of February 2020.

/s/ Clyde H. Jacob III
Clyde H. Jacob III
Louisiana Bar No. 7205
FISHER & PHILLIPS LLP
201 St. Charles Ave., Ste. 3710
New Orleans, LA 70170
Telephone: (504) 312-4424
Facsimile: (504) 529-3850
Email: chjacob@fisherphillips.com

Monica G. Cockerille
Idaho Bar No.5532
Cockerille Law Office, PLLC
2291 N. 31st Street
Boise, ID 83703-5625
Telephone: (208) 343-7676
Email: monica@cockerillelaw.com

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing Respondent's Reply to Counsel for General Counsel's Opposition to Respondent's Motion for Summary Judgment has been served by email on the following parties this 24th day of February 2020.

Jim Brigham
Amalgamated Sugar Co. LLC
1951 S. Saturn Way
Boise, Idaho 83709
jbrigham@amalsugar.com

Jon Fenn, Recording Secretary
Bakery Confectionary Tobacco Grain Millers
Local 284g (BCTGM 284g)
216 Bridgeport
Caldwell, ID 83605
jfenn@amalsugar.com

Paula S. Sawyer, Regional Director
NLRB, Region 27
1961 Stout Street
Suite 13-103
Denver, CO 80294
paula.sawyer@nlrb.gov

Clyde H. Jacob III
