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Nos. 19-2109, 19-2191

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

TECNOCAP, LLC,
Petitioner/Cross-Respondent,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent/Cross-Petitioner,

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL & SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC,
Intervenor.

Petition for Review of NLRB Decision and Order
Dated September 16, 2019 in Case 06-CA-216499

REPLY BRIEF OF PETITIONER/CROSS-RESPONDENT TECNOCAP, LLC,

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ARGUMENT

At this point, all of the parties have submitted numerous briefings on these issues and their respective positions are clear. Tecnocap has no desire to subject this Court to repetitive arguments that have already been presented. However, there is one narrow point that Tecnocap desires to add with this reply brief and that concerns the arguments presented in regards to the declaration of impasse.

The inconsistent positions taken by ALJ Rosas in his decision and those espoused by the NLRB in its responsive brief clearly demonstrate that the decision needs to be overturned in favor of Tecnocap.

In order to find against Tecnocap, ALJ Rosas found that the company improperly declared impasse on a matter of permissive bargaining, namely the reorganization plan to eliminate 14 job positions and replace them with three (Operators I-III) and to transfer some of the duties from another bargaining unit into the USW. (Transfer some die setter duties from the IAM to Operator III position). However that finding is not supported by the facts or the record.

The parties stipulated to many of the facts surrounding this issue, and those stipulations are recorded, in pertinent part at Appendix 414-415. Herein, the following stipulated facts can be found:

> From the beginning of negotiations, Union told some of the IAM duties would be transferred to bargaining unit (Stipulation ¶ 18).
>
> On October 25, 2017 the union was provided with Operator I-III job descriptions (Stipulation ¶ 16).
>
> On November 9, 2017 bargaining session, union told about reorganization and elimination of 14 job classifications into three classifications. (Stipulation ¶ 17).
>
> On November 15, 2017 the union and company signed an agreement extending the expired CBA to February 28, 2018, conditioned on the fact that the Union accepts the three job classifications, that the classifications would go into effect by April 9, 2018, and negotiations could continue regarding red-circling, grandfathering, and who falls in which class. (Joint Appendix p. 263).

Accordingly, by the time the contract extension is signed, the issue of reorganization, the three job classes, job duties, and the like has been resolved, subject to of course negotiations with the IAM which had yet to commence. Thus, the permissive bargaining matter upon which impasse was supposedly declared was actually resolved on November 15, 2017 when the contract extension was signed.

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Obviously, this is an inconvenient fact for the other side. To get around it, ALJ Rosas found that the agreement on reorganization and the job classifications expired when the contract extension expired. (*Appendix Item 1, Joint Appendix__00078*). The NLRB in its responsive brief simply refuses to acknowledge the agreement and argues none existed at the time of impasse. Similarly, the NLRB in its brief argues that Tecnocap unilaterally implemented the three classes, but the extension agreement signed by the company and the union clearly states that the three classifications shall be implemented no later than April. Accordingly, impasse was not declared on this issue, instead it was declared on the remaining unresolved issues.

The fact that the positions advanced by NLRB, the Intervenor, and ALJ Rosas' ruling are inconsistent with each other is perhaps the best evidence that ALJ Rosas' findings of fact were incorrect. As argued by Tecnocap in its earlier briefings, the application of law and legal conclusions in this matter are inappropriate because they are based upon erroneous findings of fact. Accordingly, Tecnocap respectfully requests that the decision be overturned.

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CERTIFICATE OF COMPLIANCE

In accordance with Rules 32(a)(7)(B) and (C) of the Federal Rules of Appellate Procedure, the undersigned counsel for appellant certifies that the accompanying brief is printed in 14 point typeface, with serifs, and, including footnotes, contains no more than 13,000 words. According to the word-processing system used to prepare the brief, Microsoft Word, it contains 956 word

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

TECNOCAP LLC

Petitioner

vs. CASE NO. 19-2109

NATIONAL LABOR RELATIONS BOARD

Respondent.

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2020, I electronically filed the foregoing document with the Clerk of the Court for the United Sates Court of Appeals for the Fourth Circuit by using CM/ECF system. I certify that the foregoing document will be served via the CM/ECF system on the following counsel, who are registered CM/ECF users:

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