14-CA-248354 & 14-CA-248812

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

CORESLAB STRUCTURES (TULSA), INC.,
Respondent,

v.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 627, AFL-CIO,
Charging Party.

CHARGING PARTY'S BRIEF TO ADMINISTRATIVE LAW JUDGE

Robert A. Ringler
Administrative Law Judge

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
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CORESLAB STRUCTURES (TULSA), INC.,	)	
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RESPONDENT,	)	
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and	)	Case No.: 14-CA-248354
	)	Case No.: 14-CA-248812
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 627, AFL-CIO,	)	(Robert A. Ringler Administrative Law Judge)
	)	
CHARGING PARTY.	)	

CHARGING PARTY'S BRIEF TO ADMINISTRATIVE LAW JUDGE

COMES NOW International Union of Operating Engineers, Local 627, AFL-CIO ("Union"),and respectfully files this Brief with the Honorable Robert S. Ringler, Administrative Law Judge (ALJ). This is being heard before the ALJ based upon a consolidated complaint and notice of hearing alleging that Coreslab Structures (Tulsa), Inc. (Respondent), violated Section 8(a)(1), (3), (5) and 8(d) of the National Labor Relations Act. This matter was heard by the ALJ on November 9, 10 and 12, 2020.

STATEMENT OF FACTS

The Charging Party does hereby adopt and incorporate by reference the background and statement of facts submitted by Counsel for the General Counsel in its Brief to the Administrative Law Judge. The Charging Party is in agreement with the factual statements and reference to the record made by counsel for the General Counsel in his Brief and adopts that in its entirety.

ARGUMENTS AND AUTHORITIES

PROPOSITION I: Respondent Prohibited Employees from Speaking/Meeting with the Union in Violation of Section 8(a)(1) of the Act.

In late July, 2019, Union President and Business Representative Justin Evans was properly engaged in speaking to a temporary employee in the break room. Danny Johnson, Plant Manager, told Evans, in the present of Union employees present, that the individual Evans was talking to was still temporary and he had no right talking to the Union. T. 136. This was during the time of contract negotiations. JX5, T.67; JX 20. Clearly Johnson sought to unlawfully interfere with an employee's rights to engage and discuss with a Union representative. As such, it was a violation of Section 8(a)(1) of the Act. The basic test for a violation of Section 8(a)(1) of the Act is "under all circumstances the employer's conduct reasonably tended to restraint, coerce, or interfere with employee's right guaranteed by the Act." Mediplex of Danbury, 314 NLRB 470, 472 (1994).

PROPOSITION II: Respondent's Pension and Profit Sharing Practices Violated Section 8(a)(3), (5), and 8(d) of the Act.

The CBA is clear that the Union is the sole Collective Bargaining Agent for all employees. JX1, Article 3. It is clear from the testimony of Mr. Drews, Vice President and General Manager, the company disregarded the pension contribution requirements from the time the CBA was signed by him. Mr. Drews testified that prior to the Central Pension Fund audit, the CBA only applied to members of the Union. T. 632. Only upon cross examination did Mr. Drews acknowledge the CBA covered all employees, both union and non-union. T. 257-258. Prior to that time, the company did not make pension contributions for non-union employees contrary to

the CBA. This is a per se violation of 29 USC Section 158(a)(1).

The company now has acknowledged the pension payments apply to all employees, contrary to their prior position. Non-union members of the CBA have been receiving profit sharing. Union members of the CBA have not. Profit sharing payments between 2017 and 2019 are set forth in GC11. The payment, as described by Mr. Drews, is paid by March 15th of each year. T. 325, 351-353. There is no question that profit sharing is treated as a wage for tax purposes. The CBA sets forth what is to be paid to employees. JX1, Article 4.1, Appendix A. Profit sharing should be allowed to all members of the Collective Bargaining Unit. The company is engaging in illegal activity by paying profit sharing to employees who are non-union members to the exclusion of Union members. This unlawful practice has been occurring since Drews became General Manager and Vice President in 2011. T. 330-331.

This case is similar to Lynn-Edwards Corp and Chauffeurs, Teamsters & Helpers, Local 150, 290 NLRB 202, 1988 NLRB Lexis 407. In that case, the administrative law judge found that an employer may not through provisions of a profit sharing plan, automatically deprive employees of benefits therefrom if they elect to be covered by a retirement or pension plan negotiated by the Union. This decision was upheld by the NLRB.

> The Board has consistently held that employee benefit plans which on their face are restricted to participation or enjoyment by employees who are not members of a union are inherently restrictive of employee rights guaranteed by Section 7 of the Act without further evidence of interference, restraint, or coercion are *per se* violations of Section (8)(a)(1) of the Act.

Libby Owens-Ford Company and United Glass and Ceramic Workers of North America, AFL-CIO, 285 NLRB 673, 1987 NLRB Lexis 287.

In Kroger, 164 NLRB 362, 1967 NLRB Lexis 730, the end result, simply stated was that employees represented by the union had a pension plan, whereas unrepresented employees had a pension plan and a profit sharing plan, a situation that clearly discriminated against those employees who had elected to engage in collective bargaining. Winn Dixie Stores, Inc., 224 NLRB 1418, 1976 NLRB Lexis 701.

The practice of not making pension payments for non-union members and only allowing non-union members to participate in the profit sharing plan was not negotiated with the Union. T. 360, 361, 381, and 382. Respondent never raised the company's practice as a concern pension payments and profit sharing eligibility at the negotiating table in 2015. T. 361-362.

The Union was never notified of Respondent's profit sharing practices prior to September 6, 2019, when Respondent disclosed this during negotiations. T. 97-98.

PROPOSITION III: Respondent's Failure and/or Delay in Providing Information Violated Section 8(a)(5) of the Act.

After September 6, 2019, Justin Evans attempted to obtain additional information regarding profit sharing as set forth in the detailed factual record by General Counsel, Evans repeatedly asked for clarification regarding this issue. There is no question of the general obligation of an employer to provide information that is needed by the bargaining representative for the proper performance of its duties. NLRB v. Truitt Mfg Co., 357 US 149 cited in Ohio Power Co. v. Utility Workers of America AFL-CIO, 216 NLRB 987 (1975). It is clear that the Respondent delayed

and refused to respond to the general request for information which was relevant. Respondent's failure to provide that information and its delay in providing the start date of the profit sharing plan until December 12th, violated Sections 8(a)(1) and (5) of the Act.

PROPOSITION IV: Respondent's Failure to Bargain in Good Faith for its Successor Agreement Violated Section 8(a)(5) of the Act.

The duty to bargain in good faith includes the duty to meet at reasonable times and confer in good faith in respect to wages, hours, and other terms and conditions of employment. From the time that the Respondent was aware of the Central Pension Fund audit, it repeatedly refused to bargain in good faith. The General Counsel's detailed factual time line of the actions taken by the Union to bargain and the reluctance of the Respondent to negotiate is clearly apparent. The Central Pension Fund audit had nothing to do with the ability of the Respondent to engage in good faith bargaining. The evidence clearly supports that the Respondent failed to bargain in good faith for a successful Collective Bargaining Agreement and its failure to do so violated Section 8(a)(1) and (5) of the Act.

PROPOSITION V: Respondent's Withdrawal of Recognition from the Union Violated Section 8(a)(5) of the Act.

The General Counsel set forth the detailed factual record of the Respondent's actions in withdrawing recognition of the Union. It is clear that the Respondent violated the terms of the Collective Bargaining Agreement by failure to pay the pension as required and provide the Union with information related to the profit sharing which it was paying illegally. On August 1, 2019, Drews held a meeting with employees. T. 411-418, 436-501, GC15, and GC25. Drews provided the employees

with misleading information regarding pension fund payments and the loss of "profit sharing." As of the date of the hearing, November 12, 2020, the pension fund payments have not been paid. T. 735-736.

Then on September 6, 2019, in the final bargaining session, Drews disclosed to the Union the existing profit sharing plan. T. 88, 89, and JX19. Drews then received the disaffection petition dated September 9 on September 11. T. 402-405, and JX16.

The very next day Drews met with Evans and Evans notified Drews that the Union planned to file a grievance over the profit sharing. T. 101. Drews did not inform Evans of the petition then. Only when Evans met with Drews and informed him of the Union's intent to file a board change did Drews advise Evans of the petition. T. 113-114 and JX11. This clearly shows Respondent's direct involvement in the decertification effort that led to the petition and warrants the presumption under Hearst Corp, 281 NLRB 764 (1986) enfd. mem. 837 F2d 1088 5th Cir. 1988 that the petition was tainted.

Clearly in this case the disaffection petition has been tainted by the employer's unfair labor practices.

REMEDY

Because of the Respondent's illegal actions in failing to make the pension fund payments to members of the Collective Bargaining Unit and by paying profit sharing to some members of the Collective Bargaining Unit and not to union members the Respondent should make whole its unit employees.

The Respondent should be required to make all delinquent fund contributions to the Pension Fund in accordance with Merryweather Optical Co., 240 NLRB 1213, 1216

fn 7(1979). See also Tropical Wellness Center, LLC and International Association of Machinists and Aerospace Workers, AFL-CIO, 2020 NLRB Lexis 537.

CONCLUSION

The Charging Party respectfully submits for the reasons set forth above and as submitted by the General Counsel that the Respondent Sections 8(a)(1), (5), and 8(d) of the Act as set forth in the General Counsel's Consolidated Complaint.

Dated December 31, 2020.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that I have this date served copies of the foregoing Charging Party's Brief to the Administrative Law Judge on all parties listed below pursuant to the National Labor Relations Board Rules and Regulations 102.114(i) by electronically filing with the Division of Judges and with service by electronic mail on the parties identified below.

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