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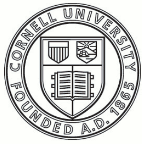

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Memorandum on Bargaining Tactics, 1979

Warren C. Ogden

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Memorandum on Bargaining Tactics, 1979

Abstract

Memo to all WCIRA consultants with 102 LRRM 1079-1080 attached discussing Arrow Molded Plastics Inc. and employee participation in illegal and unauthorized work slowdowns.

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file
& campaigns

TO: All WCIRA Consultants

FROM: Warren C. Ogden

RE: Bargaining Tactics

DATE: October 10, 1979

This may be our swan song on memos to consultants, depending upon how things go.

Regardless, we will continue to keep abreast of changes in the law. Access to that information is, of course, available on an as-needed basis. We hope to keep up strong personal contacts with our friends in WCIRA.

You might note Arrow Molded Plastics. It seems to describe a typical WCIRA campaign, but by a "consultant" in the East. Note that the employer ended up holding a bargaining order.

We will keep track of this type of case

WCO
jms

JMS/mm

Refusal to bargain

reiterate the fears I expressed in Gould regarding the effect of the position of my colleagues in the majority:

"In my view, nothing is more repugnant to the purposes and policies of the National Labor Relations Act than to see the sincere efforts of management and labor, in seeking a peaceful resolution of their disputes, wasted because of the unwillingness of employee representatives to assume the burdens which go hand-in-hand with the benefits of union representation. When management and labor are forced to settle their disputes through disruptions at the workplace rather than through the orderly process of collective bargaining, we clearly fail in the goals declared by Congress when it enacted the National Labor Relations Act 43 years ago."

TRUESDALE, Member, concurring:

[*Text*] In agreement with my colleagues, I find that the Respondent did not violate the Act when it disciplined Union Steward Picker for urging a fellow employee to slow down in violation of a contractual no-strike, noslowdown commitment. Accordingly, I concur in the dismissal of the charges. However, my decision rests on somewhat different grounds from those relied on by my colleagues.

Unlike my colleagues, I find no relevant distinction between Picker's conduct in this case and the conduct in Gould Corporation,[24] in which I dissented in part. In both cases, the employees had already begun a course of action contrary to the contractual commitment when the steward became involved — a work stoppage in Gould and a slowdown in the instant case. In both cases, the steward encouraged employees to take actions contrary to the contractual commitment. And, in both cases, the employees acted in accordance with the stewards' suggestion. I would have dismissed the 8(a)(3) allegations in Gould and, for the reasons stated in my partial dissent[25] in that case, I agree with my colleagues' conclusions that the charges in this case also should be dismissed.

ARROW MOLDED PLASTICS—

ARROW MOLDED PLASTICS, INC., Napoleon, Ohio and FOOD AND COMMERCIAL WORKERS, LOCAL 146, AFL-CIO, Case Nos. 8-CA-11476 and 8-RC-11096, August 8, 1979, 243 NLRB No. 181

Frank Motil, Cleveland, Ohio, for General Counsel; Jeffrey Julius (Gallon, Kalniz & Iorio,), Toledo, Ohio, for union; Roger W. Benko (Thornburg, McGill, Deahl, Harman, Carey & Murray), Elkhart, Ind., for employer; Administrative Law Judge Joel A. Harmatz.

Before NLRB: Jenkins, Murphy, and Truesdale, Members.

INTERFERENCE Sec. 8(a)(1)

—Soliciting grievances ▶ 50.695

Employer violated LMRA when, during series of four meetings within 10-day period before election, (1) its outside consultant told employees that their thoughts "will be cranked into the planning process," it intended to draw up recommendations on what it had learned from employees, and it would install "hot box" in which employees should place notes containing their questions or suggestions, and (2) its vice president told worker, who complained about having been improperly reprimanded, that he "would look into it." Statements support compelling inference that grievances solicited would be corrected.

[*Text*] Member Murphy would not find that Respondent violated Sec. 8(a)(1) of the Act by stating to an employee who complained that she had been improperly "written up" that it would look into it. The Administrative Law Judge found that Respondent's statement implied a promise to act favorably on the employee's complaint. Member Murphy believes the evidence is insufficient to support the Administrative Law Judge's conclusion that Respondent was promising to resolve a grievance. At best the facts show that all Respondent did was to promise to correct a mistake if one had been made by it. Absent some showing that Respondent before the advent of the Union would not have corrected its own mistakes, Member Murphy would not find this violation.

We agree that Respondent's solicitation of grievances was unlawful, as the circumstances support a "compelling inference" that the grievances elicited would be corrected. Thus, for example, Respondent's statements to employees that their thoughts "will be cranked into the planning process" and that it intended to draw up recommendations on what it had learned from employees admit of no other plausible conclusion. See Raley's Inc., 236 NLRB No. 97, 98 LRRM 1381 (1978).

INTERFERENCE Sec. 8(a)(1)

—Anti-union activity ▶ 50.240 ▶ 50.778 ▶ 50.601 ▶ 50.187 ▶ 50.57

Employer violated LMRA by (1) interrogating employees concerning their

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precisely the opposite from what Chairman Fanning, as a member of the majority, said in Gould. Member Jenkins now finds it permissible for an employer to single out a steward for greater discipline where the steward merely "urges support of and seeks to induce employee participation in an illegal, unauthorized work slowdown," which is precisely the factual situation in Gould. Member Murphy simply finds no violation in the instant case because "the steward here was disciasged for engaging in improper conduct in direct violation of a contractual clause," which again is precisely the factual situation in both Gould and Precision Castings. In her view, it is "unnecessary to extend or rely on or distinguish Gould . . . ."

[24] 237 NLRB No. 124, 99 LRRM 1059 (1978).

[25] I concurred in the finding in Gould that the respondent there had violated Sec. 8(a)(4) of the Act by relying in part on the steward's earlier filing of charges with various agencies, including the Board, when the decision was made to discharge the steward.

conditions of work, including adversities that may have given initial impetus to union, (2) impliedly promising employees that their wage levels would increase if they rejected union, (3) stating that employees would receive raise in about 10 working days if union failed to win election, but raise would take from six months to one year if union won, (4) suggesting that improvements would be made in lunchroom, and actually making such improvements after election, (5) suggesting to employees that employer would finance their education no matter how unrelated to their employment, (6) stating that employer was willing to reinstate "shift representative" system if union were rejected, (7) maintaining overly broad no-distribution rule, (8) denying worker more desirable position to which she was entitled under established promotion policy, and insinuating in presence of at least six employees that it was union activity that prejudiced her status, and (9) holding out possibility of wage increase to worker and then indicating that her participation in increase might be deferred if she invoked Board remedies.

REFUSAL TO BARGAIN Sec. 8(a)(5) ORDER Sec. 10(c)

—Eroding of majority status — Bargaining order ▶ 54.9198 ▶ 56.501

Employer violated LMRA by refusing to bargain with union having authorization cards from majority of employees, and bargaining order is warranted, since employer's unfair labor practices eroded union's established majority.

No exceptions were filed to the administrative law judge's dismissal of other allegations of unlawful interference or his overruling of certain allegations of interference with the election.

BURNS INT'L SECURITY SVCS.—

BURNS INTERNATIONAL SECURITY SERVICES, INC., Limerick, Pa. **and** PLANT GUARD WORKERS (UPGWA), Case No. 4-RC-13457, August 21, 1979, 244 NLRB No. 77

Before NLRB: Fanning, Chairman; Penello and Truesdale, Members.

ELECTION Sec. 9(c)

—Election interference ▶ 62.5598

Employer that provides guard services to another company under contract with this company and public utility did not interfere with election when, six days before election, employer distributed to employees paychecks representing retroactive wage increases that it and other company had agreed on. (1) Paychecks were distributed after public utility had approved wage increases as required by contract; (2) it is immaterial that paychecks were handwritten, since purpose was to get them out to employees as quickly as possible and before Christmas, a procedure that employees were familiar with; (3) if employer had delayed payment of wage increases, union might well have accused employer of unlawfully demonstrating to employees that it was source of all employee benefits and that it had power to punish employees for union activity.

The vote was 17 for the union and 35 against it; there were no challenged or void ballots. The union filed objections to the election, and a hearing officer subsequently recommended that Objections 1 and 2 be overruled but that Objection 4 be sustained and the election be set aside. Objection 3 was withdrawn.

[*Text*] The Petitioner's Objection 4 contains general language contending that the Employer improperly interfered with the election by other unspecified conduct.

The Employer provides guard services to the Bechtel Power Corporation under a contract with Bechtel and the Philadelphia Electric Corporation (PECO). Each year the Employer and Bechtel negotiate an amendment to the contract covering charges for employee wages and benefits, etc., which is subject to final approval by PECO. The existence of this arrangement is common knowledge among the employees.

On November 3, 1978, the new contract proposals, including a wage raise, were submitted by the Employer to Bechtel. The petition herein was filed November 22, 1978, and the election was scheduled for December 21, 1978. PECO's final approval of the new contract amendment was not secured until December 15, 1978, and the new agreement, with a term commencing November 24, 1978, and the retroactive wage increase, was signed by the parties on that date.

On December 15, 1978, six days before the election, the employees were informed of the terms of the new contract and the increases in their wages and benefits. Also on that day Branch Manager McKay distributed checks representing the retroactive increase to all employees. McKay had the checks prepared by hand and some employees were telephoned at home and told to come back to the site to receive their checks. He testified that it was not unusual for negotiations such as these to extend beyond the expiration date of the contract. He stated that in all such cases it was the Employer's practice to give employees lump sum checks for retroactive wage increases. However, McKay testified that the normal procedure was to run all such retroactive paychecks through the pay-