

**American International Manufacturing Corporation, d/b/a Nu-Aimco, Inc., Aimco Foundry Corporation, Aimco Defense Corporation and Gary Jenkins, Petitioner and International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers & Helpers Local 96, AFL-CIO.** Case 16-RD-1226

March 31, 1992

DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY, OVIATT, AND RAUDABAUGH

On February 13, 1991, the Regional Director for Region 16 issued a Decision and Direction of Election, in a unit consisting of all the production and maintenance employees, office porters, plant clerical employees, storekeepers, shipping and receiving clerks, and inspectors employed at the Employer's plant in Fort Worth, Texas. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Union filed a timely request for review of the Regional Director's decision. By Order dated March 25, 1991, the Board granted the Union's request for review.<sup>1</sup> The Employer filed a brief on review.

The Board has carefully considered the entire record in this case, including the brief on review, and in accord with our decisions in *City Markets*, 273 NLRB 469 (1984), *Passavant Health Center*, 278 NLRB 483 (1986), and *Island Spring*, 278 NLRB 913 (1986), we affirm the Regional Director's decision to process the petition after the Employer's compliance with a settlement agreement remedying an unfair labor practice charge.

I.

The facts are essentially undisputed. The Employer manufactures ordnances and oil field equipment. The Employer and the Union were parties to a collective-bargaining agreement which, by its terms, was effective from September 15, 1987, through September 15, 1990. The collective-bargaining agreement provided for automatic renewal on a year-to-year basis absent timely notice by either party to modify or terminate the agreement. No such notice was given by either party; consequently, the collective-bargaining agreement automatically renewed for 1 year. The decertification petition was timely filed during the window period of the contract on July 11, 1990. On that same date, the Union filed an unfair labor practice charge in Case 16-CA-14658, alleging that the Employer had bypassed the Union, bargained directly with employees through an employee committee, and advised employees of the

<sup>1</sup> Members Cracraft and Oviatt; Member Devaney would have denied the request for review.

benefits available to them if they would "rid themselves of the Union," in violation of Section 8(a)(1), (2), and (5) of the Act. The Regional Director held the decertification petition in abeyance pursuant to the Board's blocking charge policy pending resolution of the unfair labor practice charges.

On September 19, 1990, the Regional Director approved an informal settlement agreement, containing a nonadmissions clause, in which the Employer agreed to post a notice to the employees.<sup>2</sup> The Union objected to the settlement agreement because it did not require dismissal of the decertification petition and appealed the Regional Director's approval of the settlement agreement to the General Counsel. The General Counsel denied the appeal on October 24, 1990.<sup>3</sup> The Employer thereafter fully complied with the terms and conditions set forth in the settlement agreement and, despite the Union's request to have the decertification petition dismissed, the Regional Director conducted an election on March 21, 1991, and impounded the ballots.

II.

In processing the decertification petition, the Regional Director relied on the Board's decision in *City Markets*, above, in which the Board held that a contract entered into during the hiatus in processing a petition blocked by unfair labor practice charges will not bar an otherwise timely filed petition when the charges are withdrawn and the complaint dismissed. The Union contends, inter alia, that the Employer's conduct undermined its status as the employees' bargaining representative and, therefore, the petition must be dismissed. The Union argues that the Employer cannot cleanse its "taint" by merely posting a notice. The Union also notes that it did not agree to the settlement agreement, but sought as part of the remedy to have the decertification petition dismissed. Finally, the Union contends that the instant case is distinguishable from *Passavant Health Center*, above, in which the Board reinstated a decertification petition following compliance with a settlement agreement, as the settlement agreement here was unilateral rather than bilateral, and the alleged unfair labor practices were not, as in *Passavant*, confined to Section 8(a)(1) statements.<sup>4</sup>

<sup>2</sup> The notice provided, inter alia, that the Employer agreed to refrain from bargaining with the employee committee and from bypassing the Union and bargaining directly with the employees.

<sup>3</sup> We take administrative notice that the General Counsel denied the Union's request for reconsideration on March 6, 1991, finding that the Regional Director's approval of the unilateral settlement was not an abuse of discretion.

<sup>4</sup> The Union also argues that it should have been afforded a reasonable time to bargain for a new contract. We note, however, that the Union declined to give notice of an intention to modify or terminate the parties' collective-bargaining agreement; consequently, the parties already had a new contract as the collective-bargaining agreement renewed for 1 year.

Pursuant to its blocking charge policy, the Board will sustain dismissal of a decertification petition, subject to reinstatement, where a complaint has issued alleging that the employer has refused to bargain in violation of Section 8(a)(5) of the Act, and the remedy, if such an allegation were proven, would be an affirmative bargaining order.<sup>5</sup> Additionally, the Board will sustain a Regional Director's decision to hold a petition in abeyance pending resolution of unfair labor practice charges alleging that the employer has violated Section 8(a)(1) and/or (3) of the Act. The Board has explicitly stated, however, that the policy of dismissing a petition or holding it in abeyance because of pending unresolved unfair labor practice charges does not operate as a determination that the petition itself is defective or tainted, i.e., that it does not raise a question concerning representation because, for example, it lacks a sufficient showing of interest or is tainted by employer support. Rather, it merely postpones processing the petition until the unfair labor practice charges are resolved, at which time the petitioner is entitled to request reinstatement of the petition. *City Markets*, above at 470. Once an employer has fully complied with a settlement agreement remedying unfair labor practice charges, or once unfair labor practice charges have been withdrawn, then the question of whether a decertification petition is "tainted" is limited to the sufficiency of the showing of interest or the existence of supervisory or employer assistance in obtaining or circulating the petition. Thus, under the Board's decisions in *City Markets*, *Passavant Health Center*, above, and *Island Spring*, above, assuming that a decertification petition has been circulated and signed by employees, met all of the Board's technical showing of interest requirements, and was otherwise timely filed, the petition would, on request, normally be reinstated or processed after compliance with a settlement agreement or withdrawal of the unfair labor charges and would not be barred by a contract entered into during the hiatus in processing the petition.

In *City Markets*, timely filed decertification petitions had been dismissed because alleged unremedied 8(a)(5) violations precluded the raising of a question concerning representation. The parties subsequently executed new collective-bargaining agreements and the charges were withdrawn. The petitioners then requested reinstatement of the decertification petitions, which the union argued were barred by the contracts executed during the hiatus in processing the petitions prior to the request for reinstatement. The Board reinstated the petitions despite the execution of the new collective-bargaining agreements, holding that the original filing date of the petition applied for purposes of the contract bar rule. *Id.* at 470.

<sup>5</sup>Sec. 11730 et seq., of the Board's Representation Casehandling Manual; *Big Three Industries*, 201 NLRB 197 (1973).

In *Passavant Health Center*, above, the decertification petition, timely filed after the parties' existing contract had expired, was dismissed because of unresolved 8(a)(5) charges. The parties subsequently entered into an informal settlement agreement containing a nonadmissions clause, the parties executed a new collective-bargaining agreement, and the charges were withdrawn. The Regional Director, however, denied the motions to reinstate the petition, finding that it was barred by the new collective-bargaining agreement between the parties. The Board, following *City Markets*, reversed the Regional Director's decision, concluding that because the charges had been withdrawn and the terms of the settlement agreement were satisfied, the petition should be reinstated. Under similar circumstances, the Board reinstated the decertification petition in *Island Spring*, although the informal settlement agreement did not contain a nonadmissions clause. 278 NLRB at 913.

The Board's conclusions in *Passavant Health Center*, *City Markets*, and *Island Spring* were based on the fact that neither withdrawal of the charge and complaint, nor the execution of an informal settlement agreement, constitutes an admission by the employer, or an adjudication by the Board, that an unfair labor practice has been committed in violation of the Act.<sup>6</sup> In *City Markets*, the union, which argued that the withdrawn complaint alleging a violation of Section 8(a)(5) precluded reinstatement of the petitions, in effect was urging the Board to find that refusal-to-bargain allegations were meritorious solely based on the Regional Director's issuance of a complaint. However, the charges subsequently were withdrawn, the complaint was dismissed, and there was no evidence presented indicating that the employer engaged in conduct which would require finding that the petition should not be processed. Thus, there was no basis for concluding that the employer engaged in unfair labor practices that precluded reinstating the petitions.<sup>7</sup> The Board does not wish to discourage settlements between the parties because respondents often agree to settle for a variety

<sup>6</sup>In *Island Spring*, the Board found that the absence of a nonadmissions clause from a settlement agreement did not warrant a result contrary to *Passavant* as the employer had neither admitted the charges nor had been found in violation of the Act. Thus, there was no finding that the decertification petition had been tainted by unfair labor practices committed by the respondent. Cf. *Alexander Linn Hospital Assn.*, 288 NLRB 103 (1988), *enfd.* 866 F.2d 632 (3d Cir. 1989); *Hearst Corp.*, 281 NLRB 764 (1986).

<sup>7</sup>273 NLRB at 470 fn. 3 (former Member Zimmerman, concurring). In *Passavant*, the Board noted that a settlement agreement did not constitute an admission by the employer that it committed any unfair labor practices. 278 NLRB at fn. 3. Cf. *Mine Workers (Island Creek Coal)*, 302 NLRB 949 (1991) (inclusion of nonadmissions clause merely reflects that the settlement was the result of a compromise prior to a final litigation on the merits rather than a successfully litigated prosecution of unfair labor practices culminating in a finding of a violation based on evidence introduced at a hearing and subjected to cross-examination).

of economic and practical considerations despite their disagreement with allegations that they have engaged in unlawful conduct. Should we decline to permit processing of decertification petitions even where the General Counsel has determined that settlement is appropriate, the parties would be subjected to a substantial expenditure of time and resources without any assurance as to the ultimate outcome or the relief granted. Such a course is contrary to the Board's longstanding policy of encouraging settlement of unfair labor practices,<sup>8</sup> both to improve labor-management relations and to reduce the delay and expense of time-consuming litigation.<sup>9</sup> We find also that the unilateral nature of a settlement agreement does not require a different result. The Board consistently approves unilateral settlements when it believes such a settlement would effectuate the purposes of the Act.<sup>10</sup>

The Regional Director retains full discretion regarding whether to settle an unfair labor practice charge and, if so, to determine the appropriate remedies in any particular case; nothing in the Act or the Board's Regulations prohibits the Regional Director from including the decertification petitioner in the settlement discussions or from taking the position that the unfair labor practices, if proven, are sufficient to "taint" the peti-

<sup>8</sup>In *Independent Stave Co.*, 287 NLRB 740 (1987), the Board reaffirmed its longstanding policy of encouraging the peaceful nonlitigious resolution of disputes. The Board stated that "the purpose of such attempted settlements has been to end labor disputes and so far as possible to extinguish all elements giving rise to them." *Id.* at 741 (citing *Wallace Corp. v. NLRB*, 323 U.S. 248 (1944)). The Board has reiterated its commitment to private negotiated settlement agreements and its policy of encouraging parties to resolve disputes without resort to Board processes. See, e.g., *Independent Stave Co.*; *Combustion Engineering*, 272 NLRB 215, 217 (1984); *Texaco, Inc.*, 273 NLRB 1335 (1985). See also *NLRB v. Food & Commercial Workers Local 23*, 484 U.S. 112, 127-128 (1987) ("Congress was aware that settlements constitute the 'lifeblood' of the administrative process, especially in labor relations").

<sup>9</sup>See the Board's discussion in *Independent Stave Co.*, above, and cases cited therein.

<sup>10</sup>See, e.g., *National Telephone Services*, 301 NLRB 1 (1991) (adopting the administrative law judge's recommendation to accept a unilateral settlement agreement).

tion such that dismissal of the petition is warranted.<sup>11</sup> In that event, the Regional Director should make it clear in the course of settlement discussions that he or she intends to seek a remedy that would preclude the reinstatement of the petition. Moreover, the Regional Director is charged with advising the parties that absent such a settlement the case will be fully litigated, and that such litigation could result in a finding of an unfair labor practice violation sufficient to "taint" the petition and require dismissal. As we have noted, an affirmative bargaining order would preclude an election for a certain period of time in any event.

In the instant case, the Regional Director accepted the settlement agreement without seeking any additional remedies, and the settlement agreement was approved by the General Counsel. The Employer then fully satisfied the terms and conditions of the settlement agreement. There has been no finding by the Board, or admission by the Employer, that the Employer has committed any unfair labor practices.<sup>12</sup> Further, there is no evidence that the showing of interest supporting the decertification petition is insufficient or that the Employer or its supervisors assisted in gathering signatures or circulating the petition. Under the circumstances, as the instant petition was timely filed during the window period of the contract, in accord with our decision in *Passavant Health Center*, we affirm the Regional Director's decision to process the petition and direct an election.

#### ORDER

The Regional Director's Decision and Direction of Election is affirmed, and the case remanded to the Regional Director to open and count the ballots and for further appropriate action.

<sup>11</sup>Even if an employer has been found to have committed an unfair labor practice, this does not necessarily result in dismissal of the decertification petition; the seriousness and effect of the unfair labor practices would have to be considered.

<sup>12</sup>As in *Passavant*, the settlement agreement here contains a non-admissions clause. We note that even if this were not the case, it would not affect the result. See *Island Spring*.