

The Torrington Company, a subsidiary of the Ingersoll Rand Company and Metal Products Workers Union Local 1645, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW. Case 34-CA-4566

May 11, 1992

DECISION AND ORDER DENYING MOTION

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

On December 23, 1991, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding, finding that the Respondent did not violate Section 8(a)(5) and (1) of the Act by unilaterally adopting a health insurance plan for nonunit employees that eliminated internal coordination of benefits for their unit spouses.¹ On February 3, 1992,² the Charging Party Union filed a motion for reconsideration or alternatively to reopen record, contending that the Board misread the record in reaching its decision and that the decision is based on a critical factual error. On February 24, counsel for the General Counsel filed a response joining the motion, and the Respondent filed an opposition to the motion. Thereafter, on March 2, the Respondent filed a rejoinder to the General Counsel's response, and the Union filed a reply to the Respondent's opposition. The Respondent filed a response to the Union's reply on March 9.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board having duly considered the matter, denies the motion for reconsideration or reopening the record as lacking merit.

The Union contends that the Board erroneously rejected its argument that unit employees were disqualified from receiving dependent coverage under the nonunit health plan because of their status as employees of the Respondent, and that contrary to the Board's assessment, the record establishes that the absence of coordinated benefits coverage for nonunit employees is not universal.³ Specifically, the Union asserts that the

record makes clear that whereas nonunit employees could no longer receive reimbursement under the new plan for the unpaid balance of medical expenses incurred by their unit spouses, nonunit employees could receive reimbursement under the plan for the unpaid balance of medical expenses incurred by spouses who worked for other employers. The Union refers to the reimbursement for the medical expenses of spouses employed elsewhere as "external coordination of benefits."

1. Having reexamined the portions of the transcript and exhibits which the Union contends establish the existence of external coordination of benefits under the nonunit health benefits plan, as well as the record as a whole, we find that the record *does not* establish this purported fact. The documentary and testimonial evidence presented by the parties refers variously to coordination of benefits, internal coordination of benefits, spouses both employed by the Respondent, spouses employed elsewhere, and unemployed spouses by way of explaining the operation of the previously existing health plan and the new plan. However, such evidence does not establish that external coordination of benefits for nonunit company employees and their spouses employed elsewhere, to the extent that it may have been a preexisting component of nonunit employees' health benefits, survived the company's modification of its coordination of benefits policy for nonunit employees. For example, the General Counsel's Exhibit 4 is labeled, "How [Coordination of Benefits] worked pre 1/1/90 with married couple [sic]—both [the Respondent's] employees" and "How [Coordination of Benefits] works after the change in Non-Bargaining Unit Plan (1/1/90)." The Respondent's Exhibit 1 contains a section labeled, "Coordination of Benefits (when husband and wife both work for [the Respondent])." Although each exhibit explains the extent of coverage under the new and previously existing health benefits plans, neither exhibit indicates the extent of coverage available under the plans for employees whose spouses are employed by other employers and covered by "outside" health insurance. Additionally, Phyllis Payne, the director of compensation and benefits for the Respondent's parent company, testified that the health benefits plan available to unit and nonunit employees alike prior to January 1, 1990, paid 80 percent of a single employee's medical expenses, 80 percent of a married employee's medical expenses whose spouse did not work, and 80 percent of an employee's medical expenses whose spouse worked some place that did not provide health insurance, and that the extent of coverage did not change with the implementation of the

¹ 305 NLRB 938.

² Unless otherwise indicated, all dates are in 1992.

³ The Board's decision, at 939 fn. 8, states:

We find no merit in the Union's statement that, "The Unit employee is disqualified from receiving coverage under the non-Unit plan because he is an employee of Respondent." As far as the record shows, no nonunit employee retained "coordination of benefits" coverage under the Respondent's medical benefits plan which could cover as a dependent a spouse otherwise covered by his or her own separate plan; and that is so regardless of the place of employment of the spouse of the nonunit employee. For the nonunit employee the absence of coordinated benefits coverage appears to be universal under the Respondent's nonunit employee medical plans. Accordingly, the unit em-

ployees' status as such had no apparent bearing on their exclusion from coordination of benefits coverage under the nonunit employees' medical benefits plan.

new nonunit employees' health plan after that date.⁴ Neither Payne's testimony nor the documents recited above indicate, for example, that an employee (nonunit or unit) could ever seek reimbursement of the unpaid balance of medical expenses incurred by a spouse employed and insured elsewhere by submitting a dependent claim to the Respondent's insurer. Thus, despite repeated references to the coordination of benefits for spouses both employed by the Respondent and even references to employees with spouses employed elsewhere, the record does not establish the existence of external coordination of benefits, and it is silent with respect to how coordination of benefits operated under the new and old health plans for employees with spouses employed and insured elsewhere. Accordingly, we are satisfied that the Board did not misread the record.

2. The Union's contention that external coordination of benefits existed and that it remained unchanged under the new nonunit employees' health insurance plan, even if true, would not be sufficient to alter the Board's decision in this case. The rationale underpinning the decision is that the Respondent changed the nonunit employees' plan and not the terms and conditions of employment of unit employees, and that the impact on the joint finances of nonunit/unit couples is the result of marital status and not unit status. Con-

sequently, whatever anomalies in coverage may exist between spouses of nonunit employees employed by the Respondent and those employed elsewhere, they flow solely from the change in the nonunit employees' plan and are thus related only to those employees' status. Therefore, even if the "universal" point in footnote 8 could be rebutted by the receipt of additional evidence, this would not affect the Board's decision. The Respondent is required to bargain only over changes in the unit employees' terms and conditions of employment. With the lawful implementation of the new plan, nonunit employees lost the right to seek reimbursement of the unpaid balance of their spouses' medical expenses—be the spouse a nonunit or a unit employee. Unit employees retained the right to seek reimbursement of the unpaid balance of their nonunit (or unit) spouses' medical expenses. Thus, no change in unit employees' working conditions occurred which would have given rise to a bargaining obligation.

Accordingly, we find no merit in the Union's contention that the Board's decision is based on a critical factual error. Further, inasmuch as the purported continued existence of external coordination of benefits would not require a different result, there is no basis for reopening the record to adduce pertinent evidence.

ORDER

The Charging Party's motion for reconsideration or alternatively to reopen record is denied.

⁴Tr. 47:17–48:16.