

**Textron Lycoming, a wholly owned subsidiary of Textron, Inc. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, AFL-CIO and Local 376.** Case 34-CA-5537

April 27, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDAUGH

The issue in this case is whether to defer the dispute to the contractual grievance-arbitration machinery.

Upon a charge filed by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, AFL-CIO and Local 376 (the Union), the General Counsel of the National Labor Relations Board issued a complaint on May 21, 1992,<sup>1</sup> alleging that the Respondent, Textron Lycoming, a wholly owned subsidiary of Textron, Inc., violated Section 8(a)(5) and (1) of the National Labor Relations Act.

The complaint alleges that on January 8 the Respondent unilaterally modified the progressive disciplinary system contained in the parties' collective-bargaining agreement without the Union's consent, without prior notice to the Union, and without affording the Union an opportunity to bargain with respect to the modification. The Respondent filed an answer admitting in part, and denying in part, the allegations of the complaint and asserting an affirmative defense that the complaint allegations should be deferred to the parties' grievance-arbitration procedure pursuant to *Collyer Insulated Wire*, 192 NLRB 837 (1971), and *Dubo Mfg. Co.*, 142 NLRB 431 (1963).<sup>2</sup>

On August 3 the Board received the Respondent's motion to defer and supporting authorities with exhibits.<sup>3</sup> On August 20 the General Counsel filed an oppo-

sition to the Respondent's motion. On August 27 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the Respondent's motion should not be granted. Thereafter, the Respondent filed a supplemental brief, the General Counsel filed a Cross-Motion for Summary Judgment, and both parties filed oppositions to the motions of the other.

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

On the entire record, the Board makes the following

Ruling on Motion for Summary Judgment

The uncontroverted facts show that the Respondent and the Union are parties to a collective-bargaining agreement effective from May 30, 1991, to May 24, 1994. The contract's disciplinary procedure, set forth in a May 30, 1991 letter agreement incorporated into the contract, contained a progressive five-step system.<sup>4</sup> The letter agreement further provided that the five-step disciplinary schedule was to be "generally" applied and that all warnings and suspensions were to be considered invalid after 12 consecutive months and removed from the personnel files of employees. On January 8, 1992, the Respondent, without offering to bargain with the Union, promulgated a memorandum unilaterally modifying the disciplinary system from five to four steps<sup>5</sup> and stating further that all "written verbal warnings" were to be retained "indefinitely" in employee personnel files.

The Union filed both an unfair labor practice charge and a grievance with respect to the revision in the disciplinary system and its enforcement against a unit employee. The grievance was filed pursuant to article IV of the contract, which states in pertinent part:

A grievance is a difference of opinion between the company and the Union or an employee involving the interpretation or application of the

<sup>1</sup>All dates are in 1992 unless otherwise indicated.

<sup>2</sup>The complaint alleges, and the answer admits, that the Respondent is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Sec. 2(5) of the Act.

<sup>3</sup>The Respondent filed its motion with the Board's Division of Administrative Law Judges in Arlington, Virginia. On July 29 the General Counsel filed a response, asserting that the Respondent's motion to defer was, in effect, a Motion for Summary Judgment and requested that the motion be forwarded to the Board for processing. By letter of the same date, Associate Chief Administrative Law Judge Edwin H. Bennett found, in agreement with the General Counsel, that the "true nature of the Respondent's motion is one for summary judgment" and, accordingly, forwarded the Respondent's motion to the Board.

Thereafter, on or about August 10 the Respondent filed with the Board a "Reply to the General Counsel's Response to the Respondent's Motion to Defer and Response by Associate Chief Administrative Law Judge to Transfer Respondent's Motion to Defer to the Board." The Respondent argued therein that its motion to defer is not the equivalent of a Motion for Summary Judgment and

was appropriately filed with Judge Bennett. Alternatively, the Respondent argued, inter alia, that "if semantics dictate that the Respondent's Motion to Defer be called a Motion for Summary Judgment, it must only be considered a Motion for Summary Judgment on the issue of deferral and not on the merits of the case."

As explained infra, we find merit in the Respondent's motion to defer and accordingly do not reach the merits of the instant dispute.

<sup>4</sup>The five steps of the disciplinary procedure were:

1. written verbal warning.
2. written warning no. 1.
3. written warning no. 2, accompanied by disciplinary suspension of up to three days.
4. written warning No. 3, accompanied by disciplinary suspension of up to five days.
5. discharge.

<sup>5</sup>The four steps provided were:

1. written verbal warning.
2. written warning #1—3 day suspension.
3. written warning #2—5 day suspension.
4. written warning #3—discharge.

terms of this Agreement. Nothing herein shall be interpreted as denying an Employee the right to present his grievance directly to Management as provided in the Labor-Management Relations Act of 1947, as amended.

Section 2 of the article sets out a multiple-step grievance procedure culminating in final and binding arbitration of any “questions involving the interpretation or application of the terms of this agreement.”

The Respondent contends that the unfair labor practice alleged in the complaint concerns the identical dispute which is the subject of the grievance and that a resolution of the dispute requires the interpretation of at least two clauses in the contract, the management-rights clause and the May 30 letter agreement. Citing the language of the management-rights clause reserving to it the sole right to promulgate rules and maintain efficiency,<sup>6</sup> and the May 30 letter agreement stating that the five-step discipline procedure was to be “generally” applied, the Respondent contends that its unilateral modification of the discipline system was contractually authorized. Asserting that the issue raised by its interpretation is comprehended by the broad grievance-arbitration procedure, the Respondent argues that its unilateral modification of the disciplinary system should be deferred for resolution under that procedure.

The General Counsel argues that the issue does not involve a matter of contract interpretation and that therefore deferral is inappropriate. Specifically, he contends that the five-step disciplinary schedule was a clear and unambiguous term and condition of employment within the meaning of Section 8(d) of the Act and that the Respondent was not lawfully entitled to unilaterally modify the schedule during the life of the 1991–1994 bargaining agreement without the consent of the Union. Thus, when the Respondent, without the Union’s consent, promulgated the January 8, 1992 memorandum revising the disciplinary schedule from a five- to a four-step schedule and rescinding the provision requiring removal of warnings from employee

personnel files after 12 months, the General Counsel argues that the Respondent violated Section 8(a)(5), and “it is frivolous to suggest that any difference of opinion exists requiring the interpretation or application of the terms of the parties’ labor agreement.” Accordingly, the General Counsel requests that the Board reach the merits and enter judgment against the Respondent finding that it violated the Act as alleged.

Contrary to the General Counsel, we find that deferral of the instant dispute is warranted. In *United Technologies Corp.*, 268 NLRB 557 (1984), the Board revised the “deferral to arbitration” policy expressed in *Collyer Insulated Wire*, supra, and held that where, as here, “an employer and union have voluntarily elected to create dispute resolution machinery culminating in final and binding arbitration, it is contrary to the basic principles of the Act for the Board to jump into the fray prior to an honest attempt by the parties to resolve their disputes through that machinery.” The Board in *United Technologies* stated that deferral is appropriate when the following criteria are present: the dispute arose within the confines of a long and productive collective-bargaining relationship; there is no claim of employer animosity to the employees’ exercise of protected rights; the parties’ contract provided for arbitration in a very broad range of disputes; the arbitration clause clearly encompasses the dispute at issue; the employer has asserted its willingness to utilize arbitration to resolve the dispute; and the dispute is eminently well suited to such resolution. *United Technologies*, 268 NLRB at 558. See also *August A. Busch & Co.*, 309 NLRB 714 (1992).

We find that these deferral criteria are met in this case. Thus, the record shows that the Respondent and the Union have had a collective-bargaining relationship dating back to 1960, and there is no evidence that the Respondent is hostile to the exercise of protected statutory rights by its employees. As shown above, the parties’ grievance-arbitration clause broadly defines a grievance as “a difference of opinion between the Company and the Union or an employee involving the interpretation or application of the terms of this Agreement,” and further provides that all such difference of opinion in contractual interpretation may be submitted to arbitration.<sup>7</sup> Thus, there appears to be no restrictions on the subject matter of grievances that may be filed and pursued to arbitration. Further, in agreement with the Respondent’s contention, we find that the Respondent has raised an issue of contract interpretation which can best be resolved by an arbitrator with special skill and experience in deciding matters arising under established bargaining relationships. *Transport Service Co.*,

<sup>6</sup>The text of the management-rights clause states in full:

ARTICLE II  
MANAGEMENT

The management of the plant, the direction of the working force, designation and change of the work hours, the assignment of jobs, promulgation of the rules and the products to be manufactured are solely the responsibility and function of the company. The right to hire, to discipline or suspend or discharge for just cause, to transfer, maintain efficiency of employees, promote, demote and to lay off for lack of work or for other legitimate reason in accordance with the terms of this agreement is vested exclusively with the company. It is not intended by the foregoing enumeration to limit any of the inherent functions of management or to define all such functions.

<sup>7</sup>Contrary to the contention of the General Counsel, we believe that the Respondent’s reliance on the management-rights clause and on the word “generally” in the letter agreement created a difference of opinion as to the interpretation or application of the contract.

282 NLRB 111 fn. 4 (1986). Thus, we find that the arbitration clause encompasses the complaint allegations. Finally, the Respondent has exhibited, by the filing of the instant motion, that it is willing to submit to arbitration. Under these circumstances, we conclude that the dispute is eminently well suited to resolution through that process. See *August A. Busch Co.*, supra.

In determining that deferral is warranted, we note further that the Union filed a grievance over the same change in the disciplinary procedure alleged in the complaint. By such action, the Union has indicated that it considers the dispute to be cognizable under the grievance-arbitration clause, further supporting our conclusion that deferral is appropriate. See *E. I. du Pont & Co.*, 293 NLRB 896, 897 (1989).<sup>8</sup>

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<sup>8</sup>The General Counsel relies on the Board's decision in *Oak Cliff-Golman Baking Co.*, cited at 202 NLRB 614 (1973), in support of his argument that deferral is inappropriate. However, in a later decision in *Oak Cliff-Golman* (see 207 NLRB 1063 (1973), enfd. mem 505 F.2d 1302 (5th Cir. 1974), cert. denied 423 U.S. 826 (1975)), the Board decided that the case should be considered de novo and hence the operative decision in *Oak Cliff-Golman* is the latter not the former decision. Notwithstanding that the second decision superseded the first in *Oak Cliff-Golman*, the Board, albeit for different reasons, again found deferral inappropriate. In any event, in a situation somewhat similar to that here (see *Inland Container Corp.*, 298 NLRB 715 (1990)), the Board found the General Counsel's reliance on the latter *Oak Cliff-Golman* decision misplaced. The Board in *Inland* at 298 NLRB 716 fn. 3 indicated that *Oak Cliff-Golman*

held that deferral was inappropriate . . . because the unilateral change involved a wholesale repudiation of wage rates amounting to "a basic repudiation of the bargaining relationship." In contrast, in the case now before us there is no contention or evidence that the [r]espondent has refused to follow major portions

of its bargaining agreement, repudiated its relationship with the [u]nion, or engaged in other actions amounting to total repudiation of the principles of collective bargaining. That same reasoning is applicable here and we thus find *Oak Cliff-Golman* distinguishable.

ORDER

Since deferral is appropriate, we grant the Respondent's motion to defer and deny the General Counsel's Motion for Summary Judgment. Accordingly, we shall dismiss the complaint subject to the qualifications contained in the Order below.<sup>9</sup>

The Respondent's motion to defer is granted, the General Counsel's Cross-Motion for Summary Judgment is denied, and the complaint is dismissed, provided that jurisdiction of this proceeding is retained for the limited purpose of entertaining an appropriate and timely motion for further consideration on the proper showing that either (a) the dispute has not, with reasonable promptness after the issuance of this Decision and Order, been either resolved by amicable settlement in the grievance procedure or submitted promptly to arbitration, or (b) the grievance or arbitration procedures have not been fair and regular or have reached a result that is repugnant to the Act.

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<sup>9</sup>We agree with the General Counsel that the complaint allegation that the Respondent unlawfully "modif[ied] the progressive disciplinary system" reasonably encompasses the unilateral change regarding the 12-month retention of disciplinary warnings in employee personnel files, as well as the change reducing the disciplinary steps from five to four. For the reasons set forth above, we defer as to both.