

Bowne of San Francisco and Mildred M. Carlton.
Case 20-CA-18335

September 30, 1998

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On June 5, 1998, Administrative Law Judge Jay R. Pollack issued the attached supplemental decision. The Charging Party filed exceptions and a supporting brief, and the Respondent filed an answering brief. The Charging Party, thereafter, filed a reply brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions¹ and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Joseph P. Norelli, Esq., for the General Counsel.
Morton H. Orenstein and Robert P. Kristoff, Esqs. (Schacter, Kristoff, Orenstein & Berkowitz), of San Francisco, California, for the Respondent.
Mildred M. Carlton, of Richmond, California, pro se.
William A. Sokol, Esq. (Van Bourg, Weinberg, Roger & Rosenfeld), of Oakland, California, for the Union.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law. On March 21, 1984, during the unfair labor practice hearing in the above case, I granted the motion of Bowne of San Francisco (Respondent) to defer the case to the grievance and arbitration procedure of the collective-bargaining agreement between Respondent and Graphic Arts International Union, Local 3-B (the Union). In dismissing the complaint, I retained jurisdiction for the limited purpose of "entertaining an appropriate and timely motion for further consideration upon a proper showing that either (a) the dispute [was] not with reasonable promptness after the issuance of this order either been resolved by amicable settlement and 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 which is repugnant to the Act."

The case involving the discharge of Mildred M. Carlton (Carlton) was heard by Arbitrator Gerald McKay beginning in 1984 and ending in 1985. The arbitrator issued an award in October 1985, finding that Respondent did not have just cause

¹ In the circumstances of this case, we need not decide whether the 6-month limitation period in Sec. 10(b) should apply to a request for review of an arbitration award after the conditional dismissal of unfair labor practice charges under deferral procedures set forth in *Collyer Insulated Wire*, 192 NLRB 837 (1971); and *United Technologies Corp.*, 268 NLRB 557 (1984). We agree, however, with the judge's recommendation to dismiss the complaint. By any reasonable standard, the Charging Party's request for review, filed 6 years after receiving notice of the right to make such request, was not "timely" within the meaning of the judge's original Order.

for discharging Carlton. The arbitrator ordered that Carlton be reinstated with full seniority. However, the arbitrator did not order backpay but rather granted the parties time to negotiate an alternative remedy. The parties were unable to agree to an alternative remedy and, on March 24, 1986, the arbitrator ordered reinstatement but not backpay for Carlton.

In June 1986, Carlton requested that the Regional Director seek to reopen the case based on the argument that the arbitrator's award was repugnant to the Act. On November 25, 1991, the Regional Director for Region 20, issued a dismissal letter refusing to proceed further on the ground that the arbitrator's award was not repugnant to the Act. The Regional Director advised Carlton of her right to appeal his decision to the General Counsel. On January 13, 1992, the General Counsel's Office of Appeals advised Carlton that she could seek review of the arbitration award by submitting her objections to the arbitral award directly to the administrative law judge. On January 23, the Regional Director rescinded his dismissal letter of November 25, 1991, and notified Carlton that she could seek review of the arbitrator's decision directly to the administrative law judge. My name and address were included in the Regional Director's rescission of his dismissal letter.

On April 6, 1998, Carlton filed a letter with me seeking to reopen the case based on the argument that the arbitrator's decision was repugnant to the Act. On April 9, I issued an order to show cause directing the parties to file position of statements as to whether further proceedings are warranted.

The General Counsel takes the position that further proceedings are not warranted because a timely request for review of the arbitrator's decision under *Speilberg Mfg. Co.*, 112 NLRB 1080 (1955), was not filed. Respondent takes the position that the arbitrator's decision was not repugnant to the Act and, further, that Carlton's recent request for review of the arbitrator's decision is untimely. The Union also takes the position that the arbitrator's decision is final and binding. In addition to her argument that the arbitrator's award is repugnant to the Act, Carlton claims that there is no statute of limitations regarding a *Speilberg* review.

Conclusions

Without reaching the merits of the arbitration award, I believe, for the following reasons, that the request for review is not timely. In retaining limited jurisdiction, I used language from the Board decision in *United Technologies Corp.*, 286 NLRB 693 (1984), for entertaining a *timely motion* (emphasis added) for reviewing whether the arbitration procedures were fair and regular or reached a result which is repugnant to the Act. As set forth above, the instant motion was filed more than 6 years after Carlton was informed by the Office of Appeals and the Regional Director that she could request review of the arbitrator's decision from the administrative law judge. Carlton states that she has "intermittently to the present been treated for severe depression." However, no other basis for the failure to file a timely motion or request for review has been shown.

I have found no cases where the issue of the timeliness of a *Speilberg* review of an arbitrator's decision has been raised. On its face, a 6-year delay seems unreasonable. In *DelCostello v. Teamsters*, 462 U.S. 151 (1983), the United States Supreme Court held that Section 10(b)'s 6-month statute of limitations for filing unfair labor practices governs employee "hybrid cases" under Section 301 of the Act against both employers and unions alleging employer's violation of collective-bargaining agreement and union's breach of duty of fair representation. In

United Parcel Service v. Mitchell, 451 U.S. 56 (1981), the Supreme Court had previously held that a state statute of limitations governed a suit for vacation of an arbitration award. However, in *DelCostello*, the Court held the shorter time limitation lacked legal substance and practical application regarding a suit alleging a union's duty of fair representation. The Court held that Section 10(b)'s 6-month period for filing unfair labor practice charges was designed to accommodate interests very similar to that at stake in the *DelCostello* actions.

Congress added Section 10(b) to the Act in 1947 for a two-fold purpose—"to bar litigation over past events after records have been destroyed, witnesses have gone elsewhere and recollections of the events in question have become dim and confused. H.R. Rep. No. 245, 80th Cong., 1st Sess. at 40, and of course to stabilize existing collective bargaining relationships." *Machinists Local 1424 (Bryan Mfg.) v. NLRB*, 362 U.S. 411, 419 (1960). Just as the first reason enhances the integrity of the fact-finding process, the second ground serves the equally important purpose of establishing a sense of repose over disputes among employees, employers, and unions. Because, in the main, employment as well as bargaining relationships tend to be ongoing, Section 10(b) reflects a policy judgment that it is better for industrial peace in general to bring the disputes to a head in fairly short order rather than to have an extended period in which to vindicate a statutory right. *United Parcel Service v. Mitchell*, supra at 70-71 fn.

In this case, it is appropriate to apply the 6-month statute of limitations to Carlton's attempt to set aside the arbitrator's decision and proceed with the unfair labor practice case. The arbitrator's decision issued in 1986. The evidence reveals that Carlton had clear and unmistakable notice in January 1992 from the Office of Appeals and the Regional Director that she could seek review of the arbitrator's decision. The Union's and Respondent's attorneys were sent copies of these January 1992 letters to Carlton. However, more than 6 years passed before Carlton sought review of the arbitrator's decision. No evidence was presented to show that the statute of limitations should be tolled for any part of those 6 years. Therefore, I find the present motion to be untimely. Accordingly, I conclude that the complaint should be dismissed and the case closed.

On these findings of fact and conclusions of law and on the entire record and I issue the following recommended²

ORDER

The complaint is dismissed.

² All motions inconsistent with this recommended order are hereby denied. In the event no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.