

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

AMERICAN STEEL AND ALUMINUM CORPORATION

Employer-Petitioner

and

TEAMSTERS LOCAL 559, a/w INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO

Union

Case No. 34-RM-77

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. The Union has moved to dismiss the petition, contending that a question concerning representation does not exist because a "reasonable period of time" for the conduct of bargaining between the parties has not elapsed since the Employer recognized and agreed to bargain with the Union.

(a) Facts

The Employer is engaged in the transport of aluminum and steel products at a facility located in Hartford, Connecticut. On July 6, 2000, the Union filed an unfair labor practice charge in Case No. 34-CA-9324 alleging that the Employer violated Section 8(a)(5) of the Act by refusing to abide by an agreement to recognize the Union which was based upon a card check. On September 28, 2000, a Complaint and Notice of Hearing issued based upon the allegations in the charge. On February 7, 2001,¹ the Regional Director of Region 34 of the Board approved an informal Board Settlement Agreement, containing a non-admissions clause, through which the Employer recognized and agreed to bargain with the Union as the exclusive collective bargaining representative of its drivers and warehouse employees at its Hartford, Connecticut facility.² On May 1, the case was closed upon compliance with the terms of the Settlement Agreement.

The record reveals that between the date of the approval of the informal Board Settlement Agreement on February 7, and the filing of the instant petition on September 24, the parties conducted four meetings for the specific purpose of collective bargaining, and engaged in other contacts attendant to the four meetings. All negotiation sessions were held at the Hartford facility. Although each session lasted between one and one-half and three hours, there was no set ending time for any session. The Union was represented throughout the negotiations by Labor Representative John Lupacchino and employee Allen Dewey. The Employer was represented by Attorney Nicholas Fiorenza; Joseph Pfeffer, general manager of the Hartford facility; and Steven Shaw, the Employer's president and chief executive officer.

The parties scheduled their initial bargaining session for April 3.³ Approximately a week or two prior to that session, the Union sent the Employer a complete contract proposal addressing all economic and non-economic issues, and the Employer sent the Union a contract proposal which primarily addressed only non-economic issues. At the

¹ Hereinafter all dates are in 2001 unless specified otherwise.

² At the time of the hearing there were nine employees in unit positions, and three employees in layoff status.

³ There is no evidence as to why the first session was held almost two months after the approval of the settlement agreement.

April 3 session, the parties agreed to discuss non-economic proposals, also referred to as “language”, before entering into agreements on economic proposals such as wage rates, overtime, holidays, pension and health insurance benefits. The Union also indicated that its own deadline for reaching agreement was September 1. The parties reviewed the Union’s initial proposal, and reached agreement on several language issues, including the scope of the agreement and the posting of shop rules. They also discussed several of the Employer’s initial proposals. The Union also requested information regarding the Employer’s health benefits and 401(k) plan. At the conclusion of the meeting, which lasted about three hours, the parties agreed to meet on May 11.

On unspecified dates between the April 3 and May 11 meetings, the Union provided the Employer a three-page list of counter proposals addressing a variety of issues, including grievance and arbitration procedures, and the Employer provided the Union with nine pages of counter proposals covering a wide variety of non-economic issues. At the outset of the May 11 session, the parties discussed the Union’s concern with the alleged harassment of an employee, the layoff of certain employees, and the subcontracting of unit work. Following those discussions, the parties discussed various contract proposals, and reached agreement on recognition, union activities, stewards, and non-discrimination. Although the meeting was scheduled to begin at 9:00 a.m., it did not begin until 9:50 a.m. due to the Union’s late arrival, and concluded at noon. Due to the unavailability of the Employer’s representatives prior to Memorial Day, the parties agreed to meet again on June 7.

On an unspecified date between the May 11 and June 7 meetings, the Union provided the Employer a two-page list of counter proposals addressing management rights, complete agreement, and grievance and arbitration. At the outset of the June 7 meeting, the parties discussed the layoff of an employee, and then discussed various proposals and counter-proposals. The parties reached agreement on union security, dues checkoff, complete agreement, visitation rights, bulletin board, grievance and arbitration procedure, and a no-strike/no-lockout clause. The Union also requested information concerning the Employer’s drug policy. The meeting lasted a little over two hours.

The next session was scheduled for July 12, and was subsequently changed to July 13. That session was cancelled by the Employer for reasons not explained in the record. However, Lupacchino and Fiorenza had a telephone conversation on July 13

during which they discussed various matters relating to the negotiations. More specifically, Lupacchino raised a concern about the amount of time between negotiation sessions. In this regard, according to Lupacchino, the Employer wanted all three of its representatives to attend each session in Hartford, which required Fiorenza to travel from Syracuse, New York, and Shaw to travel from Canada. Fiorenza agreed to speak to the Employer about the frequency of the meetings. Fiorenza supplied Lupacchino with certain requested information about layoffs and subcontracting, and they also discussed various contract proposals, including discipline, seniority, layoff and recall, and job bidding. On the same date as the telephone conversation, the Employer sent a three-page letter to the Union addressing several of the issues raised during the telephone conversation, and enclosing a 15 page list of all agreements reached to date. That list included recognition, scope of the agreement, union security, dues checkoff, union privileges, bulletin board, job stewards, company rules, loss or damage, non-discrimination, management rights, no strike no lockout, grievance and arbitration, complete agreement, and termination.

The fourth and final negotiation session was held on August 22. The parties discussed the frequency of meetings, and the Employer indicated that they might be able to schedule back-to-back sessions, such as an afternoon session followed by a morning session the next day. The parties also discussed layoffs, subcontracting, and various contract proposals, and reached agreement on probationary periods, the savings clause, and discipline and discharge notices. The meeting lasted for about an hour and one-half, and ended early at the Union's request. By letter dated August 23, the Employer sent the Union the three tentative agreements arising out of the August 22 meeting dealing with probationary period, savings clause, and discipline and discharge notices. On an unspecified date following the August 22 meeting, the Union sent the Employer a counter proposal on the remaining significant non-economic issues, including seniority, job bidding, issuance of discipline, temporary employees, and drug and alcohol policy.

The next negotiation session was scheduled for September 21, but was cancelled by the Union on an unspecified date. By letter dated September 24, the Employer informed the Union that in light of a petition dated August 30 indicating that a majority of unit employees no longer wished to be represented by the Union, the Employer was filing a petition with the Board for an election, and was suspending

negotiations pending the outcome of the election. The instant petition was filed on September 24, and no further negotiation sessions have been held since that time.

The record reveals that the parties never discussed any economic proposals. In this regard, Lupacchino acknowledged that it would have taken at least one or two more sessions to resolve the non-economic issues. Lupacchino also admitted that based upon his past experience in contract negotiations, the parties made an unusual amount of progress in reaching tentative agreements in the context of just four meetings. There is also no dispute that the Employer provided the Union with all requested information.

Finally, the record reveals that on an unspecified date the Union sent all unit employees a document entitled "Important Notice American Steel Contract Update Meeting" which announced an "important contract meeting" to be held on August 4. The notice further stated:

At this meeting we will review the status of negotiations and discuss strategies to put pressure on American Steel, including a customer campaign as well as the potential for a strike. Local 559 has contacted Teamster Locals 294 and 776 who also have contracts with American Steel. These Locals have been advised of the potential of Local 559 extending the picket lines to those facilities if a strike is necessary.

Lupacchino testified that the purpose of the August 4 meeting was to advise employees that they were getting into the "economic stage" of the negotiations, and that they had to be prepared to apply pressure on the Employer, if necessary, to get a fair economic agreement. However, no strike vote was taken during the meeting.

(b) Applicable Law

It is well settled that following a Board settlement agreement in which an employer has agreed to bargain with a union, the bargaining relationship "must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed". *Poole Foundry and Machine Company*, 95 NLRB 34 (1951, enf'd. 192 F.2d 740 (4th Cir. 1951), cert. denied, 342 U.S. 954 (1952). Moreover, "where an employer has voluntarily recognized a union as the representative of its employees in good faith and based upon a demonstrated showing of majority status, that recognition serves as a bar for a reasonable period of time to allow the parties to bargain free from challenge to the union's majority status." *Ford Center for the Performing Arts*, 328 NLRB No. 1 (April 7, 1999), citing *Smith's Food & Drug Centers*, 320 NLRB 844, 846

(1996). The Board's analysis as to whether the "reasonable time" standard has been satisfied focuses upon whether the union has been given enough time to demonstrate what it can do for the employees in collective bargaining before their representative status can be challenged. *Lee Lumber and Building Material Corp.*, 334 NLRB No. 62, slip op. at 3 (June 28, 2001). In determining whether a reasonable period of time for bargaining has elapsed, the Board examines (1) whether the parties were negotiating for an initial contract; (2) the complexity of the issues being negotiated and of the parties' bargaining processes; (3) the amount of time elapsed since bargaining commenced and the number of bargaining sessions; (4) the amount of progress made in negotiations and how near the parties are to concluding an agreement; and (5) whether the parties are at impasse. *Id.*, slip op. at 4.⁴

C. Analysis

(1) Whether the parties are bargaining for an initial contract.

There is no dispute that the parties in the instant case were bargaining for an initial contract. However, the record reflects no evidence that such initial contract bargaining posed any special or unusual problems which would require protracted negotiations. To the contrary, there was no atmosphere of hard feelings left over from the organizing campaign; the individuals at the bargaining table were experienced negotiators; and little or no time was spent on establishing basic bargaining procedures. Cf. *Lee Lumber*, *supra*; *MGM Grand Hotel*, 329 NLRB No. 50 (1999); *Ford Center for the Performing Arts*, *supra*. Moreover, the absence of previously established practices or contractual language did not appear to extend the time needed for these initial contract negotiations, as each party presented the other with a full set of proposals prior to the first meeting, and the parties utilized those proposals from the very outset to reach agreement on many issues. I also note that the Employer fully complied with the Union's requests for information, and that the negotiations were conducted in an atmosphere devoid of unfair labor practices. Thus, while this factor ordinarily weighs against finding that a reasonable period of time for bargaining has elapsed, I find that

⁴ While the Board applied these five factors to determine whether the initial 6-month insulated period for bargaining should be extended following an employer's refusal to bargain with an incumbent union, these factors are similar to those that the Board has traditionally examined to determine whether a reasonable period of time for bargaining has elapsed when an employer has voluntarily recognized a union or has recognized a union pursuant to a settlement agreement. See, e.g., *Gerrino Inc.*, 306 NLRB 86, 88-89 (1992), and cases cited therein; *Driftwood Convalescent Hospital*, 302 NLRB 586, 588-589 (1991); *Cardax Division of Chemetron Corp.*, 258 NLRB 1202 (1981).

under the particular circumstances of the instant case it does not weigh against such a finding.

- (2) Complexity of the issues being negotiated and the procedures adopted for bargaining

The parties were engaged in bargaining for a unit of approximately 12 drivers and warehouse employees. There is no evidence that the issues being negotiated were complex or that the parties had structured negotiations to invite employee input. Cf. *Lee Lumber*, supra; *MGM Grand Hotel*, supra; *Ford Center for the Performing Arts*, supra. To the contrary, the proposals discussed by the parties, and the manner in which negotiations were conducted, reflect the classic model of collective bargaining negotiations in a small industrial bargaining unit. See *Freeman Company*, 194 NLRB 595 (1971). Thus, I find that this factor supports a finding that a reasonable period of time for bargaining has elapsed.

- (3) Passage of time and number of bargaining sessions.

Approximately seven months passed between the date of the settlement agreement and the filing of the instant petition. During that period the parties held four face-to-face negotiation sessions, and exchanged written proposals and counter proposals before and after each meeting. The one session which was cancelled by the Employer resulted instead in a telephonic meeting which clearly advanced the bargaining process, and another scheduled session was cancelled by the Union. While the number and timing of the negotiation sessions appear to have been dictated primarily by the Employer's needs, there is no evidence that the Employer refused to meet more often or otherwise interfered with the number or length of the bargaining sessions. To the contrary, when the Union raised a concern about the number and timing of the meetings, the Employer was amenable to holding more meetings. I also note that two of the sessions were shortened by the Union's conduct, one due to a late arrival and one due to an early termination. Thus, I find that this factor supports a finding that a reasonable period of time for bargaining has elapsed.

- (4) Presence or absence of impasse.

There is no dispute that the parties were not at impasse when the instant petition was filed. Thus, I find that this factor weighs against a finding that a reasonable period of time for bargaining has elapsed.

- (5) Proximity to agreement.

The record reflects that the parties made substantial progress towards reaching an agreement, having made, by the Union's admission, an "unusual amount" of progress in reaching tentative agreements on many non-economic issues in just four meetings. At the same time, the likelihood of concluding an agreement in the near future appears remote. In this regard, the Union admitted that it would have taken at least one or two more meetings simply to reach agreement on all non-economic issues, leaving the parties thereafter to begin discussing for the first time the economic issues. Thus, I conclude that this factor supports a finding that a reasonable period of time for bargaining has elapsed.

Thus, three of the five factors delineated by the Board in *Lee Lumber*, supra, support a finding that a reasonable period of time for bargaining has elapsed, and one factor (i.e., bargaining for an initial contract) neither supports nor weighs against a finding that a reasonable time has elapsed. The one factor which does weigh against such a finding, i.e., absence of impasse, provides an insufficient basis standing alone to conclude that a reasonable period of time for bargaining has not elapsed. *Lee Lumber*, supra, slip op. at 6, citing *Lahey's of Muskegon*, 176 NLRB 537 fn.1 (1969). Accordingly, I find that the Union has been afforded a reasonable period of time to reach agreement with the Employer. In light of that finding, I deny the Union's Motion to Dismiss the petition, and conclude that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

In accordance with the parties' stipulation, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All drivers and warehouse employees employed by the Employer at its Hartford, Connecticut location, but excluding all other employees, and guards, professional employees and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate herein at the time and place set forth in the notices of election to be issued subsequently.

Eligible to vote: those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including

employees who did not work during that period because they were in the military services of the United States, ill, on vacation, or temporarily laid off; and employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements.

Ineligible to vote: employees who have quit or been discharged for cause since the designated payroll period; employees engaged in a strike who have been discharged for cause since the strike's commencement and who have not been rehired or reinstated before the election date; and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

The eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by Teamsters Local 559, a/w International Brotherhood of Teamsters, AFL-CIO.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before October 19, 2001. No extension of time to file these lists shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by October 26, 2001.

Dated at Hartford, Connecticut this 12th day of October, 2001.

/s/ Jonathan B. Kreisberg
Jonathan B. Kreisberg, Acting Regional Director
National Labor Relations Board
Region 34

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