

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTH REGION**

**TECUMSEH PACKAGING SOLUTIONS, INC.**

**Employer**

**and**

**Case 7-RD-3544**

**MICHAEL BAILEY, An Individual**

**Petitioner**

**UNITED STEEL, PAPER AND FORESTRY,  
RUBBER, MANUFACTURING, ENERGY,  
ALLIED INDUSTRIAL AND SERVICE  
WORKERS INTERNATIONAL UNION, AFL-CIO**

**Union**

APPEARANCES:

Robert J. Brown, of Dayton, Ohio, for the Employer.

John G. Adam, of Royal Oak, Michigan, for the Union.

Michael Bailey, of Tecumseh, Michigan, Pro Se

**DECISION AND ORDER**

Upon a petition filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer<sup>1</sup> of the National Labor Relations Board.

Pursuant to the provisions of 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<sup>2</sup>, the undersigned finds:

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<sup>1</sup> An administrative law judge was the hearing officer.

<sup>2</sup> The Union filed a brief, which was carefully considered.

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction.
2. The labor organization involved claims to represent certain employees of the Employer.
3. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

### **Procedural history and overview**

On October 2, 2006, the Petitioner filed the petition in this case seeking an election to decertify the Union as the exclusive collective bargaining representative of a unit of production and maintenance employees at the Employer's Tecumseh, Michigan, facility (Unit). On October 16, 2006, the undersigned placed the petition in abeyance pending the outcome of the investigation in Case 7-CA-49861. The undersigned dismissed the petition on December 21, 2006, after a complaint issued in Case 7-CA-49861. The Employer filed a request for review, which was granted on January 24, 2007. The Board reinstated the petition, directing that an evidentiary hearing be held pursuant to *Saint Gobain Abrasives, Inc.*, 342 NLRB 434 (2004).

On January 28, 2007, the undersigned ordered that this case be consolidated with Case 7-CA-49861 for the purpose of a hearing to determine whether the unfair labor practices alleged in the complaint bear a causal relationship to the employee disaffection reflected in the filing of the decertification petition. Following the hearing in Case 7-CA-49861, and after the administrative law judge in that case acted as the hearing officer for the instant case, the cases were severed and the instant case was remanded to the undersigned for appropriate disposition in accordance with Section 102.64 through 104.66 of the Board's Rules and Regulations.

On July 16, 2007, the administrative law judge issued his decision in Case 7-CA-49861, and on June 2, 2008, the Board issued its decision and order, *Tecumseh Packaging Solutions, Inc.*, 352 NLRB No. 87. The administrative law judge found that the Employer violated Section 8(a)(5) and (1) of the Act by unilaterally implementing a wage increase, unilaterally implementing changes to the Unit's health insurance, unilaterally implementing a change in the manner of calculating overtime hours on holidays, unilaterally implementing a new 401(k) plan, and unilaterally implementing and giving effect to a new employee handbook with a complaint procedure. The administrative law judge also found that the Employer violated Section 8(a)(1) by maintaining work rules containing overly broad solicitation and distribution prohibitions. The Board overturned the administrative law judge's finding that the Employer did not

violate Section 8(a)(1) by promulgating and maintaining an overly broad no-loitering policy.

Applying the causation test factors set forth in *Master Slack*, 271 NLRB 78, 84 (1984), I find that there is a close temporal proximity between the Employer's unlawful conduct and the filing of the petition, that the Employer's unilateral implementation of changes to employees' terms and conditions of employment are the type of unlawful acts which have a detrimental and long lasting effect on employee support for the Union, and that the Employer's unilateral changes to employees' wages and benefits had a tendency to cause employee disaffection from the Union. Under these circumstances, I conclude that a causal relationship exists between the Employer's unilateral changes and employee disaffection, and that the petition should be dismissed.

### **Background and successorship<sup>3</sup>**

The Employer is an Ohio corporation engaged in the manufacture, nonretail sale and distribution of corrugated paperboard boxes and related products at its facility at 707 S. Evans Street, Tecumseh Michigan. The Employer stipulated at the hearing in Case 7-CA-49861, and the administrative law judge found, that it is the successor to Tecumseh Corrugated Box (TCB), which manufactured and sold paper corrugated boxes in several facilities in Michigan, Ohio, and Indiana, including the Tecumseh, Michigan facility. The Union represented approximately 72 production and maintenance employees at the TCB Tecumseh facility, and its most recent collective bargaining agreement with TCB was effective from June 15, 2004, to June 15, 2008.

On March 24, 2006, TCB advised the Union that it was considering selling its assets to Akers Packaging Service, Inc., and that TCB's owners would continue their management roles in the new company. On May 8, 2006, the incoming owners held a meeting with employees and announced the sale. The employees were told that the Employer would not be bound by TCB's collective bargaining agreement with the Union, and announced initial terms and conditions of employment, including wages, work shifts, and a different health insurance plan. The Employer commenced operations without interruption on June 12, 2006.<sup>4</sup>

The Employer operates in the same plant as TCB, with the same, albeit reduced, work force, performing the same work on the same equipment and producing the same products under the same manager. Under this continuity of operations, the administrative law judge found, and the Board affirmed, that the Employer had a bargaining obligation with the Union as the exclusive collective bargaining representative of the Unit.

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<sup>3</sup> All dates refer to 2006 unless otherwise stated.

<sup>4</sup> The judge's decision does not explain the name transition from TCB to Tecumseh Packaging Solutions, Inc. (Employer).

The Union demanded recognition and requested bargaining with the Employer on June 20, and demanded that the Employer maintain the status quo regarding salary and other benefits until the parties reached a new agreement. On June 22, the Employer agreed to recognize the Union and to maintain the status quo, and proposed that the parties meet on July 26 for an initial bargaining session. The parties met on July 26, and had a second bargaining session on September 22.

## **The Employer's Unfair Labor Practices found in Case 7-CA-49861**

### ***Unlawful policies***

When the Employer took over operations on June 12, it distributed to employees a new set of work rules, which contained prohibitions on engaging in any unauthorized activity during working hours not related to the employee's regular job duties, and on posting, distributing, or circulating unauthorized notices, posters, and placards during working hours and in working areas. The rules also prohibited loitering on the Employer's property after working hours. There was no evidence adduced at hearing that these rules were enforced.

### ***Unilateral changes***

After setting the initial terms and conditions of employment for the bargaining unit, the Employer implemented a series of unilateral changes to the employees' wages and benefits without giving notice to or affording the Union a reasonable opportunity to bargain.

On July 14, the Employer announced to the Unit employees that they would receive an immediate 2.5 percent wage increase. The Employer unilaterally implemented the 2.5 percent wage increase effective July 1. Also in July, the Employer posted a notice regarding its holiday policy, stating that the Employer would consider holiday and vacation hours when figuring overtime. Employees were then paid overtime for the week of the July 4 holiday. The Employer implemented this change of counting holiday and vacation as hours worked for overtime purposes without notice to or bargaining with the Union.

When the Employer took over operations, it initially provided Humana PPO healthcare coverage for employees. During the July 26 bargaining session, the Union raised the issue of health insurance and offered to obtain a quote for the Union's Blue Cross Blue Shield of Massachusetts plan. Before the Union obtained a quote, the Employer changed its insurance carrier to Blue Cross Blue Shield of Michigan Community Blue PPO without notifying or bargaining with the Union. On August 30, the Employer announced to employees that it changed insurance companies from Humana to Blue Cross Blue Shield, effective October 1, and that probationary employees

would be entitled to coverage.<sup>5</sup> The Blue Cross Blue Shield plan had lower copays and deductibles than the Humana plan, and a larger network of healthcare providers.

On July 26, the Employer posted a notice announcing a new 401(k) plan that would go into effect on September 1. In August or September, the Employer held an informational meeting with employees regarding its new 401(k) plan, with representatives on hand to discuss investment options. The Employer did not bargain with the Union over the implementation of the new 401(k) plan.

In late August or early September, the Employer distributed to employees a new handbook containing work rules. The handbook contained detailed provisions regarding employee conduct in the work place, including attendance and absenteeism, substance abuse, violence in the work place, a “problem solving” process, jury duty and bereavement policies, and employee services and benefits.

On September 27, Unit employee Timothy Michels submitted a grievance to Production Manager Rob Waynick, challenging the Employer’s bidding procedure. On October 13, Waynick responded to Michels’ grievance in writing, stating that “[f]or any issues in the workplace the employee’s [sic] handbook has a complaint procedure that needs to be followed.”

Under the above facts, the administrative law judge found that the Employer violated Section 8(a)(5) and (1) by unilaterally implementing a wage increase, unilaterally implementing changes to the Unit’s health insurance, unilaterally implementing a change in the manner of calculating overtime hours on holidays, unilaterally implementing a new 401(k) plan, and unilaterally implementing and giving effect to a new employee handbook with a complaint procedure. The administrative law judge also found that the Employer violated Section 8(a)(1) by maintaining work rules containing overly broad solicitation and distribution prohibitions. The Board affirmed these findings, and overturned the administrative law judge finding that the Employer did violate Section 8(a)(1) by promulgating and maintaining an overly broad no-loitering policy.

### **The Decertification Petition**

According to the Petitioner’s testimony, he began collecting signatures to support a petition to decertify the Union around September 11, which is the date he went from being a temporary employee to a probationary employee of the Employer, and shortly after the Employer announced it was extending health care to probationary employees.<sup>6</sup>

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<sup>5</sup> Prior to this announcement, probationary employees were not entitled to healthcare coverage under the Employer’s Humana plan.

<sup>6</sup> The Petitioner testified that three or four employees were affected by the Employer’s grant of health insurance eligibility for probationary employees.

Petitioner stated that he called Union staff representative Connie Malloy prior to filing the petition to ask a question which he could not recall at the hearing about the petition form. He testified that he told her about the decertification process.

Malloy testified that Bailey called her on September 22 and stated that he wanted to give her a “heads up” that a petition was circulating. According to Malloy, he said that the employees felt that the Employer had given them a wage increase, better insurance and a 401(k) without the Union having to bargain, and he did not see a need for the Union if the Employer was going to do those things. Malloy stated that Bailey told her that was the feeling of the members in the plant. Malloy testified that Bailey asked why they should pay dues if the Employer was going to give them the same benefits. Bailey denied discussing with Malloy his and other employees’ reasons for circulating and filing the petition.

On October 2, Petitioner filed the instant petition. At the time the decertification petition was filed, there were approximately 30 employees in the Unit.

### **Analysis<sup>7</sup>**

The Board will dismiss a representation petition, subject to reinstatement, where there is a concurrent unfair labor practice complaint alleging conduct that, if proven, (1) would interfere with employee free choice in an election, and (2) is inherently inconsistent with the petition itself. The Board considers conduct to be inconsistent with the petition if it taints the showing of interest, precludes a question concerning representation, or taints an incumbent union’s subsequent loss of majority support. To determine whether a causal relationship exists between unfair labor practices and the subsequent expression of employee disaffection from an incumbent union, the Board has identified the following relevant factors: (1) the length of time between the unfair labor practices and the filing of the petition; (2) the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency to cause employee disaffection from the union; and (4) the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union. *Overnite Transportation Co.*, 333 NLRB 1392, 1392-1393 (2001), citing *Master Slack Corp.*, 271 NLRB 78, 84 (1984).

As to the first factor, the length of time between the unfair labor practices and the filing of the petition, the Board has found a close temporal proximity where an employer's unfair labor practices occurred prior to or simultaneously with the circulation of the petition. See *Hearst Corp.*, 281 NLRB 764, 764 (1986). See also *Fruehauf*

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<sup>7</sup> Although the Board found that the Employer maintained overly broad solicitation, distribution, and non-loitering policies, I do not find it necessary to pass on whether these unfair labor practices caused the disaffection from the Union which led to the circulation of filing of the decertification petition. Moreover, the record does not establish that these rules were enforced.

*Trailer Services*, 335 NLRB 393, 394 (2001) (Board found a close temporal proximity where a disaffection petition was presented to an employer in the midst of the employer's ongoing bad faith bargaining).

Here, the Employer engaged in a continuous series of unfair labor practices from July to October. The Employer unilaterally implemented changes to employees' terms and conditions of employment in July, and continued to do so contemporaneous with the circulation of the petition expressing employee disaffection and the filing of the decertification petition. The repeated violations right up to the collection of signatures and filing of the decertification petition indicate a strong temporal nexus to the employee disaffection expressed in the petition. Therefore, I conclude that there is a close temporal proximity between the Employer's unlawful conduct and the circulation and filing of the petition.

As to the second factor, the nature of the employer's unlawful acts, including the possibility of their detrimental or lasting effect on employees, the Board has found that unilateral changes like those here graphically portray to employees that the employer is in a position to confer or withdraw economic benefits without regard to the presence of the union. Such a failure by the employer "to accord to the Union its rightful role to negotiate such programs for the employees necessarily tend[s] to undermine the Union's authority among the employees . . . with erosion of majority status the probable result." *Guerdon Industries, Inc.*, 218 NLRB 658, 661 (1975). Thus, the Board has held that unilateral changes to wages and benefits are of "such a character as to either affect the Union's status, cause employee disaffection or improperly affect the bargaining relationship itself." *Guerdon*, supra, 218 NLRB at 661. The possibility of a detrimental or long lasting effect on employee support for the union is clear, then, where unlawful employer conduct shows employees that their union is irrelevant in preserving or increasing their wages and benefits. *M & M Automotive Group, Inc.*, 342 NLRB 1244, 1247 (2004); *Penn Tank Lines*, 336 NLRB 1066, 1067 (2001).

In the instant case, the Employer unilaterally implemented advantageous changes to employees' wages, overtime pay, health insurance, and 401(k) plan. The Employer also unilaterally implemented a new employee handbook with a complaint procedure in lieu of a negotiated grievance procedure. The nature of the Employer's unlawful conduct was of a type to invite employee unrest and disaffection from a union, particularly given that the changes affected all employees. Compare e.g., *Lexus of Concord, Inc.*, 343 NLRB 851 (2004) (single employee transfer did not have detrimental or long lasting effect on employees); *Champion Home Builders Co.*, 350 NLRB No. 62 (2007) (nature of the violations did not support a finding of taint because employer's confiscation of union materials from an employee workstation and a supervisor's threat to an employee were isolated events involving one employee each). I conclude that the Employer's changes to wages and benefits without bargaining with the Union are the type of unlawful acts which had a detrimental and long lasting effect on employee support for the Union.

As to the third factor, any possible tendency to cause employee disaffection from the union, the Employer's unilateral implementation of changes to employees' wages and benefits clearly had a tendency to cause employee disaffection. The Board has found that finding that an employer's unfair labor practices caused employee disaffection "is not predicated on a finding of actual coercive effect, but rather on the tendency of such conduct to interfere with the free exercise of employee rights under the Act." *Hearst Corp.*, supra at 765. Further, the Board has held that the unilateral implementation of significant changes in terms and conditions of employment during negotiations has the tendency to undermine employees' confidence in the effectiveness of their selected collective-bargaining representative. *Vincent Industrial Plastics, Inc.*, 328 NLRB 300, 302 (1999). Accordingly, I find that the Employer's implementation during negotiations with the Union of unilateral changes to employees' wages, calculation of overtime pay, health insurance, and 401(k) plan, and the implementation of a new employee handbook with a complaint procedure had a tendency to cause employee disaffection from the Union.

As to the fourth factor, the effect of the unlawful conduct on employee morale and membership in the union, there is no direct evidence which establishes that the Employer's unfair labor practices caused the employees' disaffection from the Union. As discussed above, the Petitioner testified that he called the Union prior to filing the decertification petition and explained the "decertification process," but he denied discussing the reasons for employee disaffection with Union staff representative Malloy. Malloy, however, testified that Bailey told her that the employees didn't see a need for the Union when the Employer gave them a wage increase, better insurance, and a 401(k) without having to bargain with the Union.

The lack of direct evidence is not critical. The Board has held that where, as here, an employer's unfair labor practices have the tendency to cause employee disaffection from the union, and the other *Master Slack* factors also indicate a causal connection between the employer's unlawful conduct and the decertification petition, the lack of specific evidence regarding the actual effect of the unfair labor practices does not preclude a finding that a causal nexus exists. *Overnite Transportation Co.*, supra at 1395, n.16. Thus, a lack of direct evidence that an employer's unfair labor practice had a detrimental effect on employees' morale, union activities, or union membership is not critical to a finding of a causal nexus between the employer's unlawful conduct and the employees' disaffection. *Id.*

## **Conclusion**

Based on the foregoing and the record as a whole, I find that three of the causation test factors set forth in *Master Slack*, supra, have been met: (1) there is a close temporal proximity between the Employer's unlawful conduct and the filing of the petition, (2) the

Employer's unilateral implementation of changes to employees' terms and conditions of employment are the type of unlawful acts which have a detrimental and long lasting effect on employee support for the Union, and (3) the Employer's unilateral changes to employees' wages and benefits had a tendency to cause employee disaffection from the Union. Under these circumstances, the weight of evidence supports, and I conclude, that a causal relationship exists between the Employer's unlawful unilateral changes and employee disaffection, and that the petition should be dismissed.

**ORDER**

**IT IS ORDERED** that the petition is dismissed.<sup>8</sup>

Dated at Detroit, Michigan, this 22<sup>nd</sup> day of August 2008.

(SEAL)

*/s/ Stephen M. Glasser*

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Stephen M. Glasser, Regional Director  
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<sup>8</sup> 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, Franklin Court, 1099 14<sup>th</sup> Street N.S., Washington D.C. 20570**. This request must be received by the Board in Washington by **September 5, 2008**. The request may be filed electronically through **E-Gov** on the Board's website, [www.nlr.gov](http://www.nlr.gov), but may **not** be filed by facsimile.

To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the **File Documents** button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the **Accept** button. Then complete the E-Filing form, attach the document containing the request for review, and click the **Submit Form** button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under **E-Gov** on the Board's web site, [www.nlr.gov](http://www.nlr.gov).