

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH D. FORTE : CIVIL ACTION  
EDNA M. CALLAGHAN :  
 :  
v. :  
 :  
WAREHOUSE EMPLOYEES UNION :  
LOCAL 169, INTERNATIONAL :  
BROTHERHOOD OF TEAMSTERS : NO. 97-6498

MEMORANDUM AND ORDER

Fullam, Sr. J. April , 2000

Trial of this action commenced on March 27, 2000. At the conclusion of plaintiffs' evidence on March 29th, I dismissed the jury and granted defendant's Motion for Judgment as a Matter of Law. This Memorandum is intended to provide a more complete statement of the reasons for the Court's ruling than the brief statement made from the bench.

The defendant Warehouse Employees Local 169 ("the Union") represented the workers at a plant in Fort Washington, Pennsylvania, where over-the-counter, non-prescription medications were manufactured by a company formerly known as Ciba-Geigy, now known as Novartis, Inc. A Collective Bargaining Agreement negotiated in 1992 was scheduled to expire in October 1996. In June 1996, the Union and the company began negotiations for a new agreement. At about the same time, however, it was publicly announced that the company, then known as Ciba-Geigy, would merge with a larger organization. It also became known

that, if the merger received the necessary regulatory approvals, the merged company would no longer operate both of the two manufacturing facilities then functioning, the Fort Washington plant and a manufacturing plant in Lincoln, Nebraska. At that point, however, no decision had been made as to which of the two plants would be closed.

Initially, a focus of the negotiations for a new collective bargaining agreement at the Fort Washington plant was to achieve reductions in labor costs so as to increase the likelihood that the Fort Washington facility would be chosen over the Nebraska factory. But negotiations were suspended in July 1996, principally for the reason that the prospective merger partners were not permitted to share financial information and operating details until the merger received final regulatory approval.

When negotiations resumed in September 1996, the focus of the negotiations had changed completely. It had been decided at the highest corporate levels that the choice between the Nebraska plant and the Fort Washington plant would not be based in any way upon a comparison of labor costs, but would be based upon other considerations such as size and condition of the physical plant and the location and desires of major customers. Not long afterward, it was finally decided that the Fort Washington plant would be closed, and its operations transferred

to the Lincoln, Nebraska location.

As a result of these developments, the negotiators for the Union and for the company soon agreed that the existing Collective Bargaining Agreement would be extended until the plant finally closed, but that a "Plant-Closing Agreement" should be negotiated, to deal with such matters as severance pay, disposition of the assets of the pension plan, future entitlement to pensions, and the like.

Under the terms of the 1992 Collective Bargaining Agreement which continued in effect, workers who were laid off could, if they so chose, retain recall rights for a period of three years. Plaintiffs Joseph D. Forte and Edna M. Callaghan had been laid off in mid-1995, and were among the half dozen or so laid-off workers who retained recall rights. Throughout the negotiations leading to the Plant-Closing Agreement, however, the company insisted that only workers "actively employed" at the plant as of October 15, 1996 would be eligible for any additional benefits provided in the closing agreement. The Union initially proposed that all laid off employees with recall rights should be recalled to work but the company rejected that proposal. The Union also proposed that, if any laid off workers were recalled after October 15, 1996, they should be made eligible for any increased benefits provided in the Plant-Closing Agreement. The company rejected that proposal, also. From the perspective of

the company, it was important to be able to calculate, as closely as possible, the total cost of whatever shop closing agreement was finally negotiated. The number and wage rates of the employees on active service as of October 15, 1996 was a known quantity, and formed an adequate basis for calculating the total cost involved. Moreover, the company expressed the view that, since the agreement being negotiated would be retroactive as of October 15, 1996, and since those employees were the ones who would lose their jobs, they were the employees who should receive whatever benefits the closing agreement might provide.

Negotiations intensified after January 1, 1997. By mid-January, negotiations had reached a near-impasse, and the services of a mediator were engaged. On January 17, 1997, the company formally communicated its "final offer." The Union negotiators recommended that the offer be accepted, and the agreement was finally ratified on January 19, 1997. The agreement specifically provided that the additional severance and pension benefits provided by the Plant Closing Agreement would extend only to persons actively employed at the plant on October 15, 1996.

This litigation was triggered by the fact that the company found it necessary to increase production sharply in the months immediately preceding shutdown, so as to build up inventories which could be drawn upon during the period of

reduced operations anticipated to result from the transfer of manufacturing operations to the Nebraska facility. The company determined that this would necessitate recalling some of the laid off employees, since the required level of production could not readily be achieved merely through overtime use of current employees. The company contacted plaintiffs and invited them to return to work on a temporary basis, but with the understanding that the plant was shutting down, and that when their employment was terminated, their severance, pension, and other benefits would be those provided in the 1992 Collective Bargaining Agreement, rather than pursuant to the Plant-Closing Agreement portion of the extended agreement. The plaintiffs signed letters agreeing to these terms, and returned to work.

After returning to work, plaintiffs and the other recalled employees similarly situated filed grievances, asserting that the benefits of the Plant-Closing Agreement should be extended to them as well as to the other employees. The Union processed these grievances through the first three steps, but the company denied the grievances at every step. Plaintiffs sought to have the Union submit the dispute to arbitration, but, after consultation with counsel, the Union determined that arbitration could not possibly succeed, and should not be attempted.

The written agreement between each of the plaintiffs and the company specified that they were being hired for a

minimum period of five months. At the end of the five months, plaintiffs' employment was terminated, and they received the benefits provided in the 1992 Collective Bargaining Agreement. Each plaintiff received severance pay of approximately \$6,300. It has been stipulated that, if plaintiffs had been made eligible for the additional benefits provided in the Plant-Closing Agreement, each plaintiff would have received additional payments and benefits valued at approximately \$25,000. Hence this lawsuit.

Initially, plaintiffs sued the company on the theory that, as workers on lay-off status with recall rights, they qualified as "actively employed" at the plant on October 15, 1996. I rejected that claim, and granted summary judgment in favor of the company. Plaintiffs then pursued the present claim against the Union, on the theory that the Union had breached its duty of fair representation. Plaintiffs alleged (1) that the Union wrongfully declined to submit their grievance to arbitration; (2) that the Union breached its duty by failing to see to it that they were accorded the same rights as other members of the bargaining unit; and (3) that responsible Union officials knew, but concealed from the Union negotiators, that the company intended to recall plaintiffs and other laid off workers.

I am satisfied that, as a matter of law, the Union was

entirely justified in refusing to take plaintiffs' grievance to arbitration. Given the plain language of the Plant-Closing Agreement, the grievance could not possibly succeed.

As to the remaining contentions, plaintiffs' own evidence makes clear that the Union did all it could reasonably be expected to have done in attempting to accommodate plaintiffs' interests. There was simply no possibility that the company would agree to extend the enhanced benefits to plaintiffs and the other employees temporarily recalled to prepare for the plant closing.

Plaintiffs charge the Union with fraud and fraudulent concealment. They point to evidence that, on or about January 13 or 14, 1997, company officials and two of the officers of the Union had a dinner meeting at which the contents of the company's forthcoming "final proposal" were discussed. A company vice-president who attended that meeting testified that he recalls mentioning to the Union officials that the company would find it necessary to increase production in anticipation of the plant closing, and that it was likely that some laid off workers would be recalled for temporary duty. (Although the defendant disputes this testimony, for present purposes we are concerned only with plaintiffs' evidence on the subject.) A Union shop steward who was a member of the Union Negotiating Committee, but not present at the dinner meeting, testified that he was not aware that any

recall was in the offing, and that if he had known of these plans, he would not have recommended acceptance of the company's final offer. Plaintiffs argue that this evidence supports the conclusion that the Union was acting in bad faith, and that the ratification of the Plant-Closing Agreement by the Union membership was tainted with fraud.

Given the totality of plaintiffs' evidence, I believe it is highly unlikely that a rational fact-finder could so characterize the Union's actions. The most that can be said, perhaps, is that the officers of the Union, as distinct from the other members of the negotiating committee, felt that the Union was on the brink of achieving the best closing agreement possible in the circumstances, and did not wish to jeopardize the chances of ratification. A Union does not breach its duty of fair representation merely because it accepts a contract which provides the greater good for the greater number of the members of the bargaining unit, when it is clear that the wishes of all members of the bargaining unit cannot possibly be accommodated.

But a more crucial flaw in plaintiffs' case is the failure to prove that the defendant caused the harm suffered by the plaintiffs. Plaintiffs' own evidence makes clear that rejection of the closing agreement by the membership at the ratification meeting would not have benefited plaintiffs in any respect. The Union's only alternative would have been a strike

or other work stoppage, and the company had already formulated contingency plans to deal with such a work stoppage, none of which involved extending the increased benefits to plaintiffs and the other laid off workers. No matter what the Union did or failed to do, these plaintiffs would not have received anything more than what they have in fact received.

For all of the foregoing reasons, defendant's Motion for Judgment as a Matter of Law has been granted.

An Order follows.

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JOSEPH D. FORTE	:	CIVIL ACTION
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v.	:	
	:	
WAREHOUSE EMPLOYEES UNION	:	
LOCAL 169, INTERNATIONAL	:	
BROTHERHOOD OF TEAMSTERS	:	NO. 97-6498

ORDER

AND NOW, this            day of April, 2000, in accordance of  
the views expressed at the close of plaintiffs' evidence, and in  
the accompanying Memorandum, IT IS ORDERED:

1. Defendant's Motion for Judgment as a Matter of Law  
is GRANTED.

2. Judgment is entered in favor of the defendant  
Warehouse Employees Union Local 169 and against the plaintiffs  
Joseph D. Forte and Edna M. Callaghan.

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John P. Fullam, Sr. J.