

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

DOROTHY MOORE-DUNCAN : CIVIL ACTION
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 v. :
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LANEKO ENGINEERING CO., INC. : NO. 03-6306
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MEMORANDUM AND ORDER

Norma Shapiro, S.J.

December 23, 2003

The Petitioner is the Regional Director of the Fourth Region of the National Labor Relations Board ("Board"). Petitioner brought this action under Section 10(j) of the National Labor Relations Act ("the Act"). 29 U.S.C. Sec. 160(j) alleging unfair labor practices by Respondent Laneko Engineering, Inc. ("Laneko"). Section 10(j) allows the Board to seek temporary injunctive relief if an administrative complaint alleging unfair labor practices has been issued. The Board seeks a temporary injunction requiring Laneko to recognize and bargain with the Machine Tool & Die Local 155 of the United Electrical, Radio and Machine Workers of America pending final resolution of its administrative complaint.

BACKGROUND:

Laneko is a tool and die manufacturer with plants in Ft.

Washington, PA, and Montgomeryville, PA.¹ The principal stockholder is William James Derrah, Sr.; his son Steve Derrah is Manager of the Ft. Washington Plant, and William James Derrah, Jr., is Sales Manager for that plant. The Manager at Montgomeryville is Phil Savoca. Until September 2002, the employees at both plants were represented by the Machine Tool & Die Local 155 of the United Electrical, Radio and Machine Workers of America ("the Union").

The Union and Laneko have been parties to collective bargaining contracts for many years; the most recent contract expired on September 30, 2002. Prior to the expiration of the 2002 contract, the parties began negotiating for a new contract. After contentious negotiations, the Union members voted to strike instead of accepting Laneko's final offer. The Union members went on strike at 12:01 a.m. on October 1, 2002, and remained on strike until Monday, October 7, 2002.

The Board alleges management had improper contact with the employees during the strike and illegally circulated a petition to the striking workers for them to end Union representation. It is alleged that many of the workers were told that they had to sign the petition if they wanted to return to work, that the

¹ The plant in Montgomeryville is known as "Laneko Precision" and the plant in Ft. Washington is known as "Laneko Engineering." There is also a plant in Limerick, PA, that is not a part of this action.

petition would get rid of the Union, and if they "wanted the Union," they would not be welcome back to work.

About a week after the employees returned to work, management announced at a meeting that the company would not recognize the Union because 75 percent of the employees no longer wanted it; management also announced that it would create a "Shop Committee" to resolve problems between the employees and management and address grievances.

On October 15, 2002, the Union charged respondent with engaging in and continuing to engage in, unfair labor practices withing the meaning of Section 8(a)(1) and (5) of the Act. The Union has since filed several amended charges alleging further unfair labor practices. On August 1, 2003, based on the charges and amended charges filed against Laneko by the Union, the Board issued an Amended Consolidated Complaint and Notice of Hearing under § 10(b) of the Act. The Complaint was further amended on September 9, 2003, and September 24, 2003. An Administrative Law Judge conducted a hearing in September 2003; briefing is now complete, but the decision is pending.

DISCUSSION:

Interim relief under § 10(j) may be granted by a district court if: (1) there is reasonable cause to believe that an unfair labor practice has occurred; and (2) an injunction would be "just and proper." Hirsch v. Dorsey Trailers, Inc., 147 F.3d 243, 247

(3d Cir. 1998). There does not need to be a showing of irreparable harm or a likelihood of success on the merits. Id.

The Board alleges that there is reasonable cause to believe that Laneko has violated §§ 8(a)(1),(2),(3) and (5) of the National Labor Relations Act. For this proceeding only, Laneko has admitted there is reasonable cause to believe the alleged unfair labor practices have occurred. Whether the injunction should issue depends on a showing that such relief is "just and proper."

Interim relief is "just and proper" where the passage of time may prevent the NLRB from effectively "exercising its ultimate remedial powers." Kobell v. Suburban Lines, 731 F.2d 1076, 1091 (3d Cir. 1984). The court must assess the "likelihood of harm to the bargaining process" absent an injunction. Eisenberg on behalf of NLRB v. Wellington Hall Nursing Home, Inc. 651 F.2d 902, 907 (3d Cir. 1981). Relief under § 10(j) should be designed to preserve the status quo while the Board's normal procedures are followed. Pascarell v. Vibra Screw, Inc., 904 F.2d 874, 878 (3d Cir. 1990).

The workers at the Laneko plants in this action have been without a union since October 2002. The employees could be without representation for as many as four years, as there is no time limit for the Board to resolve this action. Laneko asserts that because the Union was recognized for 40 years prior to the

withdrawal of recognition, it was well established and its bargaining power will not be impaired during the interim should the Board eventually require Laneko to recognize and bargain with it. Laneko urges this court to follow Kobell in finding that the Union could swiftly and effectively reconstruct itself and because the bargaining unit is "small and intimate," injunctive relief is unnecessary. Kobell, 731 F.2d at 1093.

The bargaining unit at issue in Kobell was 30 people; in this action, there are approximately 90 people in the bargaining unit at two different plants. Moreover, the longer the NLRB takes to resolve this action, the more difficult it will be for the Union to reassert itself at Laneko and effectively represent the workers. This is supported by testimony at the hearing; though the Union continues to recognize Laneko employees as members, and many employees continue to consider themselves Union members, virtually no Laneko employees attended a Union meeting held off the plant premises.² The Kobell "small and intimate" exception does not apply.

It is quite unclear that the Union actually lost majority support before Laneko withdrew recognition. There was uncontroverted testimony that respondent conditioned the return to work of four of its employees on their repudiation of the

²The Union has not required dues from Laneko employees since the withdrawal of recognition.

Union. Laneko is arguably continuing the unfair labor practices; for example, there was testimony that the number of temporary workers has increased since the withdrawal of Union recognition.

Respondent Laneko asserts the NLRB's delay in bringing this action demonstrates injunctive relief is not just and proper, because "undue delay reduces the Board's credibility in arguing that an injunction is absolutely necessary...." Pascarell, 904 F.2d at 881. Respondent submits that the NLRB had all of the facts necessary to bring this action in November 2002 but unduly and inexplicably delayed. This argument is unconvincing.

The NLRB needed a reasonable time to investigate the claims made in the charges and evaluate the circumstances at both Laneko plants. This investigation was made more difficult because many of the employees who had been targets of unfair labor practices continued to work at the Laneko plants; there is evidence that perceived employee intimidation stymied the NLRB's investigation.

The Board's delay does not overcome the main consideration in evaluating the "just and proper" standard, i.e., safeguarding the Board's remedial powers. "Using the Board's delay as the basis to deny the requested injunctive relief punishes the wronged employees for the Board's belated action, an unacceptable outcome." Hirsch v. Dorsey Trailers, 147 F.3d 243, 249 (3d Cir. 1998).

If this court grants the interim bargaining order, the Board should expedite its consideration of the underlying complaint.

This would be a good outcome for both the employees and management. If Laneko did not unfairly withdraw recognition from the Union, it will be quickly vindicated; if the Board does ultimately conclude that the unfair labor practices have occurred, the healing process will have already begun. In the interim, an order to bargain with the Union will not impose significant burdens on Laneko; the employees are more likely to be harmed should they be forced to be unrepresented for several years while awaiting a decision from the Board.

CONCLUSION:

For the reasons set forth, it is just and proper to grant temporary injunctive relief pending final resolution by the Board. An appropriate Order will follow.

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ORDER

AND NOW, this 23rd day of December 2003, for the reasons set forth in a Memorandum filed this day, it is hereby **ORDERED** that:

1. Laneko is enjoined and restrained from intimidating, harassing or retaliating against employees for Union activity or in any other manner interfering with, or restraining its employees from exercising their rights guaranteed under § 7 of the National Labor Relations Act.

2. On an interim basis, Laneko shall recognize and bargain with Machine Tool & Die Local No. 155 of the United Electrical, Radio and Machine Workers of America.

3. Laneko shall withdraw recognition from the Shop Committee.

4. Laneko shall post a copy of this Order in all locations where notices to employees are customarily posted.

5. Within twenty (20) days of the issuance of this Order, a responsible official of Laneko shall file with the court, and serve a copy on Petitioner, a sworn affidavit stating the manner in which it has complied with Paragraph four (4) of this Order, including the locations of the posting of this Order.

6. This Order shall be effective for six months.

Norma L. Shapiro, S.J.

