Coca-Cola Bottling Company of Los Angeles *and* Rudy Estrada. Case 21 CA-16576

July 17, 1979

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND MURPHY

Upon charges duly filed, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 21, issued a complaint and notice of hearing on June 5, 1978, against Coca-Cola Bottling Company of Los Angeles. The complaint alleged that Respondent had engaged in and was engaging in certain unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and of the complaint and notice of hearing were duly served on the parties. On June 15, 1978, Respondent filed its answer to the complaint denying the commission of unfair labor practices and requesting that the complaint be dismissed.

Thereafter, the parties entered into a stipulation of facts and jointly moved to transfer this proceeding directly to the Board for findings of fact, conclusions of law, and order. The parties waived a hearing before, and the making of findings of fact and conclusions of law by, an administrative law judge and stipulated that no oral testimony is necessary or desired by any of the parties. The parties also agreed that the original and amended charges, complaint and notice of hearing, the answer, and the stipulation of facts, including exhibits, constitute the entire record in this proceeding.

On February 14, 1979, the Board issued its order granting the motion, approving the stipulation, transferring the proceeding to the Board, and setting February 28, 1979, as the date for filing briefs. Thereafter, Respondent and the General Councel filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the stipulation, including exhibits, the briefs, and the entire record in this proceeding and hereby makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Coca-Cola Bottling Company of Los Angeles operates a facility located at 11536 Patton Street, Downey, California, where it bottles and distributes soft drink beverages. In the course and conduct of its business the Company annually purchases and receives goods and product valued in excess of $50,000 from suppliers located within the State of California, each of which, in turn, purchases these same goods and products directly from suppliers located outside the State of California.

The complaint alleges, Respondent admits, and we find that Coca-Cola Bottling Company of Los Angeles is, and has been, engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We find that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, Respondent admits, and we find that Teamsters Local Union No. 896, Brewery, Soda and Mineral Water Bottlers of California, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICE

Respondent, on or about April 5, 1978, indefinitely suspended employees Rudy Estrada allegedly for falsifying another employee's timecard. Immediately following Estrada's suspension the Union instituted grievance proceedings pursuant to its collective-bargaining agreement with Respondent. On April 13, 1978, while the Union and Respondent were negotiating the grievance, Estrada filed a charge with the Board alleging that his suspension was an unfair labor practice. On or about April 19, 1978, Estrada, the Union, and Respondent signed a "Settlement Agreement" reinstating Estrada and converting his indefinite suspension into a disciplinary layoff without pay. The agreement provided that:

> Mr. Estrada understands and agrees that this is a full and final settlement of the dispute with regard to his suspension on or about April 5, 1978, and agrees that no further actions or claims of any kind whatsoever will be filed in conjunction with his suspension. Further, that any charges with any governmental administrative agency, including, but not limited to, the National Labor Relations Board, will be dropped and withdrawn by Mr. Estrada as a condition of his reinstatement and, further, that no actions of any kind will ensue.

On May 24, 1978, Estrada filed an amended charge with the Board alleging that Respondent had im-

posed an unlawful condition upon his reinstatement and, in effect, withdrew that portion of the original charge concerning his suspension because there was insufficient evidence linking the suspension to any protected activity.

The General Counsel contends that Respondent violated Section 8(a)(1) of the Act by requiring that Estrada withdraw any charges, including any before the Board, arising in connection with the settled suspension, citing *John C. Mandel Security Bureau, Inc.*, 202 NLRB 117 (1973), and *Kingwood Mining Company*, 171 NLRB 125 (1968). He also argues that it would be inappropriate to defer to the parties' resolution of the dispute because it deprived Estrada of his right to resort to the Board's processes.

Respondent defends Estrada's agreement to withdraw the unfair labor practice charge and to refrain from filing further claims concerning his suspension on the ground that it is an integral part of a voluntary settlement that was negotiated pursuant to the grievance procedure of the parties' collective-bargaining agreement. Respondent also argues that the *Mandel* and *Kingwood* cases are distinguishable because the condition of Estrada's reinstatement was not unilaterally imposed but was negotiated and freely agreed to by Estrada and the Union as part of full settlement of the grievance.

We find that Respondent did not violate Section 8(a)(1) of the Act by securing Estrada's promise not to litigate his suspension further. The settlement agreement was the product of negotiations during which each of the parties made concessions. Estrada, in return for his agreement, received a reduction in the discipline originally assessed against him and was allowed to return to work. Respondent, in turn, obtained a final settlement of the matter without having to engage in litigation. Furthermore, unlike the cases cited by the General Counsel, the settlement agreement is limited to the suspension that occurred on or about April 5, 1978; it does not prohibit Estrada from filing under labor practice charges concerning future incidents or preclude him from engaging in protected concerted activity. The General Counsel would have us conclude that only settlement agreements which do not settle are lawful. We conclude that Respondent's negotiation of the settlement agreement, including assurances that the dispute would not be litigated, did not deprive Estrada of any rights under the Act. *American Postal Workers Union, AFL-CIO*, 240 NLRB 409 (1979); *U.S. Postal Service*, 234 NLRB 820 (1978). Accordingly, we shall dismiss the complaint in its entirety.[1]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

[1] Member Jenkins does not rely on *American Postal Workers Union*, in which he dissented and which he considers distinguishable.