



United States Government
NATIONAL LABOR RELATIONS BOARD
REGION 7

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October 26, 2009

Office of the Executive Secretary
National Labor Relations Board
1099 14th St., N.W.
Washington, D.C. 20570

Re: Comau, Inc.
Case 7-CA-52106

Dear Mr. Heltzer:

Attached are electronic copies of Counsel for the General Counsel's Opposition to Respondent's Motion for Partial Summary Judgment and Certificate of Service in the above case.

Very truly yours,

Sarah Pring Karpinen
Counsel for the General Counsel
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Attachments

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

COMAU, INC.,

Respondent

and

CASE 7-CA-52106

**AUTOMATED SYSTEMS WORKERS LOCAL 1123,
A DIVISION ON MICHIGAN REGIONAL COUNCIL
OF CARPENTERS, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA,**

Charging Party/ Incumbent Union

and

CASE 7-RD-3644

WILLIE RUSHING, An Individual

Petitioner

**COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO
RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

In a motion served October 19, 2009, Respondent seeks partial summary judgment on Paragraphs 10-13 of the Complaint in the above unfair labor practice case. Counsel for the General Counsel now responds to this motion and respectfully requests that it be denied. The matters addressed in Respondent's motion raise genuine issues of material fact, as supported by the following:

1. Respondent's assertion that the determination in Case 7-CA-51886 that a good-faith impasse had been reached prior to Respondent's December 22, 2008 implementation of its last best offer (LBO) forecloses further challenges to the March 1, 2009 implementation of the health care plan contained in that offer raises material issues of both fact and law.

2. The validity of an impasse is determined based on events that occurred before the impasse was declared, and not after. *Francis J. Fisher, Inc.*, 289 NLRB 815 fn. 1 (1987) The Region determined in Case 7-CA-51886 that the parties were at a lawful impasse on the subjects the Respondent implemented on December 22, 2008. Because the Respondent's healthcare proposal was not implemented on December 22, the Region did not reach the question of whether there was an impasse on the healthcare issue as of that date, nor did it determine whether the parties had continued to bargain over healthcare after the Respondent's December 3 announcement that it intended to implement its LBO on December 22.

3. An impasse is "only a temporary deadlock or hiatus in negotiations," not a "rupture of the bargaining relation which leaves the parties free to go their own ways." *Charles D. Bonanno Linen Service v. NLRB*, 454 U.S. 404, 412 (1982). Parties have a continuing obligation to bargain even after a lawful impasse has been reached. *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1017 (2006).

4. Whenever there is a new possibility for fruitful discussion, an impasse is broken and an employer's obligation to bargain over the subjects of the impasse is revived. *Atrium at Princeton, LLC*, 353 NLRB No. 60 (December 5, 2008).

5. In this case, there is a genuine issue of material fact as to whether the impasse that the Respondent lawfully declared in December 2008 was broken when the parties returned to bargain over a healthcare proposal that differed in at least two important respects from the healthcare plan contained in the Respondent's LBO.

6. The plan in the Respondent's LBO was an employer-purchased Blue Cross/Blue Shield plan to which employees would contribute premium payments. After Respondent announced on December 3 that it would implement its LBO, the parties began bargaining over a new plan which would require Respondent to make payments to the Charging Party's Health and Welfare fund, which would in turn contract with Blue Cross/Blue Shield for health coverage for employees. Both the Respondent and Charging Party exchanged proposals which contemplated a framework under which the Charging Party's Health and Welfare fund, and not Respondent, would contract for healthcare coverage, and employees would not be required to pay premiums, key departures from the health care plan contained in Respondent's December 22 LBO.

7. The parties continued to bargain over these proposals, meeting several

times in December, January and February 2009. Respondent then implemented the health care plan contained in its December LBO on March 1 without reaching good faith impasse in the discussions it had been having with the Charging Party over a union-administered plan.

8. In Paragraph 28 of its Motion for Partial Summary Judgment, Respondent acknowledges that the parties met to discuss an alternate health care plan, but contends that they were merely “exploratory sub-committee discussions that did not involve ‘collective bargaining’ in the customary sense of that term.”

9. Whether the meetings between the parties to discuss a union-administered healthcare plan constituted bargaining or “exploration,” and, in either case, whether the meetings were sufficient to break the earlier impasse and revive the Respondent’s obligation to bargain is a genuine issue of fact that can best be resolved by a hearing before an Administrative Law Judge.

10. Respondent further claims that the Charging Party cooperated with Respondent’s efforts to implement the health care plan in its LBO, and should therefore be estopped from making a claim that the plan was not implemented on December 22, 2008. The nature of the Charging Party’s discussions with the Respondent over implementation of the plan contained in its LBO can best be evaluated by an Administrative Law Judge.

11. Respondent also asserts that the breaking of the impasse between the parties in this case would not mandate a return to the status quo as it was before December 22, because Respondent lawfully implemented its health care plan on that date. As noted above, there has been no finding that the health care plan contained in Respondent's LBO was lawfully implemented on December 22. The only issue decided in Case 7-CA-51866 was whether the parties were at a lawful impasse on the subjects the Respondent implemented on December 22, 2008. There was no determination with regard to whether the parties were at impasse at that time on the subject of health care, and therefore the remedy requested in the Complaint is appropriate.

12. Finally, Respondent makes an unfounded allegation in its Motion that the portions of the charge relating to implementation of its health care plan should be dismissed because it was denied due process. Respondent claims that the Board agent assigned to the charge engaged in inappropriate conduct by suggesting that the original charge in this matter be amended. The amendment was suggested because the Charging Party presented evidence that the March 1, 2009 implementation of the Respondent's health care proposals was not supported by good-faith impasse. Because that theory was not explicitly set forth in the original charge, the agent, in consultation with her supervisor, advised the Charging Party of its right to amend the charge.

13. The agent's objective in suggesting the amendment was to accord the

Respondent due process in addressing the issues raised by the investigation of this matter, not to deny it or to act as an advocate for the Charging Party. The fact that an amendment is suggested by a Board agent does not provide a guarantee that the Region will issue a complaint based on an amended charge. Rather, it affords the Charged Party an opportunity to respond specifically to all of the issues raised during the investigation.

14. The Region's conduct in suggesting that the charge be amended was mandated by the General Counsel's Casehandling Manual (Unfair Labor Practice Cases). CHM 10052.6 instructs Board agents, in consultation with their supervisors, to review and revise allegations and issues raised during an investigation of a charge, in order to adjust to developments in the case. CHM 10052.7 directs Board agents to "apprise the charging party of any potential issues and provide the charging party an opportunity to amend the charge in a timely fashion, if necessary, in order to pursue additional allegations."

15. Further, CHM 10062.5 directs a Board agent who uncovers evidence of an unfair labor practice not specified in a charge to determine, with appropriate supervision, whether the charge would support complaint allegations covering the apparent violations revealed by the investigation. If the charge is "too narrow, not sufficiently specific or otherwise flawed, the charging party or its representative should be apprised of the potential deficiency in the existing charge and given the opportunity to file an amended charge."

WHEREFORE, Counsel for the General Counsel requests that Respondent's Motion for Partial Summary Judgment be denied in its entirety.

Respectfully submitted this 26th day of October, 2009



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CERTIFICATE OF SERVICE

I certify that on the 26th day of October, 2009, I electronically served copies of the Counsel for the General Counsel's Opposition to Respondent's Motion for Partial Summary Judgment on the following parties of record:

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