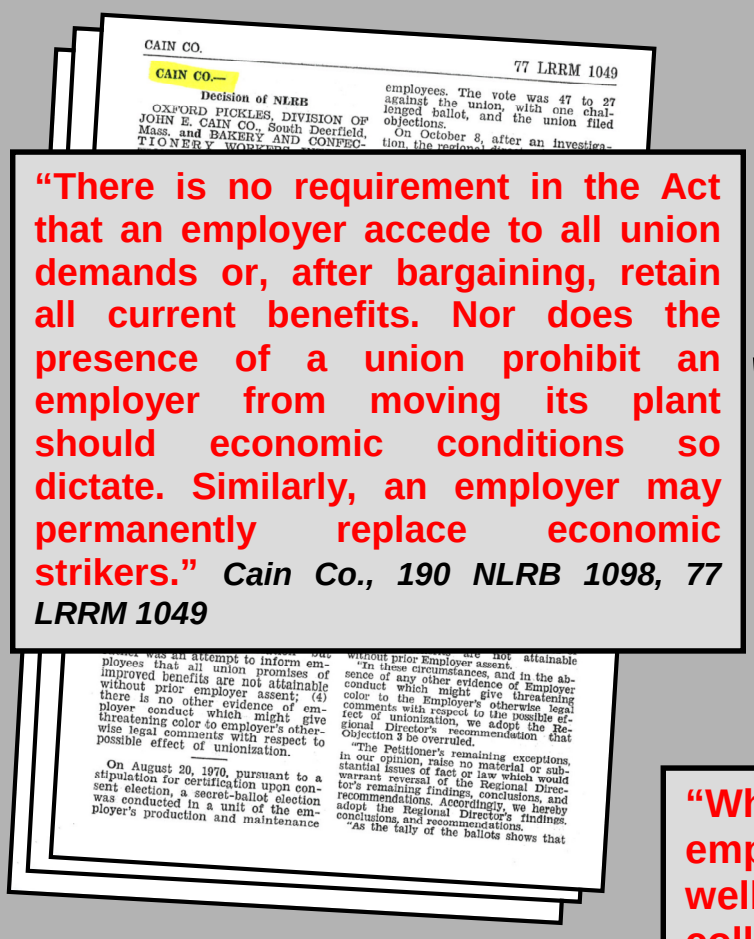
Regardless of What the Union Says…


CAIN CO. 77 LRRM 1049

CAIN CO.—

Decision of NLRB

OXFORD PICKLES, DIVISION OF JOHN E. CAIN CO., South Deerfield, Mass. and BAKERY AND CONFECTIONERY WORKERS

employees. The vote was 47 to 27 against the union, with one challenged ballot, and the union filed objections.

On October 8, after an investigation, the regional

ployees that all union promises of improved benefits are not attainable without prior employer assent; (4) there is no other evidence of employer conduct which might give threatening color to employer's otherwise legal comments with respect to possible effect of unionization.

On August 20, 1970, pursuant to a stipulation for certification upon consent election, a secret-ballot election was conducted in a unit of the employer's production and maintenance

was an attempt to inform em-

without prior Employer assent.

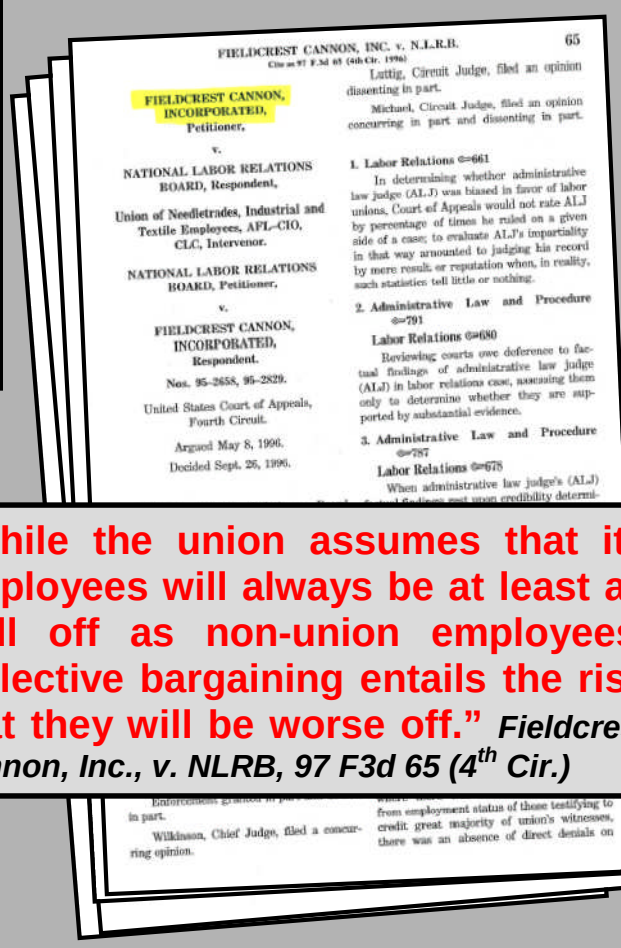
"In these circumstances, and in the absence of any other evidence of Employer conduct which might give threatening color to the Employer's otherwise legal comments with respect to the possible effect of unionization, we adopt the Regional Director's recommendation that Objection 3 be overruled.

"The Petitioner's remaining exceptions, in our opinion, raise no material or substantial issues of fact or law which would warrant reversal of the Regional Director's remaining findings, conclusions, and recommendations. Accordingly, we hereby adopt the Regional Director's findings, conclusions, and recommendations.

"As the tally of the ballots shows that

not attainable

"There is no requirement in the Act that an employer accede to all union demands or, after bargaining, retain all current benefits. Nor does the presence of a union prohibit an employer from moving its plant should economic conditions so dictate. Similarly, an employer may permanently replace economic strikers." ***Cain Co., 190 NLRB 1098, 77 LRRM 1049***


FIELDCREST CANNON, INC. v. N.L.R.B. 65

Cite as 97 F.3d 65 (4th Cir. 1996)

FIELDCREST CANNON, INCORPORATED, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent,

Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC, Intervenor.

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

FIELDCREST CANNON, INCORPORATED, Respondent.

Nos. 95-2658, 95-2829.

United States Court of Appeals, Fourth Circuit.

Argued May 8, 1996.

Decided Sept. 26, 1996.

Luttig, Circuit Judge, filed an opinion dissenting in part.

Michael, Circuit Judge, filed an opinion concurring in part and dissenting in part.

1. Labor Relations ⇐661

In determining whether administrative law judge (ALJ) was biased in favor of labor unions, Court of Appeals would not rate ALJ by percentage of times he ruled on a given side of a case; to evaluate ALJ's impartiality in that way amounted to judging his record by mere result, or reputation when, in reality, such statistics tell little or nothing.

2. Administrative Law and Procedure ⇐791

Labor Relations ⇐680

Reviewing courts owe deference to factual findings of administrative law judge (ALJ) in labor relations case, assuming them only to determine whether they are supported by substantial evidence.

3. Administrative Law and Procedure ⇐787

Labor Relations ⇐678

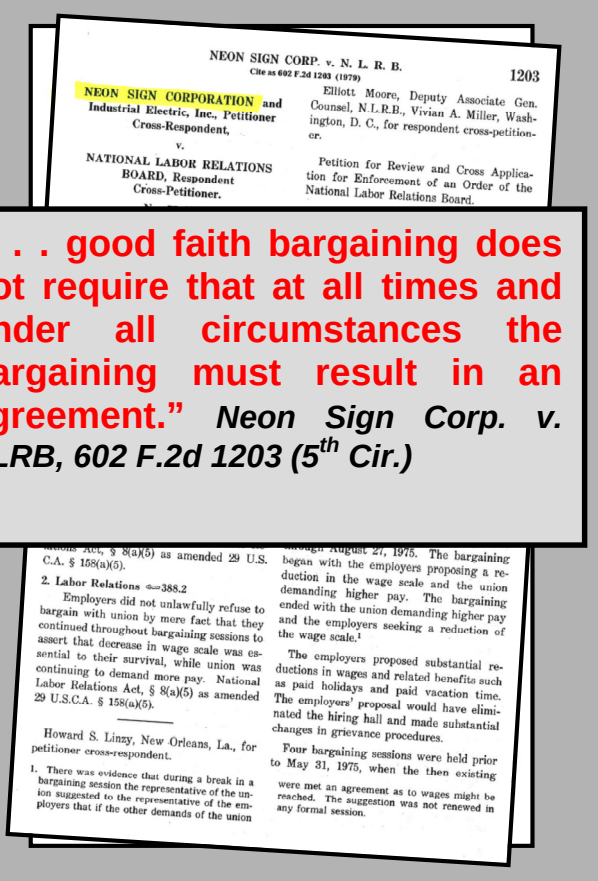
When administrative law judge's (ALJ)

Enforcement granted in part.

Wilkinson, Chief Judge, filed a concurring opinion.

from employment status of those testifying to credit great majority of union's witnesses, there was an absence of direct denials on

"While the union assumes that its employees will always be at least as well off as non-union employees, collective bargaining entails the risk that they will be worse off." ***Fieldcrest Cannon, Inc., v. NLRB, 97 F3d 65 (4th Cir.)***


NEON SIGN CORP. v. N. L. R. B. 1203

Cite as 602 F.2d 1203 (1979)

NEON SIGN CORPORATION and Industrial Electric, Inc., Petitioner Cross-Respondent,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent Cross-Petitioner.

Petition for Review and Cross Application for Enforcement of an Order of the National Labor Relations Board.

Elliott Moore, Deputy Associate Gen. Counsel, N.L.R.B., Vivian A. Miller, Washington, D. C., for respondent cross-petitioner.

Howard S. Linzy, New Orleans, La., for petitioner cross-respondent.

1. There was evidence that during a break in a bargaining session the representative of the union suggested to the representative of the employers that if the other demands of the union

Act, § 8(a)(5) as amended 29 U.S. C.A. § 158(a)(5).

2. Labor Relations ⇐388.2

Employers did not unlawfully refuse to bargain with union by mere fact that they continued throughout bargaining sessions to assert that decrease in wage scale was essential to their survival, while union was continuing to demand more pay. National Labor Relations Act, § 8(a)(5) as amended 29 U.S.C.A. § 158(a)(5).

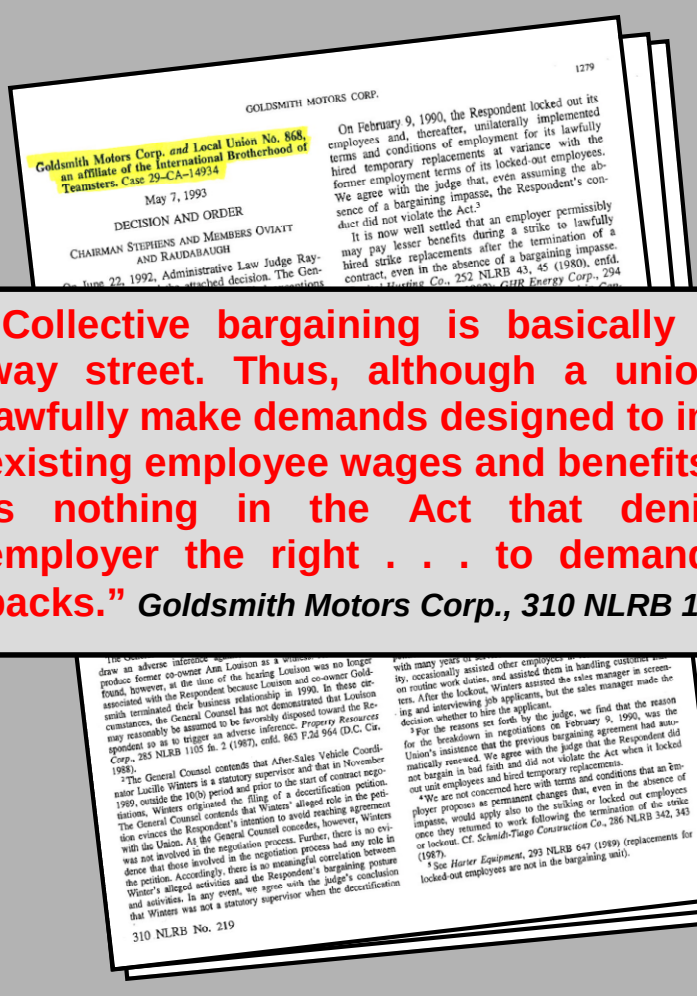
through August 27, 1975. The bargaining began with the employers proposing a reduction in the wage scale and the union demanding higher pay. The bargaining ended with the union demanding higher pay and the employers seeking a reduction of the wage scale.[1]

The employers proposed substantial reductions in wages and related benefits such as paid holidays and paid vacation time. The employers' proposal would have eliminated the hiring hall and made substantial changes in grievance procedures.

Four bargaining sessions were held prior to May 31, 1975, when the then existing

were met an agreement as to wages might be reached. The suggestion was not renewed in any formal session.

"… good faith bargaining does not require that at all times and under all circumstances the bargaining must result in an agreement." ***Neon Sign Corp. v. NLRB, 602 F.2d 1203 (5th Cir.)***


1279

GOLDSMITH MOTORS CORP.

Goldsmith Motors Corp. *and* Local Union No. 868, an affiliate of the International Brotherhood of Teamsters. Case 29–CA–14934

May 7, 1993

DECISION AND ORDER

CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

On June 22, 1992, Administrative Law Judge Ray- attached decision. The Gen-

On February 9, 1990, the Respondent locked out its employees and, thereafter, unilaterally implemented terms and conditions of employment for its lawfully hired temporary replacements at variance with the former employment terms of its locked-out employees. We agree with the judge that, even assuming the absence of a bargaining impasse, the Respondent's conduct did not violate the Act.[3]

It is now well settled that an employer permissibly may pay lesser benefits during a strike to lawfully hired strike replacements after the termination of a contract, even in the absence of a bargaining impasse. *Hot Shoppes, Inc.*, 252 NLRB 43, 45 (1980), enfd. *GHR Energy Corp.*, 294

draw an adverse inference as a produce former co-owner Ann Louison as a was no longer found, however, at the time of the hearing Louison and co-owner Goldsmith terminated their business relationship in 1990. In these circumstances, the General Counsel has not demonstrated that Louison may reasonably be assumed to be favorably disposed toward the Respondent so as to trigger an adverse inference. *Property Resources Corp.*, 285 NLRB 1105 fn. 2 (1987), enfd. 863 F.2d 964 (D.C. Cir. 1988).

[2] The General Counsel contends that After-Sales Vehicle Coordinator Lucille Winters is a statutory supervisor and that in November 1989, outside the 10(b) period and prior to the start of contract negotiations, Winters originated the filing of a decertification petition. The General Counsel contends that Winters' alleged role in the petition evinces the Respondent's intention to avoid reaching agreement with the Union. As the General Counsel concedes, however, Winters was not involved in the negotiation process. Further, there is no evidence that those involved in the negotiation process had any role in the petition. Accordingly, there is no meaningful correlation between Winter's alleged activities and the Respondent's bargaining posture and activities. In any event, we agree with the judge's conclusion that Winters was not a statutory supervisor when the decertification

with many years of ity, occasionally assisted other employees on routine work duties, and assisted them in handling customers. After the lockout, Winters assisted the sales manager in screening and interviewing job applicants, but the sales manager made the decision whether to hire the applicant.

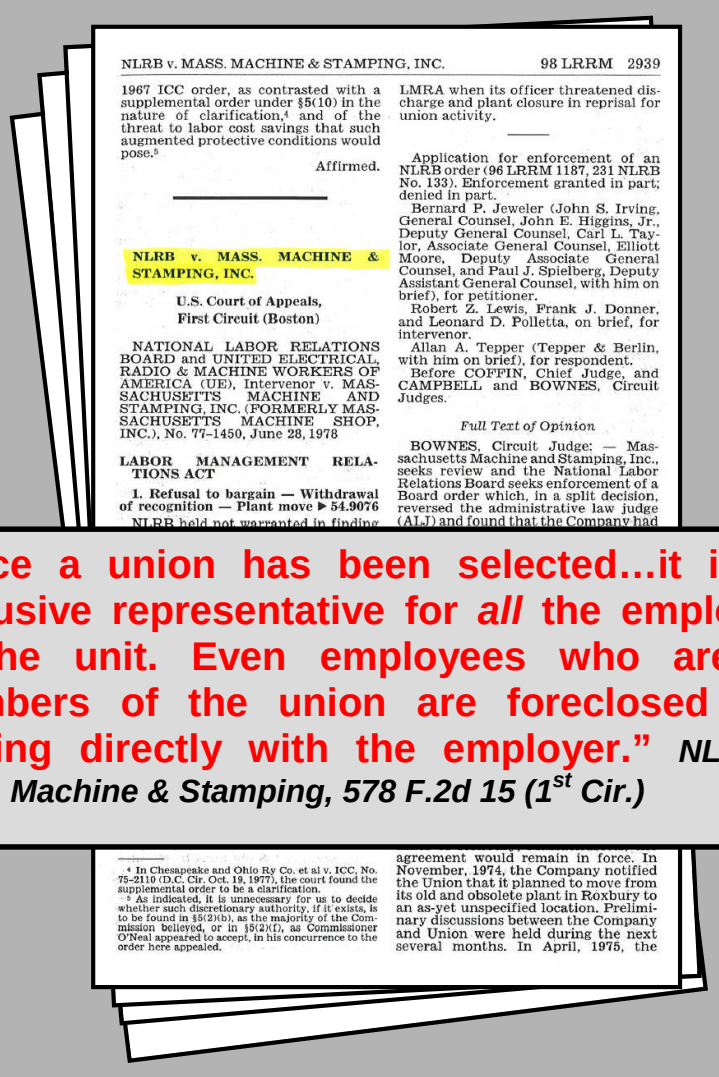
[3] For the reasons set forth by the judge, we find that the reason for the breakdown in negotiations on February 9, 1990, was the Union's insistence that the previous bargaining agreement had automatically renewed. We agree with the judge that the Respondent did not bargain in bad faith and did not violate the Act when it locked out unit employees and hired temporary replacements.

[4] We are not concerned here with terms and conditions that an employer proposes as permanent changes that, even in the absence of impasse, would apply also to the striking or locked out employees once they returned to work following the termination of the strike or lockout. Cf. *Schmidt-Tiago Construction Co.*, 286 NLRB 342, 343 (1987).

[5] See *Harter Equipment*, 293 NLRB 647 (1989) (replacements for locked-out employees are not in the bargaining unit).

310 NLRB No. 219

"Collective bargaining is basically a two-way street. Thus, although a union may lawfully make demands designed to improve existing employee wages and benefits, there is nothing in the Act that denies an employer the right . . . to demand give-backs." ***Goldsmith Motors Corp., 310 NLRB 1279***


NLRB v. MASS. MACHINE & STAMPING, INC. 98 LRRM 2939

1967 ICC order, as contrasted with a supplemental order under §5(10) in the nature of clarification,[4] and of the threat to labor cost savings that such augmented protective conditions would pose.[5]

Affirmed.

NLRB v. MASS. MACHINE & STAMPING, INC.

U.S. Court of Appeals, First Circuit (Boston)

NATIONAL LABOR RELATIONS BOARD and UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA (UE), Intervenor v. MASSACHUSETTS MACHINE AND STAMPING, INC. (FORMERLY MASSACHUSETTS MACHINE SHOP, INC.), No. 77-1450, June 28, 1978

LABOR MANAGEMENT RELATIONS ACT

1. Refusal to bargain — Withdrawal of recognition — Plant move ▶ 54.9076

NLRB held not warranted in finding

LMRA when its officer threatened discharge and plant closure in reprisal for union activity.

Application for enforcement of an NLRB order (96 LRRM 1187, 231 NLRB No. 133). Enforcement granted in part; denied in part.

Bernard P. Jeweler (John S. Irving, General Counsel, John E. Higgins, Jr., Deputy General Counsel, Carl L. Taylor, Associate General Counsel, Elliott Moore, Deputy Associate General Counsel, and Paul J. Spielberg, Deputy Assistant General Counsel, with him on brief), for petitioner.

Robert Z. Lewis, Frank J. Donner, and Leonard D. Polletta, on brief, for intervenor.

Allan A. Tepper (Tepper & Berlin, with him on brief), for respondent.

Before COFFIN, Chief Judge, and CAMPBELL and BOWNES, Circuit Judges.

Full Text of Opinion

BOWNES, Circuit Judge: — Massachusetts Machine and Stamping, Inc., seeks review and the National Labor Relations Board seeks enforcement of a Board order which, in a split decision, reversed the administrative law judge (ALJ) and found that the Company had

[4] In Chesapeake and Ohio Ry Co. et al v. ICC, No. 75-2110 (D.C. Cir. Oct. 19, 1977), the court found the supplemental order to be a clarification.

[5] As indicated, it is unnecessary for us to decide whether such discretionary authority, if it exists, is to be found in §5(2)(b), as the majority of the Commission believed, or in §5(2)(f), as Commissioner O'Neal appeared to accept, in his concurrence to the order here appealed.

agreement would remain in force. In November, 1974, the Company notified the Union that it planned to move from its old and obsolete plant in Roxbury to an as-yet unspecified location. Preliminary discussions between the Company and Union were held during the next several months. In April, 1975, the

"Once a union has been selected…it is the exclusive representative for *all* the employees in the unit. Even employees who are not members of the union are foreclosed from dealing directly with the employer." ***NLRB .v. Mass. Machine & Stamping, 578 F.2d 15 (1st Cir.)***

THIS IS THE LAW!

***See HR, your manager, or your supervisor if you would like to review a copy of these cases.**