

Employer and Union Settle to Avoid Prosecution for Delaying Wage Increase to Assist Union's Organizing Under a "Neutrality" Agreement: *Ivey v. Freightliner Custom Chassis Corp.* (NLRB)—Staff Attorney Glenn Taubman.

In this case the National Right to Work Legal Defense Foundation sought to establish that NLRA precedents prohibiting recognition and bargaining with a minority union apply in the new context of a "neutrality" agreement. Mike Ivey and David Roach are employed by Freightliner Custom Chassis Corporation, a subsidiary of Daimler-Chrysler, in Gaffney, South Carolina. Freightliner signed a neutrality and card-check agreement with the UAW. A previously promised wage increase was scheduled to go into effect in the midst of the UAW's organizing campaign. When Freightliner asked the union for its position regarding the increase, the union asked that it be postponed. Freightliner distributed to the employees a memo incorrectly stating that federal law prohibited a wage increase without the union's consent and that, therefore, the scheduled raise would not be given. During this same period, about 70% of the employees signed a petition presented to Freightliner opposing UAW representation.

On August 11, 2003, Glenn Taubman filed unfair labor practice charges for Ivey and Roach against Freightliner and the UAW alleging that their conduct was unlawful bargaining with a minority union. A month later, Freightliner announced that the union had now consented to the increase, which would be implemented retroactively. At the same time, the union circulated a memo stating that it had told management that it supported a pay raise and would not file an unfair labor practice charge over the increase. The NLRB Regional Director then dismissed Ivey's and Roach's charges. Glenn appealed to the General Counsel's Office of Appeals, which on September 2, 2004, directed that, absent settlement, a complaint be issued that the employer's and union's communications with each other over the pay raise, and the employer's communications with the employees about the raise, were unlawful. On September 28, the Regional Director issued a complaint against Freightliner that its delay in granting the wage increase at the behest of the union and its communications with the employees about the delay constituted unlawful assistance to the union and unlawful recognition of a minority union. No complaint issued then against the union, because it and the Region were engaged in settlement discussions.

In the meantime, Foundation attorneys had discovered a previously secret agreement in which the UAW agreed to certain substantive terms of any collective bargaining agreement with Freightliner in return for Freightliner's promise to recognize the union based on a card check. Glenn filed new charges on October 5, 2004, alleging that this agreement also was unlawful premature bargaining with a minority union. On October 21, the Regional Director postponed indefinitely a hearing on the complaint against Freightliner. On November 19, the Regional Director dismissed the second set of charges on the specious ground that there is no evidence that the secret agreement has ever been invoked at the Gaffney plant. Glenn filed an appeal from this dismissal, but it was denied by the General Counsel on April 29, 2005.

The Region's settlement negotiations with the UAW subsequently broke down. Therefore, on August 5, 2005, the Regional Director issued a consolidated complaint that both Freightliner and the union had unlawfully delayed the promised wage increase to coerce employees into supporting the union. A hearing was set for August 22. Both the employer and the union immediately agreed to a settlement, executed on August 12, 2005, under which the union must stop accepting illegal assistance from Freightliner, Freightliner must stop giving such assistance, the parties cannot discuss wages and benefits of employees at Gaffney unless the union becomes the recognized representative of an uncoerced majority of employees, and the parties must post notices to that effect.