

# We'll keep all our promised raises and benefits when we change unions.

## It's the law.

### National Labor Relations Board decision

More Truck Lines, Inc., October 1, 2001,  
Cases 31-CA-23883 and 31-RC-7554

“It is settled law that when employees are represented by a labor organization their **employer may not make unilateral changes** in their terms and conditions of employment, such as their wages. See *NLRB v. Katz*, 369 U.S. 736, 747 (1962). This duty to maintain the status quo imposes an obligation upon the employer **not only to maintain what he has already given his employees, but also to “implement benefits which have become conditions of employment by virtue of prior commitment or practice.”**”

◀ *The employer must keep everything the same while we negotiate for improvements. The only things that change: We don't pay dues, and we can't take grievances to arbitration until we've ratified our new contract.*

“The judge found that the Respondent **violated Section 8(a) (1) of the Act by informing employees** in May 1999 that, if the Teamsters became the certified representative of the employees, then an existing collective-bargaining agreement between the Respondent and the Brotherhood (the Brotherhood Agreement) would be “null and void,” thereby “freezing” employees' wage levels and denying them certain annual wage increases contained in that agreement.”

◀ *The National Labor Relations Board has ruled it is illegal to threaten workers that our wages and benefits will be frozen.*

“In agreement with the judge, we are convinced that the Board in *RCA Del Caribe* **only intended the phrase “null and void” to mean that a successful intervening union must be afforded an opportunity to negotiate** a new contract, rather than be saddled with the one entered into by the defeated incumbent.”

◀ *“Null and void” just means we get to negotiate for improvements—we're not locked in to the contract we had before.*



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**More Truck Lines, Inc. and General Truck Drivers, Office, Food & Warehouse Union, Teamsters Local 952, International Brotherhood of Teamsters, AFL-CIO, Petitioner and the Brotherhood, Intervenor.** Cases 31-CA-23883 and 31-RC-7554

October 1, 2001

DECISION, ORDER, AND DIRECTION OF  
ELECTION

BY CHAIRMAN HURTGEN AND MEMBERS  
LIEBMAN  
AND TRUESDALE

On June 19, 2000, Administrative Law Judge Frederick C. Herzog issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, in which the Teamsters joined, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions, and to adopt the recommended Order, as modified.<sup>1</sup>

1. The judge found that the Respondent violated Section 8(a)(1) of the Act by informing employees in May 1999 that, if the Teamsters became the certified representative of the employees, then an existing collective-bargaining agreement between the Respondent and the Brotherhood (the Brotherhood Agreement) would be "null and void," thereby "freezing" employees' wage levels and denying them certain annual wage increases contained in that agreement.<sup>2</sup> The Respondent asserts that, under *RCA Del Caribe, Inc.*, 262 NLRB 963 (1982), its statement that employees' wages would not, and could not, be raised in accordance with the terms of the Brotherhood Agreement in the event of the Teamsters' certification was simply a correct recitation of applicable Board law.

In *RCA Del Caribe*, the Board held that an employer did not violate Section 8(a)(1) and (2) of the Act by negotiating and executing a successor collective-bargaining agreement with an incumbent union after learning of the filing of a representation petition by an intervening union. 262 NLRB at 966. The Board indicated that the fate of the employer-incumbent successor agreement would be determined by the outcome of any post-execution election:

<sup>1</sup>The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

<sup>2</sup>Article III, sec. 1.A., of the Brotherhood Agreement provided generally that each regular fulltime driver employed on the effective date of the Agreement would receive \$1 per-hour-wage increases on his first three anniversary dates.

If the incumbent prevails in the election held, any contract executed with the incumbent will be valid and binding. If the challenging union prevails, however, any contract executed with the incumbent will be null and void.

262 NLRB at 966. Based on the phrase "null and void," the Respondent asserts that, if the Teamsters had been certified as the employees' collective-bargaining representative, it would have been as if the Brotherhood Agreement never existed. In that event, argues the Respondent, any future obligations contained in the Brotherhood Agreement, including the implementation of the annual wage increases, would be extinguished as well. Indeed, the Respondent contends that any attempt to grant the wage increases would have constituted unlawful unilateral action on its part. Thus, concludes the Respondent, it lawfully told its employees they would not, and could not, receive the promised wage increases if the Teamsters' certification came to pass. We disagree.

It is settled law that when employees are represented by a labor organization their employer may not make unilateral changes in their terms and conditions of employment, such as their wages. See *NLRB v. Katz*, 369 U.S. 736, 747 (1962). This duty to maintain the status quo imposes an obligation upon the employer not only to maintain what he has already given his employees, but also to "implement by virtue of prior commitment or practice." *Alpha Cellulose Corp.*, 265 NLRB 177, 178 fn. 1 (1982), *enfd. mem.* 718 F.2d 1088 (4th Cir. 1983). Accord: *Illiana Transit Warehouse Corp.*, 323 NLRB 111 (1997) (employer unlawfully told employees "wages and benefits would be frozen at current levels for the period of negotiation" and unlawfully withheld annual wage increases for this reason). As the judge explained, once promised, future nondiscretionary wage increases are such existing terms and conditions of employment. See *Liberty Telephone & Communications*, 204 NLRB 317, 318 (1973) (a promised wage raise that induces employees to accept or continue their employment is an "established" condition of employment); cf. *McDonnell Douglas Aerospace Services Co.*, 326 NLRB 1391 fn. 2 (1998).

Applying these principles to the instant case, we find that the Respondent's reading of *RCA Del Caribe* goes too far. Thus, contrary to the Respondent's contention, the phrase "null and void" in *RCA Del Caribe* cannot be read literally to mean that an employer may treat the terms and conditions of employment established under an agreement with a defeated incumbent union as if they never existed. To do so would allow, or arguably compel, an employer to reset employees' then existing conditions of employment to those that were in effect prior to the final employer-

incumbent agreement. In agreement with the judge, we are convinced that the Board in *RCA Del Caribe* only intended the phrase "null and void" to mean that a successful intervening union must be afforded an opportunity to negotiate a new contract, rather than be saddled with the one entered into by the defeated incumbent. Thus, if a challenging union is certified, then the contract between the employer and the incumbent becomes void, but, as usual, the employer must abide by the then existing terms and conditions of employment until such time as it reaches an agreement with the new union or a lawful impasse occurs. See *NLRB v. Katz*, supra; *R.E.C. Corp.*, 296 NLRB 1293 (1989).

Notably, the Respondent seems to accept this reading of *RCA Del Caribe* insofar as it concerns employees' wage levels in effect at the time a challenging union is certified, as the Respondent emphasizes it is not arguing that such wage levels lawfully could be ignored. The Respondent, though, seeks to distinguish the future, bargained for wage increases detailed in the Brotherhood Agreement. According to the Respondent, there is no basis for converting such "contractually mandated" wage raises into "conditions of employment which continue to exist after the contract becomes null and void." But, for reasons explained, no "conversion" is necessary.

Moreover, contrary to the Respondent's suggestion, it is of no moment that the promised wage increases were "solely the result of the give and take and compromise of the collective bargaining process." The same could be said of the employees' current wage levels, or their health benefits, or their vacation allotment. The question is whether the actual conferral of the annual \$1 per hour wage increases, whether unilaterally promised or collectively bargained, was "a reasonable expectancy of the employment relationship." See *Liberty Telephone*, 204 NLRB at 318. We find that this question must be answered affirmatively.

Accordingly, we agree with the judge that the Respondent's threat to "freeze" employees' wage levels and deny them their annual increases if the Teamsters were certified violated Section 8(a)(1) of the Act.

Contrary to the Respondent's contention, our decision here is not inconsistent with *Air La Caribe*, 284 NLRB 471 (1987), in which the Board overruled objections to a representation election. In *Air La Caribe*, an incumbent union told employees that, if they "voted in" a challenging union or went nonunion, they would lose their current contract and, during the interim period of no contract, the employees "could" lose health benefits, seniority rights, and suffer a reduction in pay. 284 NLRB at 473. The Board found that these statements "could not constitute threats by [the incumbent union], for it had no control over what action

[the employer's] election." *La Caribe* is that employer [had] presents would supra cumber one. (

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