

Christmas Turkey Tales

Working Together

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By Mark Sommaruga

There once was a company by the name of Aeronca, Inc. which was engaged in the manufacture of aircraft components. Some of its employees were represented by Local 2535 of District Lodge 13 of the International Association of Machinists and Aerospace Workers, AFL-CIO. Unfortunately, poor financial conditions one year prompted the company to institute a general austerity program. Until the year when the austerity program was implemented, the company had annually given its employees Christmas turkeys. The union filed an unfair labor practice complaint when the company unilaterally discontinued the turkey bonus, alleging an unlawful refusal to bargain. The company defended its action, claiming that the union had waived its right to bargain over that matter. The National Labor Relations Board ruled in favor of the union. (253 NLRB No. 26.) The NLRB reasoned that in order for the respondent company to establish that the union had waived its right to bargain, it had to show that the union consciously yielded its statutory right. “Whether there has been such a “clear and unmistakable” waiver of the right is determined by the contractual language and the facts and circumstances surrounding the making of the contract . . . upon the varied factors and circumstances herein, we find that the union made no such waiver.” *Id.* at p. 5. Having found the company to be in violation of the law, the NLRB then fashioned its remedy – it ordered Aeronca to cease and desist from unilaterally discontinuing its past practice of giving each of its employees a 14-16 lb. turkey shortly before Christmas, and pay each employee the value of the lost Christmas turkey, with interest.

But you are reading a blog posting on a website of a law firm. As you might expect, that is not the end of this Christmas story. Please read on.

Aeronca petitioned for review of the NLRB’s decision. The U.S. Court of Appeals for the Fourth Circuit held that the employer’s unilateral discontinuance of its practice in giving its employees Christmas turkeys did not violate its duty to bargain because the evidence indicated that during negotiation of the most recent contract, the union had abandoned any attempt to make the giving of turkeys obligatory. The court relied upon a remarkably similar case that it had previously decided, *NLRB v. Southern Materials Company, Inc.*, 447 F.2d 15 (1971). In that case, the court held that where a contract contained a waiver clause which relieved each party of the obligation to bargain collectively during the term of the contract with respect to any subject matter not specifically referred to as covered in the contract, the employer was under no obligation to bargain on the issue of the unilateral termination of Christmas bonuses during the life of the contract.

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Bah, humbug!! some might say, but consider the dilemma of another company, the Baker Brush Company. During its first two years of operation, that company gave no holiday benefits, such as turkeys, to its employees at either Thanksgiving or Christmas. A manager of the company testified at a NLRB hearing that after he learned that employees were dissatisfied about receiving no holiday benefits, he sent a memorandum to the corporate president stating that the employees should be given something on the two holidays the next year. The next year, the employer gave its employees turkeys. To complicate matters, however, during the months between the memo and the next Christmas holiday, a union had commenced an organizational campaign. After examining the facts, the NLRB decided (233 NLRB No. 61) that despite the memo, since the employer did not do anything to inform its employees of the benefit they would receive, or take any action to effectuate it until the union's organizing efforts were in full swing, the company's actions clearly suggested that it was motivated by a desire to boost the company's image and to undermine the union's strength among the employees. The respondent's gift of turkeys to its employees during the election campaign violated the National Labor Relations Act. The company was ordered to post a notice to all of its employees that included the following statement: "WE WILL NOT give... turkeys to our employees in order to undermine their support for the ... Union or any other labor organization."

If you are able to be a generous employer this holiday season, then a joyous holiday to all, but in your zeal to provide a meal, please don't run a-fowl of the law.

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