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Subject: Memphis Ready Mix (Case 15-CA-259794) -- case-closing email
Date: Friday, July 31, 2020 2:16:09 PM

The Region submitted this case for advice as to whether the Employer, a concrete producer and distributor, violated Section 8(a)(5) by refusing to bargain over the Union's proposals for paid sick leave and hazard pay due to the Covid-19 pandemic. Because we conclude that the Employer did not have an obligation to engage in midterm bargaining over the Union's proposals, the Region should dismiss the charge, absent withdrawal.

A party to a collective-bargaining agreement is under no obligation to bargain over issues covered by the contract during the life of the agreement. *See Connecticut Power Co.*, 271 NLRB 766, 766-67 (1984). Further, even as to matters not specifically covered by the contract, a zipper clause may relieve a party of any obligation to engage in further midterm negotiations. *See GTE Automatic Electric Inc.*, 261 NLRB 1491, 1491-92 (1982).

Here, the parties' collective-bargaining agreement contains provisions addressing leaves of absence and wages, as well as broad management-rights and zipper clauses. Even assuming that the leave-of-absence, wage, and management-rights provisions do not cover the subjects of paid sick leave and hazard pay, we conclude that the zipper clause is dispositive. That clause provides:

It is agreed that all matters deemed by the parties to be proper subjects for collective bargaining between them are included in this Agreement; and during the term of this Agreement including any extension term, no further or other matters shall be subject to further collective bargaining.

That unambiguous language constitutes a clear and unmistakable waiver of the Union's right to demand midterm bargaining concerning matters not otherwise covered by the contract. *See Mead Corp.*, 318 NLRB 201, 202-03 (1995). Accordingly, the Region should dismiss the charge, absent withdrawal.

We note, however, that the Union is not permanently precluded from demanding bargaining. As the Employer advised the Union in response to its demand to bargain, the parties' contract – which is effective until September 30, 2020, and from year to year thereafter – permits either party to reopen the agreement by serving notice not less than 60 days before the expiration date. If the Union has timely provided notice, the

Employer will be required to negotiate over sick leave and hazard pay, which are mandatory subjects of bargaining.

This email closes this case in Advice. Please feel free to contact us with any questions or concerns.

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