

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted October 4, 2022

Decided August 20, 2024

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 21-3357

NATIONAL LABOR RELATIONS
BOARD,

Petitioner,

v.

NAPLETON 1050, INC.,

Respondent.

Application for Enforcement from an
Order of the National Labor Relations
Board.

Nos. 13-CA-209951, 13-CA-220180, and
13-CA-222994

Geoffrey Carter,
Administrative Law Judge.

ORDER

The National Labor Relations Board petitions to enforce its remedial order against the automotive dealership Napleton 1050, Inc., which, an administrative law judge ruled, committed unfair labor practices that violated the National Labor Relations Act. 29 U.S.C. § 158(a). Among other things, the Board ordered Napleton to reinstate striking workers and comply with the Act. Napleton responds that the petition is moot because, relying on assertions not in the record, it has largely obeyed the order. But the

Board is entitled to judicial enforcement of its order regardless of Napleton's current compliance with it, and so it is not moot. We therefore will grant the petition.

Napleton bought a car dealership in Libertyville, Illinois, in June 2016, and it soon clashed with its union employees. When negotiations over a contract with the union representing the dealership's service technicians stalled, some employees began an economic strike. Napleton told the striking workers that it was replacing them and would rehire them only if new positions opened.

Bargaining continued, and the parties resolved issues orally, but Napleton refused to sign the bargained-for agreement. Before the union sent the final agreement to Napleton, the union told Napleton that it must return all the striking workers to work, or else the union would litigate an unfair-labor-practice charge. After it received the contract, Napleton initially said that it was "good to go" on the agreement. Encouraged, the union voted to ratify the agreement and end the strike. It told Napleton that because it had illegally threatened the strikers with loss of employment, the strike had changed from an economic strike to an unfair-labor-practice strike; therefore, Napleton had to reinstate them at once. Napleton refused; it said that the strike had remained economic and the strikers had only preferential-rehire rights rather than a mandatory return-to-work right. It also now denied the existence of a collective bargaining agreement and refused to sign it.

Relations deteriorated and, days later, employees resumed the strike. After a few months, the union urged Napleton to reemploy the strikers at once, insisting that "we do have a contract." Napleton replied that it had no agreement without a concession that the strikers belonged on a preferential-rehire list, meaning that they would be rehired only if and when new openings arose after the strike. Napleton also continued to hire replacements for the strikers.

The Board filed a complaint against Napleton, alleging that it had violated the National Labor Relations Act. An administrative law judge found that Napleton had unlawfully refused to sign the collective bargaining agreement it negotiated with the union, in violation of Section 8(a)(1) and (5) of the Act. *See* 29 U.S.C. § 158(a)(1), (a)(5). The judge also found that the strike had converted from an economic strike to an unfair-labor-practice strike when Napleton refused to sign the agreement. As a result, Napleton violated Section 8(a)(1) and (3) of the Act by declining to reinstate immediately the unfair-labor-practice strikers who had made unconditional offers to return to work. *See* 29 U.S.C. § 158(a)(1), (a)(3). The judge ordered relief: Among other

things, Napleton must cease and desist from interfering with workers' rights under Section 7 of the Act, sign the agreement, and offer the unfair-labor-practice strikers reinstatement and back pay.

The Board adopted the judge's order and petitioned us for summary enforcement of that order.

On appeal, Napleton does not challenge the merits of the Board's findings that Napleton violated the Act by unlawfully refusing to sign the agreement and rehire the strikers. Nor does it contest the Board's remedy requiring the company to cease and desist from interfering with its workers' collective-bargaining rights, to sign the agreement, and to reinstate the strikers with back pay. Napleton's sole argument on appeal is that the Board's petition for enforcement is moot because, in its view based on information not contained in the record, the company has substantially complied with the order. Napleton reasons that an enforcement action's only purpose is to achieve compliance with an order, and that purpose is obviated when the company is working cooperatively with the union to fulfill the order. It asserts that the only unresolved issue is the amount of back pay owed to a single employee, and it is awaiting information from the union concerning that employee's exact mitigation damages.

This enforcement action is not moot. A company's asserted compliance with the Board's remedial orders, even if true, does not render an enforcement proceeding moot. *See N.L.R.B. v. Raytheon Co.*, 398 U.S. 25, 27 (1970); *N.L.R.B. v. Curwood Inc.*, 397 F.3d 548, 552 (7th Cir. 2005). The cease-and-desist order imposes a "continuing obligation" to refrain from its unfair labor practices. *N.L.R.B. v. Mexia Textile Mills*, 339 U.S. 563, 567 (1950); *see also Raytheon Co.*, 398 U.S. at 27. The Board is entitled "to have the resumption of the unfair practice barred by an enforcement decree," *Mexia Textile Mills*, 339 U.S. at 567, because it allows for the remedy of civil contempt. *See N.L.R.B. v. HH3 Trucking, Inc.*, 755 F.3d 468, 469 (7th Cir. 2014). Otherwise, future violations would require the Board to begin proceedings from scratch with a new complaint and its past "orders would have no force at all." *See N.L.R.B. v. P*I*E Nationwide, Inc.*, 894 F.2d 887, 892 (7th Cir. 1990).

It is true that an enforcement action may become moot if a court of appeals has no reasonable expectation that an employer will engage in repeat behavior. *See Raytheon Co.*, 398 U.S. at 27. But on this record (the findings of which Napleton does not contest), that is not the case. Napleton broke its commitment to enter a bargained-for agreement with the union and refused to rehire strikers with back pay until ordered to do so. Thus,

the record does not allow us to find that Napleton voluntarily acquiesced to the Board's ruling and will always do so. *See Curwood, Inc.*, 397 F.3d at 552.

Napleton does not contest the merits of the Board's unfair-labor-practice findings or prescribed remedies. It therefore has waived any challenge to the substantive validity of the Board's order. *See Miller v. Chi. Transit Auth.*, 20 F.4th 1148, 1155 (7th Cir. 2021). This court gives substantial deference to both the Board's findings of fact and its interpretation of the Act. *Naperville Ready Mix, Inc. v. N.L.R.B.*, 242 F.3d 744, 751 (7th Cir. 2001). Because we have no reason to disturb those findings and rulings, and the case is not moot, we will enforce the order.

We therefore GRANT the Board's petition for enforcement.