

UNION RECOGNITION WITHDRAWAL OVERTURNED BY NINTH CIRCUIT

The Ninth Circuit Court of Appeals overturns the National Labor Relations Board (NLRB) decision that a Las Vegas golf course legally withdrew union recognition only six months after resuming bargaining based on a previous order of the board, which found that the employer's first withdrawal of recognition violated federal labor law. The board held 3-2 in July 2007 that American Golf Corp., which does business as Badlands Golf Course, bargained with Laborers' International Union Local 872 for a reasonable period of time before withdrawing recognition for the second time. The board found that the parties had engaged in substantial bargaining during the earlier eight-month round of negotiations and did not start from scratch when they resumed bargaining two years later.

The appeals court finds that the board's determination that the earlier bargaining had a significant impact on the later bargaining is not supported by substantial evidence. "[T]here is no evidence in the record as to the content, form, or frequency of these earlier negotiations or as to the actual impact of that earlier round on the second round of negotiations," Judges Dorothy W. Nelson, Marsha S. Berzon, and Richard R. Clifton state in the unpublished memorandum opinion.

The court finds that the only evidence regarding the first round of bargaining was testimony by Badlands' negotiator that he could not remember any details of the earlier bargaining or whether the parties picked up where they left off. The relevant proposals made during the two rounds of bargaining are not in the record, the court states. "As a result, there is no evidentiary basis for the finding that the earlier bargaining alleviated some of the burdens otherwise associated with negotiating an initial contract." It finds that the board's "unsupported finding regarding the impact of the parties' earlier negotiations was critical to its analysis" that Badlands bargained for a reasonable period of time before withdrawing recognition for the second time.

The appeals court remands the case to the board for further proceedings. The decision is available at <http://op.bna.com/dlrcases.nsf/r?Open=smgk-7rrptj>.

(Source: *Laborers' Int'l Union Local 872 v. NLRB*, 9th Cir., No. 07-74872, *unpublished opinion* April 20, 2009, as reported in BNA, *Daily Labor Report*, No. 85, May 6, 2009, pp. A1-A2.)