

NEW ERA CAP CO., INC.

RESPONSE TO WRC

REPORT

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A.

A Chronological Outline of Freedom of Association and Rights of Bargaining, Negotiating, NLRB Proceedings, Arbitrations and Settlements Involving New Era Cap Co., Inc. (the "Company")

JULY 1997

Out of approximately 600 workers at New Era's Derby, New York plant, employees voted to affiliate with Communication Workers of America ("CWA") by a vote of 167 to 141. The union described the Company's response to the affiliation in its August-September 1997 newsletter in the following terms....

"there was little company resistance to the affiliation."

In September 1997, at the request of the Company, a meeting was held between Dave Koch, owner and CEO of the Company, Pete Augustine, Chief Operating Officer, and union officials from the international CWA. The Company had requested the meeting to get to know the union officials better. The Company felt that the leadership of the CWA would help educate the employees at the Derby plant. It was hoped that the international union would have a better understanding of the global economy and its effect on a company such as New Era Cap, the last of the cap manufacturers in the United States.

LATE 1997 - EARLY 1998

Two union officers were caught golfing when they stated that they were out on union business. As a result of their falsification of Company records, these two individuals were terminated. In addition, another union officer ceased employment, although the facts cannot be discussed due to the confidentiality agreement which the officer insisted be included in the settlement agreement. In response to the terminations, the Company agreed to settle all issues and disputes rather than go through prolonged litigation.

No trial was ever held in the matter. There was no finding of anti-union animus.

MID-1998-1999

A. Wage Reopener

Pursuant to the terms of the collective bargaining agreement then in existence, there was a wage reopener effective October 15, 1998. Negotiations regarding the wage reopener began the summer of 1998. The Company indicated to the union that it needed to improve productivity and reduce absenteeism. The initial Company proposal would have restructured 21 operational departments, setting forth minimum production requirements for all employees and providing bonuses for quality, safety, attendance, delivery and cost.

The parties met on many occasions between the summer of 1998 and May 5, 1999. The Company's final proposal contained a modified bonus program along with the proposal for the development of engineered standards. The union recommended to the bargaining unit that it reject the Company's final proposal. The proposal was rejected and, thereafter, was never implemented by the Company, and the status quo continued.

B. Overflow Issue

In the summer of 1999, the Company had a substantial drop in sales necessitating an across-the-board layoff at each of its plants. In an attempt to reduce costs, the Company determined it could no longer continue the inefficiencies of having substantial layoffs at each of the plants, and that the concept of an "overflow" plant had to be established. Under this concept, one plant would be selected to have substantial layoffs while the others would maintain their full production, as much as possible. On July 15, 1999, the Company notified the union of its contemplated decision to implement this concept. The Company was proposing that the overflow plant would be the most costly, least efficient plant. The Company offered the union the opportunity to meet to negotiate such decision and its effects before anything was implemented. The Company further gave the union a detailed comparison of the cost and efficiency of the Derby, Buffalo and Demopolis, Alabama plants. At that time, based on straight productivity (not including any labor costs), Buffalo was the most efficient, then Demopolis, and then Derby. A comparison of the absenteeism showed that Derby's absenteeism was 9.39%, Buffalo 4.19%, and Demopolis 3.53%.

The union, naturally, was not anxious to negotiate concerning the overflow plant concept since it would have resulted in a layoff of employees at the Derby plant, which was the most costly, least efficient plant. It was agreed by both parties that they would seek the intervention of the Cornell University School of Industrial Labor Relations to assist the parties in dealing with this issue. As a result of meeting with the Cornell University mediator, it was agreed that no final decision would be reached between September 1 and September 30 of 1999. The Company and the union would meet with employees, jointly, to present them with a challenge as a first step in saving their jobs, which the parties did.

Following the one-month challenge period, there were no substantial improvements at the Derby plant relative to the Buffalo and Demopolis plants. Demopolis was the most productive, then Buffalo, and then Derby. In terms of absenteeism: Derby 11.2%, Buffalo 5.53%, and Demopolis 2.63%.

On October 7, 1999, the Company met regarding the status of the Derby plant since sales had picked up between July and October, and the laid-off employees had been recalled at each of the plants. From July to October, the union had been successful in maintaining the employment status quo. Thereafter, the union refused to negotiate further on the issue of the overflow concept. The Derby plant remains the least efficient, most costly operation. Their absenteeism has gotten and continues to exceed the combined rates of the other facilities.

C. 1999 Charges - Derby Plant

Unfair labor practice charges were filed by the union in May of 1999. In the charges, it was alleged that the Company interfered with union activities, coerced employees, engaged in surveillance, and otherwise interfered with the actions of the union president.

In response, the Company informed the NLRB that it had agreed in the collective bargaining agreement to pay the union president 20 hours per week to engage in union activities, with other union officials being paid between 1-5 hours per week. This was hardly an act of a Company attempting to undermine the CWA.

After investigating all of the union's charges, the NLRB dismissed each and every charge. There was no credible evidence to substantiate any allegation of anti-union animus.

D. Mid 1998 - ULP Charges - Buffalo Plant

An affiliation vote was held among employees at the Buffalo plant. The union lost the election by a margin of 4 to 1. Shortly before the election, an employee posted a sign which stated:

Attention. Picture I.D. and Green Card are required to vote.

During the NLRB trial, the person who drafted the notice admitted that it was intended to harass individuals who were not American-born. Specifically, the following testimony was revealed:

Q.: When you said you did this to irk management, can you tell me how this would irk management?

A.: I felt that anything that we did regarding the vote of CWA was irking management. I, that's the way I felt about it and I figured that through this whole election the controversy probably between us and management dealt with the Oriental population of the place, and I think they seen the paper they would get mad. By the way, I was looking at it was they can't ready anyway, so it didn't make no difference to me.

Q.: So this reference to the green card here was in reference to Orientals you said?

A.: Not necessarily because the reference to green card more or less was the fact of the matter was most that almost, my guess, was 60 - 70% of the workers were probably, I don't know what you call it not, not American-born, you know. I'm not, you know, not only Orientals and every body, we got Cubans, Spanish, Thailand, Italian, we got all kinds of stuff in this place. All kinds of nationalities all these.

Q.: So, in reference to the green card that was in reference to people who were not Americans.

A.: More or less yes.

Q.: And did you have an understanding that at least a substantial portion of that group was siding against CWA.

A.: The day of the election, yes.

The individual employee who posted the notice was suspended without pay for three working days. Astonishingly, the NLRB found that such individual was suspended because of union activities.

In response to the racial harassment, the Company published notices to all employees in four languages to ensure that all employees understood that the Company would not tolerate such conduct. Rather than expending additional time and cost for additional appeals, the Company paid the approximate \$200 to the employee suspended and ended the case.

LATE 1998

The Company has invested over \$1 million to improve the efficiency, safety and working conditions of employees in the blocking department in each of its operations. Estimated improvements in efficiency were between 25% and 40%. The union was intimately involved in the implementation of the project up to the point of installation of the new equipment. Upon completion of the project, the Company asked to meet with the union to discuss changes in piece rates to reflect the new technology. The union responded that it would not negotiate, nor discuss, any possible changes in the terms and conditions of employment relating to compensation of employees working in the blocking department. The Company, relying on a clause which had been negotiated in the 1995 contract, felt it had the right to implement the change after negotiating with the union. Since the union refused to meet, the Company had to proceed with implementation of what it thought was a proper rate.

In addition, the Company simultaneously eliminated a practice ("88% rule") in the blocking department which was no longer applicable with the advent of the new piece rates.

JANUARY 2000

Following arbitration of the union's grievance concerning the changes the Company implemented in the blocking department, the arbitrator found that the Company could eliminate the 88% rule but that it could not change the piece rates. In essence, the arbitrator adopted a middle of the road position. In response to the arbitrator's decision, the Company also eliminated the 88% rule in another department, believing it had the contractual right to do so based on the arbitrator's decision.

FEBRUARY 2000

The union filed various unfair labor practice charges against the Company in the aftermath of the arbitrator's award. The vast majority of unfair labor practice charges were dismissed. In fact, every allegation concerning anti-union animus was dismissed. The union appealed the dismissal but was unsuccessful. The only two aspects that the Labor Board found merit with related to the Company's procedural failure to notify the union of its actions, not whether the Company had the contractual right to implementation. These two matters related to:

1. The shutdown of the plant at approximately 12:00 p.m. on February 19 when over 25% of the employees were absent. There was a threatened snow storm in Buffalo, New York, and many employees decided to leave halfway through the shift, and others did not come to work at all. The NLRB said the Company should have notified the union prior to shutting down the plant for that afternoon. The matter is proceeding to arbitration before Arbitrator

Howard Foster. The date has yet to be finalized. The Company believes it has the management right to do what it did.

2. The second issue concerned the elimination of the 88% rule in the second department, which had been implemented after the arbitrator's decision. Again, the Labor Board said the Company should have negotiated with the union prior to its implementation, even though the arbitrator had found the Company had the management right to take the same action in the blocking department. The Company agreed to settle that issue since only approximately 3 employees were involved, and each of them were producing in excess of 100% at the time the Company agreed to the settlement.

The NLRB's dismissal letter provides as follows:

"In this regard, the investigation revealed no evidence the employer threatened to remove equipment or eliminate departments because of the union's successful pursuit of grievance through arbitration. Although the investigation revealed that various Company representatives told employees that equipment was being moved or not installed at all in light of the arbitration award, these remarks appeared to have been based on the employer's evaluation of the economic consequences of the award and not evidence of retaliatory motive. In addition, there is insufficient evidence to conclude the employer's announcement that it was contemplating relocation of the cutting department was based on the union's success in arbitration." (Copy attached hereto as Exhibit 1.)

SEPTEMBER 2000 - PRESENT

A. Contract Negotiations for Successor Agreement; Current Status of Unfair Labor Practice Charges

Negotiations began on September 12, 2000. At the first session, the Company stated that the reopener negotiations, which had begun in 1998 and lasted through the summer of 1999, had been unsuccessful. In addition, there had been negotiations concerning two factors, cost and efficiency, to determine the overflow plant should a layoff become necessary in the future. The Company had conveyed serious concerns during the mediation session involving Cornell University that attendance and productivity were not acceptable. Absenteeism was worse and productivity had not improved. Derby continued to have the lowest productivity even though it was the showcase plant. The Company indicated that it was not willing to give up on the plant or the employees, but they were going to have to address these core issues at the negotiating table. It would require improved attendance and productivity. The parties

negotiated for over 30 sessions from September 12, 2000, to the present. Most issues were agreed upon. In fact, on February 15, 2001, after industrial engineering studies were performed by the union and the Company, final agreement was reached on all productivity requirements. Hunter Phillips, the assistant to the president of the printing division of the CWA, "initialed off" tentative agreement on that day, evidencing the fact that the standards which the Company had proposed and negotiated were fair and reasonable. (Copy attached hereto as Exhibit 2.)

As of June 1, 2001, when impasse was declared, there remained very few issues which were not agreed upon. The only key issue related to the base hourly rate. Thus, the dispute between the CWA and the Company is not over safety issues, nor over anti-union issues, but the very traditional one that the union wanted more money. After hundreds of hours of negotiations, the Company declared impasse. The union was more than willing to continue the status quo, as it had since 1998.

On June 2, 2001, the Company implemented its final proposal. The portions of the proposal involving engineered standards would not take effect until July 16. In response, the union informed the Company it would strike. The parties met in an attempt to prevent a work stoppage. At that time, the Company proposed a severance package for any employee who did not want to work under the new engineered standards. Depending on the length of service of the employee, the amount of severance could be as much as six months pay. In addition, employees were offered the opportunity to work under the standards for 90 days and retain the right to receive severance. If, after the 90 days, the employee did not want to continue working under the new system, the employee could elect severance. The union leadership rejected the proposal, and employees were never allowed to vote on it.

The union filed various unfair labor practice charges against the Company following the notice of implementation. Two of such charges concerned the alleged improper layoff of employees and the implementation of the Company's final offer. The National Labor Relations Board thoroughly investigated both matters, determined that neither had any merit, and dismissed each. The union appealed these dismissals. On January 18, 2002 the general counsel of the NLRB upheld the Regional Director's dismissal. (Copy attached hereto as Exhibit 3.)

During the strike, the union engaged in various acts of misconduct on the picket line and secondary boycott activities. In response to the illegal actions by the union, the Company filed unfair labor practice charges against the union. The NLRB found merit to the secondary boycott charges and issued a complaint. During the investigation of the remaining charges, the Company and the union settled all remaining NLRB charges, including a few additional ones filed by the union against the Company, and reached an agreement on a stipulated order to control the conduct of picketers. Thus, all outstanding charges filed by

either the union or Company which were still under investigation were withdrawn and/or settled.

Following the strike, approximately 75 union employees, or 23% of the work force, would not strike and crossed the picket line. Since the strike began, those 23% of the work force have produced 39% of the pre-strike production.

During the over six months since the strike began, there has only been one new lost-time injury at the Derby plant. OSHA, which investigated the Company's safety procedures and records regarding ergonomic training and bloodborne pathogen procedures for several days in July of 2001, did not issue any violations concerning these matters. As of January 16, 2002, the time period for issuing such violations, *if they had existed*, expired and no further action is contemplated.

On December 6, 2001, the unionized Buffalo plant ratified the terms of a new contract, which contained a similar system of engineered standards as were rejected by the Derby plant. Currently, the Company's two plants in Alabama and the Buffalo operation have adopted the engineered standards system, designed to improve productivity and efficiency; only Derby has not.

There is no reasonable basis for the union claiming that it cannot achieve the same productivity levels as have been achieved at the Company's other plants.

As is readily apparent, the dispute between the Company and the union is primarily an issue of compensation which does not, in any way, constitute a violation of any of the applicable Codes of Conduct.

B. Occupational Safety and Health Administration (OSHA)

The WRC report (pg. 4) states that:

“The WRC Assessment Team finds substantial credible evidence that New Era has not implemented a minimally adequate program to protect workers from injury and illness in the workplace, as required under pertinent provisions of University Codes of Conduct and United States law.”

Apparently, the Occupational Safety and Health Administration and the New York State Department of Labor do not agree with this assessment.

Specifically, New Era was investigated by OSHA for several days in July of 2001 and did not issue any violations. Similarly, the New York Department of Labor conducted its survey on April 23, 2001 and a complete list of the deficiencies and all of the corrective actions are attached hereto as Exhibit 4.

In the last twelve years, New Era has been cited three times for OSHA violations - in 1990, 1993 and 2001. Copies of the violations occurring in each year, as well as the corrective actions, are attached hereto as Exhibits 5, 6 and 7.

A listing of the OSHA violations is as follows:

a. 1990

In 1990, the Company was cited with an OSHA violation. In 1990 the Company retained the Department of Industrial Engineering at the State University of New York at Buffalo to prepare a report to improve the Company's operation from an ergonomic perspective. Dr. Martin Hilander issued a comprehensive list of recommendations (copy attached as Exhibit 8). The vast majority of the recommended improvements were promptly implemented and the reasons for not implementing the other recommendations were detailed in a letter to OSHA (copy attached as Exhibit 9).

b. 1993

In 1993, the Company was cited with an OSHA violation. The Company promptly instituted a Hearing Conservation Program (copy attached as Exhibit 10) to correct these deficiencies.

c. 2001

In 2001, the Company was cited with an OSHA violation which it promptly remedied.

In summary, both the federal and state governments have inspected our facility and are of the opinion that no further corrective action is required. More importantly, the union apparently does not have any outstanding issues regarding plant safety or working conditions.

It is abundantly clear that from a health and safety standpoint, New Era Cap Co. is in full compliance with all applicable Codes of Conduct.

C.

ERGONOMIC PROGRAMS

The WRC report (page 9) states that, "The Assessment Team, as of the date of this Preliminary Report, has not been able to identify evidence of meaningful ergonomic programs at New Era Cap Co. in the years after the 1991, OSHA statement process - until 1999".

Over the past nine years, the Company has spent over \$2,000,000 to improve the health and safety conditions of its work force. These expenditures are in addition to the countless hours which the Company has devoted to educational and training programs as well as engineering and design improvements of equipment.

In 1990 the Company retained the Department of Industrial Engineering at the State University of New York at Buffalo to prepare a report to improve the Company's operation from an ergonomic perspective. The changes which were implemented as a result of this report far exceeded the areas of concern which had been expressed in the OSHA citation which had been issued prior to the report. In essence, the Company instituted a series of far reaching reforms to improve the working conditions of its employees.

In August of 1991 union and management initiated a cross-training program and by December of 1992 over 130 employees were able to perform multiple jobs. The purpose of the cross training was to help employees with seniority avoid being laid off and allow employees to perform different tasks and vary work postures to reduce risk of injury.

In 1993 Peter Talty, OTR prepared a detailed report to improve the ergonomic conditions at the plant. Mr. Talty was brought onsite to train supervisors and in-house trainers in a hand, arm and neck exercise program. The in-house trainers then taught these exercises to all employees. A three-minute audiocassette was recorded with the exercises and music. The tape was played over the speaker system two times per day allowing employees to participate.

In January 1994 automatic peak stitching machines were purchased to reduce the repetitiveness of manual peak stitching.

In March of 1994 Dr. Lisjak, DC trained 419 employees in proper techniques for lifting, and sitting as well as the signs and symptoms of carpal tunnel syndrome. Dr. Lisjak was hired to come onsite once per week to consult one-on-one with employees who volunteered to do so. This continued through October of 1995.

In 1996 and 1997 the Company retained Krog Construction and Syracuse Engineering, LLP as consultants to assess the weight bearing capacity and integrity of the floors due to the vibration of the embroidery machines. The floors were found to be structurally sound and no recommendations were made for further action.

In 1997 the Company retained Murak Associates to assess the packing, shipping and blocking areas. Major capital expenditures were made for the purchase of new equipment to improve these areas and reduce the risk of injury.

In 1998 additional expenditures were made for the purchase of improved workstations, computers, chairs, document holders, wrist rests, foot rests, etc.

In 1999 the Health and Environment Task Group, comprised of both management and union workers performed workstation evaluations to improve the quality of the workplace. This group met monthly to assess workstations until spring of 2001.

In 2000 administrative offices were re-designed with new workstations, computers and chairs, all with ergonomic improvements.

In 2001, the Company retained Great Lakes Environmental & Safety Consultants, Inc. to review the Company's ergonomic status. This report, by an independent entity, confirms the Company's substantial efforts to develop and implement an effective ergonomic program (copy attached as Exhibit 11). The WRC assessment of non-activity in this area is without justification and, in fact, New Era Cap Co. has been a leader in the development of ergonomically effective techniques and equipment within the workplace. New Era is not only in compliance with all applicable codes of conduct but has become the benchmark for the industry in the development of ergonomic programs.

D.

WORKERS COMPENSATION

New Era Cap Company has a self-insured Worker's Compensation Program and utilizes an independent third party administrator to supervise the program. In view of the fact that such a program is statutorily required, has mandatory reportings with the New York State Workers Compensation Board, and has its own appeal process, any allegations that employees have been improperly denied benefits is simply without substance. In New York, companies do not have the ability to arbitrarily deny benefits. There are statutory safeguards to insure employer compliance as well as elaborate procedures for disputed determinations. Nevertheless, a brief outline of the Company's procedures and forms and its administrator's guidelines for handling claims is enclosed as Exhibit 12. In addition, the Transitional Work Program which has been agreed to by the Union is also enclosed as Exhibit 13.

Once again the WRC assessment (pg. 12) that, "There is substantial credible evidence that New Era has not provided medical and wage benefits to some injured workers..." is without substance. Could any reasonable person believe that in a state with a mandatory compensation program, administered by a state agency, any disgruntled employee would have no cause of action? Could any reasonable person believe that such a situation could exist for an employee represented by a powerful national union?

E.

NEEDLE PUNCTURES

New Era Cap has instituted a rigorous health and safety program for its employees. However, when working in the sewing industry, the possibility of needle punctures obviously exists. Needle puncture injuries can range from minor (e.g., abrasions of the skin) to more serious (e.g., removal of the needle from the finger). The majority of the injuries suffered at New Era have been minor in nature, as is evident by the OSHA 200 log. OSHA requires documentation of all injuries and illnesses that meet the following criteria:

- All work-related deaths and illnesses.
- Injury or illness that results in loss time from work.
- Injury or illness that results in restricted work days.
- Injuries that requires more than first-aid treatment.
- Loss of consciousness.
- Transfer to another job.

Over the past five years (1995-2000), there have been 81 reportable lacerations, cuts and puncture injuries. Of these injuries 56 are from needle punctures. That is one needle puncture for every 6696 person days worked. This is consistent with or below comparable sewing industries according to BLS statistics.

In addition, we have implemented safety and industrial hygiene controls to reduce the number of puncture injuries. Engineering controls are the primary means of eliminating or minimizing hazards. Engineering controls that have been implemented include:

- Embroidery
 - Lock Key Switch - This switch prevents accidental activation of the start bar on the embroidery machine.
- Sewing
 - Machine Guards.

Employees are also trained in needle puncture prevention. Supervisors are periodically observing the workers to determine that all safety and health procedures are being followed. Proper disciplinary actions are taken if employees are not complying with established procedures.

If the employee bypasses existing engineering controls, the possibility of a needle puncture increases. Employees are trained to notify their supervisor or Veronica Brown (Health and Safety Coordinator) in the event of a needle puncture or any other injury. If either the employee or supervisor feel additional medical attention is necessary, an ambulance is called or the employee is taken to the nearest medical facility.

Once the employee has been properly cared for, the procedures established in the Bloodborne Pathogens Program are implemented to clean up and dispose of any blood products or blood contaminated materials. Current procedures and cleaning materials as found in the Bloodborne Pathogens Program are as follows:

- (a) Cleaning and decontamination of work surfaces will be immediately done if they are contaminated with blood or other potentially infectious body fluids. If liquid contamination exists, it will first be absorbed with a blood spill clean up kit. The surface will be cleaned with Fast Spartan Fast & Easy or equivalent. The surface will then be disinfected with DMQ Damp Mop.
- (b) Labeling - Red bags for the disposal of contaminated materials will contain the biohazard symbol and the word "BIOHAZARD" in a contrasting color.
- (c) All employees and supervisors have received initial and annual (if applicable) training in Bloodborne Pathogens.
- (d) Based on OSHA's Bloodborne Pathogen Standard and subsequent letters of interpretations, New Era is exceeding their requirements for implementation and training.

In summary, New Era recognizes that its employees are exposed to the possibility of needle punctures and has implemented design and hygiene programs to reduce their occurrence. Such programs are in full compliance with all applicable governmental standards and Codes of Conduct.

F.

Age and Disability Discrimination

The WRC report (page 13) provides that, "There is not substantial credible evidence, on the record to date, that New Era's unilaterally imposed wage reductions and work-pace increases have the intent or effect of disadvantaging older workers".

The WRC report, however, goes on to state that there is evidence to suggest that "New Era's unilateral changes systematically disadvantage disabled workers" (page 13). There is no explanation as to how this conclusion was made let alone any verification. The only apparent reason for this conclusion is stated on page 14 of the WRC report as follows:

"The burden lies with New Era to demonstrate a business necessity for the introduction of such drastically new rates".

The burden may well be with New Era to demonstrate the necessity of its economic proposals. It is a burden that the Company has more than met on a repeated basis. This burden, however, does not have anything to do with a ridiculous allegation of discrimination. It is obvious that the WRC has attempted to misrepresent an economic wage dispute as being a discriminatory practice. Such misrepresentation is both unprofessional and unjustified.

To set the record straight, the Company has not engaged in discriminatory practices of any kind. Claims are being made that the Company is cutting the wages of employees at our Derby facility to \$9.10 per hour. This is totally inaccurate. The majority of our employees are paid on a piece work or incentive basis. The Company and the Union negotiated to agreement a system of engineered standards which defines the elements of an operation and the level of work product that an average employee with average skill, applying reasonable effort would produce in a day. These standards of production by employee when applied to the base rate determine the employee's earnings per hour. The base rate currently in effect is \$9.20 per hour. The general rule of thumb is that the average employee will work at approximately 130% of the established standard. With a base rate of \$9.20 per hour the average employee will make 130% of that \$9.20 per hour or \$11.96 per hour. Some employees work at a higher percent of standard and some employees work at a lower percent of standard but on average most employees will be in the 130% of standard range.

The current 80 plus cross over employees working under the implemented terms and the current base rate of \$9.20 per hour and even while working in many operations which are new to them, are still averaging \$11.57 per hour.

New Era has never been a party to any age or disability discrimination proceeding. Our record in this area speaks for itself.