



## **Chronology of NLRB Proceedings, Arbitrations and Settlements Involving Freedom of Association Issues at New Era Cap Company, Since 1997**

### **October 1997**

Workers at New Era's Derby, NY plant vote to affiliate with CWA by a vote of 167 to 141.

### **Late 1997 to Early 1998**

The union files unfair labor practice charges (ULPs) with the NLRB concerning actions taken by New Era in the aftermath of the affiliation election (and in one case prior to the election), including: the firing of the union president and vice-president, the firing or suspension of other union officials and activists, and the company's breakage of the lock on a union showcase and destruction of union literature.

These charges are then settled through a variety of mechanisms, prior to any issuance of complaints by the NLRB Regional Director. Cases involving the firing of the union vice-president and a head steward, and the showcase break-in issue, are resolved through mediation under the auspices of the NLRB (the NLRB had planned to issue complaints and offered the company an opportunity to settle). The company agrees to re-instatement with back pay. The case of the fired union president is resolved through a private negotiation between him and the company, resulting in a severance agreement, which includes a confidentiality provision. The Company and the union agree to settlement discussion or arbitration concerning other dismissals and suspensions of union activists; this leads to re-instatement and back pay for workers, with the exception of one worker whose dismissal is upheld.

### **Mid-1998**

The union files ULP charges with the NLRB concerning New Era's actions during the affiliation election at the Buffalo plant (which took place in March of 1998, with workers voting against affiliation with the CWA). The charges concern the company's suspension of one union supporter and allegations of coercion and interference by the company in the union election. The NLRB Regional Director issues complaints on the charges and they are referred for trial by an NLRB judge. The trial takes place in January of 1999 and the judge rules against New Era, finding that: "By suspending Valerie Baldwin because of her union...activity, Respondent [New Era] engaged in unfair labor

practices in violation of Section 8(a)(1) of the Act [the NLRA]...By placing employees under close surveillance, by impliedly threatening to close its business if employees affiliated with the CWA, by implying that it would be futile to choose to affiliate with the CWA and by interfering with internal union matters... the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act..." The company appeals the ruling; a ruling on the appeal is not anticipated until 2002. The judge orders certain remedies but cannot order a new union election because the affiliation election at the Buffalo plant is not under the jurisdiction of the NLRB (because it was an election within an existing union to determine union affiliation, rather than an election to decide whether or not to form a union).

### **Late 1998**

The union initiates grievance arbitration over the company's decision to unilaterally change the piece rate for the employees of the blocking department and remove the "88% rule" for this department (the "88% rule" is a method of calculating piece rates that is beneficial to workers.)

### **January 2000**

The arbitrator issues a decision (dated January 24, 2000) upholding the grievance on the unilateral change in piece rates and ordering the company to reinstate the old piece rates and pay \$20,000 in back wages (the parties are notified of the award on January 27). The arbitrator rules that the company did not have the right to unilaterally alter contractually stipulated pay rates but could change pay rates not stipulated in the contract.

### **February 2000**

The union files ULP charges concerning a range of actions by the company in the immediate aftermath of the announcement of the arbitration award (i.e. the unilateral shut-down of the plant on the grounds of absenteeism; a decision not to place improved "sizing" machinery in the Derby plant; the announcement of the potential removal of entire cutting department from Derby plant; the unilateral removal of the "88% rule" from buttons department, etc.).

A group of workers circulate and ultimately file a petition seeking decertification of the CWA union. A number of workers have since supplied sworn affidavits stating that they were encouraged and/or pressured by New Era managers to initiate this decertification campaign.

### **April 2000**

The NLRB Regional Director issues complaints against New Era concerning the shut-down of the plant and the removal of the 88% rule from the buttons department on the grounds that these were unilateral actions that should have been negotiated with the union; the Regional Director declines to issue complaints on other charges, including the

charge that the above actions constituted retaliation. The complaints issued against New Era are referred for trial. (On August 6, 2001, the charges on which the Regional Director did not issue complaints are “resurrected” by the CWA in a new complaint, based on new affidavits from workers stating that company managers had pressured these workers to circulate a decertification petition against the union in the aftermath of the union’s arbitration victory.)

### **Summer of 2000**

The union and the company agree to settle the NLRB complaint against New Era concerning the removal of the “88% rule” from the buttons department. The company agrees to reinstate the rule and negotiate the issue with the union. The union and the company also agree to arbitration on the shut-down issue, rather than going to trial. This arbitration has not yet been held. The NLRB retains jurisdiction over the ULP case, in order to determine whether any future arbitral order sufficiently remedies the alleged statutory violations by the company. If the future arbitration does not provide such a remedy, the NLRB will proceed with a trial on the ULP charges.

### **October 2000**

A decertification election is held and the workers reject decertification. The workers elect to retain CWA as their union by a vote of 290-78.

### **June of 2001**

The union files ULP charges concerning New Era’s alleged refusal to bargain on mandatory contract issues and the company’s alleged refusal, during contract negotiations, to provide, as legally required, information requested by the union in substantiation of the company’s claims of low productivity at the Derby plant.

### **July 2001**

The union files additional charges alleging that New Era discriminated against the Derby union by assigning production of its new product, the Tyro Cap, to other plants and by laying off 125 Derby workers (in January of 2000). The union also files charges alleging coercion by New Era of striking workers – by, for example, threatening to remove workers compensation benefits from any injured worker participating in union demonstrations.

These various charges are now pending before the NLRB, but are not expected to reach resolution for one to three years.