Auciello Iron Works v. NLRB

Supreme Court of the United States

April 22, 1996, Argued ; June 3, 1996, Decided

No. 95-668.

Reporter
517 U.S. 781 *; 116 S. Ct. 1754 **; 135 L. Ed. 2d 64 ***; 1996 U.S. LEXIS 3578 ****; 64 U.S.L.W. 4387; 131 Lab. Cas. (CCH) P11,573; 152 L.R.R.M. 2385; 96 Cal. Daily Op. Service 3907; 96 Daily Journal DAR 6403; 9 Fla. L. Weekly Fed. S 621

AUCIELLO IRON WORKS, INC., PETITIONER
v. NATIONAL LABOR RELATIONS BOARD

Prior History: [**1]** ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

Disposition: *60 F.3d 24*, affirmed.

LexisNexis® Headnotes

Labor & Employment Law > Collective Bargaining & Labor Relations > Unfair Labor Practices > General Overview

HN1[] **Collective Bargaining & Labor Relations, Unfair Labor Practices**

See *29 U.S.C.S. § 158(a)*.

Labor & Employment Law > Collective Bargaining & Labor Relations > Right to Organize

HN2[] **Collective Bargaining & Labor Relations, Right to Organize**

See *29 U.S.C.S. § 157*.

Evidence > Inferences & Presumptions > Presumptions > Rebuttal of Presumptions

Labor & Employment Law > Collective Bargaining & Labor Relations > General Overview

HN3[] **Presumptions, Rebuttal of Presumptions**

A union usually is entitled to a conclusive presumption of majority status for one year following National Labor Relations Board certification as such a representative. A union is likewise entitled under board precedent to a conclusive presumption of majority status during the term of any collective-bargaining agreement, up to three years.

Labor & Employment Law > ... > Unfair Labor Practices > Union Violations > Union Refusal to Bargain

Labor & Employment Law > Collective Bargaining & Labor Relations > Unfair Labor Practices > General Overview

HN4[] **Union Violations, Union Refusal to Bargain**

At the end of the certification year or upon expiration of the collective-bargaining agreement, the presumption of majority status of a union becomes a rebuttable one. Then, an employer may overcome the presumption (when, for example, defending against an unfair labor practice charge) by showing that, at the time of its refusal to bargain, either the union does not in fact enjoy majority support, or the employer has a good-faith doubt, founded on a sufficient objective basis, of the union's majority support.

Lawyers' Edition Display

Decision

Employer held to commit unfair labor practice by disavowing collective bargaining contract with union because of employer's precontractual, good-faith doubt that union had majority status at time when contract was made.

Summary

After a union election in 1977, the National Labor Relations Board (NLRB) certified a union as the collective bargaining representative of a Massachusetts company's 23 employees. The company and the union negotiated a series of collective bargaining agreements, but when one such agreement expired in 1988, the employees went on strike. After continued negotiations, the company presented the union with a complete contract proposal. The union telegraphed acceptance of the outstanding offer, but on the next day, the company expressed doubt that a majority of the bargaining unit's employees supported the union, and for that reason the company disavowed the collective bargaining agreement and denied any duty to continue negotiating. The company traced its doubt to knowledge acquired before the union had accepted the contract offer, including the facts that (1) 9 employees **[****2]** had crossed the picket line; (2) 13 employees had given the company signed forms indicating their resignation from the Union; and (3) 16 employees had expressed dissatisfaction with the union. The NLRB's general counsel issued an administrative complaint charging the company with violation of 8(a)(1) and 8(a)(5) of the National Labor Relations Act (NLRA) (*29 USCS 158(a)(1)* and *158(a)(5)*), which make it an unfair labor practice for an employer to (1) interfere with, restrain, or coerce employees in the exercise of collective bargaining rights; and (2) refuse to bargain collectively. An administrative law judge concluded that a contract existed between the parties and that the company's withdrawal from the contract violated 8(a)(1) and 8(a)(5); the NLRB, in affirming, (1) treated as irrelevant the company's claim of good-faith doubt about the union's majority status, and (2) ordered the company to reduce to writing, sign, and implement the contract on the union's request (*303 NLRB 562*). However, the United States Court of Appeals for the First Circuit declined enforcement of the order, on the ground that the NLRB had not adequately explained its refusal to consider the company's defense **[****3]** of good-faith doubt (*980 F2d 804*). On remand, the NLRB issued a supplemental opinion to justify its position (*317 NLRB 364*), and the Court of Appeals subsequently enforced the NLRB's order as resting on a reasonable policy choice (*60 F3d 24*).

On certiorari, the United States Supreme Court affirmed. In an opinion by Souter, J., expressing the unanimous view of the court, it was held that (1) it was reasonable for the NLRB to conclude that an employer's good-faith doubt that a union had the employees' majority support at the time that the employer and the union made a collective bargaining contract--where the doubt arises from facts known to the employer before the employer's contract offer was accepted by the union--is inadequate to support an exception to the conclusive presumption of the union's majority status, which presumption arises at the moment that a collective bargaining contract offer has been accepted; (2) it was reasonable for the NLRB to conclude that an employer commits an unfair labor practice, in violation of 8(a)(1) and 8(a)(5), where the employer disavows a collective bargaining

contract with a union because of such precontractual, good-faith doubt; and (3) thus, the **[****4]** NLRB's judgment in the matter was entitled to prevail.

Headnotes

LABOR §25 > refusal to bargain -- union's majority status -- good-faith doubt -- > Headnote:
LEdHN[1A][⬇] [1A]*LEdHN[1B]*[⬇] [1B]*LEdHN[1C]*[⬇] [1C]*LEdHN[1D]*[⬇] [1D]*LEdHN[1E]*[⬇] [1E]*LEdHN[1F]*[⬇] [1F]

It is reasonable for the National Labor Relations Board (NLRB) to conclude that an employer commits an unfair labor practice, in violation of 8(a)(1) and 8(a)(5) of the National Labor Relations Act (*29 USCS 158(a)(1)* and *158(a)(5)*), where (1) the employer disavows a collective bargaining contract with a union because of the employer's good-faith doubt that the union had the employees' majority support at the time that the contract was made, and (2) such doubt arises from facts known to the employer before the employer's contract offer was accepted by the union; a bright-line rule cutting off the employer's opportunity for disavowal at the moment of apparent contract formation--rather than a case-by-case determination of a "reasonable" time for asserting a good-faith doubt--is a reasonable approach, because (1) such an approach generally allows companies an adequate chance to act on their preacceptance doubts before contract formation, (2) the NLRB could reasonably have thought that the alternative approach would encourage bad-faith bargaining, and (3) the right of employees, under *29 USCS 157*, to bargain collectively through representatives of their own choosing and to refrain from doing so does not compel a rejection of the NLRB's position; thus, the NLRB's judgment in the matter is entitled to prevail.

EVIDENCE §211 > LABOR §30 > union -- majority status presumption -- good-faith doubt -- > Headnote:
LEdHN[2A][⬇] [2A]*LEdHN[2B]*[⬇] [2B]

With respect to an employer's good-faith doubt that a union had the employees' majority support at the time that the employer and the union made a collective bargaining contract--where the doubt arises from facts known to the employer before the employer's contract offer had been accepted by the union--it is reasonable for the National Labor Relations Board to conclude that such doubt is inadequate to support an exception to the conclusive presumption of the union's majority status, which presumption arises at the moment that a collective bargaining contract offer has been accepted.

EVIDENCE §970.3 > labor -- contract validity -- > Headnote:
LEdHN[3A][⬇] [3A]*LEdHN[3B]*[⬇] [3B]

With respect to a showing that a collective bargaining contract between a union and an employer is invalid from the beginning because the union in fact lacked majority support of the employees at the time of acceptance, the substantiation required to make such a showing is greater than that required to assert a good-faith doubt as to majority support of the union.

APPEAL §1087.7 > questions not raised below -- certiorari -- > Headnote:
LEdHN[4A][⬇] [4A]*LEdHN[4B]*[⬇] [4B]

On certiorari to review a United States Court of Appeals' judgment--which upheld a National Labor Relations Board (NLRB) ruling that an employer may not disavow a collective bargaining agreement with a union because of a good-faith doubt about the union's majority status at the time the contract

was made, when the doubt arises from facts known to the employer before the employer's contract offer had been accepted by the union--the question whether an employer's decision to repudiate an otherwise valid collective bargaining contract and to disavow the duty to bargain with the union may properly be excused by a claim that the contract is invalid from the beginning because the union in fact lacked majority support of the employees at the time of acceptance is not properly before the United States Supreme Court, and the Supreme Court will decline to address this question, where (1) the employer failed to advance this claim in answer to a complaint by the NLRB's general counsel; (2) the NLRB never considered this question; and (3) the employer sought certiorari review only of the question whether an employer is bound by a union's acceptance in this context when the employer had a reasonable basis for a good-faith doubt.

LABOR §47 > National Labor Relations Act -- > Headnote:
LEdHN[5][] [5]

The object of the National Labor Relations Act (*29 USCS 151 et seq.*) is industrial peace and stability, fostered by collective bargaining agreements providing for the orderly resolution of labor disputes between workers and employees.

EVIDENCE §211 > LABOR §27 > union certification -- majority status presumption -- refusal to bargain -- > Headnote:
LEdHN[6A][] [6A]***LEdHN[6B]***[] [6B]***LEdHN[6C]***[] [6C]

A union usually is entitled to a conclusive presumption of majority status for 1 year following National Labor Relations Board (NLRB) certification as such a representative; a union is likewise entitled to a conclusive presumption--which may be overcome only in unusual circumstances--of majority status during the term of any collective bargaining agreement, up to 3 years; at the end of the certification year or upon expiration of the collective bargaining agreement, the presumption of majority status becomes a rebuttable one, and then an employer may overcome the presumption--when, for example, defending against an unfair labor practice charge--by showing that at the time of the employer's refusal to bargain with the union, either (1) the union did not in fact enjoy majority support, or (2) the employer had a good-faith doubt, founded on a sufficient objective basis, of the union's majority support.

LABOR §48 > NLRB -- judicial deference -- > Headnote:
LEdHN[7][] [7]

The National Labor Relations Board (NLRB) is due considerable judicial deference by virtue of the NLRB's charge to develop national labor policy through interstitial rule making that is rational and consistent with the National Labor Relations Act (*29 USCS 151 et seq.*).

APPEAL §1289 > presumptions -- > Headnote:
LEdHN[8A][] [8A]***LEdHN[8B]***[] [8B]

On certiorari to review a United States Court of Appeals' judgment as to whether an employer may disavow a collective bargaining agreement with a union because of a good-faith doubt about the union's majority status at the time the contract was made--when the doubt arises from facts known to the employer before the employer's contract offer had been accepted by the union--the United States Supreme Court will assume, without deciding, that where an employer with good-faith doubt about the union's majority status withdraws an outstanding

offer to form a contract with the union before the offer is accepted, such a withdrawal could not serve as a basis for the filing of an unfair labor practice complaint.

LABOR §30 > union recognition -- enforceability of contracts -- > Headnote:
LEdHN[9][] [9]

The National Labor Relations Board may, with entire consistency, deny employers the power gained from recognizing a union--even when such power flows from a good-faith but mistaken belief in a newly organized union's majority status--and at the same time deny employers the power to disturb collective bargaining agreements based on a doubt, without more, that the employees' bargaining agent has retained majority status; an employer's good-faith belief with respect to a union's majority status can neither force a union's precipitate recognition nor destroy a recognized union's contracting authority after the fact by intentional delay.

Syllabus

The day after petitioner Auciello Iron Works's outstanding contract offer was accepted by its employees' collective-bargaining representative (Union), Auciello disavowed the agreement because of its good-faith doubt, based on knowledge acquired before the offer's acceptance, that a majority of its employees supported the Union. The National Labor Relations Board ruled, *inter alia*, that Auciello's withdrawal from it was an unfair labor practice in violation of the National Labor Relations Act and ordered that the agreement be reduced to a formal written instrument. The First Circuit enforced the order as reasonable.

Held: The Board reasonably concluded that an employer commits an unfair labor practice when it disavows a collective-bargaining agreement because of a good-faith doubt about a union's majority status at the time the contract was made, when the doubt arises from facts known to the employer before the union accepted its contract offer. Pp. 785-792.

(a) In its efforts to achieve the Act's object of industrial peace and stability fostered by collective-bargaining relationships, see *e. g.*, *Fall River Dyeing & Finishing Corp. v. NLRB, 482 U.S. 27, 38, 96 L. Ed. 2d 22, 107 S. Ct. 2225*, **[****5]** the Board has held that a union is entitled to, *inter alia*, a conclusive presumption of majority status during a collective-bargaining agreement's term, up to three years, see, *e. g.*, *NLRB v. Burns Int'l Security Services, Inc., 406 U.S. 272, 290, n. 12, 32 L. Ed. 2d 61, 92 S. Ct. 1571*. Upon the contract's expiration, the employer may rebut the presumption of majority status by showing that it has a good-faith doubt, founded on a sufficient objective basis, of the union's majority support. *NLRB v. Curtin Matheson Scientific, Inc., 494 U.S. 775, 778, 108 L. Ed. 2d 801, 110 S. Ct. 1542*. Auciello's assertion that an employer may raise the latter defense even after a contract period has apparently begun to run upon a union's acceptance of an outstanding offer is rejected. Pp. 785-787.

(b) The same need for repose that first prompted the Board to adopt the rule presuming a union's majority status during its collective-bargaining agreement's term also led the Board in this case to rule out an exception for the benefit of an employer with doubts arising from facts antedating the contract. The Board's judgment in the matter is entitled to prevail. Auciello's argument for case-by-case determinations **[****6]** of the appropriate time for asserting a good-faith doubt in place of the Board's bright-line rule cutting off the opportunity at the moment of apparent contract formation fails to point up anything unreasonable in the Board's position. Its approach generally allows companies an adequate chance to act on their preacceptance doubts before contract formation, and Auciello's view would encourage bad-faith bargaining by employers. The Board could reasonably conclude that giving employers flexibility in raising their

good-faith doubts would not be worth skewing bargaining relationships by such one-sided leverage, and the fact that any collective-bargaining agreement might be vulnerable to such a postformation challenge would hardly serve the Act's goal of achieving industrial peace by promoting stable collective-bargaining relationships. Moreover, rejection of the Board's position is not compelled by the statutory right of employees to bargain collectively through representatives of their own choosing and to refrain from doing so. The Board is entitled to suspicion when faced with an employer's benevolence as its workers' champion against their certified union, and there is nothing unreasonable **[****7]** in giving a short leash to an employer as vindicator of its employees' organizational freedom. Pp. 787-790.

(c) *Garment Workers' v. NLRB, 366 U.S. 731, 738-739, 6 L. Ed. 2d 762, 81 S. Ct. 1603*, does not compel reversal; its rule concerning recognition agreements is not inconsistent with this decision. The Board reasonably found an employer's precontractual, good-faith doubt inadequate to support an exception to the conclusive presumption arising at the moment a collective-bargaining contract offer has been accepted. Pp. 791-792.

Counsel: John D. O'Reilly III argued the cause and filed a brief for petitioner.

Richard H. Seamon argued the cause for respondent. With him on the brief were Solicitor General Days, Deputy Solicitor General Wallace, Linda Sher, Norton J. Come, and John Emad Arbab. *

Judges: SOUTER, J., delivered the opinion for a unanimous Court.

Opinion by: SOUTER

Opinion

[*70]** **[*782]** **[**1756]** JUSTICE SOUTER delivered the opinion of the Court.

LEdHN[1A][↑] [1A] *LEdHN[2A]*[↑] [2A]The question here is whether an employer may disavow a collective-bargaining agreement **[****8]** because of a good-faith **[*783]** doubt about a union's majority status at the time the contract was made, when the doubt arises from facts known to the employer before its contract offer had been accepted by the union. We hold that the National Labor Relations Board (NLRB or Board) reasonably concluded that an employer challenging an agreement under these circumstances commits an unfair labor practice in violation of §§ 8(a)(1) and (5) of the National Labor Relations Act (NLRA or Act), 49 Stat. 452, 453, as amended, *29 U.S.C. §§ 158(a)(1)* and *(5)*.

I

Petitioner Auciello Iron Works of Hudson, Massachusetts, had 23 production and maintenance employees during the period in question. After a union election in 1977, the NLRB certified Shopmen's Local No. 501, a/w International Association of Bridge, Structural, and Ornamental Iron Workers, AFL-CIO (Union), as the collective-bargaining representative of Auciello's employees. Over the following years, the company and the Union were able to negotiate a series of collective-bargaining agreements, one of which expired on September 25, 1988. Negotiations for a new one were unsuccessful throughout September and October 1988, however, and when Auciello and **[****9]** the Union **[**1757]** had not made a new contract by October 14, 1988, the employees went on strike. Negotiations continued, nonetheless, and, on November 17, 1988, Auciello presented the Union with a complete contract proposal. On November 18, 1988, the picketing stopped, and nine days later, on a Sunday evening, the Union telegraphed its acceptance of the outstanding offer.

* Jonathan Hiatt, Marsha Berzon, David Silberman, and Laurence Gold filed a brief for the American Federation of Labor and Congress of Industrial Organizations as amicus curiae urging affirmance.

The very next day, however, Auciello told the Union that it doubted that a majority of the bargaining unit's employees supported the Union, and for that reason disavowed the collective-bargaining agreement and denied it had any duty to continue negotiating. Auciello traced its doubt to knowledge acquired before the Union accepted the contract offer, including the facts that 9 employees had crossed the picket **[*784]** line, that 13 employees had given it signed forms indicating their resignation from the Union, and that 16 had expressed dissatisfaction with the Union.

LEdHN[3A][↑] [3A]***LEdHN[4A]***[↑] [4A]In January 1989, the Board's General Counsel issued an administrative complaint charging Auciello with violation of §§ 8(a)(1) and (5) of the NLRA. [1] An Administrative Law Judge found that a contract **[***71]** existed between the parties and that Auciello's withdrawal **[****10]** from it violated the Act. *303 N.L.R.B. 562 (1991)*.The Board affirmed the Administrative Law Judge's decision [2]; it treated Auciello's claim of **[*785]** good-faith doubt as irrelevant and ordered Auciello to reduce the collective-bargaining agreement to a formal written instrument. *Ibid.* But when the Board applied to the Court of Appeals for the First Circuit for enforcement of its order, the Court of Appeals declined on the ground that the Board had not adequately explained its refusal to consider Auciello's defense of good-faith doubt about the Union's majority status. *980 F.2d 804 (1992)*. On remand, the Board issued a supplemental opinion to justify its position, *317 N.L.R.B. 364 (1995)*, and the Court of Appeals thereafter enforced the order as resting on a "policy choice [both] . . . reasonable and . . . quite persuasive." *60 F.3d 24, 27 (CA1 1995)*. We granted certiorari, *516 U.S. 1086 (1996)*, and now affirm.

[1758]** II

A

LEdHN[5][↑] [5]***LEdHN[6A]***[↑] [6A]The object

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[1] Section 8(a) of the NLRA provides:

"***HN1***[↑] It shall be an unfair labor practice for an employer --

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in *section 157* of this title;

. . . .

"(5) to refuse to bargain collectively with the representatives **[****11]** of his employees, subject to the provisions of *section 159(a)* of this title." *29 U.S.C. § 158(a)*.

Section 7 of the Act provides:

"***HN2***[↑] Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in *section 158(a)(3)* of this title." *29 U.S.C. § 157*.

[2] The Board has developed a number of criteria to assess whether a collective-bargaining contract has been formed, see, *e. g., Appalachian Shale Products Co., 121 N.L.R.B. 1160 (1958)*, which may not always coincide with those that would govern in the general area of contract law, see *Ben Franklin Nat. Bank, 278 N.L.R.B. 986, 993-994 (1986)*. We accept for purposes of deciding this case the Board's conclusion that a contract was formed here within the meaning of the Act. Our review of this case **[****12]** is thus limited to the narrow question whether an employer may withdraw from a collective-bargaining contract once formed when it possessed enough evidence to assert a good-faith doubt about the union's majority status at the time of formation.

LEdHN[3B][↑] [3B] ***LEdHN[4B]***[↑] [4B]Auciello has suggested that the contract itself was invalid *ab initio* because the Union in fact lacked majority support at the time of acceptance. Because the substantiation required to make this showing is greater than that required to assert a good-faith doubt, see *NLRB v. Curtin Matheson Scientific, Inc., 494 U.S. 775, 788, n. 8, 108 L. Ed. 2d 801, 110 S. Ct. 1542 (1990)*, the Board has not taken a position on whether such a claim could excuse an employer's decision to repudiate an otherwise valid contract and disavow its duty to bargain with the union. Brief for Respondent 26, n. 7. Auciello concedes that it failed to advance this claim in its answer to the General Counsel's complaint, Tr. of Oral Arg. 6, 28, the Board never considered this question, and Auciello sought certiorari review only of the question whether an employer is bound by a union's acceptance in this context when "the Employer had a reasonable basis for a good **[****13]** faith doubt." Pet. for Cert. i. Accordingly, we conclude that this question is not properly before us and decline to address it.

of the National Labor Relations Act is industrial peace and stability, fostered by collective-bargaining agreements providing for the orderly resolution of labor disputes between workers and employees. See 29 U.S.C. § 141(b); *Fall River Dyeing & Finishing Corp. v. NLRB, 482 U.S. 27, 38, 96 L. Ed. 2d 22, 107 S. Ct. 2225 (1987)* (*Fall River Dyeing*). To such ends, the Board has adopted various presumptions about the existence of majority support for a union within a bargaining unit, the **[*786]** precondition for service as its exclusive representative. Cf. *id., at 37-39*. The first two are conclusive presumptions. ***HN3***[↑] A union "usually is entitled to a conclusive presumption of majority status for one year following" Board certification **[***72]** as such a representative. *Id., at 37*. A union is likewise entitled under Board precedent to a conclusive [3] presumption of majority status during the term of any collective-bargaining agreement, up to three years. See *NLRB v. Burns Int'l Security Services, Inc., 406 U.S. 272, 290, n. 12, 32 L. Ed. 2d 61, 92 S. Ct. 1571 (1972)*; **[****14]** see generally R. Gorman, Basic Text on Labor Law: Unionization and Collective Bargaining § 9, pp. 54-59 (1976). "These presumptions are based not so much on an absolute certainty that the union's majority status will not erode," *Fall River Dyeing, 482 U.S. at 38*, as on the need to achieve "stability in collective-bargaining relationships." *Ibid.* (internal quotation marks omitted). They address our fickle nature by "enabling a union to concentrate on obtaining and fairly administering a collective-bargaining agreement" without worrying about the immediate risk of decertification and by "removing any temptation on the part of the employer to avoid good-faith bargaining" in an effort to undermine union support. *Ibid.*

LEdHN[6B][↑] [6B]

LEdHN[6C][↑] [6C]There is a third presumption, though not a conclusive one. ***HN4***[↑] At the end of the certification year or upon **[****15]** expiration of the collective-bargaining agreement, the presumption of majority status becomes a rebuttable one. See *NLRB v. Curtin Matheson Scientific, Inc., 494 U.S. 775, 778, 108 L. Ed. 2d 801, 110 S. Ct. 1542 (1990)*; see n. 6, *infra*. Then, an employer may overcome the presumption (when, for example, defending against an unfair labor practice charge) "by showing that, at the time of [its] refusal to bargain, either (1) the union did not *in fact* enjoy majority **[*787]** support, or (2) the employer had a 'good-faith' doubt, founded on a sufficient objective basis, of the union's majority support." *Curtin Matheson, supra, at 778* (emphasis in original). [4] Auciello asks this Court to hold that it may raise the latter defense even after a collective-bargaining contract period has apparently begun to run upon a union's acceptance of an employer's outstanding offer.

B

The same need for repose that first prompted the Board to adopt the rule presuming the union's majority status during the term of a collective-bargaining agreement also led the Board to rule out an exception for the benefit of an employer with doubts arising from facts antedating the contract. The Board said that such an exception would allow

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[3] This presumption may be overcome only in unusual circumstances, see, *e. g.*, *Brooks v. NLRB, 348 U.S. 96, 98-99, 99 L. Ed. 125, 75 S. Ct. 176 (1954)* (union dissolution, *inter alia*); 3 T. Kheel, Labor Law § 13A.04[5], p. 13A-26 (1995); R. Gorman, Basic Text on Labor Law: Unionization and Collective Bargaining § 9, pp. 56-57 (1976), none of which is present here.

[4] Auciello maintains that *Curtin Matheson* requires reversal here since it appears that the employer in that case asserted its good-faith doubt after the union's acceptance of the contract offer. Brief for Petitioner 19-21. But the case is not authority on the issue of timing. The question presented was whether the Board "in evaluating **[****16]** an employer's claim that it had a reasonable basis for doubting a union's majority support, *must* presume that striker replacements oppose the union." *Curtin Matheson, 494 U.S. at 777* (emphasis in original). We did not discuss or consider whether the timing of the employer's assertion should affect the outcome of that case, and the decision does not answer that question.

an **[***73]** employer to control the **[**1759]** timing of its assertion of goodfaith doubt and thus to "'sit' on that doubt and . . . raise it after the offer is accepted." 317 N.L.R.B. at 370. The Board thought that the risks associated with giving employers such "unilatera[l] control [over] a vital part of the collective-bargaining process," *ibid.*, would undermine the stability of the collective-bargaining relationship, *id.*, at 374, and thus outweigh any benefit that might in theory follow from **[****17]** vindicating a doubt that ultimately proved to be sound.

LEdHN[1B][⬆] [1B]*LEdHN[7]*[⬆] [7]The Board's judgment in the matter is entitled to prevail. To affirm its rule of decision in this case, indeed, there is no need to invoke the full measure of the "considerable deference" **[*788]** that the Board is due, *NLRB v. Curtin Matheson Scientific, Inc., supra, at 786*, by virtue of its charge to develop national labor policy, *Beth Israel Hospital v. NLRB, 437 U.S. 483, 500-501, 57 L. Ed. 2d 370, 98 S. Ct. 2463 (1978)*, through interstitial rulemaking that is "rational and consistent with the Act," *Curtin Matheson, supra, at 787*.

LEdHN[1C][⬆] [1C]It might be tempting to think that Auciello's doubt was expressed so soon after the apparent contract formation that little would be lost by vindicating that doubt and wiping the contractual slate clean, if in fact the company can make a convincing case for the doubt it claims. On this view, the loss of repose would be slight. But if doubts about the union's majority status would justify repudiating a contract one day after its ostensible formation, why should the same doubt not serve as well a year into the contract's term? Auciello implicitly agrees on the need to provide some cutoff, but **[****18]** argues that the limit should be expressed as a "reasonable time" to repudiate the contract. Brief for Petitioner 26-32. That is, it seeks case-by-case determinations of the appropriate time for asserting a good-faith doubt in place of the Board's bright-line rule cutting off the opportunity at the moment of apparent contract formation. Auciello's desire is natural, but its argument fails to point up anything unreasonable in the Board's position.

LEdHN[1D][⬆] [1D]*LEdHN[8A]*[⬆] [8A]The Board's approach generally allows companies an adequate chance to act on their preacceptance doubts before contract formation, just as Auciello could have acted effectively under the Board's rule in this case. Auciello knew that the picket line had been crossed and that a number of its employees had expressed dissatisfaction with the Union at least nine days before the contract's acceptance, and all of the resignation forms Auciello received were dated at least five days before the acceptance date. During the week preceding the apparent formation of the contract, Auciello had at least three alternatives to doing nothing. It could have withdrawn the outstanding offer and then, like its employees, **[*789]** petitioned for a representation **[****19]** election. See *29 U.S.C. § 159(c)(1)(A)(ii)* (employee petitions); *§ 159(c)(1)(B)* (employer petitions); *NLRB v. Financial Institution Employees, 475 U.S. 192, 198, 89 L. Ed. 2d 151, 106 S. Ct. 1007 (1986)*. [5] "If the Board determines, after investigation **[***74]** and hearing, that a question of representation exists, it directs an election by secret ballot and certifies the result." *Ibid.* Following withdrawal, it could also have refused to bargain further on the basis of its good-faith doubt, leaving it to the Union to charge an unfair labor practice, against which it could defend on the basis of the doubt. Cf. *Curtin Matheson, 494 U.S. at 778*. And, of course, it could have withdrawn its offer to allow it time to investigate while it continued to fulfil its duty to bargain in good faith with the Union. The company thus had

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[5] We assume, without deciding, that the withdrawal of an offer under these circumstances could not serve as a basis for the filing of an unfair labor practice complaint, which might trigger the "blocking charge" rule that the Solicitor General concedes would be implicated by an employer's **[****20]** unlawful withdrawal of recognition. See Brief for Respondent 31, n. 10.

generous opportunities to avoid the presumption before the moment of acceptance.

LEdHN[8B][↑] [8B]

LEdHN[1E][↑] [1E] There may, to be sure, be cases where the opportunity requires prompt action, [6] but labor negotiators are not the least nimble, and **[**1760]** the Board could reasonably have thought the price of making more time for the sluggish was too high, since it would encourage bad-faith bargaining. As Auciello would have it, any employer with genuine doubt about a union's hold on its employees would be invited to go right on bargaining, with the prospect of locking in a favorable contract that it could, if it wished, then challenge. Here, for example, if Auciello had acted before the Union's telegram by withdrawing its offer and declining further negotiation based on its doubt (or petitioning for decertification), flames would have been fanned, and if it ultimately had been obliged **[*790]** to bargain further, a favorable agreement would have been more difficult to obtain. But by saving its challenge until after a contract had apparently been formed, it could not end up with a worse agreement than the one it had. The Board could reasonably say that giving employers some flexibility in raising their scruples would not be worth skewing **[****21]** bargaining relationships by such one-sided leverage, and the fact that any collective-bargaining agreement might be vulnerable to such a postformation challenge would hardly serve the Act's goal of achieving industrial peace by promoting stable collective-bargaining relationships. Cf. *Fall River Dyeing, 482 U.S. at 38-39*; *Franks Bros. Co. v. NLRB, 321 U.S. 702, 705, 88 L. Ed. 1020, 64 S. Ct. 817 (1944)*.

Nor do we find anything compelling in Auciello's contention that its employees' statutory right "to bargain collectively through representatives of their own choosing" and to refrain from doing so, *29 U.S.C. § 157*, compels us to reject the Board's position. Although we take seriously the Act's command to respect "the free choice of employees" as well as to "promot[e] stability in collective-bargaining relationships," *Fall River Dyeing, supra, at 38* (internal quotation marks omitted), we have rejected the position that employers **[****22]** may refuse to bargain whenever presented with evidence that their employees no longer support their certified union. "To allow employers to rely on employees' **[***75]** rights in refusing to bargain with the formally designated union is not conducive to [industrial peace], it is inimical to it." *Brooks v. NLRB, 348 U.S. 96, 103, 99 L. Ed. 125, 75 S. Ct. 176 (1954)*. The Board is accordingly entitled to suspicion when faced with an employer's benevolence as its workers' champion against their certified union, which is subject to a decertification petition from the workers if they want to file one. There is nothing unreasonable in giving a short leash to the employer as vindicator of its employees' organizational freedom.

[*791] C

LEdHN[9][↑] [9]Merits aside, Auciello also claims that the precedent of *Garment Workers' v. NLRB, 366 U.S. 731, 6 L. Ed. 2d 762, 81 S. Ct. 1603 (1961)*, compels reversal, but it does not. In *Garment Workers*, we held that a bona fide but mistaken belief in a union's majority status cannot support an employer's agreement purporting to recognize a union newly organized but as yet uncertified. We upheld the Board's rule out of concern that an employer and a union could make a deal giving the **[****23]** union "'a marked advantage over any other [union] in securing the adherence of employees,'" *id., at 738* (quoting *NLRB v. Pennsylvania Greyhound Lines, Inc., 303 U.S. 261, 267, 82 L. Ed. 831, 58 S. Ct. 571 (1938)*), thereby distorting the process by which employees elect the bargaining agent of their choice. *366 U.S. at 738-739*.Here, in contrast, the Union continued to enjoy a rebuttable presumption of majority support, and the bargaining unit employees had

[6] We note that in the unusual circumstance in which evidence leading the employer to harbor such a doubt arises at the same time the union accepts the offer, the Board has agreed to examine such occurrences on a case-by-case basis. *317 N.L.R.B. 364, 374-375 (1995)*.

ample opportunity to initiate decertification of the Union but apparently chose not to do so. With entire consistency, the Board may deny employers the power gained from recognizing a union, even when it flows from a good-faith but mistaken belief in a newly organized union's majority status, and at the same time deny them the power to disturb collective-bargaining agreements based on a doubt (without more) that its employees' bargaining agent has retained majority status. Good-faith belief can neither force a union's precipitate recognition nor destroy a recognized union's contracting authority after the **[**1761]** fact by intentional delay. There is, indeed, a symmetry in the two positions.

* * *

LEdHN[1F][] [1F] *LEdHN[2B]*[] [2B]We hold that the Board reasonably **[****24]** found an employer's precontractual, good-faith doubt inadequate to support an exception to the conclusive presumption arising at the moment a collective-bargaining contract offer has been accepted. **[*792]** We accordingly affirm the judgment of the Court of Appeals for the First Circuit.

It is so ordered.

References

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Annotation References:

Supreme Court's views as to proper remedies for unfair **[****25]** labor practices under National Labor Relations Act (*29 USCS 151 et seq.*). *74 L Ed 2d 1112*.

Supreme Court's view as to weight and effect to be given, on subsequent judicial construction, to prior administrative construction of statute. *39 L Ed 2d 942*.

Rights of collective action by employees as declared in 7 of National Labor Relations Act (*29 USCS 157*). *6 ALR2d 416*.

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