



Raytheon Network Centric  
Systems, 365 NLRB No. 161  
(December 15, 2017)

Unilateral Changes During Contract Hiatus  
Period

# Raytheon Network Centric Systems, 365 NLRB No. 161 (2017)

- In Raytheon Network Centric Systems, 365 NLRB No. 161, (December 15, 2017) the Board considered the question of whether an Employer violated Section 8(a)(5) of the Act following the expiration of a collective bargaining agreement (CBA) when it unilaterally modified employee medical benefits and related costs, consistent with what it had done in the past.

# Raytheon Network Centric Systems, 365 NLRB No. 161 (2017)

## Background

The Charging Party Union represented a unit of about 35 production and maintenance employees employed by Raytheon at its Fort Wayne, Indiana facility. The Employer and the Union had been parties to a CBA for over 20 years. The most recent CBA expired in April 2012.

In 1999, the Employer implemented a comprehensive nationwide “cafeteria style” benefits plan called the Raytheon Plan which included healthcare coverage with various options and an investment plan. Initially this plan was available to salaried and non union employees at the Ft. Wayne facility.

# Raytheon Network Centric Systems, 365 NLRB No. 161 (2017)

- The terms of the Plan allowed the Employer to alter costs and benefits for covered employees.
- In 2000, the Union and the Employer agreed to make this plan available to unit employees effective January 2001. The parties agreed that unit employees contributions would not exceed the rates paid by salaried employees at the facility, that the Employer would pay the majority of the premiums for medical coverage and that the employees would be responsible for the balance.

# Raytheon Network Centric Systems, 365 NLRB No. 161 (2017)

- The CBAs entered into between the parties incorporated the Plan's documents in which the Employer reserved the absolute right to amend the plan and any and all benefit programs from time to time including the right to reduce benefits. The Employer had the right to alter the cost incurred by and/or benefits received by bargaining unit members in the Plan.
- Each year, the Employer mailed employees a document entitled "Your Raytheon Benefits" to participating employees in which any upcoming changes and modifications to benefits, premiums, deductibles and co-payments that would be effective the beginning of the year were set forth.
- Each year the Employer held an open enrollment period in the Plan.

# Raytheon Network Centric Systems, 365 NLRB No. 161 (2017)

- From 2001 through 2012 there were a number of changes made to the Plan and the Union did not object to them nor did it seek bargaining over those changes.
- From 2001 through 2012, there had not been a hiatus period between the CBAs that overlapped with the open enrollment period.
- In 2012, the Union informed the Employer that it wanted to open negotiations and schedule bargaining sessions for a successor CBA.
- The Union submitted proposals to change the contract provision giving the Employer the right to make annual changes to the unit employees' health insurance benefits.

# Raytheon Network Centric Systems, 365 NLRB No. 161 (2017)

- The parties did not reach agreement on a new contract nor did they reach impasse.
- Although the Union asked the Employer to exclude unit employees from the open enrollment period, the Employer rejected this request based on its belief that it was required to include unit employees in the open enrollment period under the terms of the expired CBA.
- The Employer announced changes to the Plan in its Your Raytheon Benefits document sent to all employees, including unit employees and, over the Union's objection, implemented several changes that modified the Plan.

# Raytheon Network Centric Systems, 365 NLRB No. 161 (2017)

- The Union filed an unfair labor practice charge and the General Counsel issued a Complaint alleging that the Employer's announcement and implementation of the changes to the Plan violated Section 8(a)(5) of the Act.
- The ALJ found, applying the Board's decision in E.I. DuPont de Nemours, 364 NLRB, No. 113 (2016) (DuPont), that the Employer's modification to the Plan constituted a change and not the continuation of a preexisting past practice. The ALJ concluded that the Employer's announcing and implementing changes to the benefits plan violated Section 8(a)(5) of the Act. The ALJ rejected the Employer's defense that it had lawfully continued the *status quo* since it had made such modifications every year since 2001.



# Raytheon Network Centric Systems, 365 NLRB No. 161 (2017)

## The Board's Decision

- A majority of the Board (Miscimarra, Kaplan & Emanuel) overruled the Board's decisions in DuPont, Beverly Health & Rehabilitation Services, 335 NLRB 635 (2001) and Register Guard, 339 NLRB 353 (2003).
- The majority found that the DuPont decision was fundamentally flawed, inconsistent with Section 8(a)(5), “distorts the long-term understood, commonsense understanding of what constitutes a ‘change’ and contradicts well established Board and court precedent.”

# Raytheon Network Centric Systems, 365 NLRB No. 161(2017)

- The Board held that regardless of the circumstances under which a past practice developed—whether or not the past practice developed under a CBA containing a management's rights clause authorizing unilateral action—an employer's past practice constitutes a term and condition of employment that permits the employer to take action unilaterally that do not materially vary in kind or degree from what has been customary in the past.
- The Board emphasized that its holding has no effect on the duty of employers under Section 8(d) and 8(a)(5) of the Act to bargain upon request over any and all mandatory subjects of bargaining, unless an exception to that duty applies.

# Raytheon Network Centric Systems, 365 NLRB No. 161 (2017)

- The Board further held that it would apply its new standard retroactively and concluded that the Employer's changes to the Plan did not materially vary in kind or degree from the changes made in past years, were lawfully implemented consistent with its longstanding practice, maintained the status quo, and that because the changes were lawfully implemented, the Employer's announcement of the changes were also lawful.