United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

SAM DATE: April 1, 2005

TO : Gerald Kobell, Regional Director
Region 6

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Elliott Turbomachinery Co.
and F.S.-Elliott Company, LLC
Case 6-CA-34240

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This case was submitted for advice as to: (1) whether Elliott and F.S.-Elliott are joint employers of the Elliott employees provided to F.S.-Elliott by a lease agreement; and (2) if so, whether Elliott/F.S.-Elliott was obligated to recognize the Union as the representative of both the employees who are solely employed by Elliott and the employees who are jointly employed by Elliott/F.S.-Elliott.

We conclude that Elliott and F.S.-Elliott constitute a joint employer of the employees leased to F.S.-Elliott. Under the Board's recent decision in Oakwood Care Center,[1] the unit in which the Union is seeking bargaining with both entities in the instant case -- a unit combining solely employed employees and jointly employed employees -- constitutes a multiemployer unit, which can be appropriate only with the parties' consent. We conclude that such consent is lacking and that the Section 8(a)(5) charge should be dismissed, absent withdrawal.

FACTS

The United Steelworkers of America, AFL-CIO, CLC (the Union) and Elliott have been parties to a series of collective-bargaining agreements, the most recent of which was effective by its terms from June 16, 2001, through June 11, 2004. The parties are currently working under a day-to-day extension of the contract as they bargain for a successor agreement.

One of Elliott's former divisions, the "PAP division," manufactures plant air packages that supply air for industrial use. Approximately 50 of the bargaining unit

[1] 343 NLRB No. 76 (November 19, 2004).

employees work in this manufacturing area. In October 2003, a company under ownership unrelated to Elliott purchased that division and began to operate it under the name F.S.-Elliott.[2] F.S.-Elliott purchased assets including all related equipment necessary to manufacture the product, and leased the facility from Elliott. F.S.-Elliott was formed solely for this purpose and operates no other facilities. The employees working in the PAP division remained employed by Elliott and continued working under a Leased Employee Agreement (LEA) between Elliott and F.S.-Elliott.

The LEA provides that the terms and conditions of employment of the Elliott employees working in the PAP division[3] are governed by the collective-bargaining agreement between Elliott and the Union. Under the LEA, Elliott remains responsible for all hiring, firing, discipline, and grievance processing.[4] The LEA provides that in exchange for the labor, F.S.-Elliott will reimburse Elliott for the direct wages, salaries, and benefits paid by Elliott as governed by the current collective-bargaining agreement. The LEA also allows for changes to the reimbursement fee in the event of changes in any future collective-bargaining agreement. The agreement also states that "Elliott has no authority to, nor shall it, bind or commit [F.S.-Elliott] to any union, association or group of employees."

The employees working in the PAP division are supervised by F.S.-Elliott management employees, most of whom are former Elliott managers who were hired by F.S.-Elliott. While the employees were told that Elliott Human Resources Manager Dan Wirth is their direct supervisor, Wirth visits the PAP division only sporadically. The employees are actually supervised by and receive their daily work assignments from F.S.-Elliott supervisors.

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[2] F.S.-Elliott was created by an entity known as Fu Sheng to operate the PAP line. The PAP line was just one part of Elliott's operation. It is undisputed that this was an arm's length transaction.

[3] For convenience, this memorandum uses "PAP division" to describe this area even though it is no longer a part of Elliott.

[4] Before F.S.-Elliott took over the PAP division, grievances were filed directly with the first-line supervisor. Grievances are now all directed to Elliott's human resources manager.

The F.S.-Elliott supervisors make work assignments based on a list generated by F.S.-Elliott reflecting the priority of jobs that need to be completed. Elliott maintains attendance records for payroll purposes. However, if PAP employees need to take a day off, they contact F.S.-Elliott supervisors. When a temporary vacancy occurs due to a vacation or "call-off," F.S.-Elliott supervisors assign other employees to perform work that needs to be done. While the terms of the bargaining agreement between Elliott and the Union govern the assignment of overtime,[5] the F.S.-Elliott supervisors determine when overtime is necessary and make the actual overtime assignments.

In addition to exercising day-to-day control by directing what work is to be done and when employees will take breaks or work overtime, F.S.-Elliott also determines the number of employees it would like to lease on a monthly basis. F.S.-Elliott also has exercised control over which employees it would like to lease from Elliott. For example, one employee working in the PAP division was informed by an Elliott manager in November 2004 that he would receive a three-day suspension for work-related problems. After Union intervention, the employee was given an opportunity to take a welding test and be re-certified. Despite having passed the test, the employee was not allowed to return to his position in the PAP division but rather was reassigned to work directly for Elliott in the pipe shop. When the Union questioned this decision, an Elliott manager stated that someone from F.S.-Elliott's management did not want the employee back at F.S.-Elliott. F.S.-Elliott thus further disciplined this employee by barring his return to the PAP division.

The Union is aware of only one other employee who has been disciplined since F.S.-Elliott took over. The employee was frequently late for work and was verbally warned about the problem by Elliott's human resources manager. The Union asserts that F.S.-Elliott management was seen downloading a list of the dates on which this employee had been late to work and that F.S.-Elliott effectively recommended that the employee be disciplined.

According to the Union, another example of F.S.-Elliott's control over leased employee assignments involved a forklift position that opened up at F.S.-Elliott.

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[5] The collective-bargaining agreement details the conditions under which overtime rates shall be paid (Section IV, B, paras. 46-62), and states that employees are expected to work overtime "as required by production and maintenance needs" (para. 58).

Bargaining unit employees, whether working at Elliott or F.S.-Elliott, are normally moved into open positions in order of seniority. In this particular instance, however, the position was not awarded to the most senior employee in line for the position. When the Union questioned Elliott's management about this, Elliott stated that the employee who was not given the job was not wanted at the PAP division.[6]

On July 9, 2004, the Union formally requested that Elliott and F.S.-Elliott, as a joint employer, recognize the Union as the exclusive collective-bargaining representative of the Elliott employees leased to F.S.-Elliott. According to the Region, the Union is specifically not seeking a separate bargaining unit of the jointly-employed employees, but rather is seeking to have F.S.-Elliott join Elliott, during negotiations for a successor contract to cover all employees, in order to bargain over the terms and conditions of employment that F.S.-Elliott controls. In response, both Elliott and F.S.-Elliott denied that they are a joint employer. On August 9, 2004, the Union filed the instant Section 8(a)(5) charge against Elliott and F.S.-Elliott as a joint employer.

Elliott's position. Elliott contends that it is the sole employer of the leased employees, and denies that it is a joint employer with F.S.-Elliott. Elliott points out that it remains willing to bargain over the terms and conditions of employment of *all* bargaining unit employees, including those leased to F.S.-Elliott, and thus that there is no reason for F.S.-Elliott to become involved in the negotiations. It argues that the employees working in the PAP division are merely leased to F.S.-Elliott, and that they remain employees of Elliott covered by the collective-bargaining agreement between Elliott and the Union. The leased employees continue to enjoy all of the contract's rights and benefits, including bumping rights[7] and access to the grievance procedure.

Elliott claims that it is solely responsible for the hiring, firing, and discipline of the leased employees. In accordance with the terms of the LEA, F.S.-Elliott

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[6] We recognize that this Elliott statement is hearsay proof against F.S.-Elliott. However, as noted infra, Elliott does not deny that F.S.-Elliott did not want the employee but only states that Elliott alone made the decision to not refer him.

[7] The leased employees retain seniority rights to bid on bargaining unit jobs within both the PAP division and Elliott.

periodically provides Elliott with information as to how many employees it will need and in what classification, and Elliott decides which employees to provide. Elliott admits that F.S.-Elliott supervisors engage in scheduling and day-to-day work assignments, but contends that this level of involvement with employee matters is insufficient to make F.S.-Elliott a joint employer.

With respect to the employee disciplined by Elliott and then reassigned to a job at Elliott, Elliott admits that because of welding mistakes, F.S.-Elliott advised Elliot that it no longer wished to lease his services. Elliott argues that this does not establish joint employer status, noting that the employee was not discharged but was simply assigned to an Elliott job. As for the most senior employee who was not promoted to a position at F.S.-Elliott allegedly because he was not wanted in the PAP division, Elliott contends that it alone made the decision not to lease that employee to F.S.-Elliott.[8]

F.S.-Elliott's position. F.S.-Elliott also denies that it is a joint employer. F.S.-Elliot notes that Elliott pays the leased employees their wages and benefits, which are set by the terms of the agreement in effect between Elliott and the Union, and also provides these employees with workers' compensation insurance. F.S.-Elliott denies any role in the hiring, firing, or discipline of the leased employees, or in the negotiations for a successor agreement. F.S.-Elliott asserts that the leased employees are an experienced, skilled workforce, and that their supervision is minimal and routine, typically involving only scheduling and work assignments.

As for the employee disciplined by Elliott and then reassigned to a job at Elliott, F.S.-Elliott admits that it advised Elliott that it no longer wished to lease his services, but claims that it played no part in any discipline decisions Elliott may have made. As for the senior employee who was not promoted to an opening at F.S.-Elliott, F.S.-Elliott denies any involvement in the decision, and specifically denies that it informed Elliott that the employee was not wanted in the PAP division.

The Union's position. The Union argues that F.S.-Elliott is a joint employer because it exclusively

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[8] Elliott states that two identical positions opened up, one at F.S.-Elliott and one at Elliott, and that it placed the employee in question at the position at Elliott because his involvement with the Union frequently required him to be there to conduct Union business.

supervises and directs the leased employees. The Union asserts that F.S.-Elliott's supervision is not "routine" because its supervisors give day-to-day assignments to employees and also determine the priority of their work. For example, F.S.-Elliott alone assigns maintenance tasks to the PAP division maintenance employees. In addition, the Union asserts that F.S.-Elliott on two occasions participated in the disciplining of a leased employee. Finally, the Union argues that the Oakwood requirement of voluntary consent to multi-employer bargaining is satisfied here because both employers voluntarily signed the LEA which requires F.S.-Elliott to observe the terms of the Elliott-Union bargaining agreement. Since F.S.-Elliott via the LEA voluntarily agreed to have Elliott bargain for the terms and conditions of the jointly employed employees, the Union argues that both F.S.-Elliott and Elliott in effect consented to multi-employer bargaining.

ACTION

We agree with the Region that Elliott and F.S.-Elliott constitute a joint employer of the employees leased to F.S.-Elliott. However, under the Board's recent decision in Oakwood Care Center, the unit that the Union is seeking in the instant case -- a unit combining solely employed employees and jointly employed employees -- constitutes a multiemployer unit, which can be appropriate only with the parties' consent. We conclude that "clear and unequivocal" consent is lacking, and therefore the Section 8(a)(5) charge should be dismissed.

1. Elliott and F.S.-Elliott are Joint Employers

Joint employer status exists when two separate entities share or codetermine matters governing essential terms and conditions of employment.[9] A joint employer must meaningfully affect matters relating to employment, such as hiring, firing, discipline, supervision, and direction.[10] The Board determines joint employer status based upon the totality of circumstances;[11] shared control of employees'

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[9] NLRB v. Browning-Ferris Industries, 691 F.2d 1117, 1123 (3d Cir. 1982).

[10] See, e.g., D&F Industries, 339 NLRB 618, 640 (2003); Heileman Brewing Co., 290 NLRB 991, 999 (1988), enfd. 879 F.2d 1526 (7th Cir. 1989).

[11] Cabot Corp., 223 NLRB 1388, 1388 (1976), enfd. sub. nom. Chemical Workers Local 483 v. NLRB, 561 F.2d 253 (D.C. Cir. 1977).

labor relations is sufficient to show that a joint employer relationship exists.[12]

Criteria used to determine joint employer status, which is typically at issue when an entity uses or supplies employees of a separate entity, include: control over means and methods of doing work,[13] including provision of equipment;[14] control over assignment, direction, and supervision of work;[15] absence of supervision by a nominal

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[12] Sun-Maid Growers, 239 NLRB 346, 350-351 (1978), enfd. 618 F.2d 56 (9th Cir. 1980) ("[t]he fact that Respondent may not have exercised the full panoply of powers over the [employees] that an employer can exercise does not, of itself, serve to render it any the less a joint employer . . . . So long as Respondent possessed 'an area of effective control over labor relations,'" it was an employer) (citation omitted). See also Floyd Epperson, 202 NLRB 23, 23 (1973), enfd. 491 F.2d 1390 (6th Cir. 1974) (joint employer where supplier hires and sets wage rates, but where user establishes drivers' schedules, changes assignments, generally supervises, and indirectly affects discipline and to some extent wages).

[13] The Painting Co., 330 NLRB 1000, 1006-1007 (2000), enfd. 298 F.3d 492 (6th Cir. 2002) (joint employer where user employer told painters what part of building to paint, which surface to paint, and which employees to work with); Sun-Maid Growers, 239 NLRB at 351 (though supplier possessed power to hire, fire, discipline, set wage rates, and promote, user controlled employees' performance by originating their schedules, telling them what needed to be done, instructing them as to the work to be done, determining priority of assignments, and deciding when they would perform overtime work).

[14] The Painting Co., 330 NLRB at 1007 (user-contractor provided painters with all needed tools and equipment); NLRB v. Browning-Ferris Industries, 691 F.2d at 1125 (user employer provided the drivers with the same uniforms it provided its own employees).

[15] Capitol EMI Music, Inc., 311 NLRB 997, 998 (1993), enfd. 23 F.2d 399 (4th Cir. 1994) (joint employer where user assigned work, directly supervised employees, and took day-to-day corrective action); Quantum Resources Corp., 305 NLRB 759, 760-761 (1991) (officials from both companies interchangeably supervised employees, and user's supervisors directed tasks, determined much of the scheduling, and prioritized work); NLRB v. Browning-Ferris, 691 F.2d at 1124-1125 (user established work hours and shift times). Compare TLI, Inc., 271 NLRB 798, 799 (1984), enfd. 772 F.2d

supervisor;[16] direct or indirect control over hiring, firing, and discipline;[17] and control over wages, overtime, or other compensation/benefits.[18] Extensive supervision and

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894 (3d. Cir. 1985)(Table) (user not joint employer where supervision exercised was limited and routine and where the foreman told drivers which deliveries to make, but the drivers selected assignments based on seniority); Laerco Transportation, 269 NLRB 324, 325-326 (1984) (user exercised insufficient direction and supervision over employees where it gave initial directions to the drivers regarding the routes to be followed, after which drivers merely followed the predetermined routes). But see D&F Industries, 339 NLRB at 640 (where user determined the number of vacancies, established rates of pay, provided the funds, and decided overtime, user was joint employer even though work of the temporary employees was of a routine and repetitive nature and user's supervision was minimal).

[16] Sun-Maid Growers, 239 NLRB at 351, citing Syufy Enterprises, 220 NLRB at 740 (absence of supervision by a supplier and performance of supervisory functions directly by owner are sufficient to establish a joint employer relationship); The Painting Co., 330 NLRB at 1007 (subcontractor-supplier provided neither supervisor nor lead employee to direct the work).

[17] Heileman Brewing Co., 290 NLRB at 1000 (user initiated disciplinary action and determined what action was warranted); NLRB v. Browning-Ferris, 691 F.2d at 1124-1125 (user shared right to hire and fire, and the power to approve drivers); Capitol EMI Music, 311 NLRB at 998, 1017 (user effectively disciplined, in that its supervisors gave day-to-day instructions to the workers and, as needed, took corrective actions and could effectively fire them by simply requesting that the supplier remove them from its operations). Compare TLI, Inc., 271 NLRB at 799 (user neither hires, fires, nor disciplines; user supplies primary employer with incident report for it to investigate); Laerco Transportation, 269 NLRB at 325 (discipline and grievances directed to supplier employer).

[18] D&F Industries, 339 NLRB at 640 (joint employer where user determined the number of available vacancies to be filled by the supplier, established the rates of pay and provided the funds from which they were paid, and decided when overtime was required and the number of employees necessary for such work); Quantum Resources Corp., 305 NLRB at 760-761 (joint employer where user authorized overtime, signed weekly timesheets, codetermined hours, holidays and benefits, and was involved in determining job duties, wage levels, and number of employees at site).

direction of supplied employees can be sufficient to support joint employer status.[19]

Involvement in collective bargaining and the terms of collective-bargaining agreements may be factors to consider in appropriate cases.[20] Of particular relevance here, the actual exercise of control over matters governing employees' terms and conditions of employment, notwithstanding any contrary intention set forth in the parties' commercial contract, can be a sufficient indication of a joint employer relationship.[21]

Applying the above principles, it is clear that F.S.-Elliott is a joint employer with Elliott. F.S.-Elliott

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[19] See, e.g., Continental Winding Co., 305 NLRB 122, 126 fn. 4, 135 (1991) (user a joint employer where supplier initially hired the employees and set and paid their wages and benefits, and where user assigned, scheduled, supervised, and shared discipline authority); Sun-Maid Growers, 239 NLRB at 351 (user a joint employer where it assigned the work, determined work priorities, and required overtime); Syufy Enterprises, 220 NLRB at 740 (contractor a joint employer of janitorial subcontractor's employees where it actually supervised the janitors). Compare Laerco Transportation, 269 NLRB 324 (routine and minimal supervision and assignment of employees insufficient to establish joint employer relationship).

[20] Quantum Resources Corp., 305 NLRB at 761 (joint employer where many of employees' terms and conditions are included in the contractor-subcontractor agreement). See also Heileman Brewing Co., 290 NLRB at 1000 (although user did not participate in contract negotiations between the supplier and the union, it did deal directly with the union or the employees concerning terms and conditions of employment that were not specifically governed by the contract, including discussing and resolving grievances and granting benefits that were available to its employees but not to the supplier's employees). Compare Laerco Transportation, 269 NLRB at 325 (no joint employer status where the major elements of employees' terms and conditions of employment are determined by the supplier in context of its collective-bargaining relationship with the union); TLI, Inc., 271 NLRB at 799 (no control over economics of relationship; although user attended bargaining sessions, it did not demand specific reductions or make specific proposals).

[21] Syufy Enterprises, 220 NLRB at 740.

provides the facility and the machinery for the leased employees. F.S.-Elliott also exerts almost exclusive supervisory authority over the PAP division employees as they perform their work. The leased employees would otherwise have no supervision because Elliott management is at the PAP division only sporadically. The evidence shows that F.S.-Elliott supervisors exercise significant control over the day-to-day work of the employees.

F.S.-Elliott's daily control is not at all routine because it consists of: determining daily work assignments; regularly reassigning employees to cover priority jobs or vacancies; prioritizing the work employees perform; deciding when overtime is appropriate; deciding when employees will take breaks; approving employee requests for vacation time; and approving employee transfer from one shift to another.[22]

F.S.-Elliott on at least one occasion also effectively recommended the discipline of an employee by notifying Elliott of his frequent absences. In another instance, F.S.-Elliott indirectly exercised control over the discipline of an employee with whose performance it was dissatisfied, and advised Elliott that it no longer wished to lease his services. The Board has found that the power to request removal of an unsatisfactory supplier employee is, in essence, akin to the power to discharge.[23] Additionally, Elliott management told the Union that the most senior employee seeking an opening at F.S.-Elliott was not given the job because F.S.-Elliott did not want the employee working in the PAP division.

In sum, Elliott and F.S.-Elliott shared and codetermined the leased employees' essential terms and conditions of employment. Elliott controlled the employees' hiring, firing and wages; F.S.-Elliott controlled the employees' work place and equipment, and provided exclusive

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[22] See Capitol EMI Music, 311 NLRB at 998 (user assigned work and directly supervised employees); Heileman Brewing Co., 290 NLRB at 1000 (user controlled the employees' work schedules, assigned work, and decided when, how many, and how long employees were needed).

[23] Salem Electric, 331 NLRB 1575, 1577 (2000) (joint employer found where user employer provided day-to-day oversight and direction of work and where, if an employee's work was unsatisfactory, user would request that supplier remove the employee from the worksite and refer another in his place). See also Capitol EMI Music, 311 NLRB at 1017 (user could effectively fire any worker by simply requesting that the supplier remove the employee from its operations).

day-to-day supervision and direction of their work. On two or three occasions, both joint employers shared in the discipline of leased employees. Based on the totality of the circumstances, we conclude that Elliott and F.S.-Elliott are joint employers of the employees working in the PAP division.

2. Elliott/F.S.-Elliott's refusal to recognize and bargain with the Union was not unlawful.

The Board recently held in Oakwood Care Center that a bargaining unit combining employees who are solely employed by a "user employer" and employees who are jointly employed by the user employer and a "supplier employer" constitutes a multiemployer unit, which can be appropriate only with the parties' consent.[24] It explicitly overruled its prior decision in M.B. Sturgis,[25] which held that such a bargaining unit (combining solely employed and jointly employed employees) consists of employees of one employer and thus is permissible under the Act even absent employer consent.[26] The Board in Oakwood found that the bargaining structure contemplated in Sturgis gives rise to significant conflicts among the various employers and employees involved and fails to adequately protect employee rights. It reasoned that the bifurcation of bargaining regarding employees in the same unit hampers the give-and-take process of negotiations between a union and an employer and places employers in the position of negotiating with one another as well as with union.[27] Thus it concluded that employers must consent to such bargaining relationships.

In Greenhoot, Inc.,[28] the precedent to which the Oakwood Board returned, the Board held that there could be no multiemployer bargaining relationship absent a showing that the several employers have "expressly conferred on a joint bargaining agent the power to bind them in negotiations...."[29] The Board in Oakwood stated that the required consent must be "clear and unequivocal, as

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[24] 343 NLRB No. 76, slip op. at 1.

[25] 331 NLRB 1298 (2000).

[26] 343 NLRB No. 76, slip op at 1.

[27] Id., slip op at 7.

[28] 205 NLRB 250 (1973).

[29] Id. at 251, cited by the Board in Oakwood, 343 NLRB No. 76, slip op. at 2.

manifested by express agreement or by actually entering into bargaining on a multiemployer basis."[30]

As a general rule, the Board has found that an employer does not become a part of a multiemployer bargaining group (i.e., does not intend to be bound by group bargaining) "where it merely adopts a collective-bargaining agreement in the negotiation of which it did not actually participate and which it did not authorize another to negotiate on its behalf."[31] In Ted Hicks,[32] the employer signed a memorandum agreement agreeing to be bound by "any modifications, extensions, or renewals" of the agreement between the Union and a multiemployer association. Although the Board found that the employer thereafter unlawfully refused to abide by a subsequent union/association agreement, the Board specifically found that the employer's memorandum agreement had not authorized the association to bargain for the employer, and therefore did not make it a member of the multiemployer unit:

> [the employer] had no prior history of group bargaining and did not participate in the negotiations between the AGC and the Union. In these circumstances, we find that the memorandum agreement cannot be construed as an intention to delegate bargaining authority to the AGC or to be bound by group rather than by individual action. Rather we deem the memorandum agreement to be a separate contract between Respondent and the Union, wherein Respondent agrees to be individually bound by the results of the ongoing bargaining relationship between the Union and the AGC. Id at 713, n.3.

In the instant case, the result sought by the Union - a unit combining solely employed employees and jointly employed employees -- constitutes a multiemployer unit under

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[30] 343 NLRB No. 76, slip op. at 8, n.25.

[31] Teamsters Local 153 (Anheuser-Busch, Inc.), 277 NLRB 1097, 1102 (1985). See Typographers Union No. 6 (Royal Composing Room), 242 NLRB 378 (1971) (independent employers were not part of a multiemployer unit although they agreed to be bound by the terms of the negotiated contract, contributed funds established by that contract, and had equal benefits distributed relating to hiring hall and training and income benefits for displaced employees).

[32] Ted Hicks & Associates, 232 NLRB 712 (1977), enf'd 572 F.2d 1024 (5th Cir. 1978).

Oakwood, which can be appropriate only with the parties' consent. The Union argues that this consent exists because the parties agreed to the LEA, which states that F.S.-Elliott's payment for the leased employees depends on the terms of Elliott's collective-bargaining agreement and allows for changes to that payment in the event of changes in any future Elliott/Union bargaining agreement. The Union contends, in essence, that F.S.-Elliott essentially authorized Elliott to bargain on its behalf over the terms and conditions of the leased employees and that the employers therefore consented to multi-employer bargaining. We conclude that F.S.-Elliott's mere agreement to the LEA does not provide the requisite consent to multi-employer bargaining.

The Union's argument would imply consent to a delegation of bargaining authority merely because F.S.-Elliott in the LEA agreed to make lease payments that would be determined by Elliott's bargaining agreement. However, the Board requires that consent to multi-employer bargaining be "clear and unequivocal." F.S.-Elliott's LEA was only an agreement to make lease payments calculated according to the current and future terms in the Elliott-Union bargaining agreement. An agreement to make lease payments is not an express agreement to delegate bargaining authority. Concerning Elliott's authority to bargain for F.S.-Elliott, the LEA expressly states that "Elliott has no authority to, nor shall it, bind or commit [F.S.-Elliott] to any union, association or group of employees." Since the required "clear and unequivocal" consent to multi-employer bargaining not only is absent from the LEA, but rather is contradicted by the LEA, we reject the Union's argument that F.S.-Elliott consented to multi-employer bargaining solely by virtue of its agreement in the LEA to pay the rates negotiated solely by Elliott.

Accordingly, Elliott/F.S.-Elliott's refusal to recognize and bargain with the Union was not unlawful, and absent withdrawal, the instant charge should be dismissed.[33]

B.J.K.

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[33] As set forth above, Elliott remains willing to recognize and bargain with the Union regarding the terms and conditions of employment for all of its employees, including those leased to F.S.-Elliott.