

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

Advice Memorandum

DATE: November 21, 2003

TO : Frederick Calatrello, Regional Director
Region 8

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

SUBJECT: United Association of Journeymen and Apprentices
of the Plumbing and Pipe Fitting Industry of the
United States and Canada, et al.
(Mechanical Contractors' Association of Cleveland)
Case 8-CB-9936-1

United Association of Journeymen and Apprentices
of the Plumbing and Pipe Fitting Industry of the
United States and Canada, et al.
(Cleveland Plumbing Contractors' Association)
Case 8-CB-9937-1

554-1467-7500

These cases were submitted for advice as to whether the Unions violated Section 8(b)(3) by entering into agreements with union-signatory plumbing contractors designed to increase their ability to perform work on union jobs outside the jurisdiction of the local unions with which they have signed a collective-bargaining agreement.

It was concluded that the Unions did not engage in unlawful unilateral changes by offering and entering into these agreements, because they were the product of voluntary negotiations between the parties.

FACTS

The Charging Parties, Mechanical Contractors' Association of Cleveland and Cleveland Plumbing Contractors' Association, are associations of plumbing contractors in the greater northeast Ohio area, including Cleveland. The Mechanical Contractors' Association is signatory on behalf of its members to a collective-bargaining agreement with Pipefitters Local 120 and the Cleveland Plumbing Contractors' Association on behalf of its members is signatory to a collective-bargaining agreement with Plumbers Local 55. The Local Unions are members of the United Association of Plumbers and Pipe Fitters (UA), as well as the UA's Ohio State Association.

Section 218(m) of the UA constitution limits the number of employees a signatory contractor can bring to a job that lies outside the geographic jurisdiction of the

local union with which it has signed a labor agreement. Recognizing that this limitation hinders the ability of union-signatories to compete against non-union contractors, in 1998 the UA and the Ohio State Association offered contractors the option of entering into a Freedom of Movement Agreement (known as a Portability Agreement) that raised these limits. A contractor that voluntarily entered into the 1998 Portability Agreement could bring up to two employees to a maximum of three projects in the territorial jurisdiction of a local union other than the contractor's home union. In return, the contractor was required, among other things, to pay the higher of the two wage and fringe benefit packages set forth in the collective-bargaining agreements of either the contractor's home local or the local in which the work was being performed. However, upon Local 55 and Local 120's request, the 1998 Portability Agreement excluded their territorial jurisdiction from the scope of the agreement. Thus, under the 1998 Portability Agreement, union contractors outside the Cleveland area were not allowed to bring an expanded number of employees into jobs in northeast Ohio.

In January 2003, the UA and the Ohio State Association offered a revised Portability Agreement to union-signatory contractors in Ohio. Under the 2003 agreement, a contractor could bring up to four employees to a maximum of three projects within the territorial jurisdiction of a foreign local union. For the first time, the 2003 Portability Agreement's scope also included the territorial jurisdictions of Locals 55 and 120.

As in 1998, agreement to the 2003 Portability Agreement is voluntary, and as of October 2003, over 70 union-signatory contractors have signed up. There is no evidence that the Respondent Unions have coerced any contractor into entering into the Portability Agreement.

ACTION

We conclude that the Unions did not unilaterally change any term or condition of employment by offering and entering into the 2003 Portability Agreement with interested contractors, because agreement is strictly voluntary on the part of all parties.

Section 8(b)(3), like its counterpart in Section 8(a)(5), forbids a union from unilaterally changing mandatory terms and conditions of employment without

reaching a good-faith impasse in bargaining.¹ Thus, unions have violated Section 8(b)(3) where they engaged in unilateral behavior at odds with their bargaining obligation.²

The Unions here did not engage in any unilateral conduct. Rather, the UA, the Ohio State Association and the two Local Unions merely offered union-signatory contractors the option of voluntarily entering into the 2003 Portability Agreement. The Unions have not enforced the Agreement against any contractor which did not choose to participate, and there is no evidence that the Unions coerced any contractor's agreement. Accordingly, we conclude that the Unions did not act unilaterally by offering and entering into the 2003 Portability Agreement with willing participants.

B.J.K.

¹ York Painters District Council 9 (Westgate Painting), 186 NLRB 964, 965-66 (1970), enfd. 453 F.2d 783 (2nd Cir. 1971), cert. den. 408 U.S. 930 (1972).

² See, e.g., Communication Workers (Chesapeake and Potomac Telephone), 280 NLRB 78 (1986), enfd. mem. 818 F.2d 29 (4th Cir. 1987) (union refusal to share in cost of preparation of arbitration transcripts); Teamsters Local 334 (Halle Bros.), 253 NLRB 1090 (1981), enf. denied 670 F.2d 855 (9th Cir. 1982) (unilateral changes in union health plan); Communication Workers Local 1170 (Rochester Telephone), 194 NLRB 872, 875 (1972), enfd. 474 F.2d 778 (2nd Cir. 1972) (embargo on unit employees' acceptance of temporary supervisory positions).