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A.D. 05087

UNITED STATES GOVERNMENT
National Labor Relations Board

Memorandum

177-2484-7500
177-3925
560-2575-3300
560-7540-4000
560-7540-4020-5000

712-5042-3370
712-5042-3380-5000
712-5070-8000

TO : Bernard Levine, Director
Region 8

DATE: August 24, 1979

FROM : Harold J. Datz, Associate General Counsel
Division of Advice

SUBJECT: International Longshoremen's Association, AFL-CIO and its Locals Nos. 1956 and 158 (Armco, Inc., et al.)
Case No. 8-CC-966

CONTROL PLEASE

This Section 8(b)(4) case was submitted for advice as to whether the Board has jurisdiction over the instant matter and, if so, whether the employers constitute a single integrated enterprise so as to privilege allegedly secondary picketing.

FACTS

The charge in the instant case involves a threat to picket neutral docks in Cleveland and Ashtabula, Ohio, if goods intended for delivery to the Toledo dock, where the Union was engaged in a primary strike, were diverted to these ports. The Charging Party, Armco, Inc., is a steel producer that transfers iron ore to its plants in Ohio from ship to rail, usually through the port of Toledo. The ore is shipped to Toledo on boats owned by Columbia Transportation Division of Oglebay-Norton Company (herein Columbia) and unloaded at either the Presque Isle Dock or the Lakefront Dock. The Presque Isle Dock is owned and operated by the Chessie System. The Lakefront Dock is owned by the Lakefront Dock and Terminal Company (herein Terminal), 50% of which is owned by Conrail and 50% by the Chessie System. Terminal contracts with the Toledo Lakefront Dock Company (herein Dock) to handle the loading and unloading of cargo at the Lakefront Dock. Fifty percent of Dock is owned by the Chessie System and 50% by Pickands-Mather Company.

The Regional investigation disclosed that Dock and Terminal are operated as two separate entities. They are separately incorporated; have separate officers; maintain separate books, bank accounts and corporate records; have separate payrolls, operating budgets and billing procedures; file separate tax returns and occupy separate offices. They have no common employees and there is no interchange of employees. The chief operating officer of Dock unilaterally makes the day-to-day operational decisions and his decisions cannot be overridden by either Conrail or Terminal. He

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handles all employee matters, including hiring and firing, adjusting grievances, promotions, transfers and salary determinations in consultation with the Dock board of directors. He is often assisted in contract negotiations by counsel from either Chessie or Conrail but such assistance is apparently advisory in nature. 1/ The Dock employee benefits are different from those at Terminal or Conrail. Conrail supplies less than 50% of Dock's work.

Both Dock and Conrail are common carriers, subject to the jurisdiction of the Railway Labor Act (RLA).

Dock's employees are represented by Local 158, which was certified pursuant to the provisions of the RLA and which represents no employees of employers subject to the NLRA.

On or about May 22, 1979, Local 158 commenced picketing the Lakefront Dock in connection with its economic strike against Dock. 2/ This strike was authorized by the International Longshoremen's Association (herein the International), as required by the ILA constitution. 3/ Local 158 also set up a picket line at Presque Isle Dock. Upon learning of the labor dispute at Lakefront Dock, Armco scheduled all of the ships carrying its ore to unload at Presque Isle Dock. Columbia notified Armco that its employees would respect the picket lines at both docks and that Armco should divert its shipment to another port.

In order to arrange for its cargo to be unloaded elsewhere, Armco then contacted the Ohio and Western Pennsylvania Dock Company (herein Ohio), a wholly-owned subsidiary of the Hanna Mining Company, which has a contract to operate the C & P Dock in Cleveland, Ohio. 4/ The employees of

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1/ A representative of Conrail has asserted that Conrail or Chessie has the final say in contract negotiations. It is not known whether, or in what way, this power has been exercised.

2/ The legend on the picket signs is unknown.

3/ Pursuant to its constitution, the ILA pays strike benefits only to members engaged in authorized primary strikes. Presumably, such payments were made to strikers involved in the instant case.

4/ The Region has determined that, in view of the fact that the decision to transfer the cargo was made by Columbia and Armco and not by the primary employer, Dock, and because the transfer of this cargo would not have aided Dock financially, the "struck work ally" doctrine is inapplicable to this case. See, e.g., Laborers International Union of North America, Local 859, AFL-CIO (Thomas S. Byrne, Inc.), 180 NLRB 502 (1969).

Ohio are represented by Local 1956 of the ILA, which is also certified under the RLA. The C & P Dock is wholly owned by Conrail. There appears to be no common business, and no financial relationship, between the Lakefront Dock in Toledo and the C & P Dock in Cleveland. There is no common supervision or any interchange of supervision, management or employees between the two docks. Each dock is under contract to separate employers to handle day-to-day operations, as explained above, and each dock handles its own labor relations and sets its own labor policies. With regard to the C & P Dock, the labor relations are supervised by the Hanna Mining Company, whose Director of Labor Relations ordinarily conducts contract negotiations and handles grievances.

Ohio notified Armco that it could not accept any ship originally scheduled for Toledo but would accept future shipments if they were scheduled directly for the C & P Dock in Cleveland. However, on or about May 29, 1979, a representative of Conrail notified Columbia that it would be unable to accept any vessels carrying Armco iron ore. On May 31, 1979, Local 158 notified Conrail by letter, confirming an earlier telephone conversation, that picket lines would be established at any ports to which Conrail diverted identifiable Toledo business. 5/ For the duration of the strike, which lasted until June 14, 1979, no Armco ore was unloaded either at Toledo or Cleveland. Apparently, however, no picketing actually occurred at the C & P Dock.

ACTION

It was concluded that, on the facts as presented herein, the Board lacks jurisdiction over this matter inasmuch as Local 158 is neither a "labor organization" as defined in Section 2(5) of the Act nor was it acting as the agent of the International, which is a statutory labor organization, when it made the threat to engage in allegedly secondary activity. Accordingly, unless the Region discovers additional information that would warrant a finding of an agency relationship between Local 158 and the International, the charge should be dismissed, absent withdrawal.

Section 8(b) proscribes certain conduct engaged in by a "labor organization or its agents." As defined by Section 2(5) of the Act, a "labor organization" is inter alia an organization in which employees, as defined in Section 2(3), participate. Therefore, if a union represents only non-statutory employees, secondary activity which would otherwise violate the Act is not proscribed by the NLRA, unless it can be shown that the union was acting as the agent of, or a joint venturer with, a statutory

5/ There is no evidence to indicate that the International either knew of this threat or authorized any additional picketing.

labor organization when it engaged in the unlawful conduct. 6/ In the instant case neither Locals 158 or 1956, both of which represent only employees of RLA employers, are "labor organizations." Thus, absent sufficient involvement by the International in the allegedly unlawful conduct to establish that Local 158 was acting as the agent of the International when it made the threat to Conrail 7/ or that the locals and the International were engaged in the strike as a joint venture, 8/ the Board lacks jurisdiction over this case altogether. 9/

The International appears to have had no involvement in the allegedly violative activity, other than having authorized the initial lawful economic strike in Toledo. There is no indication that the International authorized or sanctioned the threatened picketing of the neutral Docks or subsequently ratified Local 158's actions in making the threat. In fact, there apparently is no evidence to indicate that the International had any knowledge of the Local's May 31 letter to Conrail, or that any International representative helped to formulate strike policy or directed any strike activities. 10/ Nor does it appear that the strike was called

6/ Although the 1959 amendments to the Act expanded the scope of the Board's jurisdiction to cover secondary boycotts involving neutral enterprises that do not meet the statutory definition of "employer," they did not similarly extend the coverage of Section 8(b)(4) to unions which are not "labor organizations." See Airline Pilots Ass'n., Case 7-CC-1016, Appeals Letter dated February 28, 1979, reported in Quarterly Report of the General Counsel, July 24, 1979, pp. 19-24. See also Local 3, I.B.E.W., 244 NLRB No. 46 (1979).

7/ See, e.g., International Union, United Automobile, Aerospace and Agricultural Implement Workers (W.L. Crow Construction Co.), 192 NLRB 808 (1971), enf'd. 82 LRRM 2619 (D.C. Cir. 1973).

8/ See, e.g., International Organization of Masters, Mates & Pilots v. N.L.R.B. (Chicago Calumet Stevedoring Co., Inc.), 351 F. 2d 771, 777-78 (D.C. Cir. 1965), enf'g 146 NLRB 116 (1964), 144 NLRB 1172 (1963), 125 NLRB 113 (1959); International Brotherhood of Electrical Workers, AFL-CIO (B.B. McCormick and Sons, Inc.), 150 NLRB 363, 373-74 (1969), enf'd. 59 LRRM 2767 (D.C. Cir. 1965).

9/ DiGiorgio Fruit Corp. v. N.L.R.B., 191 F. 2d 642 (D.C. Cir. 1951), enf'g. 87 NLRB 720 (1949), cert. den. 342 U.S. 869.

10/ See, e.g., Amalgamated Meat Cutters & Butcher Workmen of North America, and Local 222 (Iowa Beef Processors, Inc.), 233 NLRB No. 136 (1977); Lithographers & Photoengravers International Union, AFL-CIO, CLC (Holiday Press, a Division of Holiday Inns, Inc.), 193 NLRB 11 (1971); United Rubber, Cork, Linoleum & Plastic Workers of America, AFL-CIO (Tennessee Wheel and Rubber Co.), 166 NLRB 165 (1967).

or maintained primarily to satisfy national, rather than purely local, objectives. 11/ Moreover, this does not appear to be the type of relationship in which an international union exercises such control over a local, pursuant to constitutional provisions, as to make the local an agent of the international in all its strike-related actions. 12/ Thus, the International's authorization of a lawful strike and its payment of strike benefits to primary strikers, without more, would be viewed as the exercise of normal union functions that did not constitute a grant of authority, either actual or implied, for unlawful secondary activity by Local 158. 13/

On the other hand, if the Region discovers additional information that leads it to conclude that an agency relationship exists between the locals and the International, 14/ complaint should issue, absent settlement. In this regard, it was concluded that there is no ally relationship of the type arising from an integrated operation 15/ between either Conrail and Dock or between the Lakefront Dock in Toledo and the C & P Dock in Cleveland, both owned at least in part by Conrail, and that, therefore, Conrail should be viewed as a neutral employer in the labor dispute between Local 158 and Dock. In determining whether one employer is neutral with respect to the labor disputes of another, the Board looks to such factors of interrelationship as the degree of common ownership; the extent of the integration of business operations; the dependence of one employer on the other for a

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11/ See, e.g., International Organization of Masters, Mates & Pilots, Marine Division (Westchester Marine Shipping Co., Inc.), 219 NLRB 26 (1975), enf'd. 539 F. 2d 554 (5th Cir. 1976); W. L. Crow Construction Co., supra.

12/ Compare International Brotherhood of Electrical Workers, AFL-CIO (Franklin Electric Construction Co. and Utilities Line Construction Co., Inc.), 121 NLRB 143, 145-48 (1958) with Bay Counties District Council of Carpenters and Joiners of America, AFL-CIO, 117 NLRB 958, 959-61 (1957).

13/ Cf. United Mine Workers v. Gibbs, 383 U.S. 715, 738-39 (1966).

14/ In addition to the criteria for determining an agency relationship that are discussed in the text accompanying notes 10-13, supra, the Board looks to such factors as the involvement of the international union in contract negotiations on a local level and in the ongoing policing of the local contract as well as the processing of grievances. W. L. Crow Construction Co., supra; Holiday Press, a Division of Holiday Inns, Inc., supra; Tennessee Wheel and Rubber Co., supra; International Brotherhood of Pulp, Sulphite and Paper Workers, AFL-CIO (Solo Cup Co.), 144 NLRB 421 (1963), enf'd. 337 F. 2d 608 (4th Cir. 1964).

15/ As noted, supra, note 4, the Region has concluded that the "struck work ally" doctrine is inapplicable to the facts of this case.

substantial portion of its business; and the common control of day-to-day operations, including labor relations. 16/ In particular, it is important that there be evidence of actual or active, as opposed to merely potential, control by one employer over the operations and labor relations of the other. 17/ According to the evidence in the instant case, there is virtually no integration of operations between either Dock and Conrail or between the Toledo and Cleveland docks. Management of all three employers appears to be totally separate and day-to-day business operations and decisions are made on an individual basis. Not one of these employers depends on another for the bulk of its business. Most importantly, each employer appears to control its own labor relations policy. The use by Dock of Conrail labor relations personnel in an advisory capacity is not indicative of Conrail's control over the labor relations of Dock. 18/ The assertion by a Conrail representative that Conrail has the "final say" in negotiations, without additional evidence that Conrail has exercised its prerogative to make substantive policy decisions for Dock employees, was seen as an indication of merely potential control.

Thus, if jurisdiction could be asserted in this case, the threat by Local 158 to picket Conrail, a neutral secondary, with an object of forcing Conrail to cease doing business with Columbia and Armco, would violate Sections 8(b)(4)(i)(ii)(B). 19/

H. J. D. FTP

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16/ N.L.R.B. v. Local 810, Hardware Fabricators, IBT (Sid Harvey, Inc.), 460 F. 2d 1 (2nd Cir. 1972); Retail Stores Employees Union Local 1001, Retail Clerks International Association (Safeco Life Insurance Co.), 226 NLRB 754 (1976), enf'd. 99 LRRM 3330 (D.C. Cir. 1978); Los Angeles Newspaper Guild, Local 69 (The Hearst Corp.), 185 NLRB 303 (1970), enf'd. 443 F. 2d 1173 (9th Cir. 1971), cert. den. 404 U.S. 1018 (1972); Drivers, Chauffeurs and Helpers No. 639 (Poole's Warehousing, Inc.), 158 NLRB 1281, 1285-87 (1966).

17/ Los Angeles Newspaper Guild, Local 69, supra. Cf. Gerace Construction, Inc. and Helger Construction Co., Inc., 193 NLRB 645 (1971).

18/ Local Union No. 391 (Chattanooga Division, Vulcan Materials Company), 208 NLRB 540, 543, enfd. 543 F. 2d 1373 (D.C. Cir. 1976), cert. den. 430 U.S. 946.

19/ International Brotherhood of Electrical Workers, AFL-CIO (B.B. McCormick and Sons, Inc.), supra. There would be no Section 8(b)(4)(A) violation in the instant case inasmuch as, inter alia, Conrail is not a statutory employer. See Local 3, IBEW, supra.