FORM NLRB 5026 (4-80)

UNITED STATES GOVERNMENT
National Labor Relations Board

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Memorandum A.D.

RELEASE

TO W. Bruce Gillis, Jr., Regional Director
Region 27

DATE: 31 August 1987
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FROM Harold J. Datz, Associate General Counsel
Division of Advice

SUBJECT Corn Industries, Inc.
Case 27-CA-10147

This case was submitted for advice as to whether the parties' collective-bargaining relationship was a Section 9(a) relationship, where it was established prior to the effective date of Section 8(f).

FACTS

The Region has found that the Employer and the Union have maintained a collective-bargaining relationship since prior to 1959. The most recent agreement apparently expired earlier this year.

On June 12, the Employer wrote to the Union to advise that "the labor agreement between Corn Industries Inc. and Operating Engineers Local 9 is repudiated effective this date." It appears that, notwithstanding this language, the Employer intended not only to terminate the contract but also to terminate the relationship. It further appears that the contract was ripe for termination. Hence, the issue is whether the Employer could terminate the relationship. The Union filed the instant charge on June 22, alleging that the Employer had unlawfully withdrawn recognition from the Section 9(a) representative of its employees.

ACTION

We conclude that a Section 8(a)(5) complaint should issue, absent settlement, alleging that the Employer unlawfully repudiated the bargaining relationship with the Union. Since the parties' collective-bargaining relationship originated before the enactment of Section 8(f) we would argue, as discussed infra, that the the parties' relationship was governed by Section 9(a).

In Deklewa, 1/ the Board reaffirmed that employers and unions in the construction industry may enter into Section 9(a),

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1/ John Deklewa & Sons, Inc., 282 NLRB No. 184 slip op. at 36, n. 53 (February 20, 1987).

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rather than 8(f), collective-bargaining relationships based on a clear showing of majority support for the union among the unit employees. Prior to the enactment of Section 8(f), the Act sanctioned only one kind of bargaining relationship, namely, one based on the recognition of a union as the majority representative of an employer's existing employees. Section 8(a)(2) prohibited an employer from extending recognition or entering into a collective-bargaining agreement at a time when the union was not the majority representative. Int. Ladies' Garment Workers' Union v. NLRB (Bernhard-Altmann Texas Corp.), 366 U.S. 731, 737-738 (1961). Thus, prior to the enactment of Section 8(f), an employer could recognize a union lawfully under Section 9(a) or unlawfully under Section 8(a)(2). Inasmuch as the law presumes that parties act lawfully, 2/ we would presume that a pre-1959 relationship was a lawful Section 9(a) relationship. There is no evidence in this case to rebut the presumption. Moreover, even if pre-1959 recognition had been unlawful, it is now too late to attack its propriety. Thus, it is well established that Section 10(b) bars the processing of a charge alleging an unlawful grant of recognition to a minority union where such a charge was filed more than six months after original recognition. 3/

Accordingly, the Region should issue complaint, absent settlement, alleging that the Employer violated Section 8(a)(5) by refusing to recognize the Union as the Section 9(a) representative of its employees.

H.J.D.

2/ See Amalgamated Packinghouse (Packerland Packing), 218 NLRB 853, 854 (1975).

3/ Local Lodge No. 1424 IAM v. NLRB (Bryan Mfg. Co.), 362 U.S. 411, 419-423 (1960).