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

Advice Memorandum

DATE: September 29, 1999

TO : James J. McDermott, Regional Director
Region 31

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

SUBJECT: More Truck Lines, Inc.
Case 31-CA-23883

512-5006-5015
512-5006-5055
512-5006-5090
530-6050-1612
530-6050-3700
530-6067-4033
530-6067-4100
530-8019
530-8045-9500

This case was submitted for advice as to whether the Employer violated Section 8(a)(1) by telling its employees that it could not pay wage increases provided for in a collective-bargaining agreement with the Union if a rival union won an upcoming Board election.

On December 4, 1997, the Region conducted an election among the Employer's employees, in Case 31-RC-7554, pursuant to a petition filed by Teamsters Local 952 (Local 952). A labor organization called The Brotherhood (the Union) won the election. Local 952 filed objections. While the objections were pending, the Employer and the Union negotiated and signed a collective-bargaining agreement. That agreement provided for scheduled wage and benefit increases.

Local 952's objections were ultimately sustained, and the Region scheduled a re-run election for April 9, 1999. Before that election, the Employer distributed written materials to unit employees that stated, in pertinent part: (1) "if the Teamsters win and is certified, MTL [the Employer] by law, can no longer give you the wage increases already bargained for in The Brotherhood contract because that contract will be null and void"; and (2) "the law would require that all wages, benefits and working conditions be frozen until we either reach agreement with the Teamsters on a contract or there is an impasse in the negotiations." The Employer also told employees at pre-election meetings that it would bargain with the Teamsters if that union won the

election, but that the annual raises set forth in The Brotherhood's contract would be frozen during negotiations.

No entity received a majority of the votes cast in the April 9 election. On May 20, The Brotherhood won a runoff election.

We conclude that the Employer violated Section 8(a)(1) by threatening to change established terms and conditions of employment before bargaining to impasse with the employees' representative.

In RCA Del Caribe,[1] the Board overruled its Midwest Piping[2] doctrine and held that the filing of a representation petition by an outside, "challenging" union would no longer require or permit an employer to withdraw from bargaining and/or refuse to execute a contract with an "incumbent" union. The Board noted, however, that "if the challenging union prevails, . . . any contract executed with the incumbent will be null and void."[3]

Here, the Union was an "incumbent" with which, under RCA Del Caribe, the Employer was permitted and required to negotiate an agreement while the objections were pending.[4] However, the Employer asserts that, since the contract with the Union would be null and void in the event of a Local 952 victory, it was not an unfair labor practice to advise the employees of that fact and of its effects, including that wage and benefit increases established in the contract could no longer be provided.

In the absence of Board law to the contrary, we conclude that the Board intended its statement in RCA Del

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[1] 262 NLRB 963, 965 (1982).

[2] 63 NLRB 1060 (1945).

[3] 262 NLRB at 966.

[4] See Continental Can, 282 NLRB 1363, 1373 (1987) (in assessing election objections and ULP allegations, ALJ found employer did not violate Section 8(a)(2) by executing a contract with an incumbent that secured a majority vote in an election, notwithstanding that objections were pending; Board did not address allegation when union waived objection to proceed to new election).

Caribe, to the effect that any contract negotiated with an incumbent would be null and void if the challenging union prevailed, to mean only that there would no longer be an agreement in effect and certain employment conditions existing only because of a contractual relationship (e.g., union-security, no-strike, arbitration provisions) would be eliminated. We do not interpret the Board's statement to mean that the employees' established terms and conditions of employment which are not "creatures of contract" could be changed without bargaining to impasse with the new bargaining representative.[5] Contractually-established wage and benefit increases are certainly as much a part of an employee's present terms and conditions of employment as those announced by an employer before it is subject to a collective bargaining relationship.[6] Thus, the Employer would have violated Section 8(a)(5) had it unilaterally rescinded the increases if Local 952 had won the election, and violated Section 8(a)(1) by threatening to do so.

Accordingly, the Region should issue a Section 8(a)(1) complaint, absent settlement.

B.J.K.

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[5] See Daily News of Los Angeles, 315 NLRB 1236, 1236-1238 (1994), enfd. 73 F.3d 406 (D.C. Cir. 1996), cert. den. 117 S.Ct. 764 (1997) (any unilateral change in the established wage structure, including the denial of annual merit increases that were fixed as to timing but discretionary as to amount, is unlawful under NLRB v. Katz, 369 U.S. 736 (1962)).

[6] See Liberty Telephone, 204 NLRB 317, 317-318 (1973) (established terms and conditions of employment included not only what employer had already granted but also what it had announced it would grant in the future).