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

Advice Memorandum

DATE: June 9, 2000

TO : C. L. Witherspoon, Acting Regional Director
Region 16

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

SUBJECT: Convention Services, Inc. 530-8034
Cases 16-CA-19868, 16-CA-20224 530-8042
and 530-8045-8300
Preferred Exhibitors Service 530-8054-1000
Case 16-CA-19808

These Section 8(a)(5) cases were resubmitted for advice as to whether the Employers violated Section 8(a)(5) by failing to provide requested information and by failing and refusing to abide by collective bargaining agreements the Employers and the International Union signed in 1988, which had automatically renewed.

FACTS

The facts are set forth in detail in our November 16, 1999 Advice Memorandum. Briefly, Convention Services ("Convention") and Preferred Exhibitors Services ("Preferred")(collectively the "Employers") are convention contractors which operate nationally. From time to time the Employers perform work in the San Antonio, Texas area. In September 1988 the United Brotherhood of Carpenters and Joiners of America (the "International") had entered into identical two-page contracts with each of the Employers. The contracts are headed "AGREEMENT between [company] and the United Brotherhood of Carpenters and Joiners of America (UBCJA)". The next clause of the contracts provides that the Employer:

> agrees to recognize the jurisdictional claims of the UBCJA and to comply with the contractual wages, fringe benefits, hours and other working conditions established between the UBCJA

> affiliates and the employers or recognized employer agencies in the localities in which the Company does any work within the jurisdiction of the UBCJA.

The remaining clauses of the agreements provide for the Employers agreeing to obtain employees on all projects from "UBCJA affiliates having jurisdiction in the respective areas," the payment of fringe benefit contributions "identified in the applicable collective bargaining agreement for that locality", a prohibition on subcontracting, a no strike/no lockout clause, and an automatic renewal every three years unless either party gives timely notice to terminate. The agreements were signed by Employer officials and by the International's general president. There is no evidence that either Employer or the International ever gave notice to terminate the agreements, so that they would have automatically renewed every three years, i.e., most recently in September 1997. There is no evidence that the International represented a majority of the employees of either Employer in 1988.

After Carpenters Union Local 14 (the "Local") became aware that the Employers were working on projects in the San Antonio area, in September and October 1998 the Local wrote the Employers and asked that they honor the terms of their agreements with the International, and further asked that the Employers execute copies of the Local's agreement with San Antonio-area employers for work performed by the Employers in San Antonio. The Employers did not respond. By letter to Preferred dated March 5, 1999, the Local again made the same requests. By letters later in March the Local asked each of the Employers for information regarding jobs performed within the Local's jurisdiction. Neither Employer provided the requested information. The Local filed Section 8(a)(5) charges alleging that the Employers repudiated and failed to comply with the agreements with the UBCJA and failed to provide the requested information. The Local admits that until 1998 it did not seek to enforce the International's agreements against either Employer in the San Antonio area, stating that the Local was unaware of the existence of the agreements.

In our Advice Memorandum of November 16, 1999, we concluded that the charges should be dismissed, absent withdrawal, since there was no extant evidence that the International authorized the Local to seek to enforce its contracts against the Employers and/or authorized the Local to request information from the Employers. We relied on Howell Insulation Co., 311 NLRB 1355 (1993), where the Board dismissed a Section 8(a)(5) complaint against an employer that had failed to provide requested information to one local union, while working within that local's jurisdiction, in circumstances where the employer had a contract with a different local and where the charging party local was not acting as the signatory local's agent.

In connection with the newly-filed charge in Case 16-CA-20224,[1] the Local provided evidence that it was authorized by the International to seek to enforce the International-Employers contracts. Thus, Mike Gaffney, the Carpenters state district council representative assigned to the Local who requested that the Employers comply with the contracts and provide information, and who filed the Local's charges, states that in the fall of 1998 he contacted an International representative assigned to trade show matters and told him that the Employers were not abiding by the contracts in San Antonio. Gaffney states that the International representative told him that the Employers had to operate in San Antonio as laid out in the International contracts, and that Gaffney was to tell the Employers to live up to those contracts. The International provided a letter dated December 22, 1999, to the Texas Carpenters district council, advising that the council and its affiliated locals had the authority, "both retrospectively and prospectively," to take all legal means to enforce the International contracts.

ACTION

We agree with the Region that complaint should issue, absent settlement, alleging that the Employers violated

[1] That charge alleges that Convention violated Section 8(a)(5) in October 1999 by failing to apply the International contract on work performed in San Antonio. The Region has determined to dismiss a Section 8(a)(3) allegation alleged in that charge.

Section 8(a)(5) by failing and refusing to abide by the International contracts in the San Antonio area and by refusing to provide the Local, on behalf of the International, requested relevant information.

We agree with the Region that the present evidence indicates that the Texas Carpenters district council and its affiliated locals, and their representative Gaffney, were authorized by the International, beginning in late 1998, to seek to enforce the International contracts with the Employers.[2] The Employers clearly failed and refused to abide by those contracts in 1998 and 1999, and failed and refused to provide requested relevant information. Thus, the remaining issue is whether the International should be barred from enforcing its contracts with the Employers in the San Antonio area after a passage of some 10 years between the signing of those automatically renewing contracts and the first attempts to enforce the contracts, at a time when the Employers appear to have been doing work in San Antonio without obtaining employees from the Local.

We agree with the Region that, in the circumstances of these cases, the passage of 10 years time does not preclude the International from enforcing its contracts and does not privilege the Employers to fail and refuse to abide by them. Thus, the Board has held that 14 years of an employer's noncompliance with a renewing contractual obligation did not relieve the employer of Section 8(a)(5) liability, where the mere breach of the contract by working within the union's jurisdiction did not put the union on notice of a contract repudiation.[3] Here, the contracts obligated the Employers to use the appropriate local union to staff all projects, thus presumably providing the

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[2] Cf. U.S. Postal Service, 309 NLRB 309, 310 (1992)(international union which was the designated collective-bargaining representative specifically delegated to its local authority to process grievances and file ULP charges). Compare Howell Insulation, supra.

[3] Neosho Contruction Co., 305 NLRB 100, 102-03 (1991); see also, e.g., Dutchess Overhead Doors, Case 3-CA-21892, Advice Memorandum dated September 29, 1999 (employer working within jurisdiction of union without complying with renewing contract insufficient to constitute repudiation by conduct).

International notice when an Employer was performing work in a given area. However, when the Employers obtained employees exclusively by other means for San Antonio projects, the circumstances would not have put the Local or International on notice of any failure to abide by the contracts.[4] Therefore, complaint should issue, absent settlement.

B.J.K.

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[4] Compare Matthews-Carlsen Body Works, Inc., 325 NLRB 661, 662 (1998)(8(a)(5) complaint withdrawn where union should have been on notice of employer's failure to apply contract to all employees, when employer reported 5 employees to union but visit would have shown more employees); Moeller Bros. Body Shop, 306 NLRB 191, 192-93 (1992)(remedy for employer's failure to apply contract to all employees limited to 10(b) period, when union by exercise of "reasonable diligence" would have been aware of noncompliance). In both those cases the unions were aware that the employers had unit employees that they were reporting to the union, creating a duty of "reasonable diligence" in policing the contract, unlike the circumstances here, where the Unions were unaware that the Employers were operating in San Antonio.