

National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: November 16, 1999

TO: Martha Kinard, Acting Regional Director, Region 16

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

SUBJECT: Convention Services, Inc., Case 16-CA-19868 and Preferred Exhibitors Service, Case 16-CA-19808

596-0822, 596-1270

These Section 8(a)(5) cases were submitted for advice as to whether the Charging Party Local union may seek to enforce, within its geographic jurisdiction, 10-year old automatically renewing collective-bargaining agreements between the Employers and the International union.

FACTS

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. Neither Employer has a collective-bargaining agreement with any union in the San Antonio area; each Employer has contracts with other unions in other cities.

In September 1988 the United Brotherhood of Carpenters and Joiners of America (the "International") 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 payment of fringe benefit contributions "identified in the applicable collective bargaining agreement for that locality", a prohibition on subcontracting, the referral of employees by "UBCJA" through "UBCJA affiliates having jurisdiction in the respective areas", 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 the International represented a majority of the employees of either Employer in 1988.

In September and October 1998, Carpenters Union Local 14 (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, number of employees hired, and rates of pay and fringe benefits, to effectuate the agreement between each Employer and the International. 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. The Region currently has no evidence that

the International ever tried to enforce their agreements against either Employer in the San Antonio area, or elsewhere. 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 apparently no evidence that the International has authorized the Local to seek to enforce the agreements against the Employers, to request information from the Employers, or to file the instant charges.

The Employers have traditionally obtained employees by utilizing "hiring agents" who provide workers for erecting convention exhibits. Convention has, among other "hiring agents," utilized a member of International Alliance of Theatrical and Stage Employees ("IATSE") Local 76. Most of the workers referred by that agent are also IATSE members; while there is no contract between Convention and IATSE, Convention has paid local IATSE wage rates. On May 4, 1999, IATSE Local 76 filed a representation petition for Convention's employees in San Antonio in Case 16-RC-10114. That petition is blocked by the Local's Section 8(a)(5) charge against Convention. The Local declined to intervene in the representation case. While the Region submitted the dispute between the Local and IATSE to the AFL-CIO's Article XX jurisdictional dispute procedure, the AFL-CIO declined to process the matter because IATSE would not agree to submit the dispute, and because the Carpenters were not allowed to submit the dispute due to sanctions imposed under an earlier dispute with IATSE.

ACTION

We agree with the Region that the charges should be dismissed, absent withdrawal, since there is no 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.

Initially, we agree with the Region that the original agreements between the International and the Employers appear to have been intended to be Section 8(f) prehire agreements. Even though the Board has recently decided that companies engaged in the business of fabricating and erecting trade show and convention displays are not employers within the construction industry,⁽¹⁾ and thus not protected as prehire agreements under Section 8(f), we agree that the prehire or minority character of the agreements cannot now be attacked because their most recent renewal appears to have been in September 1997, more than 6 months prior to the filing of the instant charges.⁽²⁾

Even assuming, arguendo, that the International-Employer contracts were lawfully in effect between September 1998 and March 1999 because they automatically renewed, we conclude that the instant charges must be dismissed because there is no evidence that the International authorized the Local to enforce the contracts. Thus, in *Howell Insulation Co.*, 311 NLRB 1355 (1993), 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. The employer had a contract with a different local which provided that the employer would abide by the rates of pay of nonsignatory locals while working within their jurisdiction. The Board concluded that while the contract may "confer certain contractual rights on those [nonsignatory] locals as third party beneficiaries, . . . [s]uch a relationship does not, however, confer statutory rights on those outside locals" who were not the statutory bargaining representatives of the employer's employees. 311 NLRB at 1356.⁽³⁾ The Board further found that the charging party local was not acting as the signatory local's agent because the signatory local had not authorized the charging party local to request the information from the employer.⁽⁴⁾

Here, the International was signatory to the agreements with the Employers, and there is no evidence that either the Local was the collective-bargaining representative of the Employers' employees or that the International authorized the Local to seek to enforce the International-Employers agreements. Therefore, the charges should be dismissed, absent withdrawal.⁽⁵⁾

B.J.K.

¹ *Pekowski Enterprises, Inc. d/b/a the Expo Group*, 327 NLRB No. 73 (1999).

² See *Machinists Local Lodge 1424 v. NLRB (Bryan Mfg. Co.)*, 362 U.S. 411 (1960); *Jim Kelley's Tahoe Nugget*, 227 NLRB 357 (1976), *enf'd.* 584 F.2d 293 (9th Cir. 1978).

³ See also *Johnson Bros. Corp.*, Case 15-CA-12405, Advice Memorandum dated August 2, 1994 (applying Howell to dismiss 8(a)(5) charge brought by "third party beneficiary" nonsignatory local union for employer's alleged failure to abide by its terms and conditions of employment while working in its jurisdiction).

⁴ Compare *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).

⁵ The Region also inquired as to what action to take on IATSE Local 76's petition for Convention's employees in Case 16-RC-10114. The charge against Convention in Case 16-CA-19868, which is to be dismissed absent withdrawal, would no longer serve as a blocking charge.