

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

Advice Memorandum

DATE: July 8, 2003

TO : Earl L. Ledford, Acting Regional Director
Laura E. Atkinson, Assistant to the Regional Director
Region 9

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

SUBJECT: INTERNATIONAL UNION OF 560-7560-4000
OPERATING ENGINEERS LOCAL 18 560-7560-6000
(Skibeck P.L.C., Inc.) 578-8025-3310
Cases 9-CP-365 and 9-CC-1656 578-8025-3340

LABORERS LOCAL 534
(Skibeck P.L.C., Inc.)
Cases 9-CP-366 and 9-CC-1657

PIPE LINERS LOCAL 798
(Skibeck P.L.C., Inc.)
Cases 9-CP-367 and 9-CC-1658

The Charged Party Unions engaged in recognitional picketing at a time when the Employer was signatory to an employer association collective bargaining agreement with Steelworkers Local 14693 (Local 14693), and that Local had recently been certified as the collective bargaining representative of "all" the Employer's employees. These cases were submitted for advice as to whether this conduct violated Section 8(b)(7)(A) and 8(b)(4)(C) of the Act or whether the Unions' conduct was privileged under a "Harmony Agreement" that purported to limit the geographic scope of any steelworkers' unit.

The evidence in this case does not support any claim that Local 14693, the Section 9(a) representative of the employees, has ever disclaimed interest in or otherwise agreed to a geographic limitation on the certified unit of "all" of the Employers' employees. We, therefore, conclude that the Charged Party Unions violated Section 8(b)(7)(A) and 8(b)(4)(C) of the Act by engaging in recognitional picketing, and that the Region should issue complaint, absent settlement.

FACTS

The Employer, a subsidiary of Puget Energy, is based in Randolph, New York and specializes in the construction of natural gas pipelines. The Employer has its own

employee complement that it transfers from job to job. ^{1/} Since 1996, the Employer has been a member of the Pennsylvania Heavy and Highway Contractors Association and has authorized the Association to represent it and conclude contracts on its behalf. Association members' employees are represented by the Steelworkers and the most recent collective-bargaining agreement is effective by its terms from April 11, 2001 to December 31, 2003.^{2/} Under this agreement, the Employer's employees are represented by Steelworkers Local 14693. Section 6 of the contract provides that the agreement covers all heavy construction and highway work, including utility work, performed in the States of Pennsylvania, Ohio and New York.

In March 2003, Cinergy ^{3/} awarded the Employer a pipeline construction job in Warren County, Ohio, that is expected to last through the summer. According to the Employer, representatives of Unions affiliated with the Building and Construction Trades Department of the AFL-CIO contacted the Employer prior to the onset of the Cinergy job, because they considered the Employer to be "non union" with respect to the proposed Cinergy work. William Schettine, the Employer's president, received telephone messages from agents of the Laborers and Pipe Liners asking to meet so that they could discuss signing a contract. In addition, Schettine spoke with Rick Dalton of the Operating Engineers who proposed a meeting to discuss signing a contract. Further, by letter dated March 25, 2003, Dalton invited the Employer to meet and negotiate a collective-bargaining agreement.

On April 4, 2003, the Employer filed a petition in Case 3-RM-777 based on a demand for representation made by Steelworkers Local 14693.

^{1/} Although the number of employees varies from time to time, depending on the jobs being performed by the Employer, it apparently maintains a full complement of employees and there is no evidence the Employer hires a substantial number of employees directly from "the street."

^{2/} That agreement by its terms is a Section 8(f) agreement. As noted infra, Local 14693 was certified on May 29 as the 9(a) representative of the Employer's employees. It is not clear whether the parties have adopted the Association Agreement as their 9(a) collective bargaining agreement.

^{3/} Cinergy (Cincinnati Gas and Electric Co.) is a public utility providing gas and electric power to several counties in Ohio, Indiana and Kentucky.

In the meantime, the Operating Engineers apparently filed a protest with the Steelworkers International Union concerning the Steelworkers' representation of these employees in the state of Ohio. The Operating Engineer's claim was based on a "Harmony Agreement" between the Steelworkers International Union and the Building and Construction Trades Department of the AFL-CIO that sets forth the conditions under which the Steelworkers may organize or represent employees involved in the construction industry. Pursuant to the terms of the agreement, which was entered into in 1994, 2 years before the Employer became a member of the Pennsylvania Heavy and Highway Contractors Association and signatory to its contract with the Steelworkers, the Steelworkers are restricted from organizing construction workers employed in the United States, except in the states of Pennsylvania, West Virginia and Kentucky.^{4/} By letter dated April 30, 2003, the Steelworkers International Union advised the Operating Engineers that the Employer had a contract to perform pipeline work only in the state of Pennsylvania and would be deemed an "unprotected contractor" under the Harmony Agreement. Under the terms of the Harmony Agreement, the Building Trades may picket or otherwise apply economic pressure to "unprotected" contractors. Although neither the Steelworkers International Union nor its Local 14693 advised the Employer that they do not claim the Cinergy work, the building trades unions informed the Employer of the letter they had received from the Steelworkers International Union advising that the Steelworkers did not claim any work in the state of Ohio. The Employer acknowledges that it received a copy of the April 30, 2003 letter from Cinergy, but asserts it has not been notified by the Steelworkers of any claim that they do not represent the employees in Ohio.

On May 27, 2003, the Employer commenced work on the pipeline project using its own workforce. The Employer has 40 to 50 employees on the Cinergy job and most, if not all, are members of Local 14693. On May 29, 2003, 2 days after the Employer commenced work on the Cinergy project, Region

^{4/} These states comprised the geographic boundaries of the former Steelworkers District 50. The Harmony Agreement permits the Steelworkers to continue representation of construction employees who were under contract in other locations prior to 1994, in essence grandfathering a list of employers performing construction work under contract with the Steelworkers outside of the former District 50 boundaries. The Employer is not one of these employers. The Harmony Agreement also provides for binding arbitration to resolve disputes between the Steelworkers and the Building Trades.

3 certified Steelworkers Local 14693 as the collective-bargaining representative of all employees of the Employer pursuant to a mail ballot election conducted on May 10. The unit certified is "all employees of Skibeck P.L.C. engaged in heavy and highway construction and utility work, excluding all guards and watchman, and all professional employees and supervisors as defined in the Act, and all other employees."

On June 9, 2003, picketing began at the job site. Signs carried by the Operating Engineers state: "IUOE Local 18 hereby protests against Skibeck Pipeline. NO CONTRACT." The Laborers' signs carry the slogan: "For public information only. Workers on this job are not affiliated with Laborers Union Local #534." Signs carried by other pickets note: "Honk if you don't like rats." There were apparently no signs mentioning Pipe Liners Local 798. However, on June 9, Joseph Klepfer, the Employer's job superintendent, recognized Jack Holley, a business agent for the Pipe Liners on the picket line and spoke with Holley on two occasions. Klepfer asked Holley what was going on and Holley advised him that the Employer had no contract to perform work in the State of Ohio. Holley told Klepfer that the Pipe Liners wanted him to sign a contract with Local 798 and that someday the Employer would sign an agreement. The picketing continues to date. However, work on the job continues, and the project is anticipated to last until September 2003.

The Region has recently informed us that the Employer attended a meeting with Cynergy, the building trades unions, including representatives from the Laborers Union, the Pipeliners Union, and the Operating Engineers, as well as representatives from Steelworkers International Union together with its affiliated Locals 5541-06, and 12049. At that meeting, the Employer was presented with a letter dated June 20th from the Steelworkers International Union wherein the International reiterated that the Employer was a "Non-Protected" employer in Ohio, and that it did not represent [the Employer's employees] while [they were] working in Ohio for handling grievance or complaints, and if any dues are sent... we will return dues back to the employer." Local 14693 did not attend the aforementioned meeting and to date has not disclaimed interest in these employees. In fact, the Employer asserts that the Local President had stated that the International's position on this matter is "stupid."

ACTION

Steelworkers Local 14693, the Section 9(a) representative of the employees, has never disclaimed interest in or otherwise agreed to any geographic limitations on the certified unit. We therefore conclude that the Charged Party Unions violated Section 8(b)(7)(A) and 8(b)(4)(C) of the Act by engaging in recognitional picketing when another the union was certified and no question concerning representation could be raised.

Section 8(b)(4)(C) prohibits a union from using economic pressure to force or require an employer to recognize or bargain with a particular labor organization when another labor organization has been certified as the bargaining representative of its employees. Section 8(b)(7)(A) prohibits picketing or threats to picket with an organizational or recognitional object when the employer "has lawfully recognized. . . any other labor organization and a question concerning representation may not appropriately be raised under Section 9(c) of the Act."

On May 29, prior to any picketing in this case, Region 3 certified Steelworkers Local 14693 as the section 9(a) representative of "all employees" of the Employer. Thus, since Local 14693 is within the certification year, and no question concerning representation can be raised, it is clear that the Respondents may not picket⁵ for recognition under either section of the Act, unless the Union's certification does not extend to the employees in question. Even though the Employer's contract with the Local specifically includes Ohio as in its jurisdiction, the Respondents argue that it should be read as excluding that territory based on the 1994 Harmony Agreement. By that Agreement, the Steelworkers International Union agreed with the Building Trades Department that, except for collective-bargaining relationships with Ohio Employers established prior to 1994, the Steelworkers would not attempt to

⁵/ As the Region notes, although the Pipe Liners do not have picket signs at the site, representatives of that union have been present on the line and have requested the Employer to sign a contract with the Pipe Liners covering the work. We conclude, in agreement with the Region, that the Pipe Liners Representative's presence on the unlawful recognitional picket line, coupled with his request while on that line that the Employer sign a contract, constitutes picketing under both Sections 8(b)(4)(C) and 8(b)(7)(A) of the Act.

organize building contractors in the state of Ohio. Thus, since the Employer was not under contract in Ohio with the Steelworkers prior to 1994, Respondents argue that the Ohio employees are unrepresented.

We reject the Respondents claim. First, we rely on the unit certified by the Board which, as noted, includes all the Employer's employees without geographic limitation. Second, we further note that the unit described in the collective-bargaining agreement specifically includes Ohio. Finally, we note that Local 14693, the certified representative, is neither a party nor signatory to the Harmony Agreement. In these circumstances, we would not conclude, as a matter of Board law, that Local 14693 would be bound by the asserted geographic unit limitation imposed by the Harmony Agreement. In sum, Local 14693's certification, which on its face applies to a unit of "all employees" without geographic limitations, remains unaffected by the International's Harmony Agreement.

Nor has Local 14693 disclaimed interest in or otherwise agreed to a limitation on the scope of the certified unit. The Board does attempt to accommodate valid Union disclaimers made pursuant to internal union "no raiding" agreements, where such internal agreements are not being used to supersede a bargaining obligation and/or a binding collective bargaining agreement.^{6/} No such disclaimer was made here. First, the Steelworkers International Union's letter of April 30th notified only the Charged Unions, rather than the Employer, that according to its interpretation of the Harmony Agreement, its Master Agreement with the Employer only applied to work done in Pennsylvania. While the International appears to have advanced this opinion to the Employer at a subsequent June 25th meeting, there is no evidence that it did so at the behest of Local 14693 or as an agent of that Local. In fact, Local 14693 has never disclaimed this unit, and has recently called the International's position in this matter "stupid." Thus, there is no factual support that a

^{6/} VFL Technology Corp., 332 NLRB 1443, 1444 (2000) (finding no contract bar and denying review of a Decision to process an RC petition, based on the majority representative's disclaimer pursuant to an internal union "no raid" adjudication.) See also, Mack Trucks, Inc., 209 NLRB 1003 (1974) (collusive agreement between contracting union and R-case petitioner will invalidate disclaimer).

disclaimer of interest has ever been made by the certified union, and complaint should issue, as detailed above, absent settlement.

B.J.K.