

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

Advice Memorandum

DATE: February 16, 2005

TO : James J. McDermott, Regional Director
Region 31

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

SUBJECT: Nevada Security Innovations, Ltd. 177-3987
Case 31-CA-27106 530-4090-6000
530-5400

This case was submitted for advice as to whether the Employer unlawfully refused to provide names, addresses, and phone numbers of unit employees to a union that had merged with the Section 9(a) representative. We conclude that the union merger was conducted with adequate due process, and that there was substantial continuity between the pre and post-merger union; therefore, the Employer was obligated to continue to recognize and bargain with the union after the merger and it violated Section 8(a) (5) by failing to provide clearly relevant information.

FACTS

The Employer's employees have been represented by the Federation of Police, Security and Correction Officers (FOPSCO) since August 2002.¹ In May 2004, FOPSCO merged with the International Union, Security, Police and Fire Professionals of America (SPFPA).

Before the merger, FOPSCO sent letters to all FOPSCO members updating them on the status of the negotiations and explaining that members would be receiving a ballot by mail and would be able to vote on the merger proposal. Ballots were sent to all dues-paying members, and to all the Employer's employees (regardless of whether they were members).² The ballots were returned by double envelope (to maintain the secrecy of the ballot) to independent entity

¹ The Employer refused to bargain with FOPSCO, after its certification as the 9(a) representative, contending that FOPSCO had transferred bargaining rights to one of its local unions. The Board rejected that argument and issued a bargaining order, which is pending on review in the D.C. Circuit.

² Since none of the Employer's employees were dues-paying members yet, they were all sent ballots.

Election Services Corp., which conducted a count of the ballots. The vote was overwhelmingly in favor of the merger.

The unions subsequently merged through a formal agreement, pursuant to which FOPSCO was dissolved and its local unions became SPFPA unions governed by SPFPA's constitution and by-laws. FOPSCO President Johanssen continues to hold a senior position (Advisor to the President) with SPFPA. Other FOPSCO senior officials also have been given positions with SPFPA. Officers for the FOPSCO Local unions have remained entirely the same under SPFPA. As had been the case when FOPSCO was the bargaining representative, collective bargaining is to be handled at the international level and local matters, such as grievances, are to be handled at the local level.

After the merger, SPFPA repeatedly requested that the Employer provide it with a current list of names, addresses, and phone numbers of all bargaining unit employees. The Employer did not respond to any of those requests. The Employer's response to the charge is that, because of the merger, there is no longer a Section 9(a) representative.

ACTION

We conclude that the Employer violated Section 8(a)(5) by failing to provide the requested information to a union that was the legitimate successor to the Section 9(a) rights of the certified bargaining representative.

In Allied Mechanical,³ the Board held that an employer's duty to recognize and bargain with a certified union continues, following the union's merger or affiliation with another union, unless the union's members did not have an opportunity to participate in a vote on the merger, the vote was conducted without adequate due process safeguards, or the merger caused changes so significant that substantial continuity was lost between the pre- and post-merger union. As the Supreme Court noted in Seattle-First,⁴ among the due process safeguards the Board has looked at are that all members be given notice of the election, that they have an adequate opportunity to discuss the election, and that there are reasonable precautions

³ 341 NLRB No. 141 (May 28, 2004).

⁴ NLRB v. Financial Institution Employees (Seattle-First Financial Bank), 475 U.S. 192, 199 (1986).

taken to maintain ballot secrecy. Regarding "substantial continuity," the inquiry includes whether there are continued leadership responsibilities for existing officials; whether the new union utilizes the same dues structures, and negotiates contracts and handles grievances in the same manner; and whether the local unions retain the same kind of autonomy that they had before the merger.⁵

Here, all members had an opportunity to participate in a vote on the merger, the vote was conducted with adequate due process safeguards, and the merger did not cause changes so significant that substantial continuity was lost between the pre- and post-merger union.⁶ With regard to "substantial continuity," FOPSCO international officials continue to have leadership positions in SPFPA and the local leadership has remained essentially unchanged; there is no indication that SPFPA would utilize a different methodology in negotiating contracts or otherwise representing the employees; and the local unions retain the same kind of autonomy that they had before the merger and will continue to handle grievances in the same manner. We note, however, that since the FOPSCO International was - and the SPFPA International is - the Section 9(a) representative, it is particularly important to demonstrate continuity between the FOPSCO and SPFPA Internationals' representation of the unit employees, and not just between the former FOPSCO local and the substantially identical SPFPA local it has become. Thus, the Region should introduce any evidence it can adduce of continuity at the international level, including, e.g., that the International representatives formerly responsible for this bargaining unit have continued to have such responsibility under SPFPA.

⁵ Id. at 199; Western Commercial Transport, 288 NLRB 214, 217-218 (1988); Mike Basil Chevrolet, 331 NLRB 1044, 1045 (2000).

⁶ Although the General Counsel continues to adhere to his view, discussed in a Motion for Reconsideration in Allied Mechanical, that a showing of due process should not be required before finding an obligation to bargain with an entity that is substantially the same as the 9(a) representative, that argument need not be made in this case since due process has been clearly established.

Accordingly, the Region should issue a Section 8(a) (5) complaint absent settlement.

B.J.K.