

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

Advice Memorandum

DATE: March 30, 2000

TO : Claude Witherspoon, Acting Regional Director
Region 16

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

SUBJECT: Formosa Plastics Corp.
Case 16-CA-19826

This case was resubmitted for advice as to whether the Employer violated Section 8(a)(2) by forming and holding meetings of the Meeting Basic Needs committee; and whether the Employer violated Section 8(a)(1) by conducting a survey of employee satisfaction.

FACTS

Background facts can be found in our prior memorandum in this case dated July 26, 1999. In that memorandum, we concluded that the Employer did not violate Section 8(a)(2) since the Meeting Basic Needs committee did not "deal with" the Employer and thus was not a Section 2(5) labor organization. We further concluded that there was insufficient evidence that the Employer unlawfully solicited grievances with an implied promise to remedy them. Subsequent to that memorandum, the Region obtained additional information, as follows.

In January 1999, at the first meeting of the Basic Needs committee, an employer representative suggested conducting a worker satisfaction survey to find out why employees were upset. Some of the committee members thought that the survey would be a waste of time. One employee commented that the Union "was going door to door now and if we don't watch it, we are all going to be paying someone else to run this plant." Rex Ladner, personnel director, stated that the committee needed to do something to give them credibility that changes would be made. Some committee members wanted to interview several companies before selecting one to do the survey. At the second meeting of the Basic Needs committee, Ladner mentioned some ideas he had been considering, including changes to the attendance policy. Ladner said that he would like the

Meeting Basic Needs committee to take credit for the change so it could give them credibility. On March 1, 1999, the Basic Needs Committee issued a memorandum to employees stating that, based on recommendations of the committee, the attendance policy was changing.

At the third committee meeting, members were introduced to Hal Craft, representative of the company that was conducting the worker satisfaction survey. When asked by some committee members why the committee was not allowed to select the company that would do the survey, Ladner responded that it was the Employer's money and that the Employer could do as it wished. Craft told the committee members that they "could not make changes by themselves, but that as a group they could make recommendations."

In April 1999, the results of the survey were read to the committee; the committee members were given a copy of the survey to read during the meeting but were not allowed to retain the copy. Subsequently, the Employer presented the survey results to the managers and supervisors, and then to the hourly employees in each department. The committee members were invited to attend these meetings. At the end of each meeting, Randy Smith, Vice-President and General Manager of the plant, said that he would like to have one year to address the concerns raised in the survey. On April 30, while these meetings were being held, the Union's election petition was filed.

Also in April, Craft suggested that the committee find out how the Employer's benefits compared with other businesses. Thereafter, for about one month, the committee members called and visited other area plants, on company time, to get information about their benefits, wages and policies. In addition to area industry employers, the committee contacted the Employer's facilities in Baton Rouge and Delaware. The information was gathered and written on large posters which were used at employee meetings.

Beginning in May, the Employer held two-to-five hour meetings with employees in groups of approximately 40. Craft told employees during these meetings that unions were bad for employees. At the conclusion of Craft's presentation, the committee presented the findings from its comparison study, which included wages, medical coverage,

deductibles, dental insurance, vision insurance, disability, vacations, 401(k) plans and stock discounts. There were approximately 20 to 30 of these meetings and the committee members were present at all of them. At the end of each of the meetings, Smith made comments about the comparisons and requested a year to address the issues.

ACTION

We conclude that a Section 8(a)(1) complaint should issue, absent settlement, alleging that the Employer violated Section 8(a)(1) by continuing the employee survey, soliciting employee grievances, and reporting the results of this solicitation of grievances to employees, after the Employer became aware of union organizing activity. However, the Section 8(a)(2) charge should be dismissed, absent withdrawal, since the Meeting Basic Needs committee does not "deal with" the Employer and thus is not a Section 2(5) labor organization.

The solicitation of grievances during a union campaign is unlawful only if it is accompanied by an express or implied promise to remedy the grievance if the union is rejected in the election.¹ The Board has found an implied promise to remedy where the employer survey or solicitation has never been done before and where the solicitation occurs in the context of an organizing campaign.² On the other hand, the Board has found no violation where an employer has a past practice of conducting surveys³ or the survey was conceived for legitimate business reasons and was not designed in response to union organizing efforts.⁴

¹ See, e.g., Clark Equipment Co., 278 NLRB 498 (1986).

² See, e.g., Gordonsville Industries, 252 NLRB 563, 568 (1980); Reliance Electric Co., 191 NLRB 44, 46 (1971), enfd. 457 F.2d 503 (6th Cir. 1972).

³ Clark Equipment, 278 NLRB at 517 (past practice of conducting surveys was noted even though the surveys were "substantially different . . . both as to the scope of inquiry and the scope of distribution").

⁴ See, e.g., Leland Stanford Jr. University, 240 NLRB 1138, n.1 (1979).

In the instant case, the Employer revised its attendance policy in an effort to discourage union organization. Although the publicity for this change indicated that the Meeting Basic Needs committee was responsible for the change, it is clear from the evidence that the Employer, not the committee, revised the attendance policy. This is consistent with the evidence that the Employer told the committee on several occasions that it could not make changes in terms and conditions of employment, but could only make recommendations which would be taken under advisement.

Further, although there is insufficient evidence that the initiation of the survey was unlawful since it is not known when the Employer first learned of the Union's activities, we agree with the Region that the Employer violated Section 8(a)(1) by continuing the survey after it learned of the Union's organizing, and by Smith's asking employees at the end of each meeting held with groups of employees to give him a year to address the issues in the survey. Smith's statement inferred a promise to remedy any grievances that might be uncovered by the survey.

Consistent with all the reasons underlying the conclusion in our prior memorandum, we agree with the Region that the additional evidence still does not establish that the Meeting Basic Needs committee is a Section 2(5) labor organization. The committee has taken no action except gathering information on industry wages and benefits. Further, committee members were specifically informed that they could not make changes in terms and conditions of employment, but that the information they gathered and any recommendations they would like to make would be taken under advisement. It was never the understanding of the committee that it could make recommendations that would be implemented. Further, although the committee may have held itself out as a labor organization when it took credit for the change in attendance policy, in fact, it was not responsible for that change.

B.J.K.