

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

# Advice Memorandum

DATE: July 24, 2006

TO : Joseph P. Norelli, Regional Director  
Region 20

FROM : Barry J. Kearney, Associate General Counsel  
Division of Advice 530-6033-0150  
530-6033-1433

SUBJECT: Vanguard Car Rental USA, Inc. 530-6033-7000  
Case 37-CA-7033 530-6067-2030

This case was submitted for advice as to whether the Employer violated its obligation to bargain in good faith, where the Employer's chief negotiator insisted on participating by telephone and the Employer's representatives who were at the table had no bargaining authority.

We conclude that the Employer violated Section 8(a)(5) by refusing to conduct negotiations in person, and instead requiring the Union to negotiate with its senior labor relations specialist by telephone. The fact that the Union was in the same room with Employer officials during negotiations is irrelevant since those officials lacked the authority to bargain.

### **FACTS**

The Employer is a national car rental company. The Union represents a bargaining unit of the Employer's Oahu, Hawaii employees. The parties' collective-bargaining agreement expired on October 1, 2004, after which they agreed to a series of contract extensions. The most recent extension agreement expired on December 31, 2005.<sup>1</sup>

Between September 2004 and February 2005, the Union contacted the Employer about 17 times to schedule negotiations to renew the collective-bargaining agreement.<sup>2</sup> The parties finally held their first three negotiating sessions on March 1, 2, and 15, at the Employer's regional office in Oahu, Hawaii. Three Employer representatives based in Oahu were present at the bargaining table.<sup>3</sup>

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<sup>1</sup> Herein all dates are 2005 unless otherwise indicated.

<sup>2</sup> The Region has already issued a complaint in Case 37-CA-6939 alleging that the employer failed to meet at reasonable times to engage in collective-bargaining.

<sup>3</sup> These were the regional vice president, the general manager, and the regional human resources director.

Employer Senior Labor Relations Specialist Prins and Labor Relations Manager Holbrook participated by telephone. Prins was the Employer's chief and only negotiator; the Oahu representatives had no authority to resolve bargaining issues, remained silent during negotiations, and spoke only when Prins called upon them.<sup>4</sup>

By letter of July 11, Union negotiator Ambrose told Prins that "the Union is strongly insisting that you make arrangements to meet with our committee in Hawaii for the next scheduled session or arrange to have someone else made available." Prins did not agree to come to Hawaii. The parties then held four negotiation sessions on July 21, July 28, August 30, and October 4. As with the first three sessions, Prins participated by telephone. By the end of the October 4 session, the parties had agreed on a number of issues, but were still apart on health insurance, wages, and management rights.

On October 19 and several times during the next week, Ambrose unsuccessfully sought to reach Prins by telephone to schedule additional negotiation dates. By letter of November 1, Ambrose proposed to meet on November 21 and 23, and stated:

As you know, we have been trying to reach a settlement over the past two years without success by phone conferences for our ongoing negotiations. Considering the current situation, the Union is insisting that you make arrangements to meet with our committee, in Hawaii, for the next scheduled session or arrange to have a company representative in attendance.

On November 8, Holbrook informed Ambrose that Vanguard's negotiating committee was available to meet on November 21, but that Prins and Holbrook would not negotiate in person. Ambrose initially agreed, but then called Holbrook back to insist that negotiations take place in person. By letter of November 9, Ambrose wrote Prins that "going forward, we strongly insist that negotiations between the parties take place in person." By letter of November 11, Prins responded that there was no "compelling reason for your sudden insistence on our physical presence in Hawaii." Prins stated that the Employer's principal operating officer was present at the table; that there had never been prior complaints about Prins participating by

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<sup>4</sup> Labor relations manager Holbrook, who also participated by telephone, occasionally spoke.

phone; and that as of October 4, the parties remained far apart over management rights, healthcare cost allocation, and lump sums. Prins' letter expressed surprise that the Union would "all of a sudden insist on our physical presence in Hawaii, because I believe we are at impasse over these issues, and that bargaining would be brief."

On November 16, Ambrose telephoned Prins and again requested face-to-face bargaining. Prins stated that it would be a waste of time for him to come to Hawaii to bargain because the parties were just going to remain firm in their positions. Ambrose responded that the parties had reached a critical point in negotiations where face-to-face bargaining was necessary. On November 21, Ambrose wrote a follow-up letter to Prins, which stated in pertinent part:

This serves to confirm our November 16, 2005 discussion regarding my request to meet in person rather than by teleconference to resume negotiations, in which you adamantly stated that you were not willing to meet . . . . While we remain optimistic that a fair settlement can be achieved with more meaningful negotiations, you offer no justification for your unwillingness to meet in person. Therefore, I implore you in good faith to please reconsider your teleconference stipulation and make yourself available to resume negotiations. In the event I do not hear from you by November 30, I will have no alternative but to file a complaint with the NLRB and take other appropriate action, if needed.

During the following week, Ambrose left Prins telephone messages requesting that the parties schedule negotiations and meet in person. Prins did not return the phone calls. By letter of December 9, Ambrose informed Prins:

This letter serves to document my phone message left with you on December 1 and December 5, 2005 in regards to securing negotiation dates. The Union is available to meet with you in person on December 22, 2005 in an effort to finalize negotiations between the parties.

On December 15, Prins telephoned Ambrose and stated that he would not come to Hawaii. Prins did not confirm the December 22 negotiation date. The parties still disagree over the need for face-to-face negotiations.

**ACTION**

We conclude that the Employer violated Section 8(a)(5) by refusing to conduct negotiations in person.

Section 8(d) defines collective bargaining as "the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment." The Board has stated that it is "elementary that collective bargaining is most effectively carried out by personal meetings and conferences of parties at the bargaining table," and that "[i]ndeed the Act imposes this obligation to meet."<sup>5</sup> For example, an employer's refusal to meet face-to-face until exchanges of written proposals produced some initial agreement violated Section 8(a)(5).<sup>6</sup>

Once a party engaged in collective bargaining seeks to meet in person, the other party may not lawfully refuse to do so and require instead that negotiations be conducted by phone or by mail.<sup>7</sup> Further, the fact that a party initially acquiesces to bargaining by telephone, or that some progress was made through telephonic bargaining, does not relieve the other party of its obligation to conduct face-to-face bargaining once such a demand is made.<sup>8</sup>

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<sup>5</sup> Fountain Lodge, Inc., 269 NLRB 674, 674 (1984), citing U.S. Cold Storage Corp., 96 NLRB 1108 (1951), enfd. 203 F.2d 924 (5<sup>th</sup> Cir. 1953).

<sup>6</sup> Ibid. See also Colony Furniture Co., 144 NLRB 1582, 1589 (1963) (lack of bargaining authority by employer's representative at bargaining table unlawfully "required that the Union in effect attempt to negotiate a contract through long-distance telephone calls and written correspondence, except on . . . rare occasions").

<sup>7</sup> See Twin City Concrete, Inc., 317 NLRB 1313, 1315, n.5 (1995) (employer violated 8(a)(5) by its insistence on receiving written statements of position before agreeing to a face-to-face meeting; Board contrasts this situation to one where parties had engaged in numerous face-to-face bargaining sessions and had reached impasse before the employer declined to meet again unless the union provided specifics of a proposal that might break the impasse).

<sup>8</sup> The Westgate Corp., 196 NLRB 306, 313-314 (1972) (although some progress was made substituting telephonic bargaining for face-to-face meetings, once it was clear that the union no longer acquiesced to the use of the telephone, it was

In the instant case, we agree with the Region that the Employer unlawfully refused to conduct negotiations in person. First, the evidence establishes that the parties engaged solely in telephonic negotiations. Employer Chief Negotiator Prins was the only Employer representative authorized to conduct negotiations and no negotiations took place without him. Although several Oahu-based management representatives were present at the table, they did not engage in negotiations or speak unless Prins called upon them to do so. Further, there is no dispute that during the entire seven-session negotiating process, Prins participated solely by telephone and never appeared in person.

Second, the evidence amply supports the conclusion that the Employer rejected the Union's repeated demands for face-to-face negotiations. Thus, on July 11, following the first three bargaining sessions, Union negotiator Ambrose wrote Prins "strongly insisting that you make arrangements to meet with our committee in Hawaii . . . ." Between November 1 and December 15, following the next four sessions, Ambrose sent five letters and made numerous telephone calls "strongly insist[ing] that negotiations between the parties take place in person." Prins repeatedly refused and the parties have not returned to the table. By rejecting the Union's demands for face-to-face bargaining and requiring that negotiations be conducted by phone, the Employer violated Section 8(a)(5).<sup>9</sup>

We note that Prins's November 11 letter suggested that his "physical presence in Hawaii" was not needed because he believed the parties were at impasse over the three outstanding issues, management rights, healthcare cost allocation, and lump sums. However, he never substantiated his "belief," and the Employer did not take the position in a phone conversation with the Region that the parties had reached a negotiating impasse. In any event, where an employer fails to meet its Section 8(d) obligation to bargain in good faith, a lawful, good faith impasse is impossible.<sup>10</sup> Here, as discussed above, the Employer

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employer's obligation to make available someone "with authority to bargain with the Union face-to-face . . . .").

<sup>9</sup> Westgate Corp., 196 NLRB 306; Twin City Concrete, Inc., 317 NLRB at 1320.

<sup>10</sup> See PRC Recording Co., 280 NLRB 615, 634 (1986), *enfd.* 836 F.2d 289 (7<sup>th</sup> Cir. 1987) (good-faith bargaining is a prerequisite to reaching bona fide impasse).

violated its obligation to bargain in good faith by its refusal, as of the Union's July 11 demand, to engage in face-to-face bargaining. From that point on, the Employer's refusal to negotiate in person with the Union amounted to bad-faith bargaining, precluding a good faith impasse.

Nor can the Employer argue that Prins did not need to appear in person because the Employer's Oahu-based representatives were present at the table. It is axiomatic that for bargaining to take place, the party present at the table must be someone with authority to negotiate a contract, and not a mere figurehead.<sup>11</sup> The Oahu Employer representatives had no such authority; Prins was the only person authorized to negotiate the contract.<sup>12</sup>

Accordingly, the Region should issue complaint, absent settlement, alleging that the Employer unlawfully refused to conduct face-to-face bargaining with the Union.

B.J.K.

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<sup>11</sup> Colony Furniture Co., 144 NLRB at 1589 (bargaining principals are entitled to face-to-face negotiations with their opposites and the union's attempt to negotiate with son was mere shadow-boxing, where the real negotiator for the employer, the father, was seldom present in person at the bargaining table).

<sup>12</sup> See ibid. (bad faith bargaining found where the son at the bargaining table was a figurehead and the decisive negotiations were with the father, mostly by telephone and written communications). Compare NAGE (IBPO), 327 NLRB 676, 691 (1999) (though final authority to enter into an agreement was reserved to the president, these limitations did not inhibit the progress of negotiations).