

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

DATE: July 24, 2000

TO : Ronald M. Sharp, Regional Director
Region 18

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

SUBJECT: Technagraphics 530-4825-6700
Case 18-CA-15607

This case was submitted for advice as to whether the Employer, a Burns¹ successor, was obligated to bargain with the Union before setting initial terms and conditions of employment either because: (1) it was a "perfectly clear" successor with a plan to retain all of the predecessor's employees; and/or (2) because it forfeited the Burns privilege to set initial terms because of its statements to employees that it was "non-union," under the Board's Advanced Stretchforming² decision.

FACTS

Briefly, the Union had represented a unit of approximately 7 of the predecessor printing company (Associated Lithographers, Inc. or AL)'s employees since 1976. The most recent contract expired August 31, 1999, but because of AL's financial difficulties, the parties agreed to defer negotiating a new contract. The Union agreed to a 10% wage cut while continuing the existing benefits and terms and conditions.

On April 13, 2000,³ AL told the employees that it would no longer be the employer, that there was going to be a shutdown the next day, Friday April 14, and that the

¹ NLRB v. Burns International Security Services, 406 U.S. 272 (1972).

² Advanced Stretchforming International, Inc., 323 NLRB 529 (1997).

³ All dates are in 2000 unless otherwise indicated.

employees should come in to see what was going to happen. The employees had known that a sale of the business was imminent. The three owners of the successor Employer met with the employees on April 14. According to employee witnesses, one of the Employer owners told the employees that it would not purchase the business unless the employees agreed to continue working. Further, when asked if the Employer would be a Union shop, an owner replied that it would not be a union shop, but went on to state generally the Employer's wages and all of the benefits. Also, the Employer owners were asked about benefits on April 14 but gave only vague answers. The Employer states that it told the employees on April 14 that the wages and benefits would be different than those under AL. Employees were given applications and told to return on Monday, April 17, if they were interested in applying. The employees showed up for work on Monday and began working before they were "interviewed." The interviews appear to have been pro forma, since all employees were hired. The Employer offered them their current wages plus the 10% concession the Union had given AL, although the medical, holiday, vacation, and early retirement benefits were less.

The Employer refused the Union's April 18 request to recognize and bargain. The Region has concluded that the Employer was a Burns successor and its refusal to recognize and bargain violated Section 8(a)(5). Recently, by letter dated July 11, the Employer agreed to recognize and bargain with the Union, under the terms and conditions of employment it implemented on April 17.

ACTION

We agree with the Region that the Employer violated Section 8(a)(5) under Advanced Stretchforming by unilaterally setting initial terms and conditions of employment. [FOIA Exemption 5

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Thus, for the reasons stated by the Region, we agree that the Employer, under Advanced Stretchforming, forfeited its normal Burns privilege to set initial terms and conditions because of its statement to unit employees that it was non-union.

[FOIA Exemption 5

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