

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

DATE: November 7, 2003

TO : Rosemary Pye, Regional Director
Region 1

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

SUBJECT: EAD Motors Eastern Air Devices, Inc. 512-5072-3400
Cases 1-CA-40651, et al. 530-4080-5012-6700

This matter was submitted for Advice as to whether the Employer unlawfully assisted in the preparation of the employee petition upon which it based its withdrawal of recognition of the Union.¹ We agree with the Region that the Employer unlawfully contributed more than mere ministerial assistance to the preparation of the petition.

Briefly, the Employer withdrew recognition from the Union on June 16, 2003, based on a petition signed by 34 of 66 unit employees. The Region has concluded that the petition was tainted by Employer unfair labor practices that had occurred prior to the circulation of the petition. The Union has alleged that the petition was also independently tainted by unlawful Employer assistance.

In this regard, three employees, Patty Fraser, Nancy Kane, and Catherine Vachon, circulated a petition to get rid of the Union. Employer human resources manager Leamy asserts that sometime in May 2003, Vachon came to her and said that she was "fed up" with the Union, and asked what they could do to get rid of the Union. Leamy replied that there would have to be a vote, and they would have to get 50 per cent plus 1 to be successful. Leamy said that on the next day, Fraser came to see her and said that she wanted to get rid of the Union. Fraser said that they wanted to make sure that it would "stick" and be legal. Leamy states that both Vachon and Fraser gave Leamy reasons why they did not want the Union. Leamy told Fraser that

¹These cases were also submitted as to the appropriateness of Section 10(j) proceedings. That issue will be addressed in a separate memorandum.

she would contact Employer attorney Kraft to see what could be done.

Leamy called Kraft, who said he would check the law to see how the Employer could be involved, if at all. Kraft said that after reviewing applicable Board law, he told Leamy that he could draft a petition. However, he said that if any of the reasons for the employees not wanting the Union were because of the pending unfair labor practice conduct, the Employer could not be involved. Kraft then drew up the petition. On the draft, he listed four reasons why the employees did not want the Union, which had been communicated to Kraft by Leamy, based on her discussions with the two employees. The employees deleted one of the reasons from the petitions they circulated.

On June 4, Leamy received the petition signed by 34 of 66 employees in the unit. The Employer then determined to meet with employees, ostensibly to be assured that they supported the petition. Kraft asserts that at that June 10 meeting he told employees that slightly over half of them had signed the petition, stating that they no longer wanted the Union to represent them. He read the reasons and said that the Employer had to decide whether or not to withdraw recognition. He explained that based on the implications of their signing the petition, if the employees did not mean to sign, they were free to remove their names without repercussions. He gave them until June 13 to do so. He asserts that no one asked to remove signatures, and one person asked to add his name, and did so.

Kraft then sent a letter to the Union dated June 16, stating that based upon the petition the Employer would no longer consider the Union as the employees' representative, unless the Union demonstrated through Board processes that a majority of employees supported the Union. By this letter, the Employer effectively withdrew recognition from the Union and has not been dealing with it since that time.

We agree with the Region that the Employer's involvement in the preparation of the petition was unlawful as it constituted more than mere "ministerial aid."² Here, the Employer, through Leamy, replied to employee Fraser's concern that she wanted to get rid of the Union and wanted it to "stick" by telling Fraser that the Employer would contact its attorney to see what could be done. Fraser did

²Eastern States Optical Co., 275 NLRB 371, 372 (1985) (citation omitted).

not merely ask Leamy or attorney Kraft to review petition language already drafted by an employee.³ Leamy then contacted attorney Kraft, who drafted the petition. Kraft then conducted the June 10 meeting, at which he discussed the petition prior to relying on it to withdraw recognition on June 16. Thus, the Employer expressly provided legal advice to assist the employees who expressed an interest in removing the Union as their representative by telling Fraser it would contact attorney Kraft, who in turn provided petition language to the petition circulators. In these circumstances, the Employer unlawfully provided more than mere ministerial assistance to the preparation and presentation of a petition upon which it relied to withdraw recognition. See Pic Way Shoe Mart, 308 NLRB 84 (1992) (employer unlawfully provided more than ministerial aid to employee who had sought advice about how to get rid of the union when it contacted a labor consultant directly instead of giving the employee the labor consultant's contact information, and when it then sent copies of petitions to the consultant, who filed the decertification petition).⁴

B.J.K.

³ Compare Washington Street Foundry, 268 NLRB 338, 339 (1983) (no violation where employee specifically asked employer's labor consultant to review petition language already drafted by employee; consultant made only minor changes).

⁴ See also Vic Koenig Chevrolet, 321 NLRB 1255, 1259 (1996), enf. denied in rel. part 126 F.3d 947 (7th Cir. 1997) (Board majority described Pic Way as unlawful because the employer "acted as a go-between" in furtherance of an employee decertification effort). Compare Bridgestone/Firestone, Inc., 335 NLRB 941, 942 (2001) (Board majority, in finding that employer lawfully provided employee with copy of petition from another store which employee then used as a model, distinguished Pic Way by stating that there the employer arranged for employees to meet with consultant it selected and then sent petitions to consultant).