

recognition or the contract being conditioned upon the Union's attainment of majority status. The contract also contained a union security clause.

From around August through December 2001, the Employer was involved in hiring for the new facility it was constructing on Ipsat's property. During the interviewing process, employees were told various things regarding the Employer's relationship with the Union and the contract they had negotiated. Don Jones, the Union's business agent, reportedly told employee Harris that Local 1010 was very confident that it would be the employees' representative at the Employer, that the Union had already spoken with the Employer's lawyers, and the parties were working on a proposal. Harris was also told by Steve Marcus, the Employer's plant manager, that the plant was going to be union and that it would probably be part of Local 1010. Marcus told other employees that the plant was going to be union, and the Union would represent the employees. After Harris was hired, Jones showed him a copy of the signed agreement between the Union and the Employer. Harris then told other employees that Marcus had told him that they would be with the Union, that he had seen the contract, and what the wages and holiday pay would be under that contract.

The Union selected employee Rogers to solicit authorization cards from the employees. Around December 18, Rogers approached a group of employees in the men's locker and room and distributed authorization cards for employees to sign. There was some discussion among the employees about their understanding that the Union would represent them. Most of the employees held on to the cards and turned them in at a Union meeting held the following week.

The Union held the meeting near the end of December. The Union first distributed cards to those who had not yet received them, and then collected all the signed cards. The Union gave out copies of the contingent agreement that it had signed with the Employer. One employee asked how the employees could be union if there had been no election, and Jones responded that it was set in the contract between Ipsat and the Employer that the employees would be in the Union. He also told employees that the contract had been worked out two years ago, before any employees were hired, and that they would receive wages similar to those at Ipsat. When an employee asked how there could be a

contract when there were no employees, Jones responded that the Employer and the Union had a deal worked out.¹

On December 31, 2001, the Union presented 9 cards to an arbitrator for a card check. At the time, the Employer had a complement of 13 employees. The Union demanded recognition on January 10, 2002, which the Employer granted verbally on January 14, and in writing on January 17. On January 26, the arbitrator verified that the Union had a majority of signed authorization cards.

The Employer and the Union met on February 12 to fill in the dates of the collective-bargaining agreement that they had signed back in March 2000. The parties listed March 20, 2000 as the date the agreement was "made and entered into," but made it effective from January 25, 2002 through August 2004. The agreement contains a union security clause. The Region has found merit to a charge in Case 13-CA-40178 alleging that the Employer unlawfully required employees to complete and return dues checkoff authorization forms it distributed on behalf of Local 1010 and threatened employees with termination if they failed to complete and return the forms.

ACTION

We conclude that the Region should issue complaint, absent settlement, alleging that the Employer violated Section 8(a)(1), (2) and (3) by recognizing and entering into an agreement with the Union before it commenced operations or hired any employees.

An employer violates Section 8(a)(2) when it recognizes and negotiates a contract with a union that does not have authorization from a majority of the employer's employees to represent the employees in collective bargaining.² Such conduct violates the Act even when the recognition and contract are conditioned upon the Union's

¹ The Charging Party in this case is the International Union of Operating Engineers, Local 150, which attempted to have a number of its members apply for employment with the Employer for organizational purposes. Although the Charging Party filed a "refusal to consider and hire" charge, the Region has found no merit to those allegations.

² Int'l Ladies Garment Workers Union (Bernhard-Altman) v. NLRB, 366 U.S. 731 (1961); A.M.A. Leasing, 283 NLRB 1017, 1024 (1987); SMI of Worcester, Inc., 271 NLRB 1508, 1522 (1984)

obtaining majority support from the employees.³ In this case, the Employer and the Union negotiated a contract covering a unit of the Employer's employees, even before the Employer commenced operations or began hiring.⁴ This conduct is clearly unlawful, since any support eventually garnered by the Union was tainted by the parties' behavior in negotiating the contract and discussing it with employees during the hiring process.⁵ Thus, the Employer and Union both suggested to employees that they would be represented by the Union, that the contract had been worked out two years ago, and the Union even showed one employee the signed contract with the negotiated wage rates. In these circumstances, we conclude that the Employer's recognition of the Union, and execution of a contract conditioned upon the Union's eventually obtaining majority support, violated Section 8(a)(2).⁶

Finally, the Employer also violated Section 8(a)(3) since the collective-bargaining agreement contains a union-security clause.⁷

B.J.K.

³ Majestic Weaving Co., 147 NLRB 859, 860 (1964), enf. denied on other grounds 355 F.3d 854 (2d Cir. 1966).

⁴ The Employer can not defend its conduct on its perceived need to get out from the agreement between the Union and Ipsat. Although it is not clear what the Ipsat agreement provided, it could not lawfully require the Employer to be bound by its terms.

⁵ See Majestic Weaving, 147 NLRB at 859 (finding that the majority support that the union had at the time the contract was signed was an "assisted majority").

⁶ See Ladies Garment Workers v. NLRB, above, 366 U.S. at 736 (rejecting union's defense that it represented a majority of employees as of the execution date of the agreement; such acquisition of majority status itself might indicate that the recognition secured by the agreement afforded the union "a deceptive cloak of authority with which to persuasively elicit additional employee support").

⁷ Grocery Haulers, Inc., 315 NLRB 1316, 1317 (1995).