

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

Advice Memorandum

DATE: February 20, 1997

TO : Rosemary Pye, Regional Director
Region 1

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

SUBJECT: Corex Products, Inc.
Case 1-CA-24661

512-5012-8300
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512-5072-0200

Pursuant to OM Memorandum 96-89,¹ this case was submitted for advice as to whether the Employer violated Section 8(a)(5) and (1) of the Act by denying the Union access to its plant.

As set forth in the OM Memorandum, the Board in C.C.E., Inc.² found that an employer violated Section 8(a)(5) and (1) of the Act by denying access to its facility to the union representing its employees, relying on the balancing test set forth in Holyoke Water. In that case, the union was bargaining for a first contract. In a concurring opinion, Member Browning advocated abandoning the Holyoke Water balancing test and instead finding that the Union, as the exclusive representative and agent of the employees, stands in the shoes of employees and enjoys the same rights as employees under Republic Aviation Corp., 324 U.S. 793 (1945).

We conclude that the Region should issue a Section 8(a)(5) and (1) complaint, absent settlement, alleging that the Employer violated the Act, under the test set forth in Holyoke Water, when it denied the Union permission to enter its plant to conduct time-study evaluations on certain jobs in order to formulate and present to the Employer a wage proposal for piecework and day rates for employees represented by the Union.

¹ "Issues Under Holyoke Water Power Co., 273 NLRB 1369 (1985)," dated December 23, 1996.

² 318 NLRB 977 (1995).

[*FOIA Exemption 5*

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B.J.K.