

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

# Advice Memorandum

DATE: September 28, 2006

TO : Ralph R. Tremain, Regional Director  
Region 14

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

SUBJECT: Operating Engineers Local 520  
(Beelman Ready Mix, Inc.) 584-5000  
Case 14-CC-2524 584-5056

We agree with the Region that the work of the concrete pumper truck to pour concrete at a jobsite does not constitute on-site construction work within the construction industry proviso to Section 8(e) and, therefore, that the Union violated Section 8(b)(4)(ii)(A) by filing a grievance against the general contractor for using a non-signatory concrete supplier to perform that work, an interpretation of the PLA that would violate Section 8(e).

Specifically, we agree with the Region that the work of the concrete pumper truck is a continuation of the concrete delivery process.<sup>1</sup> In order for the pumper truck to operate, a ready-mix truck must deposit concrete into the pumper truck's hopper, which holds the concrete momentarily before it is pumped through the boom's hydraulic arm. Depending on the amount of concrete needed for the pour, the pumper truck may receive concrete from multiple ready-mix trucks. However, when ready-mix trucks stop supplying the pumper truck with concrete, the pumper truck can no longer operate; it must act in tandem with, and is dependent on, ready-mix trucks for a constant supply of concrete. Therefore, pouring concrete from the pumper truck is not a separate process from the delivery of concrete.<sup>2</sup>

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<sup>1</sup> The Board holds that concrete is not delivered until it is poured, and therefore that the pouring of concrete at a jobsite is not on-site work covered by the construction industry proviso. See Teamsters Local 294 (Island Dock Lumber), 145 NLRB 484, 491 (1963) (delivery of concrete by bucket or chute considered final step in the delivery of concrete because, unlike other supplies, concrete cannot be dumped on the ground or stored for later use); Teamsters Local 559 (Connecticut Sand and Stone Corp.), 138 NLRB 532, 535 (1962) (same).

<sup>2</sup> See Operating Engineers Local 12 (Stief Co.), 314 NLRB 874, 877 (1994) (distinguishing between activities that

We further agree with the Region that the Union's grievance has an unlawful object since, if successful, it would result in an application of the PLA that would violate Section 8(e).<sup>3</sup>

Accordingly, the Region should issue complaint, absent settlement, on this charge.

B.J.K.

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could not be separated from the final delivery of supplies and activities which could just as easily be performed by the construction workers on-site, e.g., concrete forms).

<sup>3</sup> See Elevator Constructors (Long Elevator), 289 NLRB 1095 (1988); Inland Concrete, 225 NLRB 209, 214 (1976).