

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

# Advice Memorandum

DATE: February 1, 2011

TO : Alvin Blyer, Regional Director  
Region 29

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

SUBJECT: Local 1010, LIUNA  
(New York School Construction Authority) 584-1225-2500  
Case 29-CE-143

This case was submitted for advice regarding whether a union violated Section 8(e) of the Act by entering into a Project Labor Agreement ("PLA") with a public entity that, in part, required all subcontractors to recognize the signatory unions as the exclusive bargaining representatives of the craft employees performing the on-site project work.

We conclude that the instant charge should be dismissed, absent withdrawal, because the New York School Construction Authority ("SCA") is not a statutory employer pursuant to Section 2(2) of the Act and, therefore, Section 8(e) does not apply to the PLA at issue.<sup>1</sup>

Briefly, on October 15, 2009, the SCA and the Building and Construction Trades Council and its union affiliates entered into a PLA covering rehabilitation and renovation work on New York City public schools. The SCA is a political entity established by the New York State Legislature in 1998 to "build new public schools, and manage the design, construction and renovation of capital projects in New York City's more than 1,200 school buildings." Although Local 1010 did not itself sign the PLA, the Pavers and Road Builders District Council ("District Council") signed on behalf of its affiliated local unions, which include Local 1010. Thereafter, contractors placed bids for work covered by the PLA, and the SCA required the selected contractors to sign an "Affidavit of Project Labor Agreement" incorporating the PLA terms.

There is no dispute that the SCA is a political subdivision and therefore does not constitute a Section 2(2) employer under the Act. The Board, based on its

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<sup>1</sup> Because Section 8(e) does not apply to the PLA, it is not necessary to address the issue of whether the PLA would violate Section 8(e) if the agreement was with a statutory employer.

interpretation of the statutory language and legislative history of Section 8(e), has long held that Section 8(e) only applies to agreements between statutory labor organizations and statutory employers.<sup>2</sup> Thus, because the prohibitions of Section 8(e) are inapplicable to the PLA reached with the SCA, we conclude that the instant charge should be dismissed, absent withdrawal.

B.J.K.

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<sup>2</sup> Local 3, IBEW, 244 NLRB 357, 357-59 (1979) (finding Union did not violate the Act by seeking to compel a political subdivision to enter into an agreement prohibited by Section 8(e) because that section does not apply to agreements between a union and non-statutory employer).