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

Advice Memorandum

DATE: April 22, 2009

TO : Martha Kinard, Regional Director
Region 16

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

SUBJECT: United Association of Journeymen, et al.(Asarco, LLC)
Case 16-CE-34, et al. 584-1275-6700
584-3740-1700

These cases were submitted for advice on whether various provisions of the parties' collective bargaining agreement, negotiated during the signatory's bankruptcy proceedings, violate Section 8(e).[1] Those provisions include:

- a "Neutrality" provision that binds "Ventures," any enterprise in which the signatory owns a substantial and material interest; and "Affiliates," which include entities that control, are under the control of, or under common control with the signatory, where control is defined as 50% equity ownership or the power to direct the management and policies of the enterprise;

- a "Parties to the Agreement" provision that binds "Affiliates," to the Agreement, defined the same as in the Neutrality provision, but that is limited during the bankruptcy proceeding to only those entities under the signatory's control; and

- A "Special Successorship" provision, which prohibits the signatory from consummating any transaction resulting in a "change in control," including any plan of reorganization under bankruptcy laws, unless the buyer recognizes and

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[1] This case is a companion to other cases pending in Advice, 16-CB-7504, et. al., wherein the Charging Party alleges that this Agreement also violates Section 8(b)(1)(A), and 16-CB-7756, wherein the Charging Party alleges that the Union bargained in bad faith in negotiating an agreement pursuant to the Special Successorship clause. Separate Advice memoranda will issue in those cases.

enters into an agreement with the Union before the sale's closing date.

We conclude that the Neutrality provision violates Section 8(e) because it binds entities that the signatory has no right to control, purports to address the labor relations of neutral entities, and has an explicit cease doing business object.

The Region should not allege that the other provisions violate Section 8(e). Even if the Parties to the Agreement provision is arguably secondary, the parties have limited the provision by a Letter of Understanding, rendering the provision incapable of being applied in an unlawful manner. The Region should not allege that the Special Successorship provision violates Section 8(e) because, while it seeks to condition Asarco's continuing or entering into a "doing business" relationship with Asarco, LLC, on Asarco's reaching a separate collective bargaining agreement with the Unions, under the unique facts and circumstances of this case, it would not effectuate the policies of the Act to proceed.

FACTS

Asarco, LLC ("Asarco" or "the signatory") is engaged in the mining, processing, and selling of copper at five plants in Arizona and Texas. Asarco is a wholly-owned subsidiary of Asarco Inc., the Charging Party, which, in turn, is owned by Grupo Mexico (collectively with Asarco Inc., "Grupo"). Approximately 1600 employees at Asarco's Arizona and Texas plants are represented by a number of different unions[2] (collectively "the Unions") in separate bargaining units at seven different facilities.

[2] Those unions include: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (Steelworkers); International Brotherhood of Electrical Workers, Locals 518, 570 and 602 (IBEW); International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmith, Forgers and Helpers, Local 627 (IBB); International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local 104 (IBT); and Millwrights, Local 1914 (Millwrights) and/or United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 741 (UA).

Background

The Unions and the parents had acrimonious labor relations, culminating in a strike and Chapter 11 bankruptcy proceedings in 2005. The bankruptcy court approved an independent Board of Directors, and Grupo lost control of Asarco. The Board of Directors appointed a new President and Chief Executive Officer who spearheaded "partnership" model collective bargaining with the Unions.

In January 2007, the Unions and Asarco entered into a collective bargaining agreement ("Agreement") covering all of the units and, the next month, sought the Bankruptcy Court's approval of the Agreement. Grupo petitioned the Court to block approval, arguing, amongst other things, that the Agreement violated Section 8(e) of the Act. The provisions alleged to violate Section 8(e) are the "Parties to the Agreement," "Neutrality," and "Special Successorship" provisions.

Parties to the Agreement Provision

The Parties to the Agreement provision, Article 1, Section A, provides that the Agreement "is between Asarco LLC ("Asarco or the Company as further defined below") and [the Unions]." The provision provides that the term "Company" "include[s] any current or future "Affiliate," which is defined as follows:

a. An Affiliate shall mean any business enterprise that Controls, is under the Control of, or is under common Control with Asarco.
b. Control of a business enterprise shall mean possession, directly or indirect, of either:

    1) Fifty percent (50%) of the equity of the enterprise; or
    2) The power to direct the management and policies of said enterprise.

This provision was amended by a contemporaneous, January 1, 2007 Letter of Understanding on Miscellaneous Corporate Issues ("LOU") that provides in relevant part:

> **Parties to the Agreement**
> For purposes of Article 1, Section A of the Agreement, "Asarco" or the "Company" shall refer to (a) during the pendency of the chapter 11 reorganization case, ASARCO LLC and any entity that is under the Control of

> ASARCO LLC and (b), upon entry of a final, non-appealable order confirming a plan of reorganization for the Company and at any time thereafter, ASARCO LLC and any entity that Controls, or is under the Control of, or is under common Control with ASARCO LLC. For purposes of this Letter of Understanding, "Control" shall mean possession, directly or indirectly, of either: (a) fifty percent (50%) of the equity of the enterprise; or (b) the power to direct the management and policies of said enterprise. . .

(Emphasis added). Thus, during the pendency of the bankruptcy, the Parties to the Agreement provision only applies to entities that are under the "control" of Asarco.

The Agreement also contains a "Recognition and Coverage" provision, which defines the bargaining units covered by the Agreement. That provision lists the particular classifications of employees represented by each of the Unions at each of the identified Asarco facilities. There is no general grant of recognition or coverage of any employees not in one of the specified groups.

Neutrality Provision

Under Article 2, Section E of the Agreement, the Neutrality provision, the signatory agrees to adopt a position of neutrality with respect to the unionization of any "hourly-paid production and maintenance employees." The provision establishes organizing procedures, including card-check procedures, verification by a neutral third-party of the signed authorization cards, and arbitration of disputes.

The Neutrality provision applies to "the Company and the Union," and "the Company includes (in addition to the Company) any entity which is either an Affiliate or Venture of the Company." An "Affiliate" is defined the same as in the Parties to the Agreement section. A "Venture shall mean a business enterprise in which the Company owns a substantial and material interest."

Following the definition of Company is subsection (b), entitled, "Rules with Respect to Existing Affiliates and Ventures," which states that "[t]he Company agrees to cause all of the existing Affiliates and/or Ventures to become a party/parties to this Section and to achieve compliance with its provisions."

Subsection (c) entitled, "Rules with Respect to New Affiliates and Ventures," prohibits the Company from consummating a transaction with an entity that refuses to be bound by the Neutrality provision:

> The Company agrees that it will not consummate a transaction which would result in the company having or creating (1) an Affiliate or (2) a Venture without ensuring that the New Affiliate and/or New Venture agrees to and becomes bound by this Section.

Special Successorship Provision

In January 2007, the parties agreed to a Special Successorship provision that would address successorship in the context of the bankruptcy and any plan of reorganization:

> The Company agrees that it will not consummate any transaction resulting in a Change of Control of the Company, nor will it sell, convey, assign or otherwise transfer, using any form of transaction, any operating plant, or significant part thereof covered by the Agreement (any of the foregoing, a "Sale") to any other party ("Buyer") unless the following conditions have been satisfied prior to the closing date of the Sale:
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> i. The Buyer shall have entered into an Agreement with the Union recognizing it as the bargaining representative for the Employees working at the plant(s) to be sold; and
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> ii. The Buyer shall have entered into an Agreement with the Union establishing the terms and conditions of employment to be effective as of the closing date of the Sale.

"Change of Control" includes several types of transactions, including a plan of reorganization and the purchase or acquisition of majority stock or equity.

In February and March 2007 hearings, the bankruptcy court expressed concerns about the potential effect of provisions in the Agreement that bound the parents. In response to this concern, Asarco and the Unions drafted the

"Second Stipulation and Order Regarding Modification to Collective Bargaining Agreement." The Second Stipulation incorporated into the Order the "Special Successorship" clause set forth above and provided that the clause was effective from the period of bankruptcy until the effective date of any plan of reorganization.

The Second Stipulation further provided that the agreement and its terms were not applicable to the parents prior to the effective date of any plan of reorganization as long as the parent did not exercise control of Asarco:

> Prior to the effective date of any plan of reorganization of or for the Debtor, and provided that the Parent does not exercise control of the Debtor, the Parent (a) is not a signatory to the CBA, (b) is not a party to the CBA and (c) is not bound by any of the terms of the CBA regardless of its status as a direct or indirect owner of the equity in the Debtor[.]

Further, the Second Stipulation provided that under any proposed plan of reorganization "that would be a Parent Retained Equity Plan, the Special Successorship provision shall apply and the obligations of [the parties] shall be governed by such [clause]" subject to the bankruptcy court's determination that the Agreement does not violate the parents' rights, that the Unions are negotiating in good faith, and that there are no exigent circumstances related to the Chapter 11 bankruptcy.

Further Proceedings

On March 15, 2007, the Bankruptcy Court approved the agreement, including the Second Stipulation incorporating the Special Successorship provision. In its "Order Approving New Collective Bargaining Agreement with Unions, Including Monetary Obligations Thereunder," the Court explained that the Special Successorship provision "put the Parent[s] in substantially the same position as the creditors of this estate, should they own the company in a stand alone plan, or a buyer of the Debtor's assets or equity." The Charging Party filed an appeal, which is still pending.

For the last several years, the parties have operated under the terms of the collective bargaining agreement. Asarco is still in bankruptcy. Grupo and the Union had begun negotiating a new contract pursuant to the Special Successorship clause, but negotiations broke down in early May 2008. The Union had negotiated a collective bargaining agreement with another company called Sterlite. Both

potential purchasers had either filed or were planning to file plans of reorganization with the bankruptcy court. Recently, however, commodity prices collapsed, and, as a result, both Grupo Mexico and Sterlite withdrew their plans for reorganization. However, both companies, as well as at least one additional company, remain interested in acquiring Asarco (under more favorable terms to reflect the drop in commodity prices).

ACTION

We conclude that, absent settlement, the Region should issue complaint alleging that the Neutrality provision violates Section 8(e). Absent withdrawal, the Region should dismiss the 8(e) allegation regarding the Parties to the Agreement and Special Successorship provisions.[3]

Section 8(e) principles

Section 8(e) makes it an unfair labor practice for a union or an employer to enter into any contract or agreement, express or implied, where the employer agrees to cease or refrain from doing business with any other person.[4]

A violation of Section 8(e) is established by "proof of prohibitions against forming business relationships in the first place as well as requirements that one cease business relationships already in existence."[5] Section 8(e), however, also prohibits secondary agreements that impose a partial cessation of, or interference with

[3] We agree with the Region that, for 8(e) purposes, the Agreement was "entered into" when it was approved by the Bankruptcy Court on March 15, 2007. Further, we agree that the issues are ripe for review even though the Second Stipulation provides that the Agreement does not apply to a parent unless the parent "exercise[s] control]" of the debtor. There are no standing requirements for filing unfair labor practice charges, and thus, the Charging Party parent can file a charge even though it may not yet be subject to all clauses at issue here.

[4] Carpenters Dist. Council of Northeast Ohio (Alessio Construction), 310 NLRB 1023, 1025 (1993).

[5] Alessio, 310 NLRB at 1025 fn. 9 (citing Ets-Hokin Corp., 154 NLRB 839, 840 (1965), enfd. 405 F.2d 159 (9th Cir. 1968), cert. denied 395 U.S. 921 (1969)).

business, to the same extent as agreements that impose a total cessation.[6]

There are two basic requirements in proving a Section 8(e) violation: (1) that the agreement has a secondary, as opposed to primary work or work standards preservation, object, and (2) that the agreement has a cease or refrain from doing business object.[7] In determining whether an agreement has a secondary object, the Board regards separate corporate subsidiaries as separate persons under the Act if neither "exercises actual or active, as opposed to merely potential, control over the day-to-day operations or labor relations of the other."[8] Thus, companies bound only by common ownership are generally found to be neutrals with respect to each other's labor relations, because mere ownership does not establish actual control over day-to-day management.[9]

In Alessio Construction, the Board applied these principles to hold that an "integrity clause" between a signatory and a union that would have required separate employers to adopt a collective bargaining agreement or its terms violated Section 8(e).[10] Thus, the union violated Section 8(b)(3) by insisting on the clause, which provided that "[i]n the event" that the signatory's "partners, stock holders, or beneficial owners . . . formed or participated in the formation of another company," the signatory employer's referral provisions and contractual terms would apply to the second business.[11] The Board held that the clause had a cease doing business object because it was "calculated to cause Alessio to sever its ownership relationship with affiliated firms that seek to remain nonunion or to forebear from forming relationships with such firms."[12] Further, by applying to companies bound to

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[6] Heartland Industrial Partners, LLC, 348 NLRB No. 72, slip op. at 3 (2006); Int'l Longshoremen's, Local 1410 (Mobile Steamship), 235 NLRB 172, 179 (1978).

[7] Alessio, 310 NLRB at 1025.

[8] Los Angeles Newspaper Guild Local 69 (Hearst Corp.), 185 NLRB 303, 304 (1970), enfd. 43 F.3d 1173 (9th Cir. 1971), cert. denied 404 U.S. 1018 (1972).

[9] Alessio, 310 NLRB at 1026.

[10] Id. at 1025.

[11] Id. at 1023.

[12] Id. at 1025.

the signatory solely by common ownership, the agreement unlawfully reached neutral employers and was thus secondary.[13]

Applying the foregoing principles, we consider the three contractual provisions alleged to violate Section 8(e).

Neutrality Provision

We conclude that the Neutrality provision here violates Section 8(e) because it is secondary and has a cease doing business object. First, the provision is secondary because it binds separate entities with separate employees to that provision based on common ownership alone Thus, the terms "Affiliates" and "Ventures" includes entities that Asarco owns or owns a substantial and material interest, entities that own Asarco, and entities that are under common ownership with Asarco, but not necessarily entities that are within Asarco's right of control.[14] Because the provision therefore seeks to impose neutrality provisions on neutral employers, and not to preserve work for unit members, it is "tactically calculated to satisfy union objectives elsewhere" and has an unlawful secondary purpose.[15]

Second, the Neutrality provision has a "cease doing business" object. A subsection, "Rules with Respect to New Affiliates and Ventures," explicitly restricts the Company from consummating a transaction with entities unless the Company ensures that the entity will abide by the

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[13] Id. See also Iron Workers (Southwestern Materials), 328 NLRB 934, 936 (1999) (anti-dual shop clause requiring application of collective-bargaining agreement to "any person, firm or corporation owned or financially controlled by" signatory employer had secondary purpose); Operating Engineers Local 520 (Massman Construction Co., 327 NLRB 1257, 1261-62 (1999)(joint venture provision prohibiting signatory employer from entering joint venture unless collective-bargaining agreement was applied to "all parties to the [joint venture] contract," violated Section 8(e)).

[14] See Alessio, 310 NLRB at 1025-26 (unlawful secondary object could be inferred based on the fact that the application of contract provisions would reach companies performing work not within the signatory's right of control).

[15] See National Woodwork Mfrs. Assn., 386 U.S. at 644-45.

provision.[16] Thus, the challenged clause effectively gives the signatory two alternatives: (1) induce another company to apply the neutrality clause; or (2) refrain from consummating the relationship, *i.e.* cease-doing-business. The clause thus attempts to force the signatory to forebear from forming business relationships with entities that seek to remain nonunion, even though those entities are separate employers.[17]

Thus this case is distinguishable from Heartland Industrial Partners,[18] where the Board held that an agreement between a signatory and a union that potentially imposed a neutrality agreement on separate employers was not an agreement to "cease doing business." There, a side letter agreement provided that no less than six months after the employer had invested in a "covered business entity" (CBE), the union could notify the employer of its intent to organize the CBE, upon which the employer would cause the CBE to execute agreements binding the CBE to be neutral in the campaign and to recognize the union upon a card majority.[19] Despite argument from the General Counsel to the contrary, the Board found that "the plain words of the clause[s] at issue [did not] prohibit the signatory employer from establishing or continuing an affiliation with a nonunion firm," and did not require Heartland to sever its relationship with a CBE that does not become bound to the side letter agreement.[20] Because the prohibition on consummating a transaction is explicit here, the Board's concern in Heartland -- that the provision must

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[16] The question of whether the neutrality provision is unlawful without the "Rules with Respect to New Affiliates and Ventures" clause is not presented. If this issue arises in the course of settlement, the Region should contact the Division of Advice.

[17] See Alessio, 310 NLRB at 1025, 1025 fn. 9 (cease-doing-business element "is satisfied by proof of prohibitions against forming business relationships in the first place as well as requirements that one cease business relationships already in existence.").

[18] 348 NLRB No. 72, slip op. at 4-5 (2006), review denied as moot, Kandel v. N.L.R.B., 265 Fed.Appx. 1 (D.C. Cir. Jan 28, 2008) (unpublished).

[19] Id., slip op. at 1-3.

[20] Id., slip op. at 4. The Heartland Board did not reach whether the agreement had secondary objectives. Id., slip op. at 3 fn. 5.

explicitly or effectively require forbearance or divestiture -- is met.

While the Board has not yet found contractual provisions requiring third parties to be bound to neutrality agreements to violate Section 8(e) and did not do so in Heartland, its reasoning there was based on the fact that the side letter agreement did not expressly or effectively require Heartland to cease doing business with anyone. The Board did not hold that neutrality agreements, as a matter of law, do not impose a sufficiently onerous burden on "doing business" within the meaning of Section 8(e).[21] Accordingly, we conclude that the neutrality agreement here violates Section 8(e).

Parties to the Agreement Provision

While presenting a closer issue, we conclude that the Parties to the Agreement provision does not fall under Section 8(e) prohibitions because the provision has been limited in writing by the Letter of Understanding such that it can never be applied in an 8(e) manner.

Where a clause is not unambiguously unlawful on its face, the Board will interpret it to require no more than what is allowed by law.[22]

Even though the Parties to the Agreement provision alone could be read as secondary, another written contractual provision effectively prevents it from ever having such an effect. The Letter of Understanding provides that, during the pendency of the bankruptcy, the Parties to the Agreement provision only applies to entities "under the Control" of Asarco. This means that during the pendency of the bankruptcy, the provision does not go up the corporate chain and therefore does not apply to Grupo on any of its affiliates. Granted, the term "Control" is defined to include entities that Asarco may own but not actually control. But Asarco does not own or control any other entities, and, significantly, *cannot acquire* any entity during the pendency of the bankruptcy. Accordingly, this provision can have no secondary effect during the pendency of the bankruptcy.

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[21] See Heartland, 348 NLRB No. 72, slip op. at 5.

[22] See Teamsters Local 982 (J.K. Barker Trucking Co.), 181 NLRB 515, 517 (1970), affd. 450 F.2d 1322 (D.C. Cir. 1971); Ets-Hokin Corp., 154 NLRB at 841.

After the bankruptcy court confirms a final, non-appealable order confirming a plan of reorganization, the term "Company" in the agreement will include entities that "Control" Asarco. But at this point, the entire collective bargaining agreement will be superseded by a new labor agreement pursuant to the Special Successorship clause. Accordingly, even if the Parties to the Agreement provision could arguably be read as secondary, it can never have any secondary effect.

Special Successorship Provision

The Charging Party argues that the Special Successorship provision is unlawful because it applies under any plan of reorganization, even where the Charging Party retains, not obtains, majority stock ownership of Asarco, and because it applies to the Charging Party if it retains the stock but does not necessarily control Asarco as, e.g., a single employer.

Initially, it is important to recognize the form of the transaction at issue here. Unlike a typical successorship case, the transaction here may involve the retention or acquisition of the stock ownership in a corporation, not the retention or acquisition of an asset of a corporation (e.g., a factory). Grupo, for instance, now holds, and seeks to retain, the stock of Asarco, with the approval of the Bankruptcy Court. Because Grupo now holds the stock of Asarco, it is "doing business" with Asarco. Because Grupo seeks to retain the stock of Asarco, it seeks to continue "doing business" with Asarco.

Asarco, with whom the Unions have their primary relationship, is already bound by a collective bargaining agreement with the Unions (of which the Special Successorship provision is a part). Normally, outside the context of a bankruptcy proceeding, the retention of the stock of Asarco by Grupo would not change that fact. It is well established that changes in the stock ownership of a subsidiary do not affect the contractual obligations of the subsidiary.[23] As a matter of corporate law and labor law, the obligations of the subsidiary simply continue on because the subsidiary corporation itself continues on.[24] Thus, the Unions' primary relationship with Asarco would be wholly unaffected by what entity holds or obtains the

[23] M.P.C. Foods, 311 NLRB 1159, 1160 (1993) ("mere change of stock ownership does not absolve a continuing corporation of responsibility under the Act").

[24] Id.

stock.[25] Under these facts, the Special Successorship provision is simply redundant as it affects the contractual rights and obligations of the Unions and Asarco *vis a vis* one another. Because it is redundant, the only purpose is can possibly have is to enmesh another employer, e.g. Grupo.

Thus, the effect of the Special Successorship provision in this case is to prevent Asarco from agreeing to any plan of reorganization that would allow Grupo to retain or obtain its stock, unless Grupo itself agrees to enter into a separate collective bargaining agreement with the Unions. This therefore imposes a "cease or refrain from" doing business on Asarco.

Again, it is important to recognize that this case does not necessarily involve a typical successorship scenario, where the sale of asset of a corporation (e.g., a factory) – not stock of a corporation – is involved. In a typical successorship case, the seller of the factory may be required under its collective bargaining agreement to limit the sale to a buyer willing to hire the seller's employees and undertake the seller's obligations under the collective bargaining agreement at that factory. The sale of such a capital asset is not, in the usual case, "doing business" within the meaning of Section 8(e).[26] Thus, even if such a successorship clause would require a seller not to deal with some potential buyers, it does not require the seller to "cease or refrain from" *doing business* with those buyers within the meaning of Section 8(e).

It is altogether possible that the Special Successorship provision may not be "doing business" with respect to any plan of reorganization that involves a typical successorship situation. Thus, if a plan of reorganization were to involve the sale of some or all of Asarco's mines, plants and other physical assets to a third party, the sale of those assets would not constitute doing business. We do not have such a situation in the case of a stock purchase by Grupo.

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[25] That might not be the case if the stock owning entity were a single employer with Asarco, but there is no allegation or evidence that such is or would be the case here.

[26] United Mine Workers of America (Lone Star Steel Co.), 231 NLRB 573, 574-575 (1977); Operating Engineers Local 701 (Cascade Employers Association), 221 NLRB 751, 751-752 (1975).

We nevertheless conclude that under the peculiar facts and circumstances of this case, it would not effectuate the policies of the Act to issue complaint. We acknowledge that this case presents an unusual fact pattern in that it is possible that the purchaser of Asarco may not be a single employer with Asarco, or even the employer of Asarco's employees. The Special Successor provision is unique to the bankruptcy posture of this case. Its function is to guarantee that the entity that emerges from bankruptcy will be bound to a collective bargaining agreement. It is unclear how a new entity might come to purchase Asarco— e.g., a stock purchase, an asset acquisition, or through some other transaction approved by the bankruptcy court. If the purchase is through an asset acquisition, it would not constitute "doing business" for Section 8(e) purposes.[27]

Although, as described above, we conclude that a reorganization that involves a stock re-acquisition by Grupo would be a doing of business between Asarco and Grupo,[28] the purchase would occur within the confines and under the regulation of a bankruptcy proceeding. Moreover, the bankruptcy court here has retained the ability to review the Union's conduct to make sure that the Union is acting in good faith in attempting to reach an agreement with Grupo or any other potential purchaser. The court even retains the authority to set aside the requirement that the

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[27] Lone Star Steel Co., 231 NLRB at 574-575; Cascade Employers Association, 221 NLRB at 751-752.

[28] Given our conclusion above, it is not necessary to decide whether the clause here is primary or secondary. We do note, however, that the Special Successorship clause seeks to burden the "doing business" relationship between Grupo and Asarco with a requirement that Grupo bargain and reach agreement with the Union. And there is no evidence that Grupo will be a single employer with Asarco. Thus, the Special Successorship clause gives the Union a veto over any "doing business" relationship between Grupo and Asarco, by the simple expedient of the Union not reaching an agreement with Grupo. In the absence of a single employer relationship or any other recognized basis for requiring such bargaining (or requiring an agreement), the Special Successorship clause can be seen as serving the Union's interest elsewhere (i.e. related to Grupo), not Asarco or its bargaining unit. Nevertheless, in all the circumstances, including the protections built in by the bankruptcy court, we conclude that complaint is not warranted at this time. We express no opinion as to any charge that Grupo might file in the future, should circumstances change.

purchaser reach a contract with the Union. The court therefore retains the ability to ensure that the Union does not use the Special Successorship clause to block Grupo from regaining control of Asarco. Given the unique posture of this case and the protections built in by the bankruptcy court, it would not effectuate the policies of the Act to issue complaint here.

Absent settlement, the Region should issue complaint alleging that the Neutrality provision violates Section 8(e). Absent withdrawal, the Region should dismiss the allegations that the Parties to the Agreement and Special Successorship provisions are unlawful. The Region should seek Section 10(l) injunctive relief unless it is satisfied that the Union will not attempt to apply the unlawful provision.

B.J.K.