

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

Advice Memorandum

DATE: March 8, 2011

TO : James J. McDermott, Regional Director
Region 31

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

SUBJECT: Paramount Petroleum Corp. 530-4080
Case 31-CA-30083 530-4825-6700
530-8027-8300

This case, involving a Burns¹ successor's withdrawal of recognition shortly after it took over the predecessor's operations, was submitted for Advice as to whether the Region should hold the charge in abeyance pending the Board's reconsideration of the successor bar doctrine in UGL-UNICCO Service Co., 355 NLRB No. 155 (2010). We conclude that the Region should not hold this matter in abeyance.

On or about June 2, 2010,² Paramount Petroleum Corporation ("the Employer") acquired the assets of Big West Oil of California ("Big West"). At that time, the United Steel Workers International Union was the certified bargaining representative of the 37 hourly employees of Big West's Bakersfield, California refinery. On June 4, the Union sent a letter to the Employer demanding recognition as the exclusive bargaining representative of the employees who remained employed in the same jobs as had been included in the Big West bargaining unit. On June 15, the Employer responded, confirming that it recognizes the Union as the bargaining representative of those employees and agreeing that the parties would commence bargaining.

On June 25, an employee filed a decertification petition with the Board stating that a "substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative." This petition was subsequently withdrawn.

On July 2, the Employer received a two-page petition signed by [FOIA Exemption 4] of the 37 bargaining-unit employees stating that they no longer wanted to be members of the Union and that they did not want the Union to represent them. There is no evidence that this

¹ NLRB v. Burns Intl. Security Services, Inc., 406 U.S. 272 (1972).

² All dates herein are in 2010 unless otherwise noted.

petition was tainted. On July 12, the Employer informed the Union that it had withdrawn recognition because it had received a petition signed by a majority of the bargaining unit employees indicating that they no longer wished to be represented by the Union.

On August 31, in its consideration of UGL-UNICCO Service Co.,³ the Board invited the filing of briefs addressing, *inter alia*, the issue of whether the Board should modify or overrule MV Transportation⁴ and return to the "successor bar" doctrine set forth in St. Elizabeth Manor,⁵ which states that an incumbent union is entitled to a reasonable period of time for bargaining with a successor employer without challenge to its majority status.

On January 7, 2011, the Union filed the instant charge alleging that the Employer's withdrawal of recognition was unlawful. Although the Board is reconsidering the successor bar issue in UGL-UNICCO, the Region should not hold this case in abeyance pending that decision but rather should proceed consistent with current Board law. The Region has determined that the petition relied upon by the Employer in this case is sufficient to establish a good-faith doubt of the Union's continued majority status, and thus that the Employer's withdrawal of recognition was lawful under current Board law. Therefore, the Region should dismiss the charge, absent withdrawal.

B.J.K.

³ 355 NLRB No. 155, slip op. at 1 (August 27, 2010).

⁴ 337 NLRB 770, 773 (2002) (overruling the successor bar doctrine and holding that an incumbent union in a successorship situation is entitled only to a rebuttable presumption of continuing majority status, which will not serve to bar an otherwise valid decertification petition or other valid challenge to the union's majority status).

⁵ 329 NLRB 341, 341 (1999) (question concerning representation could not be raised by a successor during an insulated period of good-faith bargaining).