

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

## Advice Memorandum

DATE: September 26, 2007

TO : James Small, Acting Regional Director  
Region 21

FROM : Barry J. Kearney, Associate General Counsel  
Division of Advice 524-5090-5088  
536-2564

SUBJECT: Raymond Interior Systems 590-7575-2500  
Case 21-CA-37469  
United Brotherhood of Carpenters  
& Joiners of America; and United  
Brotherhood of Carpenters & Joiners  
Of America, Local 1506  
Case 21-CB-15259

This case was submitted for advice on the following issues: whether a group of the Employer's employees, who had been represented by one union in a Section 8(f) unit, were unlawfully accreted into a Section 9(a) bargaining unit represented by another union after the Employer lawfully terminated the Section 8(f) relationship; and whether the Employer and the union representing the Section 9(a) unit unlawfully denied the employees formerly in the 8(f) unit the appropriate grace period before requiring them to join the other unit.

We conclude that the Region should issue a Section 8(a)(1) and (2) complaint, absent settlement, alleging that the Employer unlawfully applied its Section 9(a) collective bargaining agreement with the Carpenters Union to the employees formerly represented under a Section 8(f) agreement with the Painters Union. The Union failed to obtain an uncoerced majority showing of interest among the former Painters in favor of Section 9(a) representation by the Carpenters,<sup>1</sup> and the Employer could not lawfully accrete the former Painters into the Carpenters unit because they had been historically excluded from that unit. The Region should also issue a Section 8(b)(1)(A) and (2) complaint, absent settlement, alleging that the Carpenters Union unlawfully accepted Section 9(a) recognition of the former Painters-represented employees. Finally, the Region should allege that the Employer violated Section 8(a)(1), (2) and (3), and the

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<sup>1</sup> The Region determined, and we agree, that on October 2, 2006, the Employer unlawfully coerced employees to join the Union in order to obtain a majority showing of interest in support of inclusion in the Carpenters Section 9(a) unit.

Union violated Section 8(b)(1)(A) and 8(b)(2), by conditioning the former Painters' continued employment on immediately joining the Carpenters Union and not according them the seven-day grace period provided by the contract.

ACTION

I. Accretion

It is well-settled that, where a group of employees was "in existence at the time of recognition or certification, yet not covered in an existing contract," they may not later be accreted into that bargaining unit.<sup>2</sup> Thus, parties to a collective bargaining agreement may not attempt to include a group of employees historically excluded from a unit without a majority showing that these employees desire representation by the signatory union.<sup>3</sup> It is irrelevant whether the historically-excluded employees share a community of interest with the existing unit; if the group was historically excluded from the unit, they will continue to be an appropriate separate unit,<sup>4</sup> and the Board does not permit accretion unless the merged unit is the only appropriate bargaining unit.<sup>5</sup>

Here, the Employer and Carpenters Union have historically excluded the drywall finishing employees at the Employer from the Carpenters Union unit. The master collective bargaining agreement between the employer association and the Carpenters specifically allows signatory employers to maintain collective bargaining relationships with the Painters Union covering drywall finishing employees. Under this provision, the Painters represented this group of the Employer's employees until the Employer lawfully ended that bargaining relationship when their most recent 8(f) agreement expired on September 30, 2006. We conclude that the historical exclusion of the Painter-represented employees precluded the Employer from lawfully accreting them into the Carpenters unit, regardless of whether the two groups of employees share a community of interest.

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<sup>2</sup> See Teamsters Local 89 (United Parcel Service), 346 NLRB No. 49, slip. op. at 1 (2006) (citations omitted).

<sup>3</sup> Id.

<sup>4</sup> Kaiser Foundation Hospitals, 343 NLRB 57, 57, 64 (2004), citing United Parcel Service, 303 NLRB 326, 327 (1991), enfd. 17 F.3d 1518 (D.C. Cir. 1994), cert. denied 513 U.S. 1076 (1995).

<sup>5</sup> See Passavant Retirement & Health Center, 313 NLRB 1216, 1218 (1994).

Therefore, the Employer violated Section 8(a)(1) and (2) by including these employees in the unit without the Carpenters having acquired, free of coercion, a majority showing of interest among the former Painters. The Union violated Section 8(b)(1)(A) and 8(b)(2) by accepting the Employer's recognition.

## II. Seven-day Grace Period

We also agree with the Region that, even if the drywall employees had been lawfully accreted into the Carpenters unit, the Employer and Union violated the Act by not according the employees the contractual seven-day grace period.<sup>6</sup> Thus, the evidence shows that the Employer and the Carpenters told the former Painters-represented employees, on October 2, 2006, that they had to sign up with the Carpenters "today" or they would not be able to work for the Employer the following day. This was six days before the end of what would have been the appropriate seven-day grace period.<sup>7</sup>

We reject the Employer's argument that it was privileged to deny a grace period because these employees had been employed by the Employer, and the Carpenters' contract had been in effect, for longer than seven days. It is clear that employees are entitled to a new grace period when commencing employment in a new unit.<sup>8</sup> These drywall finishers had been employed not only in another unit, but under a collective bargaining agreement with a different union, and were thus entitled to a new grace period.

Thus, the Region should issue complaint, absent settlement, against both the Employer and the Carpenters Union in accordance with the above. Since the remedy for the unlawful accretion of the drywall finishing employees into the Carpenters' Section 9(a) unit is a rescission of that recognition and a reimbursement of all dues collected by the Union from these

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<sup>6</sup> Although the Carpenters contract is a Section 9(a) agreement, it includes a seven-day, not thirty-day, grace period in the union security clause, which is permissible for employees working in the construction industry.

<sup>7</sup> The Employer and Carpenters could not have begun any collective bargaining relationship regarding these employees until October 1, 2006, the day after the Employer ended its Section 8(f) relationship with the Painters.

<sup>8</sup> See Millwright and Machinery Erectors, Local 740, 238 NLRB 159, 160 (1978) (union unlawfully caused employer to discriminate against new employee by enforcing union-security clause within grace period based on the employee's dues arrearages incurred while outside the unit).

employees, there is no separate remedy for the grace period violation.<sup>9</sup>

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<sup>9</sup> Although the Employer could lawfully have recognized the Carpenters as the Section 8(f) representative of these employees, the parties did not enter into an 8(f) relationship but instead coerced employees to join the Carpenters Union. In these circumstances, we conclude that complaint should issue and a remedy should be sought notwithstanding any future agreement between the Employer and Carpenters to enter into a Section 8(f) relationship. Compare Petro Chem Insulation, Inc., 20-CA-20820, Advice Memorandum dated December 31, 2002.