



United States Government  
**NATIONAL LABOR RELATIONS BOARD**  
Region 34  
A.A. Ribicoff Federal Building  
450 Main Street, Suite 410  
Hartford, CT 06103

Telephone (860) 240-3522  
Facsimile (860) 240-3564  
**www.nlrb.g** **ov**

July

28, 2011

[REDACTED]

UNITE HERE, LOCAL 217  
425 College Street  
New Haven, CT 06511

Re: The Mory's Association, Inc.  
Case 34-CA-12839

Dear Mr. [REDACTED]

The Region has carefully investigated and considered your charge against The Mory's Association, Inc. alleging violations under Section 8 of the National Labor Relations Act. Based on that investigation, I have concluded that further proceedings are not warranted, and I am dismissing your charge for the following reasons.

The charge alleges that the Employer, following the reopening of its facility after a 20-month hiatus in operations, violated Section 8(a)(5) by withdrawing recognition from the Union during the life of the collective bargaining agreement, unilaterally changing the terms and conditions of employment, and refusing to provide information requested by the Union. Because the investigation disclosed that the Union had notice of the withdrawal of recognition more than six months before it filed the charge in the instant case, the charge is untimely filed under Section 10(b) of the Act.

Section 10(b) of the Act precludes the issuance of a complaint based upon any unfair labor practice occurring more than six months prior to the filing of the charge. See generally *Machinists Local 1424 v. NLRB (Bryan Manufacturing Co.)*, 362 U.S. 411 (1960). When the alleged unfair labor practice constitutes a repudiation of the union's representational status, the unfair labor practice occurs at the moment of the repudiation, and the Section 10(b) period begins to run at the moment the union has clear and unequivocal notice of that act. *A & L Underground*, 302 NLRB 467, 469 (1991). Whether there has been clear and unequivocal notice is determined based on all the circumstances of the case. *J & S Drywall*, 303 NLRB 24 (1991), enf. denied 974 F.2d 1000 (8th Cir 1992).

Here, as in *A&L Underground*,<sup>1</sup> the Employer clearly and unequivocally gave the Union notice of its withdrawal of recognition well outside the 10(b) period. Specifically, the 10(b) period began to run by no later than November 13, 2009, more than a year before the Union filed its charge. Thus, on August 21, 2009, the Employer's attorney stated that the parties could work together to outline the terms of a possible agreement "that could come into play once the Union established majority support." On August 28, the Employer's general manager stated that everything was contingent on the Union showing majority support. In September, the Employer and the Union's representative agreed that the Union would produce a recognition agreement. On November 3, after the Union had not provided such an agreement, the Employer sent one which stated that "the attached collective bargaining agreement will take effect on the date that the Union proves to Mory's satisfaction that the Union represents an uncoerced majority of Mory's employees in the appropriate bargaining unit." And, on November 13, the Employer explained that it was not proposing changes to an existing contract, but was instead proposing a new contract that would be entered into only if the Union established a majority.

In sum, over the course of several months from August to November, the Employer repeatedly made clear its withdrawal of recognition of the Union, its repudiation of the parties' last collective-bargaining agreement, and its demand for a new showing of majority support before any new agreement would become effective. The documentary evidence of the parties' correspondence, particularly regarding the execution of a recognition agreement, can only be understood in a context in which the Employer had already withdrawn recognition -- absent a withdrawal of recognition, no new recognition would be necessary. While it might be argued in another context that the Employer's willingness to engage in bargaining over terms and conditions gave conflicting signals to the Union, here, its repeated statements and proffered recognition agreement made it clear that such bargaining was for a new collective-bargaining agreement that would only take effect after the Union newly demonstrated majority support.

Taken together, this evidence demonstrates clear and unequivocal notice to the Union of the Employer's withdrawal of recognition. Therefore, by no later than November 13, 2009, the Union was aware of the Employer's allegedly unlawful conduct, and any charge over that conduct needed to have been filed within six months thereafter. As the charge in the instant case alleging withdrawal of recognition was not filed until November 15, 2010, more than a year later, the charge is untimely under Section 10(b) of the Act.

The remaining allegations that the Employer violated Section 8(a)(5) by unilaterally changing the terms and conditions of employment and refusing to provide information requested by the Union are also untimely under Section 10(b), as they are all merely consequences of the Employer's earlier withdrawal of recognition.

**Your Right to Appeal:** The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing an appeal with the ACTING GENERAL COUNSEL of the National Labor Relations Board. Use of the Appeal Form (Form NLRB-4767) will satisfy this requirement. However, you are encouraged to submit a complete statement setting forth the facts and reasons why you believe that the decision to dismiss your charge was incorrect.

**Means of Filing:** An appeal may be filed electronically, by mail, or by delivery service. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax. *To file an appeal electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.gov), click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.* To file an appeal by mail or delivery service, address the appeal to the Acting General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

**Extension of Time to File Appeal:** Upon good cause shown, the Acting General Counsel may grant an extension of time to file the appeal. A request for an extension of time may be filed electronically, by fax, by mail, or by delivery service. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **File Case Documents**, enter the NLRB Case Number,, and follow the detailed instructions. The fax number is (202) 273-4283. A request for an extension of time to file an appeal **must be received on or before the original appeal due date**. A request for an extension of time that is mailed or given to the delivery service and is postmarked or delivered to the service before the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to me.

**Appeal Due Date:** The appeal must be received by the Acting General Counsel in Washington D. C. by the close of business at 5:00 p.m. EDST on August 11, 2011. If you mail the appeal, it will be considered timely filed if it is postmarked no later than one day before the due date set forth above. If you file the appeal electronically, it also must be received by the Acting General Counsel by the close of business at 11:59 p.m. EDST on the date above. A failure to timely file an appeal electronically will not be excused on the basis of a claim that transmission could not be accomplished because the receiving machine was off-line or unavailable, the sending machine malfunctioned, or for any other electronic-related reason.

**Confidentiality/Privilege:** Please be advised that we cannot accept any limitations on the use of any appeal statement or evidence in support thereof provided to the Agency. Thus, any claim of confidentiality or privilege cannot be honored, except as provided by the FOIA, 5 U.S.C. 552, and any appeal statement may be subject to discretionary disclosure to a party upon request during the processing of the appeal. In the event the appeal is sustained, any statement or material submitted may be subject

to introduction as evidence at any hearing that may be held before an administrative law judge. Further, we are required by the Federal Records Act to keep copies of documents used in our case handling for some period of years after a case closes. Accordingly, we may be required by the FOIA to disclose such records upon request, absent some applicable exemption such as those that protect confidential source, commercial/financial information or personal privacy interests (e.g., FOIA Exemptions 4, 6, 7(C), and 7(D), 5 U.S.C. § 552(b)(4), (6), (7)(C), and 7(D)). Accordingly, we will not honor any requests to place limitations on our use of appeal statements or supporting evidence beyond those prescribed by the foregoing laws, regulations, and policies.

**Notice to Other Parties of Appeal:** You should notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is sent to the Acting General Counsel, please complete the enclosed Appeal Form (NLRB-4767) and send one copy of the form to all parties whose names and addresses are set forth in this letter.

Very truly yours,

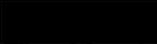
Jonathan B. Kreisberg  
Director

Regional

JBK:pjr

Enclosures: Notice of Appeal Form

cc

  
The Mory's Association, Inc.  
306 York Street  
New Haven, CT 06511

  
Durant, Nichols, Houston, Hodgson  
& Cortese-Costa, P.C.  
1057 Broad Street  
Bridgeport, CT 06604

Acting General Counsel, NLRB, Washington, DC