

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

Advice Memorandum

DATE: October 30, 1998

TO : James J. McDermott, Regional Director
Region 31

James S. Scott, Regional Director
Region 32

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

SUBJECT: Armored Transport, Inc. (Bakersfield) 530-4090-3000
Case 31-CA-23504 530-4090-4000
Armored Transport, Inc. (Santa Maria) 530-4090-6000
Case 31-CA-23505 530-8018-3000
Armored Transport, Inc. (Van Nuys) 530-8081-6900
Case 31-CA-23506
Armored Transport, Inc. (Victorville)
Case 31-CA-23507
Armored Transport, Inc. (Fresno)
Case 32-CA-16841
Armored Transport, Inc. (Merced)
Case 32-CA-16879

These cases from two Regions were submitted for advice as to whether the Employer violated Section 8(a)(5) by refusing to recognize and bargain with a labor organization (CASHA) at six Employer terminals after the employees at those terminals, who had been represented by independent employee associations, voted to affiliate or merge their associations with CASHA.

FACTS

Briefly, Armored Transport Inc. (the Employer) operates 18-19 branches in California from which it provides armed guard and messenger services. The full-time and regularly scheduled part-time driver and vault messenger/guards at each of the six branches involved in these cases are covered by "labor agreements" between the Employer and the "Armored Transport [name of branch] Employees Association" (the Associations), which expire by their terms in 1999 or 2000 and which recognize the respective Association as the exclusive collective bargaining representative of the unit employees at the

respective branch. Each of the contracts was signed on behalf of the respective Association by three unelected "representatives," who were usually the senior unit employees. Although the agreements provided for grievances and arbitration, it appears that no written grievances have ever been filed by any Association. None of the Associations appear to have had an office, elected officers, dues, a treasury, a constitution or bylaws, or meetings. It appears that all unit employees were considered to be members of their respective Association.

During the winter of 1997-98, discussions took place between employees at various of the Employer's branches and representatives of Currency and Security Handlers Association (CASHA), a labor organization formed by several Employer employees at another branch. At some Employer branches, CASHA filed representation petitions which were either withdrawn or dismissed because extant contracts barred an election. Region 31 states that at other Employer branches, CASHA won Board representation elections.¹

At the six locations involved in these cases, the respective Association and CASHA utilized almost identical procedures and documents in notifying employees of, and conducting, secret ballot "merger/affiliation" elections between mid-March and mid-April 1998.² Thus, unit employees at each of the branches were given advance written notices on CASHA letterhead, for which they signed receipts, of the meetings at which "merger/affiliation" with CASHA would be discussed and then voted on at the meetings. Secret ballot elections were conducted after discussion of the

¹ Region 31 states that CASHA won elections at the Employer's Orange, Los Angeles, Oakland, El Centro, Ventura, and Sacramento branches. Region 21 has informed Advice that the certification at the San Diego branch was amended to substitute CASHA for the Armored Transport San Diego Employees Association in Case 21-AC-66, decision and amendment of certification dated April 29, 1998, request for review pending before the Board.

² All dates hereinafter are in 1998 unless otherwise stated.

merger/affiliation, with "Merger/Affiliation Ballot"s stating "Do you wish to merge the Armored Transport [branch name] Employees Association with CASHA for purposes of collective bargaining?" with yes and no boxes.³ The voting is summarized below:

Location	Date	# of unit employees	Votes for/ against
Bakersfield	3/24, 4/3	8	8/0
Santa Maria	3/23	14	13/0
Van Nuys	3/25	30	25/2
Victorville	3/26, 4/17	9	8/1
Fresno	4/1	18	12/1
Merced	4/2	4	3/0

By letters dated April 6 CASHA notified the Employer that the Associations at Fresno, Santa Maria and Van Nuys⁴ "voted to affiliate with CASHA"; advised that CASHA was "now the bargaining representative for the" respective Association; stated that CASHA would honor the existing Association contracts; requested that the Employer "recognize CASHA as the representative of the [respective] Association"; and stated that the Employer "will conduct future bargaining with the same representatives of the [respective] Association who conducted such bargaining in the past." The Employer did not respond. By letter dated May 18 CASHA reiterated its demand for recognition at those branches and stated that "CASHA is also demanding recognition for the following ATI Branches for Merger Elections also held," listing Bakersfield, Merced and Victorville. At a June 11 meeting with CASHA, the Employer took the position that no contracts were up for renewal at

³ At Bakersfield and Victorville low turnouts at the initial meetings led to rescheduled meetings and voting.

⁴ CASHA also requested recognition for the Association at Temecula, California. CASHA filed a Section 8(a)(5) charge regarding Temecula with Region 21, which informed Advice that the charge was withdrawn [FOIA Exemption 5

the six branches at issue and that it was, therefore, not necessary to respond to CASHA's recognition requests.

At least at the Santa Maria, Van Nuys, Victorville, and Fresno locations, several weeks after the "merger/affiliation" elections, unit employees were notified of meetings to discuss and vote on adoption of bylaws proposed by CASHA; those bylaws were adopted at all four locations. A sample of those bylaws provided by CASHA sets forth that the union is called CASHA; it is not clear whether the Associations at those branches adopting the bylaws are now known solely as CASHA. At least at the Santa Maria, Van Nuys and Fresno branches, the respective Associations and CASHA signed agreements stating, inter alia, that CASHA would not charge any members initiation fees until a majority of the respective Association voted to join CASHA in a Board election; that the local officers of the Association would continue "to have authority as they had prior to affiliating with CASHA in terms of bargaining with Armored Transport, in matters of grievances, daily bargaining etc."; that "CASHA will provide assistance in bargaining matters as requested by" the respective Association; and that the respective Association agreed to forward dues of \$20 per month per member to CASHA. The president of CASHA stated that these terms were the terms of affiliation offered to all of the Associations.

ACTION

We agree with the Regions that, absent settlement, Section 8(a)(5) complaints should issue alleging that the Employer has failed and refused to recognize and bargain with the collective bargaining representative of the unit employees at each of the six branches involved here. The Employer has so refused to recognize and bargain by refusing to recognize that each Association has affiliated with CASHA and that CASHA was seeking recognition in its capacity as the entity with which the respective Associations affiliated or merged. Therefore, the Employer has violated Section 8(a)(5) by refusing to recognize and bargain with CASHA as the representative of the Associations as affiliated with CASHA.

Initially, we agree with the Regions that the Employer has failed to meet its burden of proving⁵ that the "merger/affiliation" with CASHA, approved by a large majority of unit employees at each branch, was not accomplished with adequate procedural safeguards or "resulted in changes that were sufficiently dramatic to alter the identity of the Association, and thus in the substitution of an entirely different union as the employees' representative."⁶ Thus, we agree that the Board's "due process" requirement in such organizational changes was met here where there was adequate notice to Association members of the time and purpose of the respective "merger/affiliation" voting meetings, there was adequate opportunity to discuss the proposed changes, and where there were secret ballots taken.⁷

⁵ The Board "has consistently held that a party seeking to avoid its obligation by virtue of a change has the burden of demonstrating that the change was not accomplished with minimal due process, or was sufficient to raise a question concerning representation." Sullivan Bros. Printers, 317 NLRB 561, 562 (1995), enf'd. 99 F.3d 1217, 153 LRRM 2752 (1st Cir. 1996) (citations omitted).

⁶ CPS Chemical Co., 324 NLRB No. 154, slip op. at 3 (1997); see also NLRB v. Financial Institution Employees, Local 1182 (Seattle-First National Bank), 471 U.S. 1098, 121 LRRM 2741 (1986). Although Seattle-First dealt with an affiliation of one union with another, the Board applies the same standards to mergers as to affiliations. F.W. Woolworth Co., 268 NLRB 805 (1984), vacated on other grounds, 122 LRRM 2368 (D.C. Cir. 1986), on remand 285 NLRB 854 (1987); accord: Hammond Publishers, Inc., 286 NLRB 49, 52-53 (1987) (AC petition). See generally GC Guideline Memorandum 86-8, "Guideline Memorandum Concerning Continuity of Bargaining Representative after Affiliations, Mergers and Similar Cases," August 14, 1986.

⁷ See, e.g., May Department Stores, 289 NLRB 661, 665 (1988), enf'd. 897 F.2d 214, 133 LRRM 2745 (7th Cir. 1990); RTP Co., 323 NLRB No. 4, ALJD at 7 (1997); Minn-Dak Farmers Cooperative, 311 NLRB 942, 945 (1993), enf'd. 32 F.3d 390,

We further agree that there was substantial continuity of representation between each pre-CASHA Association and each affiliated/merged Association. Under the terms of the "Agreements" signed between at least three of the Associations and CASHA, which CASHA states apply to each Association involved here, no Association members were to be charged initiation fees initially until a majority voted to join CASHA in a Board election; the Association "local officers" continued to have authority and autonomy as they had "prior to affiliating with CASHA"; and CASHA would provide bargaining assistance "as requested" by the Association. The evidence also shows that the existing labor agreements were adopted by the postaffiliation unions; all preaffiliation Association "members" are presumed to remain members; and the same Association members who had bargained with the Employer would continue bargaining with the Employer. There were no Association offices, bylaws, or treasuries for the post-affiliation entities to maintain. In all these circumstances, we agree that the Board's substantial continuity of representation standard has been met.⁸

With regard to CASHA's requests for recognition, the Employer was informed of the affiliation votes. The Employer was also told that CASHA was the "bargaining representative for the Armored Transport [branch name] Employees Association", and CASHA requested recognition as the "representative of the" respective Association. Accordingly, we conclude that because CASHA requested recognition as the representative of the Associations, the Employer was not privileged to refuse to recognize CASHA in that capacity.⁹ Newell Porcelain Co., 307 NLRB 877 (1992),

147 LRRM 2065 (8th Cir. 1994) (the key factor is whether "the members had a proper opportunity to express their desires").

⁸ See, e.g., CPS Chemical Co., 324 NLRB No. 154, slip op. at 7; Sullivan Bros. Printers, 317 NLRB at 563-65; RTP Co., 323 NLRB No. 4, slip op. at 8.

review denied 986 F.2d 70, 142 LRRM 2513 (4th Cir. 1993) does not require a contrary result. In Newell an independent local union voted to affiliate with the UE, which then chartered the local union as a UE local. The UE notified the employer that it had been "designated the collective-bargaining representative... by virtue of the affiliation vote, and requested bargaining," to which the Employer agreed, 307 NLRB at 877. When the UE proposed a recognition clause reflecting recognition of the UE and its local, the Employer rejected the proposal and proposed recognizing the independent local "as affiliated with the UE." Id. The Employer attempted to clarify with the UE as to whether only an affiliation or a substitution of the UE as the employees' bargaining representative had taken place; the UE did not adequately clarify the situation. While the Board found that the employer was "obligated to recognize and, upon request, bargain with the affiliated Union", because of the confusion engendered by the UE the "Respondent was justified in suspending negotiations pending further clarification of the identity of the party purporting to be the employees' bargaining representative." Id. at 878.

Here, if the Employer were confused to any extent as to the capacity in which CASHA was requesting recognition, the Employer should have sought clarification rather than flatly refusing to recognize CASHA in its post-affiliation capacity.¹⁰ It did not seek such clarification. Since

⁹ Based on the presently known facts, it is unclear whether any Association or CASHA intended that the merger/affiliation vote was meant to substitute CASHA itself (separate from any Association) as the Section 9(a) representative of unit employees, as opposed to affiliating or merging the Association with or into CASHA so that the affiliated or merged Association remained the Section 9(a) representative. Accordingly, we do not reach the issue of whether the Employer would have been privileged to refuse to recognize CASHA itself, apart from any Association, as the Section 9(a) representative of unit employees.

¹⁰ See RTP Co., 323 NLRB No. 4, ALJD at 6, 8-9 n. 16 (after affiliation of independent local(WFU) with UAW, UAW requested bargaining; employer argued that even if

CASHA's recognition requests on their face were phrased in terms of CASHA representing the respective Associations, we conclude that the requests were not so confusing or inconsistent with the status of the affiliated or merged Associations as the continuing collective bargaining representatives of the unit employees as to privilege the Employer's refusal to recognize CASHA in its representative capacity.

We note that in some cases the Board has named the entity with which a bargaining representative has affiliated as the party whom an employer is obligated to recognize,¹¹ while in other cases, the Board has named the

affiliation were proper, it was confused about identity of collective-bargaining representative; ALJ stated that Newell offered "no respite" because "neither the UAW nor Local 2340 has asked that Respondent do anything other than fulfill its statutory and contractual duty to bargain with the certified representative of the bargaining unit; violation found in "refusing to recognize Local 2340 as the certified bargaining representative following its affiliation with the UAW"); Insulfab Plastics, 274 NLRB 817, 823-24 (1985), enf'd. 789 F.2d 961, 122 LRRM 2105 (1st Cir. 1986) ("in finding that the Independent and the Independent as affiliated with the IUE are one and the same organization, it should be noted that [both the Independent and the IUE] could have been more precise when they brought news of the affiliation" to the employer; "In fact, the IUE is not the exclusive collective bargaining representative" of the unit employees; although the IUE's letter could be construed as a claim to that effect, it could also be construed as stating that the IUE was merely assisting the existing bargaining agent which had become affiliated with the IUE; the employer's contention that it was uncertain with whom to bargain "is at best disingenuous"). Cf. Parkview Manor, 321 NLRB 477, n. 2 (1996) (where employer refused to supply district council with requested information, employer's reliance on Newell was misplaced; employer made no attempt to "clarify the ambiguity and ascertain the relationship between" the district council and the certified local).

pre-affiliation entity "as affiliated with" another entity as the party whom the Employer must recognize.¹² In light of CASHA's recognitional demands, in which CASHA stated that it was representative of the respective Associations, as well as the "affiliation" agreements which can be read to indicate that the Associations continue to exist for representative purposes, we conclude that the complaints should allege the units' collective bargaining representatives as the Associations "affiliated with CASHA." Thus, the violations to be alleged are the Employer's refusals to recognize CASHA as the bargaining representative of the respective affiliated Associations.

B.J.K.

¹¹ See, e.g., CPS Chemical, 324 NLRB No. 154, slip op. at 1, 8, ALJD at 9, 12 (Association affiliated with existing OCAW Local 8-397; employer violated Section 8(a)(5) "by refusing to recognize and bargain with local 8-397"); Sioux City Foundry Co., 323 NLRB No.184, ALJD at 9-10, 17-19 (1997) (Shop Committee affiliated with IAM and its existing Local 1426; employer violated Section 8(a)(5) by refusing to recognize and bargain with Local 1426).

¹² See, e.g., Insulfab Plastics, 274 NLRB at 824. Cf. Newell Porcelain, 307 NLRB at 878 (employer was obligated to recognize and bargain with the affiliated union).