



**UNITED STATES GOVERNMENT
National Labor Relations Board**

Memorandum

TO :	Ronald M. Sharp, Regional Director Region 18	DATE:	March 11, 1988
FROM :	Harold J. Datz, Associate General Counsel Division of Advice		530-6001-2500 590-7500
SUBJECT:	Overhead Door Company of Waterloo, Inc. Case No. 18-CA-10187		590-7575 590-8700

This case was submitted for advice as to whether, under John Deklewa and Sons, 282 NLRB No. 184 (February 20, 1987), the Employer may repudiate a Section 8(f) relationship where the parties have voluntarily bargained to impasse for a successor 8(f) contract.

FACTS

Since about 1957, the Overhead Door Company of Waterloo, Inc. (the Employer) has been involved in the service and installation of door openers for residential and commercial customers. Local Union No. 1835, United Brotherhood of Carpenters and Joiners of America (the Union) and the Employer have been party to a series of collective bargaining agreements since October 27, 1966. The Region has concluded that those agreements were governed by Section 8(f).

The most recent collective bargaining agreement contained the following clause:

The Union is hereby recognized as the sole and exclusive bargaining representative for all full-time and part-time installation employees of the Company

The agreement also contained the following language:

This agreement shall be in full force and effect from the 9th day of May, 1983 to and including the 1st day of May, 1984, and shall continue in full force and effect from year to year thereafter unless written notice of a desire to change or modify this Agreement is served by either party to the other party at least sixty (60) days prior to the date of expiration.



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On January 29, 1987 1/ the Union sent the Employer a request to negotiate a new agreement, thereby forestalling automatic renewal of the extant contract. The parties met on April 8, 21 and 28 prior to the expiration of the contract, and on May 20, after the contract had expired. The Employer presented verbal proposals during the April 8 meeting including separation of its service and installation work, reduction of wages in order to stay competitive, and the allocation of job assignments based on qualifications as well as seniority. The parties met again on April 21 and 28 and discussed their demands, but no progress was made.

The employees continued working on May 1, even though the contract expired that day. On May 4, the employees struck after the Employer refused to sign an extension agreement. No replacements were hired during the strike, which lasted until May 28. The parties had met again on May 20, but no progress towards a new agreement was made.

After a Union meeting on June 2, three returning strikers were hired after they had filled out new application forms and had signed an Employer-prepared document which stated "I am aware that the labor force of Overhead Door Co. is on strike and that a labor dispute is in progress" The Employer also informed the strikers, all of whom offered to return to work by June 2, that that they would be considered for employment along with new applicants. On June 4, the Employer sent the Union a letter which stated that the Employer was repudiating any and all bargaining agreements. 2/

The Region has concluded that the Section 8(a)(1) and (3) allegations of the instant charge regarding the discharge of and refusal to reinstate strikers are meritorious and does not submit this issue to Advice. The Region has also concluded that the parties have bargained to impasse prior to the Employer's repudiation of the Section 8(f) relationship. The sole issue presented to Advice is whether the Employer's repudiation of the bargaining relationship violated Section 8(a)(5).

1/ All dates hereinafter are in 1987 unless otherwise indicated.

2/ Although inartfully drawn, this letter is treated by the Region as a repudiation of the bargaining relationship.

ACTION

We conclude that the Employer did not violate Section 8(a)(5) by allegedly bargaining in bad faith for a successor 8(f) contract and repudiating its bargaining relationship with the Union.

In Deklewa, the Board held that Section 8(a)(5) requires an employer to honor an extant Section 8(f) contract. However, the Board made it clear that Section 8(a)(5) imposes no obligations after the expiration of the contract. In this latter regard, the Board flatly declared that "an 8(f) employer has no 8(a)(5) obligations after expiration of the agreement underlying the union's claim of representation." ^{3/} Thus, when the contract ends, the bargaining obligations of the 8(f) relationship end. Indeed, the Board referred in its opinion to "an 8(f) relationship/contract," ^{4/} thereby indicating its view that the two are essentially coextensive.

This same point was made when the Board spoke of the Section 8(a)(5) obligations that do exist in a Section 8(f) relationship. That is, the Board was careful to limit the obligations to the duration of the contract. In this regard, the Board declared, "The enforceable Section 9(a) status we confer on signatory unions is also only coextensive with the bargaining agreement which is the source of its exclusive representational authority. Beyond the operative term of the contract, the signatory union acquires no other rights and privileges of a 9(a) exclusive representative." ^{5/} Similarly, the Board said, "The obligations we impose on an 8(f) employer through our application of Section 8(a)(5) to 8(f) agreements are limited to prohibiting the unilateral repudiation of the agreement until it expires" or until the employees vote to reject the union. ^{6/} Finally, the Board said, "In our view . . . it is both reasonable and desirable to adopt a rule that constitutes a limited application of Section 8(a)(5)'s contract enforcement mechanisms by virtue of the strictly limited 9(a) representative status that we believe a[n] 8(f) signatory union necessarily possesses." (Emphasis in

^{3/} Deklewa, slip op. at 39.

^{4/} Id. at 7.

^{5/} Id. at 35-36.

^{6/} Id. at 35.

original). 7/ In other words, "the linking of Section 8(a)(5) and Section 9(a) [is] for the limited purpose only of enforcing an 8(f) agreement." 8/

Subsequent to Deklewa, the Board held in Yellowstone Plumbing, 286 NLRB No. 93 (1987), that an employer did not violate the Act by making unilateral changes after the expiration of a Section 8(f) contract. Thus, the Board has re-emphasized its view that bargaining obligations end with the contract.

The Board's decision in W. B. Skinner 9/ is not to the contrary. In that case, the Board held that an employer has a Section 8(a)(5) duty to furnish information to the union, where the information is relevant to a determination of whether an extant contract is being obeyed. Further, the Board noted that the Section 8(a)(5) obligation would exist even if the contract did not contain an information clause. Thus, in this sense, the obligations of the relationship are broader than the express terms of the contract. However, the information request in Skinner was made during the contract term and the information was relevant to whether the contract was being obeyed. In short, since the Board was prepared to enforce obedience to the 8(f) contract, the Board was also prepared to enforce a duty to supply information to determine whether the contract was being obeyed. Obviously, the teaching of Skinner is not applicable to a situation where, after the expiration of a contract, the parties are bargaining for a new one.

It could be argued that the Employer, by voluntarily bargaining with the Union for a new contract, has agreed to continue the Section 8(f) relationship. However, as discussed supra, the mere existence of a Section 8(f) relationship does not bring into play all of the obligations of Sections 8(a)(5) and 8(b)(3) of the Act. Rather, as noted supra, the Board would use these sections "for the limited purpose only of enforcing an 8(f) agreement." 10/ Hence, the fact that this Employer arguably continued the 8(f) relationship for some time by bargaining for a new contract does not mean that it incurred the general obligations of Section 8(a)(5) of the Act. Moreover, parties

7/ Id. at 34-35.

8/ Id. at 37.

9/ 283 NLRB No. 149 (1987).

10/ See n. 8 supra.

generally would be reluctant to even discuss the possibility of a new 8(f) agreement, if discussion about the terms of such an agreement would result in their being obligated to continue bargaining to impasse.

It could also be argued that the Employer, by bargaining with the Union for a new contract, has agreed to bargain for a new contract. And, the argument runs, the Board ruled in Deklewa that it would enforce agreements entered into in the context of a Section 8(f) relationship. However, as discussed supra, the Board ruled in Deklewa that it would enforce collective bargaining agreements entered into in the context of a Section 8(f) relationship. There is no holding that the Board would enforce other agreements, e.g., agreements to bargain for a new contract. Further, even if the Board would enforce an agreement to bargain for a new contract, there was no such agreement in this case. There was nothing in the contract which required that bargaining for a successor contract be of a certain duration or quality.

Based on the above, the Section 8(a)(5) allegation should be dismissed, absent withdrawal. As shown, under Deklewa, there is no statutory obligation to bargain for a new Section 8(f) contract. And, even where an employer voluntarily agrees to continue the relationship after the expiration of the 8(f) contract, this does not bring into play all of the obligations of Section 8(a)(5) and 8(b)(3) of the Act. Further, even if an employer must honor any and all agreements entered into in the context of a Section 8(f) relationship, the Employer in this case honored its agreements. 11/ Finally, all of the conduct occurred

11/ We therefore do not decide whether a specific agreement to bargain for a new Section 8(f) contract would be enforceable under Section 8(a)(5) of the Act. If such agreement is embodied in the "old" Section 8(f) contract, and the refusal to bargain occurs in contravention of the specific terms of that contract, there may be a Section 8(a)(5) violation. On the one hand, the employer would be dishonoring an extant contract. See Deklewa, finding a Section 8(a)(5) violation in this regard. On the other hand, an agreement to bargain for a new Section 8(f) contract may not be a mandatory subject of bargaining. If it is not, the dishonoring of the agreement would not be violative of Section 8(a)(5). See

after the expiration of the Section 8(f) contract. 12/



H.J.D.

Allied Chemical Workers v. Pittsburgh Plate Glass, 404 U.S. 157, 78 LRRM 2974 (1972).

12/ We do not decide whether conduct occurring during the waning days of an expiring contract, and in the context of negotiations for a successor contract, could be violative of Section 8(a)(5). On the other hand, even if the old contract has expired, we may well view a post-expiration refusal to arbitrate a dispute arising under that contract as unlawful under Section 8(a)(5). See Indiana & Michigan Electric Co., 284 NLRB No. 7 (1987). In such circumstances, as in Deklewa, the union is seeking to enforce the provisions of a Section 8(f) contract.