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

DATE: March 13, 2013

TO: Terry A. Morgan, Regional Director
Region 7

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

SUBJECT: Local 283, International Brotherhood of Teamsters (IBT) and Marathon Petroleum Company, LP
(Savage Services Corporation)
Case 7-CE-094067

The Region submitted this case for advice as to whether the union and/or employer violated § 8(e) as a result of an arbitration award interpreting the parties' contract to require the employer to cease and desist from using subcontracted employees, to incorporate the impacted subcontractor's employees into the bargaining unit, and to recognize the union as their bargaining representative.

We initially conclude, in agreement with the Region, that IBT Local 283 ("the Union") violated the Act by obtaining and seeking to enforce an arbitration award that does not comport with the requirements of § 8(e), and that complaint should therefore issue against the Union. Specifically, the arbitration award does not serve a work preservation function but, rather, has the unlawful secondary objective of altering or interfering with the business relationship between Marathon ("the Employer") and Savage Services Corporation ("Savage"). Notwithstanding any similarities between the work done by Savage employees and that traditionally done by unit employees, the work sought is not fairly claimable because unit employees were not performing that work and no unit work was lost as a result of the subcontract. Therefore, there is no work that the Union can lawfully seek to preserve.[1] In addition, no job opportunities were added for unit employees by the

[1] *Local 814, Int'l Brotherhood of Teamsters (Santini Bros)*, 208 NLRB 184 (1974), *enf'd. in rel. part* 512 F.2d 564 (D.C. Cir. 1975) (work not fairly claimable where no jobs were lost by unit employees due to change in operations); *Retail Clerks Union, Local 324 (Ralphs Grocery)*, 235 NLRB 711 (1978) (no work preservation objective where no evidence of unit employees being replaced or any diminution of unit work); *Service Employees, Local 32B-32J (Nevins Realty)*, 313 NLRB 392, 400 (1993) *enf'd. in rel. part* 68 F.3d 490 (D.C. Cir. 1995) ("Where, as here, the unit employees have not

arbitration award, which merely converted Savage employees into unit members employed by Marathon.[2] Although the Union argues that the coke cutter position has existed in the past, the Board has found work not fairly claimable (even where identical to the work once performed by unit employees) where the employer had previously eliminated such work without complaint from the union and without job loss for unit employees.[3] Moreover, the unit coke cutter work to which the Union refers was performed thirty years ago, and was substantially different than the work that the Employer has now subcontracted.

We further conclude that, although the arbitration award constituted "entering into" an agreement between the Union and Marathon pursuant to § 8(e), it would not effectuate the Act to issue complaint against Marathon. The Union violated § 8(e) by attempting to obtain compliance with the unlawful arbitration award. Marathon, by contrast, objected to the unlawful award, as demonstrated by its failure to comply and its filing of a lawsuit seeking to vacate or modify the award.[4] Accordingly, the Region

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lost the work they performed, let alone [been] threatened with such loss, it is a nonsequitur to assert that the work the union wants to preserve is fairly claimable by the unit"). *See also Teamsters Union Local 216 (Bigge Drayage)*, 198 NLRB 1046, 1046 (1972), *enforced* 520 F.2d 172 (D.C. Cir. 1975) (even though contract included classifications describing disputed work, work not fairly claimable where neither employees nor employer had previously engaged in that type of work).

[2] *Local 921 (San Francisco Newspaper Printing)*, 204 NLRB 440, 441 (1973) ("[N]o substantial work opportunities would necessarily be added for employees from the preexisting unit, but rather there would be new employees who must become union members"); *Local 814, Int'l Brotherhood of Teamsters (Santini Bros)*, 208 NLRB at 199, (work not fairly claimable where work sought would not create job opportunities for unit employees).

[3] *Local 814, Int'l Brotherhood of Teamsters (Santini Bros)*, 208 NLRB at 199 (although employees had performed long haul delivery work in the past, that work was not fairly claimable where its elimination occurred five years prior to the union's attempt to recapture it and had not resulted in the loss of unit jobs).

[4] *Retail Clerks Union Local 770 (Hughes Mkt)*, 218 NLRB 680 (1975) (union violated § 8(e) by insisting on compliance with unlawful arbitration award); *Local 814, Int'l Brotherhood of Teamsters (Santini Bros)*, above, (both union and employer violated § 8(e) where the union pursued compliance with the unlawful collective-bargaining provision through economic pressure and the employer acquiesced by soliciting union membership from its contractors).

should issue complaint against the Union alleging that it violated § 8(e) by seeking compliance with the unlawful arbitration award.

/s/
B.J.K.