



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

June 13, 2013

[REDACTED]
BLAKE & UHLIG, P.A.
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KANSAS CITY, KS 66101-2516

Re: CB&I, Inc.
Case 06-CA-089693

Dear [REDACTED]:

Your appeal from the Regional Director's partial refusal to issue complaint has been carefully considered. The appeal is denied. It was concluded that the Employer's hiring policy is, on its face, lawful under *Zurn/NEPCO*, 345 NLRB 12 (2005). While animus was present, the evidence indicated that the Employer did not deviate from its policy in a sufficient number of instances which would render the policy unlawful. See *Jesco, Inc.*, 347 NLRB 903, 906-907 (2006).

First, contrary to your contention on appeal, there was no basis for the Employer to disclose its preferential policy to employees. Moreover, the Employer's application contained questions such as [REDACTED] which appear to be clear indicators to an applicant that this information is of some importance in the hiring process.

Second, you allege on appeal that the Employer hired no known union members, however, this is not the case. At least five known union applicants were hired despite their current union affiliation.

Last, you contend that the Employer's hiring policy is inherently discriminatory, citing *Aim Royal Insulation*, 358 NLRB No. 91, p. 3. It was determined that *Aim* is distinguishable. In *Aim*, the Board relied on four factors in finding a violation in that case that are not present here. First, *Aim*'s hiring policy was inconsistent, vague and in flux. The Board described it as not really "an official policy at all." Here, the Employer has a clear official policy which was in place prior to the current job. Second, it is true that the Board notes in *Aim* that the employer did not disclose its policy to applicants. However, this fact is mentioned as a part of an overarching plan of deception by the employer. The Board emphasized that employees, without knowledge of the hiring policy, could not know that employer representatives were lying to them. There is no evidence in this case that the Employer outright lied to applicants about either the policy or as to when work would be available. Third, the Board considered that *Aim* purposefully manipulated

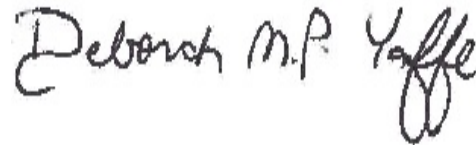
its policy as specific circumstances warranted to exclude union applicants. There is no evidence of this type of fluid deception by the Employer. Finally, even though Aim told applicants that no work was available, it was hiring workers from a temporary agency. The investigation in this case revealed no evidence that the Employer utilized an employment agency.

Accordingly, the Employer was able to show that it would have made the same hiring decisions even absent the applicants' union affiliation. Accordingly, further proceedings related to the Section 8(a)(3) portion of the charge are unwarranted.

Sincerely,


Lafe E. Solomon
Acting General Counsel


By:




Deborah M.P. Yaffe, Director
Office of Appeals

cc: ROBERT W. CHESTER
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