

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

DATE: September 4, 2013

TO: Claude T. Harrell, Regional Director
Region 10

Gary W. Muffley, Regional Director
Region 9

Robert W. Chester, Regional Director
Region 6

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

SUBJECT: Teamsters Local 519 (Cummins Crosspoint, 560-7540-4020-2500
LLC), Cases 10-CC-109738, 06-CC-109839, 09- 560-7540-4020-5000
CC-109842 560-7540-4020-5084
560-7540-4020-7500
560-7540-4020-7550

The Regions submitted these cases for advice concerning whether Teamsters Local 519 (Union) violated Section 8(b)(4)(i)(ii)(B) by picketing three branches of Cummins Crosspoint, LLC (Crosspoint), in addition to a fourth Crosspoint branch in Knoxville, TN at which the Union was engaged in a lawful, economic strike.

We conclude that the Union engaged in lawful, primary picketing when it picketed the three additional branches based on ample evidence that Crosspoint and its branches are a single, integrated employer. The Regions should therefore dismiss the charges, absent withdrawal.

FACTS

Crosspoint distributes and services diesel engines, generators and other products manufactured by Cummins, Inc., and describes itself as “an integrated network of 12 branches” operating within Illinois, Indiana, Kentucky, Tennessee and West Virginia.¹ Crosspoint’s corporate headquarters are located in Indianapolis, IN.

¹ See www.crosspoint.cummins.com.

Crosspoint is the result of a 2006 merger between two former Cummins, Inc. distributors, Cummins Mid-States and Power and Cummins Cumberland. At the time of the merger, management representatives of the new Cummins Crosspoint corporation visited its branches to explain to employees the new company's vision and expectations. Managers also explained to employees how to apply to the new company and the common benefits and other terms and conditions of employment employees should expect. Managers conveyed a uniform and consistent message to all branches they visited.

After the merger, Crosspoint management discussed the need for comparable terms and conditions of employment at the various branches such as consistent attendance, company vehicle, use of electronic equipment and confidentiality policies. To ensure labor contract consistency among its represented branches, Crosspoint management, including Crosspoint's president and legal counsel, also held a meeting with all branch managers in advance of contract negotiations. At the meeting, Crosspoint leaders told branch managers of its desire to achieve "almost identical, or as identical as possible," contracts at the represented branches and gave branch managers a contract "template" that would form the basis for future collective-bargaining agreements. Crosspoint corporate leaders and its branch managers analyzed the contract template in detail at the meeting so that branch managers learned how to achieve consistent policies, rules, regulations and business practices throughout the company. Crosspoint has ensured this consistency by having its corporate legal counsel negotiate, with branch and regional manager participation, all Crosspoint collective-bargaining agreements. Contracts are then signed by corporate, regional and branch management.

Crosspoint operates through three interrelated levels of management. Branch managers are the first level of corporate management and oversee daily branch operations, including branch bank accounts, credit cards, and equipment. Branch managers supervise daily staffing issues and administer Crosspoint's company-wide employee handbook at the branch level. Although Crosspoint branches are not separately incorporated, they operate in distinct geographic areas with their own customer bases, financial targets, operating expenses and budgets. Branch managers hire for open branch positions from job applications received on Crosspoint's corporate website and routed to them from Crosspoint's corporate headquarters. Branch managers report to a Crosspoint regional manager.

Regional managers are the second level of supervision and each one oversees several branches. Regional managers report to Crosspoint's corporate leaders and support their branches in part by regularly reviewing branch financial information and communicating with branch managers. Regional managers must first approve any associated costs before branch managers' marketing and other recommendations are submitted to Crosspoint's corporate division for final approval and cost allocation.

Regional managers also communicate corporate directives to branch managers, including those concerning staffing issues. For instance, in late 2012, regional managers received a directive from Crosspoint's President to better control expenses and then worked with branch leaders to reduce branch costs through layoffs, job eliminations and other actions. Similarly, branch managers must first justify to their regional manager any recommendation to increase their branch's staff. One regional manager noted that he is consulted about branch managers' firing decisions and can overrule those decisions if he disagrees with them.²

Finally, Crosspoint's third and highest level of management consists of its corporate headquarters leadership and legal counsel. As noted above, Crosspoint's legal counsel negotiates all labor contracts and gives branch managers advice concerning pending grievances and participates directly in labor arbitrations. Although branches maintain their own expenditures, Crosspoint headquarters must approve branch vehicle expenses and employees' paid leave. Crosspoint headquarters also provides guidance to branches concerning their specific financial goals and forecasts. Crosspoint corporate provides branches with IT services for which branches are billed. Crosspoint administers corporate-wide safety and customer support programs at every branch and informs employees at all branches of improvements and other efforts through its company-wide newsletter.

The Union represents employees at Crosspoint's Knoxville, TN branch and recently commenced a lawful, economic strike at the Knoxville branch. For several days in late July 2013, the Union also picketed three other Crosspoint locations in Nashville, TN and Fairmont and Cross Lanes, WV. There is some evidence of branch coverage during the strike. For instance, although Crosspoint denies that other branches are doing the work of the struck branches, the Union presented evidence that at least two employees from the Hazard, KY branch performed service and parts work for the Knoxville branch during the strike. Additionally, Crosspoint's Normal, IL branch shipped parts, and provided technical and customer call support to, the Nashville branch during the strike. Currently, the Union has ceased all picketing outside of the Knoxville branch.

ACTION

We conclude that Crosspoint and its branches are a single, integrated employer and are therefore "allies" for purposes of Section 8(b)(4)(B). As such, the Union's picketing of the Nashville, Fairmont and Cross Lanes branches was lawful, primary picketing. The Regions should therefore dismiss the charges, absent withdrawal.

² This regional manager notes that he has not yet exercised such authority.

It is well established that the dual congressional objectives found in Section 8(b)(4) aim to "preserv[e] the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressures in controversies not their own."³ Thus, a union violates Section 8(b)(4)(B) when it pickets in furtherance of a labor dispute against an employer that is not a party to that dispute.⁴ The "ally" doctrine is a well-recognized defense to such picketing and is available where the alleged neutral employer is "in cahoots with or acting as a part of" the primary employer.⁵ In those circumstances, the allegedly neutral employer loses the protection of Section 8(b)(4) because it is not "wholly unconcerned" with (and thus neutral to) the primary's labor dispute.⁶

An ally relationship among Crosspoint and its branches depends on whether they may be considered a single employer. In determining whether the alleged neutral and primary entities are a single employer, the Board considers four factors: (1) common ownership; (2) common management; (3) interrelation of operations; and (4) common or centralized control of labor relations.⁷ The Board considers these factors together but notes that daily operations and centralized control of labor relations policies are of paramount importance.⁸ Specifically, there must be substantial, actual, and active control, rather than merely the potential to control, the working conditions of the primary employer's employees.⁹

³ *NLRB v. Denver Bldg. Trades & Constr. Trades Council*, 341 U.S. 675, 692 (1951).

⁴ *See NLRB v. Retail Store Emp. Union Local 1001*, 447 U.S. 607, 611 (1980).

⁵ *Teamsters, Local 560 (Curtin Matheson Scientific)*, 248 NLRB 1212, 1213 (1980) (citing 95 Cong. Rec. 8709 (1949)).

⁶ *Id.* (citing 93 Cong. Rec. 4198 (1947), reprinted in II Leg. Hist. 1106 (NLRA, 1947)).

⁷ *See Mine Workers (Boich Mining Co.)*, 301 NLRB 872, 873 (1991) *enforcement denied on other grounds* 955 F.2d 431 (6th Cir. 1992).

⁸ *See id.* at 873 & n.11; *Carpenters (Missoula White Pine Sash)*, 301 NLRB 410, 410 n.3 (1991) (parent's control of subsidiaries' labor relations established ally relationship).

⁹ *See, e.g., Service Emp. Local 525 (General Maint. Co.)*, 329 NLRB 638, 639-40 (1999), *affd.* 52 F.App'x 357 (9th Cir. 2002) (no ally relationship because targeted entities did not substantially control primary employees' working conditions); *Electrical Workers IBEW Local 2208 (Simplex Wire)*, 285 NLRB 834, 834 n.1, 836-39 (1987) (no ally relationship where parent did not control daily labor relations of subsidiary's employees because subsidiary was "wholly in charge of its own destiny, including its

Although the Board has emphasized the importance of centralized labor relations to its single employer analysis, it has not always consistently explained how much integration is needed for separate but related entities to qualify as a single employer under Section 8(b)(4). For example, in *Teamsters Local 282 (Acme Concrete and Supply)*, the Board found it unnecessary to determine whether the relationship between two entities was that of a single employer or ally when their strong interrelationship and interdependence negated any claim of neutrality.¹⁰ And, in *Mine Workers (Boich Mining)*, where there was no common management or labor relations, the Board specifically disavowed an ALJ's finding that interrelations of operations was the most important single employer factor while simultaneously relying on it to "tip[] the balance in favor of single employer status."¹¹

The Board, therefore, has underscored functional integration's importance as a factor that often establishes that two entities, while appearing separate, function in reality as a single, integrated entity. The Board's seminal decision in *Curtin Matheson Scientific*,¹² issued between *Acme* and *Boich Mining*, guides our analysis of the single employer factors in the Section 8(b)(4) context. The Board emphasized in *Curtin Matheson* that the fundamental issue in these cases is whether one employer entity is "wholly unconcerned" with the other's labor dispute, and the single employer factors are simply used to answer that question.¹³ Thus, when analyzing the primary-secondary dichotomy, the Board stressed that it would apply a flexible and common sense approach by considering "all the strands of mutual interest" between the corporate entities.¹⁴ In *Curtin Matheson*, the Board found that the corporate parent itself was the "decisive link" between its branches—despite the daily autonomy enjoyed by branch managers—because of corporate policy of cross-shipping among

labor relations"); *Los Angeles Newspaper Guild, Local 69 (Hearst Corp.)*, 185 NLRB 303, 304 (1970), *enfd.* 443 F.2d 1173 (9th Cir. 1971) (no ally relationship where parent had only that potential authority inherent in common ownership).

¹⁰ See *Local 282, IBT (Acme Concrete & Supply)*, 137 NLRB 1321, 1324 (1962).

¹¹ See *Boich Mining*, 301 NLRB at 873 n.11, 875 ("[w]e ... disavow the judge's statement that interrelationship of operations is the most significant of these factors ... however, that factor is the one that influences our decision most heavily in this case").

¹² 248 NLRB 1212 (1980).

¹³ See *Curtin Matheson*, 248 NLRB at 1213-14.

¹⁴ See *id.* at 1214 & n.11.

branches and its ultimate control over branch labor relations.¹⁵ The Board thus recognized that, in those circumstances, the union had not attempted to enmesh a neutral because the corporation and its branches were a single employer, whose functional integration *and* control over labor relations allowed it an advantage in dealing with labor disputes at the local level.¹⁶

Crosspoint, like *Curtin Matheson*, is a “national company with its own mix of centralized and decentralized operations,” in which branch managers control their branches’ daily operations and labor relations only from within the strict boundaries of corporate directives.¹⁷ Most significantly, Crosspoint controls the labor relations of its branches by having its corporate legal counsel bargain every collective-bargaining agreement.¹⁸ Indeed, Crosspoint has always desired “almost identical, or as identical as possible” terms and conditions of employment at every branch and trained its branch managers how to negotiate contracts to ensure that consistency. In addition, Crosspoint branch managers hire among those applicants routed to them from the corporate website and must seek clearance from regional managers before adding staff. Similarly, branch managers must follow corporate directives to cut costs, including staff reductions. Conversely, branch managers may have their decisions to discharge employees vetoed and overturned by regional management.

In addition to ample evidence that the labor relations of all Crosspoint branches are centrally controlled at the corporate level, the evidence of corporate functional integration establishes a single employer relationship similar to that found in *Curtin Matheson*. Thus, Crosspoint’s Normal, IL branch supported the Nashville branch during the picketing by handling customer calls and shipping parts. There is also evidence that at least two employees from the Hazard, KY branch were sent to work in the Knoxville territory during the strike. The totality of this evidence establishes that Crosspoint and its branches are not “wholly unconcerned” with Knoxville’s labor dispute. We conclude, therefore, that the Union’s picketing of the Fairmont, Cross Lanes and Nashville branches was lawful, primary picketing that did not violate Section 8(b)(4).

¹⁵ See *id.* at 1214-15.

¹⁶ See *id.* at 1215.

¹⁷ *Id.* at 1212.

¹⁸ Compare *Local Union No. 391, IBT (Vulcan Materials Co.)*, 208 NLRB 540, 542-43 (1974), *enfd.* 543 F.2d 1373 (D.C. Cir. 1976) (no centralized control over labor relations where corporation’s participation in division’s contract negotiations was voluntary, by invitation of division, and advisory only).

Accordingly, the Regions should dismiss the charges, absent withdrawal.

/s/
B.J.K.