UNITED STATES GOVERNMENT
National Labor Relations Board

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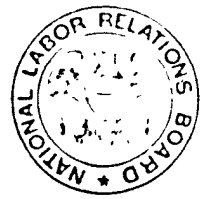
Memorandum



TO : Samuel M. Kaynard, Regional Director
Region 29

DATE: OCT 31 1985

FROM : Harold J. Datz, Associate General Counsel
Division of Advice

578-6007
578-6014
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RELEASE

SUBJECT: Local 3, IBEW
(Telecom Plus of New York City, Inc.)
Case 29-CP-522

This case was submitted for advice on whether Local 3's current picketing at a facility that is occupied by a parent corporation and its subsidiary is violative of Section 8(b)(7) of the Act and whether our conclusion that the parent and the subsidiary constitute a single employer affects the outstanding complaint in Case 29-CP-516. This memorandum confirms our telephone communication with the Region on October 24, 1985.

The background facts in this case are set forth in the Advice Memorandum dated September 30, 1985 in Case 29-CD-329. After Telecom Plus Downstate (Downstate) closed its operation at the Long Island City facility (LIC) in November 1984, Local 3 IBEW continued picketing periodically at that location in support of its economic dispute with Downstate. Beginning in June 1985, TPNYC, another subsidiary of TPI and the Charging Party in Case 29-CP-516, moved a large portion of its operations, including its technicians, from its Manhattan facility to LIC. TPI continues to have some employees stationed at LIC. Since Downstate went out of business in November 1984, it has had no presence at LIC. On August 26, 1985, Local 3 pickets appeared at LIC, carrying signs reading "on strike Local 3, IBEW." These signs were identical to those previously carried by Local 3 pickets at TPNYC's Manhattan facility between December 13, 1984 and July 1985, and at LIC until Downstate's closing in November 1984, except that the signs did not name "Telecom Plus" or bear any other employer's name. The Region, upon learning from TPNYC in mid-September 1985 that Local 3 was picketing at LIC, contacted Local 3's attorney. The attorney shortly thereafter advised the Region that the signs would be corrected. On September 30, 1985, the name "Downstate" was inserted on the signs. The picketing at LIC has continued to date.

We concluded that insufficient evidence exists to show that the picketing at LIC is in support of securing recognition from TPNYC, rather than a continuation of the economic dispute at that location. While Downstate itself arguably no longer has any presence at LIC, TPI, which was responsible for Downstate's closing, continues to maintain offices at that location. Further, although for a period of time the signs did not name any employer and

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for that reason might have been taken as aimed at TPNYC, it appears that that omission was inadvertent and was corrected when called to Local 3's attention. We would not find that this inadvertence was sufficient to establish that the picketing at LIC had a recognitional objective. Further proceedings are accordingly unwarranted in Case 29-CP-522 and the charge should be dismissed, absent withdrawal.

In Case 29-CD-329, we concluded that TPI and TPNYC were a single employer for the purposes of Section 8(b)(4)(D) and the Waterway Terminals (185 NLRB 186) analysis. By the same reasoning it may well be that TPI and Downstate, at least when the latter was still in existence, were a single employer for the purposes of the 8(b)(4)(D)-Waterway Terminals analysis. However, it does not follow that TPNYC is a single employer or an alter ego of Downstate for the purposes of Section 8(a)(5). The single employer analysis is used when two companies exist simultaneously and the contention is that they are one employer. This is not the present situation with respect to Downstate and TPNYC. Further, even if both companies constituted a single employer, TPNYC would be considered a separate unit for which the CWA was the lawfully recognized representative and as to which Local 3 had no representative status. Kiewit Sons' Co., 231 NLRB 76 (1977), enf'd, 595 F.2d 844 (D.C. Cir. 1979).

As to the alter ego contention, the evidence does not establish that TPNYC is a disguised continuance of Downstate. Rather, as a subsidiary of TPI, TPNYC was in existence prior to the closing of Downstate, another TPI subsidiary. And TPI simply decided to shift work from one to the other, i.e., from Downstate to TPNYC.

Based on all the foregoing and as Local 3 has no representative status at TPNYC, it follows that it was not entitled to picket for recognition at the Manhattan facility. Accordingly, the outstanding complaint in Case 29-CP-516 remains unaffected by the conclusions reached here or in Case 29-CD-329 and the Region should proceed with that complaint consonant with prior Advice authorization in that case. 1/

H. J. D.