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UNITED STATES GOVERNMENT
National Labor Relations Board

Memorandum

TO Glenn A. Zipp, Regional Director
Region 33

DATE: AUG 14 1989

RELEASE

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

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SUBJECT Cedar Valley Corp.
Cases 33-CA-8721, 8724, 8735

A.D. 03.58

These Section 8(a)(5) cases were submitted for advice as to whether the Employer is bound to current Section 8(f) agreements because it entered into predecessor agreements with 3 unions in 1978 and 1981 and agreed to be bound by subsequent contracts negotiated by the multiemployer association and because it never revoked those authorizations.

FACTS

The Employer is a construction industry employer based in Waterloo, Iowa. In early May 1989, the Employer was awarded a concrete job in Davenport, Iowa, located in Scott County, approximately 141 miles from Waterloo. As is its current custom, the Employer brought in a crew from Waterloo to do the work. The Employer's Waterloo employees are not represented by a union.

Shortly thereafter, each of the 3 Charging Party Unions -- Laborer's Local No. 309, the Tri-Cities Cement Masons Union No. 544 and Local 537, Operating Engineers -- demanded recognition from the Employer, and each presented the Employer with a multi-employer collective bargaining agreement to which it contended the Employer is bound. Specifically, the Laborers Local contends the Employer entered into an agreement with it on June 26, 1978; the Cement Masons Local presented an agreement with the Employer dated July 21, 1981; and the Operating Engineers Local based its demand on an agreement with the Employer dated June 26, 1978. 1/

Each of the agreements cited above contain a provision that states in relevant part:

> The Undersigned Employer signatory hereto who is not a member of the said Association agrees to be bound by ... the terms and conditions of all subsequent contracts negotiated between the Union

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1/ Apparently during the period when the Employer entered into those agreements it hired local employees to supplement the core workforce it brought from Waterloo.

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> and the Association unless ninety (90) days prior to the expiration of this or any subsequent Agreement said nonmember Employer notifies the Union in writing that it revokes such authorization.

The Employer never gave the requisite notice to revoke its authorization to the Association to bargain on its behalf.

The Employer has refused to recognize any of the 3 Unions. In support of its refusal the Employer has relied in part on various representation proceedings involving sister locals of the 3 Unions involved herein. With regard to the Operating Engineers, the Employer points to the fact that Local 234 of that Union had filed a petition in 1983 for an election in a unit of the Employer's employees, but had withdrawn that petition prior to the election scheduled for July 22, 1983. The Employer then ceased recognizing Local 234 as the bargaining representative of its operators, oilers, mechanics and apprentices and has not done so since. With regard to the Cement Masons, the Employer notes that, after a mail ballot election, Local 818 of that Union was decertified on April 30, 1984 as the bargaining representative of the Employer's full-time and regular part-time cement mason employees. And, with regard to the Laborers, on June 8, 1984, the Iowa Laborers District Council was decertified, after an election, as the bargaining representative of the Employer's laborer employees. Local 309 is not a member of the Iowa Laborers District Council. Each of these proceedings apparently involved the Employer's existing workforce within the unit description at the time of the proceedings.

The Employer also contends that the Unions should be estopped from claiming recognition at this time because they did not attempt to claim recognition on the 3 or 4 occasions when the Employer did work in Scott County on public projects in 1985 and 1986. The Unions maintain that they were not aware of the Employer's work within their jurisdiction in 1985 and 1986, and that, in any event, prior to the issuance of John Deklewa & Sons, 282 NLRB 1375 (1987), the Section 8(f) contracts would not have been enforceable.

ACTION

The Employer continues to be bound to collective bargaining agreements with the 3 Charging Party Unions. Accordingly, the Region should issue a complaint, absent settlement, alleging that the Employer violated Section 8(a)(5) and (1) by refusing to recognize those Unions or to abide by the collective bargaining agreements.

In John Deklewa & Sons, supra, the Board held that a Section 8(f) agreement cannot be repudiated during its operative term, and that such an agreement can be enforced during its term under the provisions of Sections 8(a)(5) and 8(b)(3). 2/ Based on Deklewa, the Board held in Reliable Electric Co., Inc., 3/ that if a construction industry employer authorizes a multiemployer association to bargain on its behalf for Section 8(f) agreements, it remains bound to succeeding agreements negotiated by that association unless it effectively withdraws bargaining authority from the association. 4/

In the instant case, it is clear that the Employer never withdrew the bargaining authority it gave when the various Scott County agreements were negotiated. Therefore, under Reliable Electric, it remains bound to successive bargaining agreements with the 3 Unions, all of whom apparently are parties to current collective bargaining agreements with the multiemployer association that the Employer authorized to bargain on its behalf. 5/ In the absence of evidence that the Employer revoked those authorizations by their terms, we would not rely on representation proceedings involving unions in another location to erase the Employer's bargaining obligations with the Scott County Unions. Although the Employer's stable workforce based in Waterloo has indicated that it does not wish to be represented by unions in that locality, it is not clear that those employees would not wish to be represented by the Scott County Unions. Indeed, had the Employer executed new Section 8(f) agreements with those Unions when it commenced work on the Davenport project in May 1989, its workforce would initially have had no choice as to its representation by the 3 Unions. In any event, the Employer's employees have the ability to express their desires regarding representation by filing representation petitions in each of the 3 units and, if they so desire, voting against the Unions in the expedited elections that would follow. Unless and until they do so, the Employer remains bound to the Scott County agreements.

2/ 282 NLRB at 1386.

3/ 286 NLRB No. 83 (November 9, 1987).

4/ Id., slip op. at 6-7.

5/ In view of the Board's apparent intent to hold parties to 8(f) contracts to the stated terms of those agreements, we would not find, on the facts of these cases, that the Unions are estopped from relying on those agreements.

Accordingly, a Section 8(a)(5) and (1) complaint should issue, absent withdrawal.

H. J. D.

[redacted]