FORM NLRB-5026 (4-80)

closed

UNITED STATES GOVERNMENT
National Labor Relations Board

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# Memorandum

01775

TO : Daniel Silverman, Director
Region 2

DATE: JUL 3 1 1986

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

SUBJECT: Local 1212, International Brotherhood of Electrical Workers (WJR AM-FM)
Cases 2-CC-1891, 2-CB-11312, & 2-CE-146

572-0100
572-5025
572-5050-8500

This case 1/ was submitted for advice as to whether the Union violated Section 8(b)(6) by insisting that the Employer hire a Union engineer in addition to its own announcer to conduct broadcasts from within the Union's jurisdiction.

## FACTS

WJR AM-FM (the Employer), a Detroit, Michigan radio station, broadcasts home and road games of the Detroit Red Wings hockey team. Games are broadcast by the Employer's play-by-play announcer, Bruce Martyn. Martyn transmits his commentary on each game to the Employer's studio by a telephone-satellite or direct telephone connection using equipment he brings to each game in a small suitcase. Although the quality of the broadcast is monitored and, apparently, controlled by the Employer's engineering staff in Detroit, at each game Martyn must locate, and attach his equipment to, satellite and/or telephone connections and connect his microphone to the equipment. Martyn apparently can adjust various dials and gauges on the equipment in the course of each broadcast.

On October 31, 1985, Martyn arrived at the Brendan Byrne Arena in New Jersey to broadcast a game between the Red Wings and the New Jersey Devils. Michael Maccaro, a Local 1212 steward, approached Martyn and asked him where his engineer was. When Martyn replied that he did not work with an engineer, Maccaro said, Not here you don't, and referred to the contract between

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1/ Only Case 2-CB-11312 was submitted for advice, although the Region's submission listed other charges that the Region has apparently processed.

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the Union and the Arena. 2/ At Martyn's suggestion, Maccaro telephoned the Employer in Detroit and said that an engineer was required to broadcast the game. The conversation ended with Maccaro stating, In the future, you've got to have a Union engineer . . . remember, no Union, no radio. The Employer then called Martyn and told him that it appeared that it would have to pay a Union engineer in order to broadcast the game. Maccaro then introduced Martyn to an individual named Dominic Spada and gave Martyn a bill for Spada's services as an "audio engineer." Shortly before the broadcast began, Spada called the Employer in Detroit and asked where he should send his bill for the game. Martyn then proceeded to broadcast the game as he always did. Spada merely stood behind him throughout the game. The Employer paid the bill for Spada's "services" in November 1985.

On December 23, 1986, Martyn was scheduled to broadcast another Red Wings game in Local 1212's jurisdiction, this time from Madison Square Garden in New York City. After some difficulty gaining entry to a locked broadcast booth, Martyn set up his equipment. Shortly thereafter, Maccaro and Spada approached the booth. Maccaro asked Martyn about his engineer. Martyn replied that he had been instructed to broadcast without an engineer. Maccaro said, A Union person will have to stand behind you and the station will be billed.' Martyn told Maccaro that the Union could do what it wished but he doubted that the Employer would agree to pay. Maccaro reiterated his view that a Union engineer would have to stand behind Martyn. As a result of this conversation, Spada again stood behind Martyn during the entire broadcast. Spada asked Martyn for the Employer's address, but the Employer has not received a bill for Spada's "services" on December 23.

## ACTION

A Section 8(b)(6) complaint should issue, absent settlement, alleging that the Union's insistence that the Employer pay a Union engineer to stand behind the Employer's announcer did not constitute a bona fide offer to perform relevant services.

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2/ The Employer does not have a collective-bargaining relationship with the Union. The Union has a collective-bargaining agreement with Hughes Television, Inc., pursuant to which Hughes agrees to employ Union electricians for its television broadcasts of New Jersey Devils and New York Rangers hockey games from Brendan Byrne Arena and Madison Square Garden, respectively. This agreement also provides, however, that Hughes "may lease or rent its equipment and/or its studio space to other companies, with or without the services of a Local 1212 technician."

Section 8(b)(6) prohibits a labor organization from causing or attempting to cause an employer to pay money as an exaction for services which are not performed or are not to be performed. 3/ However, the mere fact that no work is actually performed does not establish a Section 8(b)(6) violation. All that is required to render the payment demand lawful is that an offer to perform some service be made and that the service offered be related in some way to the employer's business, regardless of whether the work is necessary or desirable. 4/ Thus, Section 8(b)(6) has been construed to prohibit demands for payment for "stand-by" work where no performance of relevant services is or can be contemplated by the so-called offer. 5/

Based upon the foregoing, we concluded that the Union violated Section 8(b)(6) by failing to make an offer of relevant services when, on October 31 and December 23, 1985, it insisted that the Employer hire a Union member in addition to its own announcer in order to conduct broadcasts from Brendan Byrne Arena and Madison Square Garden. Thus, the Union's statements were not "bona fide" offers to perform relevant services, but rather were offers literally to stand by while Martyn conducted the broadcast without offering to substitute for him should he be unable to do his work. 6/ To be sure, Maccaro's October 31 statements questioning Martyn as to the whereabouts of his engineer and

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3/ See generally NLRB v. Gamble Enterprises, Inc., 345 U.S. 117 (1952).

4/ See, e.g., American Newspaper Publishers Association v. NLRB, 345 U.S. 100, 110-111 (1953); New York District Council of Carpenters (Graphic Displays, Ltd.), 226 NLRB 453 (1976); Teamsters Local 456 (J.R. Stevenson Corp.), 212 NLRB 968, 969-971 (1974).

5/ See, e.g., J.R. Stevenson Corp., supra, 212 NLRB at 971 (Union demand that employer continue to employ one of its members violated 8(b)(6) where it was clear that "there was no contemplation of his performing any bona fide relevant services"); Metallic Lathers Union of New York (Expanded Metal Engineering Co., Inc.), 207 NLRB 631, 636 (1973) (absent "even any prospective need," demand that employer hire a lather was not a bona fide offer of relevant services). Cf. Gamble Enterprises, supra, 345 U.S. at 123-124 ("payments for 'stand-by,' or for the equivalent of "'standing-by,'" distinguished from "bona fide offer of competent performance of relevant services").

6/ Cf. International Union of Operating Engineers, Local No. 9 (Shank-Artukovich), Case 27-CB-1432, Advice Memorandum dated May 30, 1980.

warning that in the future, you've got to have a Union engineer . . ., are ambiguous and, standing alone, arguably could be interpreted as an offer to perform ostensibly relevant engineering services. On the other hand, the statements also can be viewed as an offer to perform non-relevant services, i.e., a demand for the mere physical presence of a Union engineer. The latter interpretation is supported by the Union's statement on December 23 that a Union engineer would have to stand behind Martyn throughout his broadcast. Thus, by specifying that the "service" offered was to have a Union engineer "stand behind" Martyn, the December 23 statement tends to establish that the Union's offer did not contemplate having the engineer perform any services other than merely standing by. Accordingly, we would resolve the ambiguity in the October 31 statements in light of the December 23 statement and conclude that on both occasions the Union violated Section 8(b)(6) by demanding payment for the non-relevant stand-by services of a Union engineer.

Accordingly, complaint should issue, absent settlement, alleging that the Union violated Section 8(b)(6) by insisting that the Employer hire a Union engineer to perform "services" that were not relevant to the Employer's business.

H.J.D.