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UNITED STATES GOVERNMENT
National Labor Relations Board

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Memorandum

DATE: October 31, 1986

TO : Glenn A. Zipp, Director
Region 33

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

A.D 05873

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SUBJECT: Sheet Metal Workers Local No. 91
(The Schebler Company)
Cases 33-CB-2401-1, 33-CC-853,
33-CE-14

and

Sheet Metal Workers
International Association
(The Schebler Company)
Cases 33-CB-2401-2, 33-CC-854

These cases were submitted for advice on the following issues: (1) whether the Local Union and the International Union violated Section 8(b)(4)(ii)(A) of the Act; (2) whether the International Union should be named as a co-respondent with the Local Union; FOIA Exemption 5.

FACTS

The Schebler Company (the Employer) is a member of a multiemployer bargaining association whose most recent contract with Sheet Metal Workers Local No. 91 (Local 91 or the Local Union) is effective from June 1, 1985 through May 31, 1987. In 1980, the Employer was acquired by six unionized mechanical engineering firms which are owned by Bill and Jerry Egan. The Egan brothers also own a nonunion firm called Egan-Ryan Mechanical Company.

In 1982 or 1983, the Sheet Metal Workers International Association (the International Union) gave its local unions, including Local 91, authority to offer wage and fringe benefit concessions on a job-by-job basis to contracting employers who were competing against nonunion companies. Then, beginning in 1985, the International Union instructed Local 91 and other local union affiliates not to grant wage concessions to any signatory employer which refused to include an "integrity clause" in its contract. That clause is designed to prohibit signatory contractors from maintaining nonunion, double-breasted operations.

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In August 1985, Kertesz, the Employer's president, asked Praet, the Local Union's business manager, for wage and fringe benefit concessions. In response, Praet gave Kertesz a copy of the integrity clause and asked him to sign it, adding that the Employer's chief competitor, who was also a member of the multiemployer association, had already signed the integrity clause. 1/ After discussing the clause, Kertesz said he would consider the matter. Thereafter, in October or November 1985, a Local Union official again told Kertesz that, under instructions from the International Union, the Local Union would not grant the Employer any concessions unless the Employer signed the integrity clause.

In July 1986, after learning that the Local Union had granted concessions to a competitor which was the low bidder on a project for which the Employer had also bid, Kertesz filed a grievance alleging that the Local Union was violating the most favored nations clause in the parties' contract. 2/ At an August 5, 1986 grievance meeting, a Local Union official told Kertesz that the International Union's president had instructed its local unions, including Local 91, not to grant wage and fringe benefit concessions to employers which did not sign the integrity clause. The Local Union official also gave Kertesz a copy of a March 22, 1985 memorandum to that effect from the International Union's president.

On September 22, 1986, the Employer filed the CB and CC charges in these cases, alleging that the Local Union and the International Union violated Section 8(b)(3) and 8(b)(4)(ii)(A) of the Act by forcing or requiring the Employer to enter into an 8(e) agreement as a condition precedent to bargaining with the Employer about wage and fringe benefit concessions. Two days later, on September 24, the Employer filed the CE charge against the Local Union, 3/ alleging that the Local Union and certain

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1/ Local 91 was not successful in getting such a clause included in its current multiemployer association contract to which the Employer is a signatory. However, several individual employer-members of the association who are competitors of the Employer have agreed to and signed the Local Union's integrity clause in exchange for wage and fringe benefit concessions.

2/ The Employer's competitor was also a member of the multiemployer association to which the Employer belonged, and apparently was also a signatory to the association's contract with the Local Union.

3/ [illegible] was filed against the International Union.

employer-members of the multiemployer association had amended the association contract by adding the integrity clause.

ACTION

For the reasons discussed below, we concluded that a Section 8(b)(3)-8(b)(4)(ii)(A) complaint should issue, absent settlement, FOIA exemption 5.

We agree with the Region that the integrity clause violates Section 8(e) based upon the rationale set forth in International Brotherhood of Painters, et al. (Manganaro Corp. of Md.), Cases 5-CB-4687, et al., Appeals Memorandum dated September 24, 1985, and in Sheet Metal Workers Local Union No. 420 (Far West Air Conditioning, Inc.), Case 21-CB-9494, Advice Memorandum dated April 18, 1986; Sheet Metal Workers Local 141 (Peck-Hannaford & Briggs), Cases 9-CB-6256-11, 9-CC-1279-11, Advice Memorandum dated September 30, 1985. 4. Consequently, we also agree that: (1) the Local Union violated Section 8(b)(3) by insisting to impasse on inclusion of its integrity clause in contracts, and by refusing to engage in concession bargaining with the Employer unless the Employer agreed to the unlawful 8(e) clause; 5/ (2) the International Union similarly violated Section 8(b)(3) by directing Local 91 to insist upon the unlawful clause

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FOIA Exemption 5.

5/ Although the contract was not technically "open" for negotiations, the Local made it clear that it was willing to negotiate about concessions. In such circumstances, it was obligated to bargain in good faith. It breached that obligation by insisting upon an unlawful clause as a condition to granting concessions.

in its negotiations with the Employer; 6/ and (3) the Local Union and the International Union violated Section 8(b)(4)(ii)(A) by coercing the Employer with an object of forcing or requiring the Employer to enter into an agreement prohibited by Section 8(e). 7/ Although this conduct began outside the 10(b) period, it continued into the 10(b) period.

With regard to the 8(b)(4)(ii)(A) charge, we concluded that the Local Union's conduct was reasonably calculated "to cause economic loss" to the Employer's business during the period the Employer refused to comply with the Union's demands. 8/ Because the Employer has not agreed to the unlawful provision, it

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6/ With regard to the liability of the International Union for the 8(b)(3) and 8(b)(4)(A) conduct of its local union affiliate, see, e.g., Combustion Engineering, Inc., 272 NLRB 957, 968-969 (1984)(derivative and direct liability imposed on international union where local union breached its duty of fair representation, since local acted as agent of international, and international not only ratified, but also participated in, local union's misconduct); Cargo Handlers, Inc., 159 NLRB 321, 322-327 (1966)(international union jointly responsible with local union affiliate for instituting and maintaining a hiring and referral system which discriminated against applicants on the basis of their lack of union membership, but international, unlike local, was not responsible for the racially discriminatory referral practices, since there was no evidence that the international participated in, or otherwise condoned, the latter unlawful practices of the local). See also Ets-Hokin Corp., 154 NLRB 839, 845-846 (1965), enfd. 405 F.2d 159 (9th Cir. 1968), cert. denied 395 U.S. 921 (1969)(local and international unions jointly liable for 8(b)(4)(ii)(A) and (B) violations, where the evidence showed that the two unions acted in concert).

7/

FOIA Exemption 5.

8/ See, e.g., Ets-Hokin Corp., supra, 154 NLRB at 842-843, [illegible], [illegible], [illegible] NLRB [illegible], [illegible], enfd. as

is economically disadvantaged vis-a-vis competitors which have agreed to the clause and received concessions. This economic pressure by the Local Union constitutes "coercion" within the meaning of Section 8(b)(4), even in the absence of a strike, picketing, or threats to do so. 9/

FOIA Exemption 5.

H. J. D.

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modified 263 F.2d 796 (9th Cir. 1959), cert. denied 362 U.S. 940 (a Section 8(b)(1)(A) and (2) case).

9/ See, e.g., United Scenic Artists, Local 829 (Theatre Techniques, Inc.), 267 NLRB 858, 863 (1983), enforcement denied 762 F.2d 1027, 119 LRRM 2675 (D.C. Cir. 1985); Local No. 742, Carpenters (J.L. Simmons Co., Inc.), 237 NLRB 564, 565 (1978).

FOIA Exemption 5.