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UNITED STATES GOVERNMENT
National Labor Relations Board

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Memorandum A.D. 54

TO : Roger W. Goubeaux, Regional Director
Region 31

DATE: October 9, 1987

RELEASE

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

SUBJECT: Glaziers, Local 132 — 578-4025-0100
(Kern Glass), Case 31-CP-561 — 578-4025-5075
(Center Glass Co.), Case 31-CP-563 — 590-0100

These cases were resubmitted for advice pursuant to General Counsel Memorandum 87-2 on the issue of whether, under John Deklewa & Sons, 282 NLRB No. 184 (1987), the Union violated Section 8(b)(7)(C) by picketing the Employers after the expiration of their Section 8(f) collective-bargaining agreement.

FACTS

Kern Glass and Center Glass Co. are each signatories to the Master Labor Agreement, which expired on June 30,1987. The Region has found that the Union represents the employees of each Employer on a single employer basis, and that the Union is a Section 8(f) and not a Section 9(a) representative of the employees of the two Employers. The Union bargained with each Employer in June and the first half of July. They were in disagreement on a number of issues, including wages. On July 15, the Union struck each Employer and commenced picketing with signs which recited that the Union was "on strike [against the named Employer] No agreement. No dispute with any other Employer."

On the foregoing evidence, we concluded in our Advice Memorandum of September 16 that the charges should be dismissed, absent withdrawal. In this regard, we noted that the Employer had voluntarily renewed the bargaining relationship and that the dispute was a bargaining dispute. Thus, the Union's picketing did not have a recognitional object, but rather was in support of its bargaining position.

The Employers have now come forward with evidence that, on July 15, they withdrew recognition on the stated grounds that the Union no longer represented the employees. The Employers further assert that this conduct prompted the picketing that began on that day. The picketing continues to date. The Employers admit that they have held further negotiating meetings with the Union, on August 6 and 11, and apparently on September 30. The Employers make no contention, and there is no evidence, that the picketing forced them to negotiate.

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ACTION

We concluded that complaint should issue, absent settlement, alleging that the picketing herein was violative of Section 8(b)(7)(C) between July 15 and August 6, but privileged thereafter.

As noted, the Employers withdrew recognition on July 15. In view of the timing, it is clear that an object of the Union's picketing which began that day was to force the Employrs to confer recognition on the Union. Inasmuch as the previous recognition had been on a Section 8(f) basis, and as there is no evidence that the Union sought Section 9 recognition, it would appear that the Union sought a resumed recognition on a Section 8(f) basis.

In Deklewa,1/ the Board said:

> Even absent an election, upon the contract's expiration, the signatory union will enjoy no majority presumption and either party may repudiate the 8(f) relationship. The signatory employer will be free, at all times, from any coercive union efforts, including strikes and picketing, to compel the negotiation and/or adoption of a successor agreement.

The above language strongly suggests that the Board intends to proscribe any and all picketing even if such picketing lasts less than 30 days, and that the Board will no longer follow Los Angeles Building & Construction Trades Council (Donald Schriver, Inc.), 239 NLRB 264, 269 (1978) 2/ which holds that a union can ordinarily picket for 30 days to obtain a Section 8(f) contract.

Under the argument set forth above, picketing in support of Section 8(f) recognition should not be permitted to continue for 30 days, whereas picketing in support of Section 9 recognition can usually continue for 30 days. In support of this distinction, we note that, in the Section 8(f) situation, the union seeks to become the representative without regard to the representational desires of the employees. Its picketing is designed to coerce the employer into recognizing the union. In

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1/ Text above fn. 45.

2/ Petition for review dismissed, 635 F.2d 859 (D.C.Cir.1980), certiorari denied 451 U.S. 976.

the Section 9 situation, the union seeks the support of the unit employees and to persuade a majority of them to select the union. Hence the focus of the picketing is not only on the employer but also on the employees. Thus, there is a strong public policy for giving the picketing union a full 30 days to communicate its message to the employees. That public policy does not operate where the union is not seeking to persuade employees but simply to coerce the employer. In addition, in the construction industry time is generally of the essence and picketing can have a very disruptive effect on the progress of the construction. Hence, unlike the situation of a permanent industrial plant, 30 days of picketing may be unreasonable. In these circumstances, the Region should argue that the picketing which continued from July 15 until August 6 was unlawful.

However, once bargaining resumed on August 6 the picketing did not violate Section 8(b)(7)(C). 3/ From and after the date, the dispute once again became a bargaining dispute and not a recognitional dispute. As discussed in the prior memorandum, picketing in support of a bargaining position is not unlawful.

H.J.D.