**Bradford Printing & Finishing, LLC *and* New England Joint Board, UNITE-HERE.** Case 1–CA–45575

March 25, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER AND HAYES

The primary issue in this case is whether the Respondent, a successor employer, unlawfully refused to recognize and bargain with the incumbent Union. The judge found the violation, rejecting the Respondent's reliance on an employee petition opposing continued union representation, because the petition was tainted by the Respondent's unlawful formation of a "Guiding Coalition" to deal with employees' terms and conditions of employment.[1]

We agree with the judge's findings for the reasons he gave.[2] As discussed below, we also rely on an additional, independent basis for finding the employee petition tainted: the Respondent's preceding and ongoing refusal to recognize and bargain with the Union since becoming a successor under *NLRB v. Burns Security Services*, 406 U.S. 272 (1972).[3]

I.

As set out in the judge's decision, the Union represented a unit of production and maintenance employees at the preexisting employer, Bradford Dyeing Association, until that entity closed in November 2008. Prior to that closing, some of Bradford Dyeing's sales and managerial employees created the Respondent and reached an agreement with Bradford Dyeing to lease its facility and equipment.

In November 2008, the Respondent's chief executive, Nicholas Griseto, met with Bradford Dyeing's employees to recruit them for the Respondent's prospective operation. When asked if the new company would be unionized, Griseto said the Respondent would not be a union company, but that it would be up to the employees to decide if they wanted union representation. At a December job fair attended by many Bradford Dyeing employees, Griseto again said that the Respondent would not open as a union company but that the question of union representation would be decided by the employees.

The Respondent re-opened the facility on January 5, 2009,[4] and held an orientation program for new employees that day. Griseto had prepared a document to use in describing the new company to them. It stated, in pertinent part:

> We are aware that some of the associates of the previous company were represented by a union. We do not think one is necessary here. Personally I would like you all to wait on thinking about this subject until we see what kind of company we can achieve together.

Although the judge did not make a finding on whether Griseto "read the entire document" verbatim, he found from the record that "the probability is that Griseto told the employees that he believed that as a new company he did not have to recognize the Union and that a union was unnecessary." This finding is consistent with Griseto's other undisputed public statements and actions.

By January 16, the Respondent had hired a representative complement of approximately 33 bargaining unit employees, a large majority of whom were former Bradford Dyeing employees. At the hearing, the Respondent conceded that it was a successor employer within the

[1] On April 14, 2010, Administrative Law Judge Raymond P. Green issued the attached decision. The Respondent filed exceptions and a supporting brief; the General Counsel filed a brief in support of the judge's decision, limited exceptions, and a supporting brief; and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions, and to adopt the recommended Order as modified.

We shall modify the judge's recommended Order to provide for the posting of the notice in accord with *J. Picini Flooring*, 356 NLRB 11 (2010). For the reasons stated in his dissenting opinion in *J. Picini Flooring*, Member Hayes would not require electronic distribution of the notice.

[2] The Respondent has not excepted to the judge's finding that its formation of the Guiding Coalition violated Sec. 8(a)(2) of the Act. The Respondent does argue that no employee witness testified that he was motivated specifically by the Guiding Coalition to sign the employee petition. The record, however, clearly establishes the necessary connection.

The Guiding Coalition was created by the Respondent's chief executive, Nicholas Griseto. He informed employees that it would address such issues as work hours, holidays, attendance, discipline, and grievances. Griseto also emphasized, shortly before the petition was circulated, that the Union was not "necessary" because the Guiding Coalition "will be a perfect forum to get involvement from all ranks and . . . will [be] able to address all issues and concerns in a timely and fair manner." Employee John Parker, who circulated the petition, testified that he and other employees who signed it wanted to "give Nick [Griseto] a chance to prove to us what he . . . said he wants to do." It may fairly be inferred that Parker was referring at least in part to the Guiding Coalition.

[3] Member Hayes agrees with his colleagues that the employee petition was tainted by the Respondent's preceding unlawful refusal to recognize the Union, and that the Respondent consequently violated Sec. 8(a)(5). He therefore finds it unnecessary to rely on the Respondent's unlawful creation of the Guiding Coalition as a basis for rejecting the petition.

[4] All subsequent dates are in 2009.

meaning of *Burns*, supra. Also on January 16, the Union requested recognition as the majority representative for the same unit it had represented at Bradford Dyeing.

In a notice to employees posted on January 24, the Respondent stated again, in pertinent part:

> Ownership is aware that some of our associates previously worked at [Bradford Dyeing] and were represented by a union. Ownership does not think one is necessary here. Nick Griseto, the President, CEO would like to wait on thinking about this subject until we see what kind of company we can achieve collectively and give our new procedures, vision and cultural change a chance.

Sometime between February 1 and 4, the Respondent posted a notice informing employees of the Union's demand for recognition and stating, in pertinent part:

> [The Respondent]'s position on this topic has been clear. We believe a union is not necessary given Bradford's new vision, culture change and procedures.
>
> . . . .
>
> Unite Here seeks recognition as your union without the benefit of election at which you can freely vote your preference and determine for yourself whether a union and/or Unite Here shall be your bargaining representative.
>
> If you desire to have a role in this decision, you must take immediate steps to make your opinions and views known to Unite Here, the National Labor Relations Board in Boston and Bradford. It is Bradford Printing's position that your views and opinions are the most important on this issue. You alone should make the decision on whether Unite Here becomes your union and the bargaining agent for employees.
>
> Your opinion, however, can only be taken into account if you make your wishes known to all parties involved. If you do not take any action, a decision on this issue could be made without any input from you. Bradford urges you to become involved and exercise your rights to have a sway on what happens in your workplace.

On February 5, after reading the above notice, employee Parker circulated his petition opposing continued representation by the Union.

On February 20, the Respondent formally refused to recognize the Union, asserting that it was not a successor to Bradford Dyeing and citing Parker's petition as evidence that a majority of unit employees did not want the Union to represent them.[5]

II.

The Respondent concededly was a *Burns* successor to Bradford Dyeing. Thus, it was legally required to recognize and bargain with the Union as of January 16, when the Respondent had hired a representative complement of unit employees, a majority of whom had worked for the predecessor, and the Union formally demanded recognition. The Respondent, however, refused to do so.[6]

Moreover, the Respondent's statements to employees, both before and after that date, made clear that it would not recognize and bargain with the Union. The Respondent consistently took the position that union representation was unnecessary and effectively communicated to employees that it would not recognize and bargain with the Union unless and until they reaffirmed their support for it.

A challenge to an incumbent union's majority support "must be raised in a context free of unfair labor practices of the sort likely, under all the circumstances, to affect the union's status, cause employee disaffection, or improperly affect the bargaining relationship itself." *Lexus of Concord*, 343 NLRB 851, 852 (2004). Here, the circumstances precluded any challenge to the Union's support. The Respondent engaged in an ongoing refusal to recognize and bargain with the Union. That conduct tainted the employee petition, independently of the Respondent's unlawful creation of the Guiding Coalition. See *Lee Lumber*, 322 NLRB 175, 178 (1996) (unlawful refusal to recognize incumbent union creates a presumption that refusal caused subsequent employee disaffection, which can be rebutted only by a showing that disaffection arose after employer subsequently recognized and bargained with the union), affd. in relevant part 117 F.3d 1454 (D.C. Cir. 1997). Consequently, the Respondent is foreclosed from invoking the petition to defend its conduct.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as

[5] The Respondent also maintains before the Board that "numerous" employees indicated to it before January 5, when the new operation opened, that they did not want to be represented by the Union. However, the Respondent did not attempt to show, and the record does not establish, how many employees so indicated or that they comprised a unit majority on or before that date. The Respondent's employee witnesses testified as to their sentiments toward the Union only as of February 5, when they signed or refused to sign the petition.

[6] The judge characterized the Respondent's action as a "withdrawal" of recognition. However denominated, the Respondent's action was unlawful.

modified below and orders that the Respondent, Bradford Printing & Finishing, LLC, Bradford, Rhode Island, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

"(b) From refusing to recognize, or withdrawing recognition from, the Union in the absence of a demonstrated and untainted showing that the Union has lost its majority status."

2. Substitute the following for paragraph 2(b).

"Within 14 days after service by the Region, post at its facilities in Bradford, Rhode Island, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 16, 2009."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to recognize, or withdraw recognition from, the New England Joint Board, UNITE-HERE, in the absence of a demonstrated and untainted showing that Union has lost its majority status.

WE WILL NOT recognize or deal with the Guiding Coalition as a representative of our employees in relation to their terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you of the exercise guaranteed you by Section 7 of the Act.

WE WILL, on request, recognize and bargain collectively with the Union as the exclusive representative of its employees with respect to wages, hours, and other terms and conditions of employment, and if an agreement is reached, embody such agreement in a signed document. The appropriate bargaining unit consists of:

> All production and maintenance employees employed at the Respondent's facility, but excluding general office help, clerical employees, scientific employees, foremen, department heads, watchmen, guards and supervisors as defined in the Act.

BRADFORD PRINTING & FINISHING, LLC

*Elizabeth A. Vorro, Esq.,* for the General Counsel.
*Michael J. Murray, Esq.,* for the Respondent.
*Anne R. Sills, Esq.,* for the Union.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. I heard this case in Providence, Rhode Island, on February 16, 2010. The charge and the first and second amended charges were filed on August 17, October 29, and December 21, 2009. A complaint issued on December 31, 2009, and alleged as follows:

1. That the Respondent, after purchasing the business of Bradford Dyeing, which had a collective-bargaining relationship with the Union, operated the business in such manner as to be considered a "successor" under the Act and therefore had an obligation to recognize and bargain with the Union.

2. That since January 16, 2009, the Respondent has failed and refused to recognize or bargain with the Union.

3. That in early January 2009, immediately upon commencing operations, the Respondent established the "Guiding Coalition," an internal entity comprised of employees, managers, and supervisors that was designed to deal with the Respondent concerning wages, hours, and other terms and conditions of employment. It is alleged that by establishing this organization, the Respondent rendered assistance and support to and dominated a "labor organization" in violation of Section 8(a)(1) and (2) of the Act.

4. That in early February 2009, the Respondent posted a notice with (a) the purpose of soliciting employees to abandon

their support for the Union and (b) which constituted a de facto interrogation of employees.

The Respondent agrees that it was a "successor" to Bradford Dyeing, but asserts that it nevertheless had the right to withdraw recognition because a majority of the production and maintenance employees signed a petition stating that they did not want to be represented by the Union.

As to the 8(a)(2) assistance allegation, the Respondent contends that the Guiding Coalition was established as a good-faith effort to aid communications between the employer and the employees and as a reasonable method to resolve issues. It asserts that this was not formed for the purpose of undermining the Union and it denies that the Guiding Coalition was a dominated labor organization.

As to the allegation regarding the February notice to employees, the Respondent asserts that the contents of the notice are protected by Section 8(c) of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed, I make the following

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

### I. JURISDICTION

It is agreed and I find that the Respondent is an employer engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act. It also is agreed and I find that the New England Joint Board, UNITE-HERE, is a labor organization within the meaning of Section 2(5) of the Act.

### II. THE ALLEGED UNFAIR LABOR PRACTICES

The New England Joint Board has had a long term bargaining relationship with a company called Bradford Dyeing Association. The last contract ran from December 1, 2005, to November 30, 2008. The bargaining unit consisted of all production and maintenance employees, but excluded general office help, clerical employees, scientific employees, foremen, department heads, watchmen, guards, and supervisors as defined in the Act.

Bradford Dyeing was engaged in the manufacture of cloth having camouflage designs that are utilized by the Armed Services. The designs are in part, covered by copy rights and the manufacture of the cloth (and the uniforms by its direct customers), are required by law to be made in the United States. This company had been in business for many years but in 1997 there was a fire at its factory that adversely affected its operations.

In the ensuring years, business suffered and by 2008, there were serious financial problems. At that time, the predecessor company approached the Union to bargain about contract concessions but no agreements were reached. On September 24, 2008, Bradford Dyeing formally notified the Union that it would be permanently closing the facility and laying off the entire work force as of November 24, 2008. At that time, there were 71 bargaining unit employees. After that announcement, Bradford Dyeing bargained with the Union about the effects of the shutdown.

During this process, some of the sales and managerial employees of Bradford Dyeing, including Nicholas Griseto (previously the vice president of sales and marketing), decided that they would like to purchase the assets of that company and create a new company that was called Bradford Printing & Finishing.[1] In this regard, the parties stipulated as follows:

> That about "December 23, 2008," the Respondent entered into a site access agreement with Bradford Dyeing Association which agreement has been mutually extended several times since then. Under that agreement, Respondent has leased Bradford Dyeing Associations' former facility and equipment. Since about January 5, 2009, Respondent has been operating the business formerly operated by Bradford Dyeing Association in basically unchanged form, and has employed as a majority of its production and maintenance employees, individuals who were previously employees of Bradford Dyeing Association.

In November 2008, Griseto addressed a meeting of the employees (then employed by the predecessor), and in response to a question about whether the new company would be unionized, he stated that it would not be a union company. The credible evidence also shows that at the meeting, Griseto added that it was not within his control as to whether employees wanted a union and that it was up to them to decide if they wanted union representation.

In December 2008, the new owners held a job fair in Westerly, Rhode Island. This was attended by many of the employees of Bradford Dyeing and Griseto was again asked about whether the new company was going to be unionized. Once again, the credible evidence indicates that he told prospective employees that the company would not open as a union company and that the question of union representation would be decided by the employees.

In short, the evidence indicates to me that Griseto was of the belief that as a new company, he would not be encumbered by a union relationship upon the commencement of operations and that any question of unionization would be decided by the employees at a latter time. From these statements made in anticipation of the transition, it appears to me that Griseto was not, at least at that time, familiar with the law regarding "successorship" and was simply expressing his belief as to what would happen when the new company took over the old company's operations.

Bradford Printing commenced operations on January 5, 2009. And by January 16, 2009, the Company was up and running after having hired about 33 bargaining unit employees, the majority of whom had previously been employed by Bradford Dyeing. It seems that before hiring its work force, the Company established new terms and conditions of employment and the complaint does not allege that the Respondent unilaterally changed any of the terms of the predecessor's contract.

There was an orientation program held on January 5 for the new employees at which Griseto spoke. In preparation for his talk, Griseto prepared a document which sets out how the new

[1] Initially, the ownership of the new corporation was shared by Nicholas Griseto, Vasco Ferrara, and Craig Nichols. Thereafter, Grisetto bought out the ownership interest of the other two individuals and is now the sole owner.

company was going to be different and better than the predecessor. Whether or not he read the entire document is not really relevant because even if he didn't, it represents his intentions at the time. The document reads in part:

> We intend to operate the business in compliance with all employment and labor laws. Our corporate position is that we will strive to provide good jobs with good pay and benefits that will enable all associates to provide for the future of their families. . . .
>
> We are aware that some of the associates of the previous company were represented by a union. We do not think one is necessary here. Personally I would like you all to wait on thinking about this subject until we see what kind of company we can achieve together. Please give our new procedures, vision and cultural changes a chance. I think the Guiding Coalition will be a perfect forum to get involvement from all ranks and the Guiding Coalition will be able to address all issues and concerns in a timely and fair manner.

At the orientation meeting, Griseto asked for and got volunteers to act as employee members of the Guiding Coalition. He also appointed the management members of the Coalition. Although there is some ambiguity, the probability is that Griseto told the employees that he believed that as a new company he did not have to recognize the Union and that a union was unnecessary. But the evidence also indicates that he told them that having a union was their choice and not his.

With respect to the Guiding Coalition, which was effectively established on the first day of the Respondent's operations, Griseto testified that he got this idea back in October 2008, from an article in a Harvard Business School publication. He testified that after reading the article, he thought that the creation of such an entity would more effectively facilitate communications and decision making between management and the employees.

In any event, the Guiding Coalition was established and consisted of employee and supervisory personnel including Griseto. Each member had a vote and the organization was designed to deal with various employee or personnel issues such as hours of work, holidays, attendance, and discipline. The Respondent agreed that the Guiding Coalition as an entity, could deal with and resolve employee grievance, albeit none had come to it as yet. From its inception, the Guiding Coalition has met about once every month although meetings were suspended after the complaint in this case was issued. Employees who attend its meetings were paid for their time in attendance.

The General Counsel asserts that the Guiding Coalition is a dominated labor organization as defined in the Act and that its formation was intended to discourage employees from joining or supporting the Union. The Respondent, contends that the Guiding Coalition was conceived of before any union activity was present and that it was intended as a tool to help communications between management and the work force and was not meant to influence employees regarding any issue of unionization. For my part, I do not think that intent is all that relevant in this situation.

By letter dated January 16, 2009, the Union asserted that it was the majority representative of the production and maintenance employees and asked for recognition and bargaining. This letter was forwarded by the Company to legal counsel.

As indicated by an email dated Saturday, January 24, 2009, the Respondent posted the following notice, presumably on the next working day which would have been January 26.

> Ownership intends to operate the business in compliance with all employment and labor laws. . . . Ownership is aware that some of our associates previously worked at BDA and were represented by a union. Ownership does not think one is necessary here. Nick Griseto, the President, CEO would like to wait on thinking about this subject until we see what kind of company we can achieve collectively and give our new procedures, vision and cultural change a chance. The Guiding Coalition will be a perfect forum to get involvement from all ranks and the Guiding coalition will [be] able to address all issues and concerns in a timely and fair manner.

By a letter to the Union dated January 30, 2009, the Company's attorney stated that he would be studying the situation and would get back to the Union in the near future.

At some point during the first week of February 2009, the Respondent posted the following notice.

> A couple of weeks ago, Bradford Printing & Finishing received a letter from former Bradford Dyeing Associations' union, UNITE-HERE. In that letter, the union demanded that it be recognized as the bargaining representative or union for all current Branford Printing employees holding the type of positions that were formerly in the union at Bradford Dyeing Association.
>
> Bradford's position on this topic has been clear. We believe a union is not necessary given Bradford's new vision, culture change and procedures. Our new working environment and practices will address all employees concerns and issues. It is Bradford's intent to provide stable jobs with good wages and good benefits. We need your help in making our company's business succeed and meet the serious challenges facing every new business in this economy.
>
> Unite Here seeks recognition as your union without the benefit of election at which you can freely vote your preference and determine for yourself whether a union and/or Unite Here shall be your bargaining representative.
>
> If you desire to have a role in this decision, you must take immediate steps to make your opinions and views known to Unite Here, the National Labor Relations Board in Boston and Bradford. It is Bradford Printing's position that your views and opinions are the most important on this issue. You alone should make the decision on whether Unite Here becomes your union and the bargaining agent for employees.
>
> Your opinion, however, can only be taken into account if you make your wishes known to all parties involved. If you do not take any action, a decision on this issue could be made without any input from you. Bradford urges you to become involved and exercise your rights to have a sway on what happens in your workplace.

On or about February 3 or 4, 2009, John Parker, an employee, had his wife type up a petition that states:

> We the employees at Bradford Printing and Finishing are quite satisfied working as non-union employees. We do not want nor do we need union support at this textile facility at this time.

With respect to the above, Parker testified that after discussing the matter with a few of his fellow workers, he decided to draw up this petition and solicit signatures. In substance, his testimony was that he and the other people he spoke to, figured that with the Guiding Coalition in place, there was no need for union representation at that time. He also testified that his decision to solicit the petition was not the result of any statements or actions by company managers or supervisors.

On or about February 5, 2009, Parker circulated the petition on company premises and during working hours, but without any direct assistance or involvement by supervisors or managers. He did ask his supervisor if he could go around the shop with a petition and that his supervisor, who refused to read the petition, said he could but to make if fast. This process took about 45 minutes and Parker collected 31 signatures. There is no indication that employees were coerced into signing the petition or that the purpose of it was misrepresented to them. After obtaining the signatures, Parker gave a copy to the Company and sent a copy to the Union.

By letter dated February 11, 2009, the Union's counsel wrote to the Company indicating that unless she received a response to the previous request for recognition by February 20, 2009, the Union would file unfair labor practice charges with the NLRB.

By a letter to the Union dated February 20, 2009, the Respondent's attorney stated his opinion that the Company was neither an alter ego nor successor to Bradford Dyeing. He asserted that the Respondent had no obligation to bargain with the Union. The letter went on to note that it had been presented with a petition showing that "an overwhelming majority of Bradford's production employees do not want Unite Here or any union to represent them."

## III. ANALYSIS

There is no dispute that the Respondent is a "successor" to Bradford Dyeing as that terms is used in *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987), affg. 775 F. 2d 425 (1st Cir. 1985). Therefore, I conclude that when the Respondent commenced its operations on January 5, 2009, and reached a representative complement of employees within a matter of days thereafter, it became a successor and therefore incurred an obligation to recognize and bargain with the Union.

That the Respondent was a successor does not, however, mean that it could not withdraw recognition if there was objective evidence that a majority of the employees in the bargaining unit no longer desired union representation. In this regard, the Respondent relies on the petition that was signed by 31 out of 35 employees in early February 2009.

The question here is whether that petition was tainted by unfair labor practices committed by the Respondent.

### *A. The February Posted Notice*

The General Counsel contends that the February notice that was posted at the facility violated Section 8(a)(1) because (a) it solicited employees to abandon their support for the Union and (b) it constituted unlawful interrogation. I don't agree.

The content of this posted message was that the Union had demanded bargaining; that the Company did not believe that a union was necessary; and that if employees wanted their opinions to count, they should contact the Union, the National Labor Relations Board and the Employer. There is no mention of a decertification petition and the employees were told, as they had been told in the past, that the decision to unionize was within their own control and not the Employer's. The notice contained nothing that I would construe as a threat of reprisal or a promise of benefit. There is no indication that if a union was selected, the Company would refuse to bargain or that the selection of a union would be futile.

As to the General Counsel's theory that this constituted unlawful interrogation, I do not view these facts as remotely comparable to those cases where a supervisor or manager goes around the plant insisting that employees take a vote-no button or an antiunion T-shirt. See for example, *Tappan Co.*, 254 NLRB 636 (1981), and *Pillowtex Corp.*, 234 NLRB 560 (1978). Although asking employees to make their views known to the Union, the Labor Board or the Company, this notice did not invite employees to report to management, which employees were in favor of the Union. *First Student, Inc.*, 341 NLRB 136, 137 (2004). In short, I view the contents of this notice as being protected by Section 8(c) of the Act and I therefore shall recommend that this allegation of the complaint be dismissed.

### *B. The 8(a)(2) Domination Issue*

In *Electromation, Inc.*, 309 NLRB 990 (1992), the Board did an exhaustive review of the law regarding alleged 8(a)(2) violations involving situations where employers establish committees to discuss and "deal with" issues relating to terms and conditions of employment. In reaffirming settled law, the Board held that Electromation violated Section 8(a)(1) and (2) of the Act by setting up certain "action committees," composed of management and employee representatives that sought to resolve matters such as pay progressions, bonuses, and absentee rules. The Board concluded that these were labor organizations as defined in Section 2(5) of the Act and that they dealt with the employer as that term is used in Section 8(a)(2) of the Act. (*Electromation* dealt with a situation involving an employer that did not have a collective bargaining relationship with a union).

In *E. I. Du Pont & Co.*, 311 NLRB 893 (1993), the Board concluded that employee committees and management can be found to be dealing with each other either in situations where management representatives function outside of a committee or as members within a committee. In this case the Board held that joint safety committees were labor organization that dealt with management because they made proposals to the Company about incentive awards. As these committees were established by the Employer and were set up despite the fact that

there was an incumbent labor organization, the Board held that the Employer violated Section 8(a)(1) and (2) of the Act.[2]

In the present case, the Guiding Coalition was established by management on January 5, 2009, the day that the Respondent opened for business. It consisted of an equal number of employee and supervisory representatives and was presided over by the Company's president who also set the agenda for the meetings. As a committee consisting of employee and managerial representatives, each having a vote, the group was established as a forum in which employees dealt with Respondent's management with respect to employment issues such as hours of work, holidays, pensions, and lunch breaks. The entity was also admittedly set up to deal with employee grievances, albeit this did not happen during the time that meetings were held.

In light of the above, I conclude that the Guiding Coalition was a "labor organization" within the meaning of the Act; that it dealt with the Employer regarding terms and conditions of employment; and that it was dominated by the Employer in violation of Section 8(a)(1) and (2) of the Act.

### *C. The Withdrawal of Recognition*

It was stipulated that the Respondent was a successor because of its continuity of operations with Bradford Dyeing and the fact that a majority of its employees had previously been employed by the predecessor. Therefore, the legal obligation to recognize and bargain with the Union attached to the Respondent at the time it commenced operations with a representative complement of employees. In this regard, I note that even though the Respondent, as a successor, inherited the obligation to bargain, it did not have any obligation to adopt or assume the collective-bargaining agreement that the Union had with the predecessor. See *NLRB v. Burns Security Services*, 406 U.S. 272 (1972).

Nevertheless, although there was an obligation to recognize and bargain with the Union at or about the time that the Respondent commenced operations, there was no extant collective-bargaining agreement and the Employer would be legally entitled to withdraw recognition if it could demonstrate that the Union had, in fact lost its majority status. *Levitz Furniture Co. of the Pacific*, 333 NLRB 717 (2001).

In this case the Respondent relies on the petition that was signed by a majority of the bargaining unit employees on or about February 5, 2009, to show that the Union lost its majority status. (The General Counsel conceded that the signatures on the petition were authentic.) The General Counsel counters that this petition cannot be the basis for a lawful withdrawal of recognition because it was tainted by the Respondent's other unfair labor practices. *Atlas Refinery, Inc.*, 354 NLRB 1056 (2010); *Penn Tank Lines*, 336 NLRB 1066, 1067–1068 (2001); *Lee Lumber & Building Material Corp*., 322 NLRB 175, 177 (1996).

In *Master Slack*, 271 NLRB 78, 84 (1984), the Board set forth the factors to be considered in determining whether a causal relationship exists between unfair labor practices and employee disaffection. These are:

> (1) the length of time between the unfair labor practice and the withdrawal of recognition; (2) the nature of illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency to cause employee disaffection from the union; (4) the effect of unlawful conduct on employee morale, organizational activities and membership in the union.

There is, in my opinion, no doubt that there was a direct causal relationship between the creation and maintenance of the Guiding Coalition and the employee petition. In my opinion, the question as to whether or not the Guiding Coalition was originally established in order to discourage union membership is essentially irrelevant. For even if it wasn't, the fact is the Employer on or about January 24, 2009, notified the employees, soon after the Union made a demand for recognition, that union representation was not necessary and that the Guiding Coalition could serve as an alternative means to discuss and resolve employment issues.

Indeed the testimony of John Parks was that he created the petition in early February 2009 because he wanted to give the Employer a chance. He testified that in his discussions with other employees, "we said, let's give Nick a chance to prove to us what he wants to do, what he said he wants to do."

In light of the above, I conclude that because the employee petition was tainted by the maintenance of an illegally dominated "labor organization," the Respondent's refusal to bargain with the Union violated Section 8(a)(1) and (5) of the Act.

## CONCLUSIONS OF LAW

1. By creating and maintaining the Guiding Coalition as a joint employee-management committee that was authorized to "deal with" terms and conditions of employment, the Respondent dominated a labor organization in violation of Section 8(a)(1) and (2) of the Act.

2. By withdrawing recognition from and refusing to bargain with the Union, the Respondent, as the successor to Bradford Dyeing Association, violated Section 8(a)(1) and (5) of the Act in the absence of a demonstrated showing that the Union had legitimately lost its majority status.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having concluded that the Respondent unlawfully dominated the Guiding Coalition, it is recommended that it be ordered to cease dealing with it as a representative of its employees.

In relation to my conclusion that the Respondent has not demonstrated that the there was an untainted loss of majority status by the Union, I shall also recommend that the Respondent be ordered to recognize and bargain with the Union concerning wages, hours, and all terms and conditions of employment.

[2] For a thorough discussion of this subject see chapter 8, sections II and III of The Developing Labor Law, published by the Bureau of National Affairs.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, Bradford Printing & Finishing, LLC, Bradford, Rhode Island, its officers, agents, successors, and assigns, shall

1. Cease and desist

(a) From recognizing and dealing with the Guiding Coalition as a representative of its employees in relation to the terms and conditions of employment of its employees.

(b) Withdrawing recognition from the Union in the absence of a demonstrated and untainted showing that the Union has lost its majority status.

(c) In any like or related manner, interfering with, restraining, or coercing employees in the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request, recognize and bargain collectively with the New England Joint Board, UNITE-HERE, as the exclusive representative of its employees with respect to wages, hours, and other terms and conditions of employment, and if an agreement is reached, embody such agreement in a signed document. The appropriate bargaining unit consists of

> All production and maintenance employees employed at the Respondent's facility, but excluding general office help, clerical employees, scientific employees, foremen, department heads, watchmen, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facilities in Bradford, Rhode Island, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, or sold the business or the facilities involved herein, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since January 5, 2009.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[4] If this Order is enforced by a judgment of the United States Court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."