

UNITED STATES GOVERNMENT

# Memorandum

177-3925  
177-3950-2700

TO Wilford W. Johansen, Director  
Region 21

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

SUBJECT: Acme/Alltrans Strike Committee  
(Acme Fast Freight, Inc.)  
Case No. 21-CB-6317

Acme/Alltrans Strike Committee  
(Intermodal Container Services, Inc.)  
Case No. 21-CB-6318

DATE: APR 25 1978

This Section 8(b)(1)(A) case was submitted for advice as to whether the Acme/Alltrans Strike Committee constitutes a labor organization within the meaning of Section 2(5) of the Act. 1/

## FACTS

Acme Fast Freight, Inc. (herein Acme), is a freight forwarder which, until September 6, 1977, had facilities located in Los Angeles, California. Until September 6, 1977, Acme's underlying carrier was Alltrans Express (herein Alltrans). Alltrans employees consisted essentially of two units: the warehouse and dock employees, represented by Local 357, and the truckdrivers, represented by Local 208. Both locals were affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and both units were covered by the National Master Freight Agreement.

On September 2, 1977, Acme discontinued its contractual relationship with Alltrans and signed an agreement with Intermodal Container Services, Inc. (herein Intermodal) in Carson, California. Intermodal uses owner/operators for truckdriving work and it already had a full complement of warehouse and dock employees at the time it became Acme's underlying carrier. Intermodal's warehouse and dock employees are represented by Local 986 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Intermodal has a collective

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1/ The merits of the case, which involves allegations of threats, violence, and mass picketing, were not submitted for advice.

bargaining agreement (other than the National Master Freight Agreement) with Local 986 covering those employees. As a result of the change in underlying carriers by Acme, Alltrans terminated all of its Los Angeles-based employees and discontinued operations in the Southern California area.

On or after September 6, 1977, the employees who had been terminated by Alltrans organized themselves as a group and established a picket line at the Acme and Intermodal's Carson facility. One of these former Alltrans employees, Doug Allen, assumed the leadership of the group and, at that point, the group formed the Acme/Alltrans Strike Committee (herein the Committee) and continued to picket the Carson facility. In addition, the evidence shows that these former Alltrans employees engaged in mass picketing, threats against employees, and other activities which the Region found would constitute violations of Section 8(b)(1)(A) of the Act, if it were found that the Committee constitutes a labor organization within the meaning of Section 2(5) of the Act. The record also shows that the Committee successfully solicited labor organizations, including Locals 357 and 208, and individuals to contribute to its picket fund. It installed a telephone at the picket line and had round-the-clock pickets. However, none of the involved Local Unions, nor Joint Council 42, nor the Western Conference of Teamsters have sanctioned the picketing or any of the other activities engaged in by the Committee and the employees.

The evidence indicates that the object of the picketing and other activities undertaken by the Committee is to force Intermodal to hire the former Alltrans employees. In this regard, the only evidence showing the Committee's object is certain literature which it has issued. Thus, for example, an undated flyer issued by the Committee, and signed "Alltrans/Acme Employees Local 208, 357, and 495," states that Acme and Intermodal are having to use so many National Master Freight Agreement signatory carriers that many of the carriers will be obligated to hire additional employees from Locals 208 and 357, and that such an occurrence will not be satisfactory because the employees want their jobs back in one barn, and intend to keep up the pressure until Acme sees things their way. The flyer goes on to state that the solidarity that has been shown is helping to save the jobs of the Alltrans employees and is giving other employers with similar ideas second thoughts. The flyer also states that Acme and its owner/operators have been unable to successfully steal Master Freight work, that if Acme is not stopped, it would be "anybody's guess" whose job will be next, and that the employees will be at another carrier's premises for a week to force it either to give up Acme's freight or to come out front and take it all, along with the picketing employees.

There is no evidence that the Committee had any communication with any of the employers involved in the case. It appears that the picketing and other activities undertaken by the Committee are intended only to force Intermodal to hire the Alltrans employees, and there is no evidence that the Committee intended to engage in collective bargaining with Intermodal or any other employer.

#### ACTION

It was concluded that the Committee is a labor organization within the meaning of Section 2(5) of the Act.

The term "labor organization" as defined in Section 2(5) includes "any organization of any kind, or any agency or employee representation committee or plan, 1/ in which employees participate and 2/ which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

In the instant case, the Committee is clearly an organization or a plan in which statutory employees participate. The Committee was formed by truckdrivers, warehouse and dock workers who were discharged when their underlying-carrier employer lost the contract it had with a freight forwarder, and who then engaged in picketing and other activities directed against the freight forwarder and its new underlying carrier. The object of the picketing was to force the new carrier to hire the discharged workers. Under these circumstances, particularly the fact that the discharged workers were seeking to be hired by the new carrier, the discharged truckdrivers and warehouse and dock workers were viewed as applicants for employment and thus as statutory employees within the meaning of Section 2(3) of the Act when they participated in the Committee. 2/

It is also clear that the Committee existed for the purpose of "dealing with" employers concerning grievances, labor disputes, and conditions of work. Thus, the Committee picketed Acme and Intermodal's facility with the object of forcing Intermodal to hire members of the Committee, who had been discharged by Alltrans when Acme changed under-

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2/ See, e.g., Cherokee Pike Line Co., 202 NLRB 560, 563. See also Phelps Dodge Corp. v. N.L.R.B., 313 U.S. 177 (1941).

lying carriers by replacing Alltrans with Intermodal. Apparently, the discharged employees were displeased that the new carrier was not accepting the previous carrier's employees and bargaining contract. Certainly, the members of the Committee, by picketing Acme and Intermodal's facility and by threatening to "keep up the pressure until Acme sees things their way," were asserting a grievance and seeking to effect a change in their conditions of employment. They were also pressing to compel "other employers with similar ideas" as Acme and Intermodal to have "second thoughts" before they "will try the same tactic of ducking the Union." That a labor dispute existed is evidenced not only by the Committee's long-running picketing of the Intermodal Carson facility, but also by its threat to extend its picketing to another carrier's facility. 3/

Under these circumstances, it was concluded that the Committee, by picketing Acme and Intermodal's facilities, demanding that Intermodal hire former employees of Alltrans, and threatening to picket another carrier's premises to "force it to either give up Acme's freight or come out front and take it all, along with the picketing employees" was attempting to deal with, and evidenced that it existed for the purpose of dealing with, Acme, Intermodal and other employers concerning labor disputes, grievances, and working conditions. The Supreme Court has specifically rejected the argument that "dealing with" requires the establishment of a traditional bargaining relationship. 4/ Thus, the absence of any evidence that the Committee had any communication with any of the employers involved in the case or that it intended to engage in collective bargaining with Intermodal or any other employer is not dispositive of its status as a labor organization. 5/ Nor is the Committee's seemingly ad hoc existence and limited mission determinative of its status where, as here,

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3/ Cf N.L.R.B. v. Washington Aluminum Co., Inc., 370 U.S. 9, 15-16 (1962) Section 2(9) of the Act defines the term "labor dispute" to include "any controversy concerning terms, tenure or conditions of employment . . . regardless of whether the disputants stand in the proximate relation of employer and employee."

4/ See N.L.R.B. v. Cabot Carbon Company and Cabot Shops, Inc., 360 U.S. 203, 212-213 (1959).

5/ Id. See also Porto Mills, Inc., 149 NLRB 1454, 1471-1472.

it is clear that the Committee was an organization in which statutory employees participated and which was seeking to deal with employers concerning grievances, labor disputes, and conditions of employment. 6/

This matter was presented by Amako N.K. Ahaghotu.

*Hollis*  
H.J.D.

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6/ See Cabot Carbon and Cabot Shops, supra; Porto Mills, Inc., supra; N.L.R.B. v. Kennametal, Inc., 182 F.2d 817 (C.A. 3, 1950); and First National Bank of Omaha, 171 NLRB 1145. Center for United Labor Action (CULA), 219 NLRB 873, where the Rochester CULA was found by the Board not to be a labor organization within the meaning of Section 2(5) of the Act, notwithstanding that one of its declared purposes included picketing for reinstatement of discharged employees (219 NLRB at 877), was considered distinguished from the present case. In that case, the Rochester CULA's activity was, as characterized by the Board, support for what was considered to be a social cause. In the instant case, on the other hand, the Committee's activity, unlike the picketing and other activities undertaken by CULA, was viewed as "a desire to represent individuals in the furtherance of their cause," as well as "implicitly seeking to deal with employer/s/ over matters affecting the employees." 219 NLRB at 873.