

UNITED STATES GOVERNMENT

# Memorandum

177-3925-4000

177-3925-6000

TO Charles M. Paschal, Jr., Director  
Region 15

FROM Harold J Datz, Associate General Counsel  
Division of Advice

SUBJECT: "Protesting Citizens" and Its Agent  
Elvin Winn (Vancouver Plywood Co.,  
Inc., Oakdale, Louisiana)  
Case 15-CC-681

DATE: AUG 30 1977

This Section 8(b)(4)(i)(ii)(B) case was submitted for advice as to whether the "Protesting Citizens" constitutes a labor organization within the meaning of Section 2(5) of the Act. 1/

The Charging Party, Vancouver Plywood Co., Inc., (herein Vancouver) is engaged in the production of wood products at its plywood plant in Oakdale, Louisiana. C.W. Peters and Associates Consulting Engineers (herein Peters) was contracted by Vancouver to design and supervise, in conjunction with Vancouver, the expansion and modernization of the Oakdale facility. The work commenced in October 1976 and since that date approximately six subcontractors (herein contractors) have been engaged in the performance of skilled construction work at the jobsite. The contractors collectively employed approximately 25 skilled employees who were either nonunion or members of craft unions outside the geographical jurisdiction of the Southwestern Louisiana Building and Construction Trades Council (herein Council) and its member locals. Neither Vancouver, Peters nor the contractors were parties to collective bargaining agreements with the Council or any local unions with respect to the construction work at this facility.

The Council and two of its member locals had engaged in area standards picketing of the construction site from April 11 through June 6, 1977; 2/ however, none of the employers entered any agreement or contract with the Council or its local unions. On both June 6 and 7, Elvin Winn 3/ picketed with the Millwrights local union sign, although

- 1/ The case was not submitted for advice as to the merits of the 8(b)(4)(i)(ii)(B) allegations.
- 2/ The Council, a member Ironworkers local and a member Millwrights local picketed from April 11 through May 23, from May 30 through June 5, and on June 6, 1977, respectively. The employers met with the picketing unions during this period but no agreement or settlement was reached.
- 3/ Winn is a member of the Millwrights local union who had been removed from union office for non-attendance at meetings.

he had been advised on the afternoon of June 6, by the business agent of the Millwrights local union to cease picketing in the union's behalf 4/

On the afternoon of June 7, 1977, Winn conceived the notion of picketing in behalf of the "Protesting Citizens." He and his son constructed picket signs 5/ and contacted individuals for picketing purposes. The "Protesting Citizens" picketed from June 8 through June 21, 1977. The picketers included unemployed workers and their wives and children. In addition to picketing, several picketers handbilled Vancouver's production and maintenance employees; 6/ and Winn wrote a Letter-to-the-Editor on behalf of the "Protesting Citizens" which was published in a local newspaper.

On June 14, Winn was present at a meeting attended by the Peters project manager, the Vancouver corporate personnel manager, and representatives of the Council and its member locals. 7/ The crux of the parties' disagreement was the contractors' position that they did not wish to hire employees from two of the local unions. Winn's position at this time was that the "Protesting Citizens" would be satisfied with any agreement entered into by the Council and the contractors.

4/ In the late afternoon of June 6 Winn told the business agent that peaceful picketing had accomplished nothing and that he intended to engage in mass picketing. The business agent told Winn that the local union did not want to be involved in illegal picketing and to discard the Millwrights' picket sign. Notwithstanding these instructions, Winn picketed with the Millwrights' sign on June 7, without incident.

5/ The picket signs contained the following legends: Allen Parish Peoples for Allen Parish jobs; Citizens of Allen Parish Protest Unfair Jobs; We Spend Our Money in Oakdale, If We Had Fair Jobs; If Teachers can protest, We can too; Unfair to Local Merchants Cash Register; and, Louisiana People Need Our Jobs For our Families. Winn provided materials for the signs.

6/ The handbill read: "Brother Citizen and Union Member, We have supported You in the past and will continue to do so in the future. Now we are asking for your support for better wages and working conditions in Allen Parish. Thank You, Protesting Citizens."

7/ This was the only meeting between the Council, the local unions and the employers during the "Protesting Citizens" picketing, and no additional meetings between those parties has occurred.

Winn met with Peters and Vancouver representatives on three occasions in attempts to resolve the dispute. Although agreement was reached on certain matters, 8/ no final settlement was reached to which the Council could agree, because of the Council's position that it would not agree to any settlement excluding some member locals. These meetings occurred on June 13, 17 and 21.

At the June 21 meeting, Winn announced that he would remove the "Protesting Citizens" picket line effective June 22. On June 24, Winn and representatives of Vancouver and the contractors met and reached an oral agreement, with the following provisions: (1) Winn and the "Protesting Citizens" would not resume picketing; (2) the contractors would pay union scale for all crafts on the jobsite; (3) the contractors would pay the fringe benefits required by members of the Council with such payments made directly to the fringe benefits fund rather than through the local member unions; and (4) the contractors would employ persons from a list given by Winn to the project manager. This list consisted of names of individuals who had picketed on behalf of the "Protesting Citizens." Since resumption of work, approximately 95% of the "Protesting Citizens" picketers, who were previously unemployed, have been hired by the various contractors on the jobsite.

There has been no subsequent picketing or activity of any kind by the "Protesting Citizens." 9/ There is no evidence that, at any time material herein, the "Protesting Citizens" held organized meetings, elected officers, drafted by-laws or collected dues or fees from any individuals who engaged in picketing or who were eventually hired by the contractors.

#### ACTION

It was concluded that the "Protesting Citizens" is a labor organization within the meaning of Section 2(5) of the Act. 10/

8/ During the first three meetings, Winn objected to substandard wages and working conditions, and the employers agreed to pay union scale and to improve working conditions once the job resumed. As a result of employer objections to hiring employees referred from two specific member locals, Winn proposed to provide the employers with a list of skilled employees who would be compatible with employer supervision and whose work performance and qualifications could be guaranteed by Winn. The employers were receptive to this proposal.

9/ The Council resumed area standards picketing on June 30, 1977

10/ The Region concluded that there was no evidence that Winn and the "Protesting Citizens" were agents of, or engaged in a joint venture with, the Council or its local member unions.

The term "labor organization" as defined in Section 2(5) includes any organization of any kind, 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 "Protesting Citizens" is clearly an organization or plan in which statutory employees participate. "Protesting Citizens" pickets were unemployed skilled individuals who were seeking employment and who were eventually hired by the contractors. Under these circumstances, the pickets were viewed as applicants for employment and thus as employees within the meaning of Section 2(3) of the Act 11/ when they participated in "Protesting Citizens" activities.

It is also clear that the "Protesting Citizens" existed for the purpose of "dealing with" employers concerning labor disputes, wages and conditions of work. Thus, the "Protesting Citizens" met with Vancouver and Peters representatives on four occasions from June 14 through June 24, and discussed working conditions, wages and the employment of "Protesting Citizens" picketers. These meetings resulted in an oral agreement providing for, inter alia, payment of union scale and benefits, employment of the majority of the picketers, and cessation of further picketing. The Supreme Court has specifically rejected the argument that "dealing with" requires the establishment of a traditional bargaining relationship. 12/ Thus, the failure of the "Protesting Citizens" to concern itself with negotiating a collective bargaining agreement or with all subjects listed in Section 2(5) is not dispositive of its status as a labor organization. 13/ Nor is the "Protesting Citizens" seemingly ad hoc existence and lack of formal organization determinative of its status where it is clear that the "Protesting Citizens" was an organization in which statutory employees participated and which dealt with employers concerning wages, referral of applicants, and other conditions of employment. 14/

11/ Phelps Dodge Corporation v. N.L.R.B. 313 U.S. 1977 (1941); cf. Allied Chemical & Alkali Workers of America, Local Union No. 1 v. Pittsburgh Plate Glass Co., Chemical Division, et al., 404 U.S. 157, at 168 (1971).

12/ N.L.R.B. v. Cabot Carbon Co. and Cabot Shops, Inc., 260 U.S. 203 (1959).

13/ Id. at 213; FTS Corp., 184 NLRB 787, 795; General Foods Corp., Case 38-CA-2657, Advice Memorandum dated May 26, 1976.

14/ Cabot Carbon, supra, at 275; Porto Mills, Inc., 149 NLRB 1454; N.L.R.B. v. Kennametal, Inc., 102 F.2d 816 (3d Cir. 1950), enfg. 80 NLRB 1481.

Finally, the fact that the "Protesting Citizens" may have sought to rally public opinion in support of its activities does not alter the fact that it also existed for the purpose, at least in part, of dealing with employers over Section 2(5) matters. 15/

This matter was presented by Paula J Choate.

  
H.J.D.

15/ See Leland Stanford Jr. University, Case 20-CA-10117, Advice Memorandum dated February 20, 1976, involving the labor-organization status of "Black Advisory Committee" and "Alianza Latina;" Eastern Farmworkers Association (I.M. Young & Co.), Case 29-CP-287, Advice Memorandum dated November 11, 1975, involving a community service organization, engaged in activities on behalf of migrant workers, which possessed authorization cards designating the organization as representative, and which held itself out in a civil action complaint and in leaflets containing specific employee demands, as representative of employees. The following cases where activist groups were not found to be labor organizations were considered distinguishable on the facts as it did not appear that the groups sought to "deal" with employers with respect to working conditions: Locals 8505, District 50 UMW (Harold Fuel Co., Inc.), 146 NLRB 652; Center for United Labor Action, 219 NLRB 873; Michael E. Drobney, an Agent of Laborers Local 498 (T.E. Ibberson), Cases 8-CC-855 and 8-CB-3229, Advice Memorandum dated December 30, 1976; Metro Atlantic Dekalb SCLS and Mead Caucus of Rank and File Workers (Mead Corporation), Cases 10-CP-123 and 10-CC-866, Advice Memorandum dated November 15, 1972; United Black Workers Association (J.J. Altman & Co.), Case 14-CB-2206, Advice Memorandum dated December 27, 1971.