



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 18  
Federal Office Building  
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Minneapolis, MN 55401-2657

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July 20, 2016

[REDACTED]  
JOHNSON, KILLEN & SEILER, P.A.  
800 WELLS FARGO CENTER  
230 WEST SUPERIOR STREET  
DULUTH, MN 55802-1983

[REDACTED]  
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800 WELLS FARGO CENTER  
230 WEST SUPERIOR STREET  
DULUTH, MN 55802-1983

Re: INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL #31  
(ALLETE, INC. D/B/A MINNESOTA POWER  
AND ALLETE RENEWABLE RESOURCES,  
INC., AS A SINGLE EMPLOYER)  
Case 18-CB-171088

[REDACTED]:  
The above-captioned case, alleging violations under Section 8(b) of the National Labor Relations Act, as amended, has been investigated and carefully considered.

**Decision to Dismiss:** I have concluded that further proceedings are not warranted, and I am dismissing your charge for the following reasons:

The charge in Case 18-CB-171088 alleges that the International Brotherhood of Electrical Workers, Local 31 (the Union) violated Sections 8(b)(1)(A) and 8(b)(3) of the Act by refusing to bargain with ALLETTE, Inc. (d/b/a Minnesota Power) and ALLETE Renewable Resources, Inc., a single employer, and by filing a Section 301 lawsuit to compel arbitration over the applicability of an interest arbitration provision to a newly certified unit of employees, where the interest arbitration provision is from an existing contract between the Union and ALLETE, Inc. d/b/a Minnesota Power, covering a different unit of employees and, arguably, a different corporate entity.

Whether a party violates the Act by invoking a contractual grievance-arbitration procedure is generally determined under the principles of the Supreme Court's decisions in *Bill Johnson's Restaurant v. NLRB*, 461 U.S. 731 (1983) and *BE&K Construction Co. v. NLRB*, 536 U.S. 516 (2002). Specifically, the Board has held that a party's efforts in obtaining arbitration of a grievance are unlawful and may be enjoined where the grievance has an objective that is illegal

under federal law. An illegal objective will be found, for example, where the party's grievance seeks a change in the scope of the bargaining unit, or enforces an unlawful contract term, or seeks a result that would conflict with a prior Board determination. See, e.g. *Chicago Truck Drivers (Signal Delivery)*, 279 NLRB 04 (1986); *Murphy Oil USA, Inc.*, 361 NLRB No. 72 (2014); *Allied Trades Council (Duane Reade, Inc.)*, 342 NLRB 1010 (2004).

Here, the Union's Section 301 lawsuit does not have an illegal objective. Rather, the suit merely seeks to compel arbitration on the application of Paragraph 24 of the existing contract to determine whether that Paragraph is applicable to the wind technician unit. Because application of the interest arbitration provision does not compel a merger of units, the Union is not unlawfully insisting that the parties bargain over a permissive subject. Even though the Union indicated that it intends to submit to the arbitrator the question of whether the existing contract should be modified to include the wind technicians in the same unit, such a request is not in itself insisting to impasse. Moreover, to the extent that an interest arbitration tribunal includes non-mandatory subjects in its final award, those provisions are merely unenforceable.

In addition, the Union's Section 301 suit does not seek to enforce an unlawful contract term, as the Board has concluded that it is not unlawful for parties to agree to certain provisions, including interest arbitration, that could apply to units a union does not yet represent. Similarly, the Union's Section 301 suit does not seek to achieve a result that would conflict with a prior Board determination; the Board in this instance has not been presented with, or ruled upon, whether the Employer is part of "the Company" as stated in the existing contract. Accordingly, because the lawsuit does not have an illegal objective, and no other evidence was presented in support of the alleged refusal to bargain allegation, I am refusing to issue complaint.

**Your Right to Appeal:** You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at [www.nlr.gov](http://www.nlr.gov). However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect.

**Means of Filing:** An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax or email. To file an appeal electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

**Appeal Due Date:** The appeal is due on **August 3, 2016**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a

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delivery service no later than August 2, 2016. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

**Extension of Time to File Appeal:** The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before August 3, 2016.** The request may be filed electronically through the *E-File Documents* link on our website [www.nlr.gov](http://www.nlr.gov), by fax to (202) 273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after August 3, 2016, **even if it is postmarked or given to the delivery service before the due date.** Unless filed electronically, a copy of the extension of time should also be sent to me.

**Confidentiality:** We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/ Jennifer A. Hadsall

JENNIFER A. HADSALL  
Acting Regional Director

Enclosure

cc:

  
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30 W SUPERIOR ST  
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UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

**APPEAL FORM**

To: General Counsel  
Attn: Office of Appeals  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

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Case Name(s).

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Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

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*(Signature)*