The Region submitted these cases for advice on whether International Brotherhood of Electrical Workers, Locals 443 and 995 (collectively referred to as “Union”) violated Section 8(b)(3) of the Act by engaging in direct dealing with NXS Powerline, Inc. (NXS) and Echo Powerline, Inc. (Echo) (collectively referred to as “Employer”) instead of the multiemployer bargaining association, Southeastern Line Constructors Chapter (SLCC or Association). We conclude the facts do not conclusively establish that the parties had formed a multiemployer bargaining relationship at the time the Union and Employer reached the transitional agreements. Thus, the Region should dismiss the cases absent withdrawal. [1]

This case involves a unique fact pattern that presents the question of when a multiemployer bargaining relationship is formally established. Here, there is no dispute that the Employer signed the Union’s Letter of Assent A in late April 2021, at a time when the Union and Employer were actively engaged in bargaining the transitional agreements. While the Letter of Assent A would normally establish the Employer’s intent to designate the SLCC as its bargaining representative, here the Employer was clear that its willingness to become a member of the multiemployer bargaining association was contingent on achieving the accommodations contained in the transitional agreements. [2] Thus, the facts strongly suggest that the Employer’s intention, regardless of when its President signed the Letter of Assent A, was that it would not join the multiemployer group until such time as the transitional agreements were reached. The Union, likewise, asserts that this was its intention, and this was the reason it chose not to countersign and approve the Letters of Assent A until after the terms of the transitional agreements had been reached.

A multiemployer bargaining relationship is consensual, requiring the agreement of all parties involved. See Local Union 49 of the Sheet Metal Workers (New Mexico Sheet Metal Contractors Ass’n), 122 NLRB 1192, 1194 (1959). Here, two of the parties involved, the Union and the Employer, intended for the relationship to begin only after having completed bargaining for the transitional agreements. Once those agreements were reached, the Employer presented the Letter of Assent A and transitional agreements to the Association. The Association’s consent was necessary to form the multiemployer bargaining relationship. The Association was free to withhold its consent. [3] Yet, it did not. In permitting the Employer to join, the Association implicitly agreed to the terms the Employer had set for becoming a member of the Association, namely that it be allowed to come into the Association with agreements that altered certain terms of the multiemployer bargaining agreement.

We are mindful of the case law on interim agreements and the Board’s rulings on when such agreements adversely affect the integrity and viability of a multiemployer bargaining unit. See, e.g., Charles D. Bonanno Linen Service, Inc., 243 NLRB 1093, 1096-97 (1979), enforced, 630 F.2d 25 (1st Cir. 1980), aff’d 454 U.S. 404 (1982). However, we find the facts presented here distinguishable from those cases involving interim agreements, because in those cases the parties had already formed a multiemployer bargaining relationship and the question was whether separate agreements between
the union and a single employer undermined that existing relationship. Here, the parties were negotiating to form a multiemployer relationship, with any party able to withhold its consent. Thus, when the Union, Employer, and Association agreed to the bargaining relationship, they made that agreement with full knowledge of the terms of the transitional agreements. Under these facts, we cannot find that the Union engaged in direct dealing with the Employers, or otherwise violated Section 8(b)(3) of the Act.

This email closes the case in Advice. Please contact us with any questions or concerns.

[1] In coming to this conclusion, we have considered the facts set forth in Case 10-CB-279784 and have concluded that, as that case presents the same factual scenario and legal issues, it should be dismissed absent withdrawal as well.

2 The Board has found that individual bargaining between an employer and union of a limited nature is not inconsistent with the existence of a multiemployer unit and does not, necessarily, demonstrate an unwillingness to be bound by group action on common concerns. The Kroger Co., 148 NLRB 569, 572-75 (1964). However, “in order to establish the multiemployer unit, there must be an unequivocal commitment by each member of the employer group to be bound by the results of group rather than individual action. . . .” Detroit Newspapers, 326 NLRB 700, 702 (1998), rev’d on other grounds sub nom, Detroit Typographical Union No. 18, et al. v. NLRB, 216 F.3d 109 (D.C. Cir. 2000). Here, while the Employer’s desire to enter into a transitional agreement on limited issues did not necessarily demonstrate an unwillingness to be bound by multiemployer bargaining, the Employer’s insistence that the transitional agreements be negotiated alongside its agreement to join the Association demonstrates that its commitment to be bound by group action was conditional and not unequivocal until such time as the transitional agreements were reached.

3 “[A] particular employer can become part of an established multiemployer unit only if the already committed parties agree to the newcomer’s participation.” The Hammet Company, Inc., 206 NLRB 679, 680 (1973). The Board has recognized the multiemployer association as a full party in the multiemployer bargaining relationship. Teamsters Union Local No. 378 (Capital Chevrolet Co.), 243 NLRB 1086, fn. 1 (1979) (Recognizing the multiemployer association’s right to prevent the untimely withdrawal of an employer in the 9(a) context), enforcement deferred, 672 F.2d 741 (9th Cir. 1982), remanded to 266 NLRB 685 (1983).

[1] In coming to this conclusion, we have considered the facts set forth in Case 10-CB-279784 and have concluded that, as that case presents the same factual scenario and legal issues, it should be dismissed absent withdrawal as well.

[2] The Board has found that individual bargaining between an employer and union of a limited nature is not inconsistent with the existence of a multiemployer unit and does not, necessarily, demonstrate an unwillingness to be bound by group action on common concerns. The Kroger Co., 148 NLRB 569, 572-75 (1964). However, “in order to establish the multiemployer unit, there must be an unequivocal commitment by each member of the employer group to be bound by the results of group rather than individual action. . . .” Detroit Newspapers, 326 NLRB 700, 702 (1998), rev’d on other grounds sub nom, Detroit Typographical Union No. 18, et al. v. NLRB, 216 F.3d 109 (D.C. Cir. 2000). Here, while the Employer’s desire to enter into a transitional agreement on limited issues did not
necessarily demonstrate an unwillingness to be bound by multiemployer bargaining, the Employer’s insistence that
the transitional agreements be negotiated alongside its agreement to join the association demonstrates that its
commitment to be bound by group action was conditional and not unequivocal until such time as the transitional
agreements were reached.

“[A] particular employer can become part of an established multiemployer unit only if the already committed
has recognized the multiemployer association as a full party in the multiemployer bargaining relationship.
Teamsters Union Local No. 378 (Capitol Chevrolet Co.), 243 NLRB 1086, fn. 1 (1979) (Recognizing the multiemployer
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672 F.2d 741 (9th Cir. 1982), remanded to 266 NLRB 685 (1983).