JD(SF)-19-07
El Paso, TX

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO BRANCH OFFICE
DIVISION OF JUDGES

DECO-AKAL JV

and **Case 28-CA-21082**

JUAN J. VIELMA, an Individual

INTERNATIONAL UNION, SECURITY, POLICE, AND FIRE PROFESSIONALS OF AMERICA (SPFPA)

and **Case 28-CB-6508**

JUAN J. VIELMA, an Individual

Mara-Louise Anzalone, Esq., Phoenix, AZ, for
the General Counsel.
John Scully, Esq., Springfield, VA, for
the Charging Party.
Mark L. Heinen, Esq., and *Scott A. Brooks, Esq.,*
Detroit, MI, for the Respondent Union.
John A. Ferguson, Jr., Esq., San Antonio, TX, for
the Respondent Employer.

DECISION

Statement of the Case

GREGORY Z. MEYERSON, Administrative Law Judge. Pursuant to notice, I heard this case in El Paso, Texas, on March 27-28, and April 16, 2007. On November 14, 2006, Juan J. Vielma (Vielma or the Charging Party) filed an unfair labor practice charge in case 28-CA-21082 against Deco-Akal JV (the Respondent Employer), and filed an unfair labor practice charge in case 28-CB-6508 against International Union, Security, Police, and Fire Professionals of America (SPFPA) (the Respondent Union). Based on those charges, the Regional Director of Region 28 of the National Labor Relations Board (the Board) issued a consolidated complaint on January 31, 2007. (G.C. Ex. 1(g).) The complaint alleges that the Respondent Employer violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act), and that the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act.[1] The Respondent Employer

[1] At the hearing, counsel for the General Counsel amended the complaint to delete paragraph 6(b), an alleged violation of Section 8(b)(1)(A) of the Act by the Respondent Union. (G.C. Ex. 2.)

and the Respondent Union (collectively the Respondents) filed respective timely answers to the complaint denying the commission of the alleged unfair labor practices and, in the case of the Respondent Union, raising a number of affirmative defenses.[2]

All parties appeared at the hearing, and I provided them with the full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to argue orally and file briefs. Based upon the record, my consideration of the briefs filed by counsels for all the parties, and my observation of the demeanor of the witnesses, I now make the following findings of fact and conclusions of law.[3]

Findings of Fact

I. Jurisdiction

All parties stipulated that Deco-Akal JV (the Respondent Employer) is a joint venture between Deco, Inc. and Akal Security, Inc., that provides security services to the United States Government at the Government's El Paso Service Processing Center in El Paso, Texas (hereinafter referred to as the SPC). Further, at all material times, Akal Security, Inc., a New Mexico corporation with an office and place of business in Santa Cruz, New Mexico, has been engaged in the business of providing security services to the United States Government at the SPC in El Paso, Texas, through Deco-Akal JV. Additionally, at all material times Deco, Inc., a Minnesota corporation with an office and place of business in Onamia, Minnesota, has been engaged in the business of providing security services to the United States Government at the SPC in El Paso, Texas, through Deco-Akal JV. (See written stipulation of the parties, Jt. Ex. 8.)

The complaint alleges, the Respondents' respective answers admit, and I find that during the 12-month period ending November 14, 2006, Akal Security, Inc., in conducting its business operations described above, performed services valued in excess of $50,000 in States of the United States other than the State of Texas.

Accordingly, I conclude that Akal Security, Inc. is now, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The complaint alleges, the Respondents' respective answers admit, and I find that during the 12-month period ending November 14, 2006, Deco, Inc., in conducting its business operations described above, performed services valued in excess of $50,000 in States of the United States other than the State of Texas.

Accordingly, I conclude that Deco, Inc. is now, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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[2] All pleadings reflect the complaint and the Respondents' respective answers as those documents were finally amended.

[3] The credibility resolutions made in this decision are based on a review of the testimonial record and exhibits, with consideration given for reasonable probability and the demeanor of the witnesses. See *NLRB v. Walton Manufacturing Company,* 369 U.S. 404, 408 (1962). Where witnesses have testified in contradiction to the findings herein, I have discredited their testimony, as either being in conflict with credited documentary or testimonial evidence, or because it was inherently incredible and unworthy of belief.

II. Labor Organization

The complaint alleges, the Respondents' respective answers admit, and I find that at all times material herein, the Respondent Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. Alleged Unfair Labor Practices

A. Background Facts

For the most part, the background facts in this case are not in dispute. The parties have stipulated to many of those facts in a written "Joint Stipulation Between Parties" admitted into evidence. (Jt. Ex. 8.) A recitation of those facts follows.

Juan Vielma was originally hired to work as a security officer at the SPC by Southwestern Security Services (SSS) in 1995. On June 8, 2000, the International Union, United Plant Guard Workers of America (UPGWA) was certified by the Board as the exclusive-bargaining representative of the unit set forth in the Certification of Representative, a copy of which is in evidence. (Jt. Ex. 1.) In May 2000, the UPGWA changed its name to International Union, Security, Police, and Fire Professionals of America (SPFPA) (the Respondent Union). In 2004, the Respondent Employer replaced SSS as a provider of security services at the SPC, and Vielma was hired by the Respondent Employer as a security officer. At all relevant times, Vielma has been a member of the bargaining unit.

Effective March 1, 2004, the Respondent Employer and the Respondent Union entered into a collective bargaining agreement (CBA) with an expiration date of May 31, 2007. The CBA contains a "Union Security" clause at Article 2, Section 2.8. (Jt. Ex. 2.)

At all times after May 31, 2005, Vielma has not been a member of the Respondent Union. Further, between July 1, 2005, and June 25, 2006, he did not pay any dues to the Respondent Union. By letter dated December 20, 2005,[4] the Respondent Union, through its attorney, Mark Heinen, advised Vielma, among other matters, that he was "delinquent in the payment of union dues," and that if he did not "eliminate the dues delinquency within a 30-day grace period" the Respondent Union would "seek termination of [his] employment…." (Jt. Ex. 3.) Further, by letter dated May 19, 2006,[5] the Respondent Union, through its secretary-treasurer, Dennis Eck, informed the Respondent Employer, among other matters, that Vielma had "not paid periodic union dues or service fees, in lieu of union dues," and it was, therefore, "request[ing] the removal from the work site of security officer Juan Vielma pursuant to the terms of the collective bargaining agreement's union security provisions." (Jt. Ex. 4.) The parties stipulated that the Respondent Union sent the May 19 letter to the Respondent Employer because Vielma was delinquent in the payment of union dues.[6]

[4] The letter in question was actually misdated December 20, 2004, but the parties stipulated that it should have borne the date of December 20, 2005.

[5] All dates are 2006, unless otherwise indicated.

[6] Apparently, Vielma had also failed to pay service fees, in lieu of union dues.

On June 14, Jonathan Rhodes,[7] the Respondent Employer's human resources manager, sent Vielma a letter, which, among other matters, mentioned that under the CBA between the Employer and the Union, employees employed at the SPC "are required to either join the union or pay the union a service fee (CBA Section 2.8-Union Security)." Further, the letter informed Vielma that "[u]nder the terms of the CBA, the Union has the right to demand your removal from the contract if you refuse to do so." Rhodes' letter advised Vielma that the Respondent Employer had informed the Respondent Union of his "fail[ure] to either join the union or pay the union service fee." The letter closed with Rhodes asking that Vielma give this matter his "prompt attention," and advise Rhodes of his intentions no later than June 23. (Jt. Ex. 5.) On June 21, Rhodes sent Vielma a follow up letter, reminding him of the earlier letter "instructing [him] to comply with [the CBA]." This latest letter from Rhodes concluded, "If you do not respond prior to Monday, June 26, 2006, your employment will be suspended pending compliance." (Jt. Ex. 6.)

Further, the parties stipulated that on or about June 25, 2006, the Respondent Employer removed Vielma from the SPC, took him off schedule, and administratively suspended him because Vielma failed to join or pay service fees to the Respondent Union, and because the Respondent Union had requested that the Respondent Employer take such action, and for no other reason. Apparently in an effort to establish that the Respondent Union had in fact requested that the Respondent Employer take said action, the parties stipulated to the admission into evidence of a letter dated September 26 from Dennis Eck, the Respondent Union's secretary-treasurer, to Rhodes. That letter, with a copy to Vielma, among other matters, stated that "[t]he termination [of Vielma] for non payment of dues or service fee stands." (Jt. Ex. 7.)

In the written stipulation between the parties, they agree that Vielma is currently under "suspension" from the Respondent Employer, and that he has not performed any work for the Respondent Employer since about June 25, nor has he been referred through the Respondent Union for any work since that date.

Regarding the situs of the dispute, the parties stipulated that the SPC is physically located within the State of Texas. They stipulated that pursuant to Section 14(b) of the Act, the State of Texas has passed legislation prohibiting union security clauses.[8] I will take administrative notice that Texas is what is commonly referred to as a "right to work" state.

Also, the parties stipulated that none of the unit employees live on the SPC property. Further, they stipulated that the Respondent Union's offices are not located on the property, and that the Respondent Union's offices and the properties upon which said offices are located are not owned by the United States of America.

Finally, the parties, including the General Counsel, stipulated that they are unaware of any "Deed of Cession," or acceptance thereof, that covers any of the land on which the SPC is located. They concluded their stipulation by stating that: The process of researching legislative history involving Deeds of Cession from Texas to the United States Government, and acceptance thereof, is a complex and lengthy process. (Jt. Ex. 8.)

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[7] The parties stipulated that Jonathan Rhodes was an agent of the Respondent Employer within the meaning of Section 2(13) of the Act.

[8] Specifically, the parties cited Tex. Rev. Civ. Stat. Ann. art. 5154a, effective 8/10/43; art. 5207a, effective 9/4/47; and Tex. Bus. & Comm. Code Ann. s 15.03(a)(4), effective 8/28/67. (Jt. Ex. 8.)

B. The Dispute

The dispute between the parties is almost entirely a legal one, not factual. The central issue is whether the SPC, where Vielma was employed, constitutes a "Federal Enclave" under exclusive federal jurisdiction for purposes of the Act. The General Counsel and the Charging Party contend that the union security clause contained in the collective bargaining agreement, under which provisions Vielma was suspended[9], is unlawful as the SPC is located in Texas, a right to work state. On the other hand, the Respondents contend that the union security clause is lawful because the SPC is an enclave under exclusive federal jurisdiction.

In order to resolve the dispute in this case, it will be necessary to determine the ownership of the land upon which the SPC is located, and whether the Federal Government exercises exclusive jurisdiction over that land.

C. Analysis and Conclusions

1. Ownership of the Land

The Respondents spent considerable time at the hearing offering evidence as to the nature of the work performed at the SPC and the ownership of the land upon which it sits. Much of this evidence is unrebutted.

It is undisputed that the United States Immigration and Customs Enforcement (ICE),[10] an agency within the Department of Homeland Security, operates a Service Processing Center (SPC) at 8915 Montana Avenue, El Paso, Texas. The SPC houses an office of the United States Border Patrol, as well as a detention facility. Aliens[11] apprehended by the Border Patrol are detained at the facility, which includes dormitories and dinning facilities. Also included is an office of the Executive Office for Immigration Review, an agency of the United States Department of Justice, more commonly known as the "Immigration Court." It is in the Immigration Court that aliens may contest ICE's contention that they are subject to involuntary removal from the United States. These cases are adjudicated by United States Immigration Judges. The security officers employed by the Respondent Employer provide internal security at the SPC, specifically in the detention facility, dormitories, dinning facilities, and Immigration Court, as well as perimeter security around the exterior of the secured area. The security officers control the placement and movement of aliens throughout the SPC.

In an effort to establish that the United States Government owns the land upon which the SPC is located, the Respondent Employer called two witnesses to testify, Ron Rush, the president of Land America Lawyers Title of El Paso, Texas and Jerry Cutts, the owner of Cutts Land Surveying. Rush, whose title insurance company researches land titles and issues title

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[9] Although the Respondent Employer referred to its adverse action against Vielma as a "suspension," it is obvious that, except in name, the action taken constituted a termination. The "suspension" was indefinite, intended to last at least so long as Vielma refused to tender union dues or service fees, in lieu of dues. Accordingly, for all practical purposes Vielma was terminated by the Respondent Employer, and I so find.

[10] I will take administrative notice that ICE is the successor agency to the former Immigration and Naturalization Service (INS).

[11] The term "alien" is a "term of art" used in the Immigration and Nationality Act to denote non-citizens of the United States.

insurance based on title research, testified at length about his efforts to determine the ownership of the land upon which the SPC is located. He was extensively cross-examined by counsel for the General Counsel. His testimony was detailed and complex. However, in an effort to simplify and condense that testimony, I will emphasize his conclusion that through an "Exchange Deed" dated October 31, 1965, the City of El Paso, Texas granted to the United States Government ownership of a tract of land, including that land upon which the SPC currently stands. (Emp. Ex. 1.)

Cutts, whose company conducts land surveys, also testified at length about his efforts to determine whether the land upon which the SPC currently sits is in fact contained within that tract of land set forth in the Exchange Deed from the City of El Paso. Cutts was also cross-examined by counsel for the General Counsel. His testimony was also detailed and complex. Again, in an effort to simplify and condense that testimony, I will focus on his conclusion that the SPC is currently located within that tract of land given to the United States Government pursuant to the Exchange Deed executed by the City of El Paso.

Both Rush and Cutts were extremely credible witnesses. They are clearly experts in their respective fields, and I consider their testimony as such. Neither counsel for the General Counsel nor counsel for the Charging Party seriously challenged their respective findings. While neither counsel expressly concedes the conclusions reached by Rush and Cutts, it appears from their post-hearing briefs that they have all but conceded the point. In any event, no rebutting evidence was offered.

Based on the unrebutted testimony of Rush and Cutts, as well certain documents admitted into evidence through their testimony (Emp. Ex. 1-6.), I conclude that the City of El Paso, Texas conveyed ownership to the United States Government of that land upon which the SPC currently sits. As there was no evidence offered to establish that the ownership of that land has changed since the Exchange Deed was executed, I hereby conclude that the United States Government continues to this date to own the land upon which the SPC is located.

However, as counsel for the General Counsel and counsel for the Charging Party have repeatedly argued at trial and in their post-hearing briefs, mere ownership of the land does not establish that the United States Government has exclusive jurisdiction over the property for the purpose of labor relations. In fact, the gravamen of this case remains the question of whether the State of Texas or the Federal Government has jurisdiction, as only a resolution of this issue will determine if the union security provision in the collective bargaining agreement is lawful or not.

2. Jurisdiction over Labor Relations

Section 8(a)(3) of the Act permits the parties to a collective bargaining agreement, under certain circumstances, to enter into a union security provision,[12] provided that under section 14(b) of the Act such a provision is not prohibited by the laws of the state where the bargaining unit is located. The State of Texas has enacted so called "Right to Work"[13] laws, and, thus, in accord with Section 14(b) of the Act, a union security provision in a collective bargaining agreement is unlawful in Texas. However, in a "Federal Enclave" where exclusive federal

[12] Such a provision generally requires as a condition of continued employment, with certain exceptions, that an employee either join the union and pay union dues, or in the alternative, pay an equivalent service fee.

[13] The Texas Right to Work statutes are cited by the parties in Joint Exhibit 8, item 23.

jurisdiction over labor relations exists, a union security provision is lawful, even in a Right to Work State. *Cooper v. General Dynamics,* 378 F. Supp. 1258 (N.D. Tex. 1974), reversed on other grounds, 533 F.2d 163 (5th Cir. 1976); also see, *International Ass'n of Machinists and Aerospace Workers v. Dyncorp,* 796 F. Supp. 976, 982 (N.D. Tex, 1991).

The enclave clause of the United States Constitution, Art. I, Sec. 8, cl. 17, gives Congress the "Power…to exercise exclusive Legislation" over all property acquired "by the consent of…the State in which the same shall be."

40 U.S.C. Sec. 3112 (formally referred to as 40 U.S.C. Sec. 255) provides as follows:

> (a) Exclusive jurisdiction not required. It is not required that the federal government obtain exclusive jurisdiction in the United States over land or an interest in land it acquires.
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> (b) Acquisition and acceptance of jurisdiction. When the head of a department…or other authorized officer…considers it desirable, that individual may accept or secure, from the State in which land… that is under the immediate jurisdiction, custody or control of the individual is situated, consent to, or cession of, any jurisdiction over the land…. The individual shall indicate acceptance of jurisdiction on behalf of the Government by filing a notice of acceptance…or in another manner prescribed by the laws of the State where the land is situated.
>
> (c) Presumption. It is conclusively presumed that jurisdiction has not been accepted until the Government accepts jurisdiction over land as provided in this section.

It is obvious from a literal reading of the above cited provisions of the United States Code that mere ownership of land by the Federal Government does not automatically confer jurisdiction to the Government. To the contrary, the presumption is that such jurisdiction is not conferred upon the Federal Government until such time as it accepts jurisdiction from the state, and notifies the state of that acceptance.

The State of Texas has a specific statutory procedure for the Federal Government's acquisition of land and for the granting of jurisdiction to the Federal Government. The Texas Government Code Chapter 2204, Section 2204.101 grants the legislature's consent "to the purchase or acquisition by the United States, including acquisition by condemnation, of land in this state." The purposes for which the land may be used as specified by this Section include the erection and maintenance of a "fort, military station, magazine, arsenal, dockyard, customhouse, post office, or other necessary public building." (U. Ex. 3.) However, as with the Federal Statute, the State of Texas distinguishes between the ownership of property by the Federal Government and the conveyance of jurisdiction.

Chapter 2204, Section 2204.103 of the Texas Government Code, "Cession of Jurisdiction to the United States," states as follows:

> (a) On written application of the United States…the governor…may cede to the United States exclusive jurisdiction, subject to Subsection (c), over land acquired by the United States…over which the United States desires to acquire constitutional jurisdiction for a purpose provided by Section 2204.101.
>
> (b)….

> (c) A cession of jurisdiction may not be made under this section except on the express condition, which must be included in the instrument of cession, that this state retains concurrent jurisdiction with the United States over every portion of the land ceded so that all civil or criminal process issued under the authority of this state or a court or judicial officer of this state may be executed by the proper officers of this state on any person amenable to service of process within the limits of the land to be ceded, in the same manner and to the same effect as if the cession had not occurred.

(U. Ex. 3.)

The term "Federal Enclave" refers to land acquired by the Federal Government, with the consent of the state, over which the state has ceded to the United States Government exclusive or concurrent jurisdiction pursuant to the Federal Enclave Clause of the United States Constitution, as quoted earlier. See *Paul v. U.S.,* 371 U.S. 245, 264 (1963); *Silas Mason Co. v. Tax Commission of State of Washington,* 302 U.S. 186, 197 (1937). Where legislative jurisdiction is "exclusive," only Federal Law applies, except where Congress has designated otherwise. See *Pacific Coast Dairy v. Department of Agriculture of California,* 318 U.S. 285, 294 (1943); *James v. Dravo Contracting Co.,* 302 U.S. 134, 140 (1937). However, where jurisdiction is "concurrent," both Federal Law and state law apply, including the state's right to work laws. *International Ass'n of Machinists and Aerospace Workers v. Dyncorp,* 796 F. Supp. 976 (N.D. Tex. 1991) (Texas right to work law applied where State and Federal Government possessed concurrent jurisdiction).

Again, a literal reading of the United States Code establishes that for jurisdiction to be conveyed to the Federal Government, the state must consent through a statute or agreement of cession. (40 U.S.C. Sec. 3112(b)). For a state giving such consent to the transfer of "exclusive" jurisdiction, the laws of that state are generally unenforceable in the enclave, as it has transferred jurisdiction exclusively to the Federal Government. See *Paul v. United States,* 371 U.S. 245, 263 (1963). Where such a cession has occurred, the Federal Government has "exclusive" jurisdiction over the enclave. In such an enclave, a union security agreement may be enforced pursuant to Section 8(a)(3) of the Act, even in a right to work state, such as Texas. *Cooper v. General Dynamics,* 378 F. Supp. 1258 (N.D. Tex. 1974), reversed on other grounds, 533 F.2d 163 (5th Cir. 1976); also see *Lord v. Local Union No. 2088, IBEW*, 646 F.2d 1057, 1062 (5th Cir. 1981), cert. denied 458 U.S. 1106 (1982).

As I have noted above, there is no genuine dispute that the SPC is located on property owned by the United States Government. However, ownership by itself does not establish the jurisdictional status of the enclave, or the continuing application of the Texas right to work law to the SPC. The courts consistently distinguish between "concurrent" jurisdiction and "exclusive" jurisdiction. Yet, there appears to be no dispute in the courts that state right to work laws apply on a Federal Enclave when the property is subject to concurrent Federal jurisdiction. *International Ass'n of Machinists & Aerospace Workers v. Dyna Corp, supra*. It is only where Federal jurisdiction is exclusive that a state right to work law would not apply, and, thus, where a union security clause in a collective bargaining agreement would be lawful.

It is clear that for the Federal Government to have exclusive jurisdiction over an enclave, more is necessary than a mere transfer of the land to the Federal Government. Both the United States and the State of Texas have statutes specifying the means by which exclusive jurisdiction is ceded to the United States. For the United States Government "to acquire exclusive jurisdiction over land within a state, it is necessary to have both consent of the state and acceptance by Congress." *Bilderback v. United States,* 558 F. Supp. 903, 905 (D. Or. 1982).

The United States Code, cited at length earlier, provides that in order to obtain "exclusive jurisdiction" in state land, an authorized officer must "accept or secure" from that state the "consent" or "cession" of such jurisdiction. Further, and critically important to the issue in this case, "until the United States has accepted jurisdiction" over the land sought to be acquired, "it shall be conclusively presumed that no such jurisdiction has been accepted." (40 U.S.C. Sec. 3112).

At the hearing in this case, there was simply no evidence offered or produced that the Federal Government had either accepted or secured the consent or cession of jurisdiction from the State of Texas for the SPC. In the absence of such acceptance, the statute indicates that it must be presumed that jurisdiction has not been accepted. (40 U.S.C. Sec. 3112 (c)). The United States Government can not be forced to accept unwanted legislative jurisdiction. [14]

Regarding the state requirements, state relinquishment of legislative jurisdiction to the Federal Government is strictly construed, and "[a] controlling reason for such construction is that it is a matter of the very greatest importance to both the national and the state governments affected." *Six Cos v. De Vinney,* 2 F.Supp. 693, 697 (D. NV. 1993); e.g. *United States v. Brown,* 431 F.Supp. 56, 59 (D. Minn. 1976) (It will not be presumed, in the absence of a clearly expressed intent, that a state has relinquished its sovereignty). As the Supreme Court articulated in *United States v. Winstar Corp.,* 518 U.S. 839, 874 (1996), "[N]either the right of taxation, nor any other power of sovereignty, will be held by this court to have been surrendered, unless such surrender has been expressed in terms too plain to be mistaken." (citing *Jefferson Branch Bank v. Skelly,* 66 U.S. (1 Black) 436, 446 (1862).

In the absence of clear evidence that the state consented to the transfer of exclusive jurisdiction to the Federal Government, the presumption must be in favor of concurrent legislative jurisdiction. This presumption can be rebutted, but only by a clear manifestation of a specific intention to do so. *Silas Mason Co.* 302 U.S. 186,197 (1937); see also *Paul v. U.S.*, 371 U.S. 245, 264 (1963) (Exclusive Federal jurisdiction cannot be created by default; only by the state's consent does the jurisdiction of the Federal Government become exclusive).

In order for the Federal Government to obtain exclusive jurisdiction from the State of Texas over territory in that State, there must be adherence to State law, as set forth in the Texas Code, Section 2204.103, cited in detail above. (U. Ex. 3.) According to that statute, there must first be a "written application" from the United States to the Governor of the State of Texas, seeking exclusive jurisdiction over land acquired by the United States Government. A "cession of jurisdiction" then may be made by the State of Texas to the Federal Government.

At the hearing in this matter, there was no evidence offered or produced that the United States Government had ever presented the State of Texas with a "written application" seeking exclusive jurisdiction over the land upon which the SPC is located. Further, no evidence was offered or produced as would establish that the State of Texas had ever, in any form, awarded a

[14] Even before the Congressional Statute, the Supreme Court had ruled in a series of cases that simply because a cession conferred a benefit upon the United States Government was not a basis, with nothing more, to presume that the Federal Government had accepted jurisdiction. See *Collins v. Yosemite Park & Curry Co.*, 304 U.S. 518, 522-24 (1938); *James v. Dravo Contracting Co.*, 302 U.S. 134, 141-42, 146-49 (1937); *Silas Mason Co. v. Tax commission of State of Washington,* 302 U.S. 186, 197-99 (1937).

"cession of jurisdiction" to the United States Government. In fact, the parties specifically stipulated that they are "unaware of any Deed of Cession, or acceptance thereof, that covers any of [the] land on which the SPC is located (the SPC Property.)" (Jt. Ex. 8.)

3. The Burden of Proof

The parties have stipulated that "[t]he process of researching legislative history involving Deeds of Cession from Texas to the United States Government, and acceptance thereof, is a complex and lengthy process." (Jt. Ex. 8.) While I am sure that is true, ultimately the issues in this case must be decided on the evidence that is available and admitted into the record. In evaluating that evidence, the undersigned must determine which of the parties has the burden of proof, and whether that burden has been met. Not unexpectedly, the parties disagree as to where the burden of proof lies.

As the Respondents' point out in their post-hearing briefs, the ultimate burden of establishing those violations of the Act alleged in the complaint rests with the General Counsel, who must do so by a preponderance of the evidence. On this ultimate burden of proof, there is no dispute. However, the Respondents contend that as Section 8(a)(3) of the Act allows, under certain circumstances, the parties to a collective bargaining agreement to enter into a union security provision, that the burden of establishing that such an arrangement is not lawful under Section 14(b) of the Act rests with the General Counsel. The Respondents acknowledge that this issue is one of first impression, with no Board case specifically on point.

The General Counsel argues in her post-hearing brief that the Respondents have the burden of establishing that the Federal Government is vested with exclusive jurisdiction over the SPC, as, without such evidence, the presumption found in the United States Code and in the case law is that the Federal Government possesses no such jurisdiction. The Charging Party essentially agrees with the General Counsel's position. According to the Charging Party, the Respondents' argument is really an affirmative defense, the burden of proof of which normally lies with the party asserting it. *Seton Company,* 332 NLRB 979, 1008-09 (2000), citing *Marydale Product Co.,* 133 NLRB 1232, n.8 (1961).

Both the General Counsel and the Charging Party argue in their respective briefs that it would be inherently unfair to require the General Counsel to prove that exclusive jurisdiction was not conveyed to the Federal Government, because this would require the General Counsel to prove a negative. According to Counsel for the General Counsel, there is an evidentiary doctrine referred to as the "proof of negatives," which holds that a party asserting a negative will not carry the burden to do so if the facts are peculiarly within the other party's knowledge or are much more difficult for the former to prove than the latter. Counsel cites a State of Wisconsin case, which stands for that proposition, and that cites certain evidentiary treatises. *State v. McFarren,* 215 N.W. 2d, 459, 465 (Wis. 1974) (citing 31A C.J.S. Evidence Sec. 105, pp. 181, 182; 29 Am. Jur.2d, Evidence, p. 184, Sec 153).

Whether expert evidentiary authorities recognize the so called "proof of negatives" doctrine or not, I am of the belief that fundamental principles of fairness require that the burden of proof rests with the Respondents to prove that in fact the Federal Government has exclusive jurisdiction over the SPC. It would be virtually impossible for the General Counsel and the Charging Party to prove the absence of the conveyance, in other words to prove a negative, in this case, specifically that the Federal Government does not possess exclusive jurisdiction over the SPC. It would be much easier for the Respondents to demonstrate that the State of Texas conveyed exclusive jurisdiction to the Federal Government over the SPC and that the conveyance was accepted by the Federal Government, if in fact such events had occurred.

This is where the burden of proof properly lies, and I so find. See *State v. Rodriguez*, 302 S.E. 2d 666 (S.C. 1983) (very similar issues, which arose in a state court proceeding in South Carolina). Accordingly, the Respondents have the burden of proving that Section 14(b) of the Act does not apply because the SPC is a Federal Enclave where the Federal Government exercises exclusive jurisdiction. However, as I will explain more fully below, the Respondents have failed to meet this burden.

4. Affirmative Defenses

In its post-hearing brief, the Respondent Union raises a number of affirmative defenses.[15] According to counsel for the Union, it is the Texas State Courts, and not the Board, that should provide the appropriate forum to adjudicate those issues arising under the Texas Right to Work Law. However, there is no doubt that the General Counsel has the authority to prosecute the Respondent Union under section 8(b)(1)(A) and (2) and the Respondent Employer under Section 8(a)(1) and (3) of the Act. The General Counsel having exercised that prosecutorial discretion to issue a complaint in this case, the question raised by the Respondent Union as to which forum is the most appropriate to adjudicate this matter in is now moot. Further, it is a well established principle that the Board may find an unlawful union security provision to constitute a violation of the Act. See *Iron Workers Local 118,* 257 NLRB 564 (1981) (Board found a violation in Nevada, a Right to Work State).

Counsel for the Respondent Union, in his post-hearing brief, cites a number of cases for the proposition that the State of Texas would have been the most appropriate forum to adjudicate issues arising under that State's Right to Work Law.[16] In my opinion, however, those cases merely establish that both the Board and the state where the alleged violations of the right to work law occurred have "concurrent" jurisdiction to prosecute these matters. Either or both venues would constitute appropriate forums to adjudicate these issues. While similar issues arise under both the Act and state right to work statutes, those issues are not identical. Not only are the issues not identical, but the possible remedies available under the two statutes are different. While Texas can certainly enforce its right to work law, and the Board can not; it is equally true that the Board can enforce the Act, which Texas can not do. There is simply nothing inappropriate in the Board finding that a union security provision in a collective bargaining agreement is unlawful in the State of Texas under Section 14(b) of the Act.

In a final effort to avoid what appeared to be the inevitable, the Respondent Union raises the specter of "Homeland Security" to argue that the "Supremacy Clause of the Constitution pre-empts direct state regulation" of conditions of employment at a federally owned facility engaged in national security. There is no doubt that the bargaining unit employees employed at the SPC, which houses the Border Patrol, the Immigration Court, and alien detention facilities operated by Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland Security, are engaged in very important national security functions. However, that does not, therefore, mean that the activities of the Respondents are, as argued by counsel for the Union, "shield[ed]" from direct state regulation by, for example, a state right to work law.

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[15] The Respondents' burden of proof and jurisdiction over the SPC arguments have been addressed earlier.

[16] *Local 34, International Molders & Allied Workers Union (Malleable Iron Range Co.)*, 150 NLRB 913, 919, (1965), citing *Western Electric Co., Inc.,* 84 NLRB 1019, 1022, fn14 (1949); *Retail Clerks v. Schermerhorn,* 375 U.S. 96, 103 (1963); *Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board,* 336 U.S. 301, 314 (1949).

The Respondent Union's argument, if accepted, would require that the Act be ignored for any matters involving national security. However, as counsel for the Charging Party noted in his post-hearing brief, the Board has already rejected that argument in a case where this same Union argued that the NLRB has jurisdiction over airport screeners employed by a private contractor, whose work is obviously regulated by Homeland Security. *Firstline Transportation Security,* 347 NLRB No. 40 (2006). Objectively, there would not appear to be a legitimate argument that could be made that enforcing a union security provision in a collective bargaining agreement would somehow contribute to national security.

5. Violations of the Act

Counsel for the General Counsel has met her initial burden of establishing that the State of Texas is a so called right to work state as contemplated by Section 14(b) of the Act. The burden of proof then shifts to the Respondents to demonstrate that the SPC is a Federal Enclave where the Federal Government exercises "exclusive" jurisdiction. However, as I concluded earlier, the Respondents have failed to establish by any standard approaching a preponderance of the evidence that exclusive jurisdiction was either conveyed by the State of Texas or accepted by the Federal Government. Under both the applicable Federal and State Statutes as cited above, and in accordance with the case law, also cited above, the presumption that jurisdiction remains with the State of Texas has not been rebutted. Accordingly, the General Counsel has established by a preponderance of the evidence presented at the hearing that the union security provision contained in the collective bargaining agreement between the Respondents is unlawful in the State of Texas under Section 14(b) of the Act.

As stipulated to by all parties, on December 20, 2005, the Respondent Union, through its attorney, sent Juan Vielma a letter informing him that he was subject to the provision of the union security clause in the Respondents' collective bargaining agreement, that he was delinquent in the payment of union dues, and that unless he paid off the delinquency within 30 days, the Union would seek to have the Employer terminate him in accordance with the collective bargaining agreement. (Jt. Ex. 3 & 8.) As such conduct to enforce a union security clause is unlawful in the State of Texas, I find that the Respondent Union's conduct constitutes a violation of Section 8(b)(1)(A) of the Act, as alleged in paragraphs 6(a) and amended paragraph 9 of the complaint. [17]

Also as stipulated to by all parties, on May 19, 2006, the Respondent Union, by its secretary/treasurer, sent the Respondent Employer a letter. That letter, under the heading "Termination Request," notified the Respondent Employer that Vielma was delinquent in the payment of union dues or service fees, in lieu of union dues, as a result of which the Union "request[ed] the removal from the work site" of Vielma "pursuant to the terms of the collective bargaining agreement's union security provisions." (Jt. Ex. 4 & 8.) Again, as such conduct to enforce a union security clause is unlawful in the State of Texas, I find that the Respondent Union's conduct constitutes a violation of Section 8(b)(2) of the Act, as alleged in paragraphs 6(c), (d), and 10 of the complaint.[18]

[17] Section 8(b)(1)(A) prohibits a union from coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

[18] Section 8(b)(2) prohibits a union from causing or attempting to cause an employer to discriminate against an employee in violation of Section 8(a)(3) of the Act.

Regarding the Respondent Employer, all parties stipulated that on June 14 and 21, 2006, respectively, the Employer, by its human resources manager, sent Vielma separate letters. In the letter dated June 14, the Employer informed Vielma that he was "required" under the terms of the collective bargaining agreement between the Union and the Employer to "either join the union or pay the union a service fee." Further, Vielma was advised that under the terms of the contract, the Union "has the right to demand [his] removal from the contract" if he refused to do so. A response from him was requested by no later than June 23. However, by the letter dated June 21, Vielma was directed to comply with the collective bargaining agreement prior to June 26, or "[his] employment [would] be suspended pending compliance." (Jt. Ex. 5, 6, & 8.) Such conduct on the part of the Employer to enforce a union security clause is unlawful in the State of Texas. The Employer's stated defense that it was merely trying to comply with the terms of its collective bargaining agreement with the Union does not negate the unlawful nature of its conduct. The Respondent Employer's motive is irrelevant. Accordingly, I find that the Respondent Employer's conduct constitutes a violation of Section 8(a)(1) of the Act, as alleged in paragraphs 7(a)(1), (2), and 11 of the complaint.[19]

Finally, all the parties stipulated that on about June 25, 2006, the Respondent Employer removed Vielma from the SPC, took him off the schedule, and administratively suspended him. Further, they stipulated that this action was taken because Vielma failed to join or pay a service fee to the Union, and because the Respondent Union had requested that the Respondent Employer take such action, and for no other reason. (Jt. Ex. 8.) Once again, such conduct on the part of the Employer to enforce a union security clause is unlawful in the State of Texas, and the Employer's motive in taking such action is irrelevant. Accordingly, I find that the Respondent Employer's conduct constitutes a violation of Section 8(a)(1) and (3) of the Act, as alleged in paragraphs 8(a), (b), and 12 of the complaint.[20]

Conclusions of Law

1. Akal Security, Inc., a New Mexico corporation, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Deco, Inc., a Minnesota corporation, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. Deco-Akal JV (the Respondent Employer) is a joint venture between Akal Security, Inc. and Deco, Inc., that provides security services to the United States Government at the Government's El Paso Service Processing Center in El Paso, Texas (the SPC).

4. International Union, Security, Police, and Fire Professionals of America (SPFPA) (the Respondent Union) is a labor organization within the meaning of Section 2(5) of the Act.

5. The Respondent Union and the Respondent Employer (collectively the Respondents) are signatories to a collective bargaining agreement (the Agreement) which was made effective retroactively by its terms from November 11, 2003, through May 31, 2007.

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[19] The Respondent Employer's conduct interfered with, restrained, and coerced Vielma in the exercise of his rights guaranteed in Section 7 of the Act.

[20] The Respondent Employer's conduct in effectively discharging Vielma discriminated against him in regard to the hire and tenure or terms or conditions of his employment, thereby encouraging membership in the Respondent Union in violation of the Act.

6. The Agreement covers rates of pay, wages, hours of employment, and other terms and conditions of employment of the employees of the Respondent Employer employed at the SPC.

7. The Agreement contains a union security clause requiring that an employee either become a member of the Respondent Union or pay the Respondent Union a service fee.

8. By the following acts and conduct the Respondent Union has violated Section 8(b)(1)(A) of the Act:

(a) Threatening Juan Vielma (Vielma), an employee of the Respondent Employer employed at the SPC, with discharge if he did not comply with the provisions of the union security clause in the Respondents' Agreement and pay to the Respondent Union a sum of money for union dues, for which he was allegedly delinquent.

9. By the following acts and conduct the Respondent Union has violated Section 8(b)(2) of the Act:

(a) Requesting that the Respondent Employer discharge Vielma for failure to comply with the provisions of the union security clause in the Respondents' Agreement.

(b) Attempting to cause and causing the Respondent Employer to discharge Vielma for failure to comply with the provisions of the union security clause in the Respondents' Agreement.

10. By the following acts and conduct the Respondent Employer has violated Section 8(a)(1) of the Act:

(a) Threatening Vielma that he is subject to the provisions of the union security clause in the Respondents' Agreement, by which terms he is required to either join the Respondent Union or to pay the Respondent Union a service fee, and that a refusal to do so could result in the Respondent Union requesting his discharge.

(b) Threatening Vielma with discharge unless he complied with the provisions of the union security clause in the Respondents' Agreement and joined the Respondent Union or paid the Respondent Union a service fee.

11. By the following acts and conduct the Respondent Employer has violated Section 8(a)(3) and (1) of the Act:

(a) Discharging Vielma, at the Respondent Union's request, because he failed to join or pay service fees to the Respondent Union.

12. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the polices of the Act.

The Respondent Employer having discriminatorily discharged its employee Juan Vielma, at the request of the Respondent Union, my recommended order requires the Respondent Employer to offer him immediate reinstatement to his former position, displacing if necessary any replacement, or if his position no longer exists, to a substantially equivalent position, without loss of seniority and other privileges. My recommended order further requires the Respondent Union and the Respondent Employer, both jointly and severally, to make Vielma whole for any loss of earnings and other benefits, computed on a quarterly basis from the date of his discharge to the date the Respondent Employer makes a proper offer of reinstatement to him, less any net interim earnings as prescribed in *F.W. Woolworth Co.,* 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

The recommended order further requires the Respondent Employer and the Respondent Union to expunge from their respective records any reference to the discharge of Vielma or the allegation that he was in noncompliance with the Respondents' collective bargaining agreement, and to provide him with written notice of such expunction, and inform him that the unlawful conduct will not be used as a basis for further personnel or other actions against him. *Sterling Sugars, Inc.,* 261 NLRB 472 (1982). Further, the Respondents must not make reference to the expunged material in response to any inquiry from any employer, employment agency, union official, unemployment insurance office, or reference seeker, or use the expunged material against Vielma in any other way. [21]

My recommended order also requires both Respondents to expunge from their current collective bargaining agreement, and any successor agreement, that language requiring an employee employed at the SPC to become a member of the Respondent Union and pay union dues, or pay the equivalent sum to the Respondent Union as a service fee. (The expunged provision of the Agreement is customarily referred to as a union security clause.) Further, the Respondents are required to cease any efforts to enforce such a provision at the SPC. Additionally, the Respondent Union is required to request in writing that the Respondent Employer reinstate Juan Vielma to his former position of employment at the SPC.

[21] In paragraph 13 of the amended complaint, the General Counsel seeks a remedy on behalf of not only Vielma, but any other employee similarly situated. (G.C. Ex. 2.) However, absolutely no evidence was offered or produced at the hearing as would suggest or indicate that any employee other than Vielma was adversely affected by the Respondents' unfair labor practices. Accordingly, it is inappropriate to include such broad language as a remedy in this case, and I specifically decline to do so.

Finally, the Respondents shall be required to post respective notices in English and Spanish at the SPC that assure the SPC employees that the Respondents will respect their rights under the Act. The Respondent Union shall also be required to post said notice at its Roseville, Michigan headquarters.[22]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[23]

ORDER

The Respondent Union, International Union, Security, Police, and Fire Professionals of America (SPFPA), its officers, agents, and representatives, shall

1. Cease and desist from:

(a) Threatening employees of Deco-Akal JV employed at the SPC in El Paso, Texas with discharge for failing to join the Respondent Union and pay union dues, or pay a service fee to the Respondent Union;

(b) Requesting that Deco-Akal JV (the Respondent Employer) discharge its employees employed at the SPC in El Paso, Texas, because they fail to join the Respondent Union and pay union dues, or pay a service fee to the Respondent Union;

(c) Causing or attempting to cause the Respondent Employer to discharge its employees employed at the SPC in El Paso, Texas, because they fail to join the Respondent Union and pay union dues, or pay a service fee to the Respondent Union; and

(d) In any like or related manner restraining and coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act; or causing or attempting to cause an employer to discriminate against employees in violation of Section 8(a)(3) of the Act.

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

(a) Make Juan Vielma whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision;

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[22] The General Counsel's amended complaint, paragraph 13, further requests that the Respondent Union be required to post a notice "at all places in the State of Texas at which it conducts business." This I decline to order. The only facility involved in this proceeding is the SPC located at 8915 Montana Blvd., El Paso, Texas. The only employees involved were those employed at that location, as set forth in the Certification of Representation (Jt. Ex. 1.), and the only collective bargaining agreement that was admitted into evidence as containing the unlawful union security provision was the Agreement solely covering the employees at the SPC. (Jt. Ex. 2.) Notice posting at all locations where the Respondent Union conducts business in the State of Texas is inappropriately broad and is punitive, rather than properly seeking to remedy only those unfair labor practices established in this case. The Act is intended to be remedial, not punitive.

[23] 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.

(b) Request in writing that the Respondent Employer reinstate Juan Vielma to his former position of employment at the SPC in El Paso, Texas, and indicate that it has no objection to his continued employment;

(c) Expunge from its current collective bargaining agreement with the Respondent Employer covering the employees employed at the SPC in El Paso, Texas, and any successor agreement, that provision requiring an employee to become a member of the Respondent Union and pay union dues, or pay an equivalent service fee to the Respondent Union. (The expunged provision of the Agreement is customarily referred to as a union security clause);

(d) Expunge from it records any reference to the discharge of Juan Vielma and the allegation that he was in noncompliance with the collective bargaining agreement covering the Respondent Employer's employees employed at the SPC in El Paso, Texas, and to provide him with written notice of such expunction and inform him that the unlawful conduct will not be used as a basis for personnel or other actions against him;

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order;

(f) Within 14 days after service by the Region, post at its union headquarters in Roseville, Michigan, and at the SPC in El Paso, Texas, copies of the attached notice marked "Appendix A"[24] in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent Union's authorized representative, shall be posted by the Respondent Union and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent Union 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 Union has gone out of business or ceased to represent the employees employed by the Respondent Employer at the SPC in El Paso, Texas, the facility involved in these proceedings, the Respondent Union shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent Employer at the SPC in El Paso, Texas, at any time since December 20, 2005; and

(g) 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 Union has taken to comply.

The Respondent Employer, Deco-Akal, JV, its officers, agents, successors, and assigns, shall

[24] If this Order is enforced by a judgment of a 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."

1. Cease and desist from:

(a) Threatening its employees employed at the SPC in El Paso, Texas that they are subject to the union security clause in the Respondents' Agreement, by which terms they are required to either join the Respondent Union or pay the Respondent Union a service fee, and that a refusal to do so could result in the Respondent Union requesting their discharge;

(b) Threatening its employees employed at the SPC in El Paso, Texas with discharge unless they complied with the provisions of the Respondents' Agreement and joined the Respondent Union or paid the Respondent Union a service fee;

(c) Honoring the Respondent Union's request that it discharge its employees employed at the SPC in El Paso, Texas because they fail to comply with the union security clause in the Respondents' Agreement; and

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

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

(a) Within 14 days from the date of this Order, offer Juan Vielma full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed;

(b) Make Juan Vielma whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision;

(c) Expunge from its current collective bargaining agreement with the Respondent Union covering its employees employed at the SPC in El Paso, Texas, and any successor agreement, that provision requiring an employee to become a member of the Respondent Union and pay union dues, or pay an equivalent service fee to the Respondent Union. (The expunged provision of the Agreement is customarily referred to as a union security clause);

(d) Expunge from its records any reference to the unlawful discharge of Juan Vielma and the allegation that he was in noncompliance with the collective bargaining agreement covering the employees employed at the SPC in El Paso, Texas, and to provide him with a written notice of said expunction and inform him that the unlawful conduct will not be used as a basis for personnel or other actions against him;

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order;

(f) Within 14 days after service by the Region, post at the SPC in El Paso, Texas copies of the attached notice marked "Appendix B"[25] in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent Employer's authorized representative, shall be posted by the Respondent Employer and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent Employer 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 Employer has gone out of business or no longer has the contract for the SPC facility involved in these proceedings, the Respondent Employer shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent Employer at the SPC in El Paso, Texas, at any time since December 20, 2005; and

(g) 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 Employer has taken to comply.

Dated at Washington, D.C., June 13, 2007.

Gregory Z. Meyerson
Administrative Law Judge

[25] If this Order is enforced by a judgment of a 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."

APPENDIX A

NOTICE TO MEMBERS AND 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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union.
Choose representatives to bargain on your behalf with your employer.
Act together with other employees for your benefit and protection.
Choose not to engage in any of these protected activities.

WE WILL NOT in any manner interfere with your exercise of these rights. Specifically:

WE WILL NOT threaten employees of Deco-Akal JV employed at the SPC in El Paso, Texas (the SPC) with discharge for failing to join the International Union, Security, Police, and Fire Professionals of America (SPFPA) (the Union) and pay union dues, or pay a service fee to the Union.

WE WILL NOT request that Deco-Akal JV (the Employer) discharge its employees employed at the SPC because they fail to join the Union and pay union dues, or fail to pay a service fee to the Union.

WE WILL NOT cause or attempt to cause the Employer to discharge its employees employed at the SPC because they fail to join the Union and pay union dues, or fail to pay a service fee to the Union.

WE WILL request in writing that the Employer reinstate Juan Vielma to his former position of employment at the SPC, and indicate that we have no objection to his continued employment.

WE WILL make Juan Vielma whole for any loss of earnings, plus interest, and other benefits suffered as a result of the Union's discrimination against him because he was not a union member and did not pay union dues, or pay a service fee to the Union.

WE WILL remove from our records any reference to the unlawful discharge of Juan Vielma and shall notify him of this in writing, and also that our unlawful conduct will not be used as a basis for personnel or other actions against him.

WE WILL remove from our collective bargaining agreement with the Employer any language requiring the employees of the Employer employed at the SPC to join the Union and pay union dues, or to pay a service fee to the Union.

INTERNATIONAL UNION, SECURITY, POLICE, AND FIRE PROFESSIONALS OF AMERICA (SPFPA)

(Labor Organization)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

2600 North Central Avenue, Suite 1800
Phoenix, Arizona 85004-3099
Hours: 8:15 a.m. to 4:45 p.m.
602-640-2160.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 602-640-2146.

APPENDIX B

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 Federal labor law and has ordered us to post and obey 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 do anything that interferes with these rights. Specifically:

WE WILL NOT threaten our employees employed at the SPC in El Paso, Texas (the SPC) that they are subject to the union security clause in the collective bargaining agreement (the Agreement) we have with the International Union, Security, Police, and Fire Professionals of America (SPFPA) (the Union), by which terms they are required to either join the Union and pay union dues, or to pay the Union a service fee, and that a refusal to do so could result in the Union requesting their discharge.

WE WILL NOT threaten our employees employed at the SPC with discharge unless they complied with the provisions of the Agreement and joined the Union and paid union dues, or paid the Union a service fee.

WE WILL NOT discharge our employees employed at the SPC because they are not members of the Union and have not paid union dues, or have not paid the Union a service fee.

WE WILL offer Juan Vielma full reinstatement to his former job, without loss of seniority or any other rights or privileges previously enjoyed.

WE WILL make Juan Vielma whole for any loss of earnings, plus interest, and other benefits suffered as a result of the discrimination against him.

WE WILL remove from our Agreement with the Union any language requiring our employees employed at the SPC to join the Union and pay union dues, or to pay the Union a service fee.

WE WILL remove from our records any reference to the unlawful discharge of Juan Vielma, and shall notify him of this in writing, and also that our unlawful conduct will not be used as a basis for personnel or other actions against him.

DECO-AKAL JV

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

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