United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: June 15, 2000

TO : Martha Kinard, Acting Regional Director
Region 16

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: IBEW, Local 2337
Case 16-CB-5768

554-1433-9100
554-1433-2433-8000
544-1467-3600

This Section 8(b)(3) case was submitted for advice on whether the Union, while engaged in contract negotiations for five separate bargaining units of the Employer's employees, unlawfully decided that it would not present any bargaining agreement for approval of its membership unless and until it first obtained approval of that agreement from a majority of the individual unit bargaining committees.

In the summer of 1999, pending contract negotiations in the Union's five separate bargaining units, the Union membership passed the following motion: no contract package would be presented to the membership without a majority vote approval of that package from all five of the Union's separate bargaining committees, and also a unanimous vote of approval from the Union's main negotiating committee.[1]

During the next several months, the Employer heard rumors about this internal Union motion from conversations with employees, stewards and Union bargaining representatives. According to these rumors, the Union had decided that it would not vote on any one unit contract proposal until all the units also had obtained contract proposals. In March 2000, the Employer told the Union's Chief Negotiator that the Employer heard a rumor that an individual contract would be held hostage to contracts at other plants, and that the Union would not accept any one contract until it had agreement on all contracts. The Employer avers that the Union's Chief Negotiator confirmed

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[1] Negotiations in each unit were conducted by separate negotiating subcommittees appointed by the Union President. The Union's main negotiating committee, comprised of Union officers also appointed by the Union President, has final approval of negotiated contracts.

the rumor, stating this was the only thing the Union could do.

The Union's Chief Negotiator denies the Employer's version of the conversation, pointing out that the actual motion passed by the membership does not require that contracts at all locations be reached before any one contract can be approved. According to the Union, the motion was merely an attempt to coordinate the five separate negotiations, to prevent one subcommittee from giving up an issue that would be detrimental to another. The Union also notes that it has never acted upon its motion, because the Employer has not yet presented any contract package for membership approval.[2]

We conclude that the Union motion is not unlawful on its face, but that the threatened interpretation placed upon that motion by Union stewards and negotiators is unlawful and should be alleged a violation of Section 8(b)(3).

The Board has found pooled contract voting procedures unlawful when they imposed non-unit conditions upon contract approval, but lawful when they merely coordinated separate negotiations by the same union.[3] In Paperworkers, employees in each unit separately voted on whether to ratify their own contracts. No individual contracts were accepted, however, until all units voted on their contracts, and also until the Union tallied the sum of all these ratification contract votes. If this sum total ratification vote was negative, no individual contract was accepted regardless of whether the individual unit itself had voted for ratification. The Board found this procedure unlawful, stating that its "structure and operation impermissibly imposed extraneous non-bargaining unit considerations . . ."

In Lynchburg Foundry, the union represented separate units in two employer plants, which manufactured the same products using overlapping functions and employee skills.

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[2] In that regard, contract negotiations have been affected by allegedly unlawful conduct by the Employer, viz., unilateral changes and the withholding requested relevant information. The Union filed charges over this conduct which is pending investigation.

[3] Compare Paperworkers (International Paper Co.), 309 NLRB 44 (1992), with Steelworkers, Local 2556 (Lynchburg Foundry Co.), 192 NLRB 773 (1971).

Prior union bargaining agreements had contained virtually identical substantive provisions, unnderscoring the close community of interest between the two plant units. The union allowed both units to vote on the employer's separate wage proposals for each individual unit. The Board found no Section 8(b)(3) violation, noting first that the union's combined vote was not for ratification of a final offer. The Board also noted the close community of interest between the two units, and that the union was privileged to seek the opinion of unit employees on a matter of common concern, i.e., taking a common position on wages to prevent the employer from transferring work to a lower wage plant. The Board thus rejected the argument that this pooled voting procedure in effect forced single unit bargaining.

Examining the explicit language of the Union's voting procedure here, we conclude that it is distinguishable from the unlawful procedure in Paperworkers, and rather is more like the lawful coordinated procedure in Lynchburg Foundry. The procedure in Paperworkers absolutely precluded acceptance of a finally negotiated agreement in any one unit until (1) all units had negotiated their agreements; and (2) the sum total vote showed a majority for acceptance. In contrast, the instant procedure does allow any of the five individual units to finally negotiate an agreement, without regard to the status of negotiations in other units. Although final approval of any one agreement must be obtained from a majority of the bargaining subcommittees, and from a unanimous vote of the main committee, this procedure does not on its face prevent individual unit contract approval on a piecemeal basis.

Although the individual units here share some common concerns, they clearly do not have the close community of interest present among the plants in Lynchburg Foundry. Moreover, the vote here appears to be a final ratification vote, while the vote in Lynchburg Foundry was only upon a wage proposal. On the other hand, the Union's vote in this case only requires a majority of the individual bargaining subcommittees to pass upon the proposed agreements of each other; it does not dictate the blocking of a final agreement pending agreement in other units. In sum, the written language of the instant procedure is more akin to the coordinated bargaining process approved in Lynchburg Foundry, and does not *in haec verba* " impermissibly impose extraneous non-bargaining unit considerations" in the manner found unlawful in Paperworkers. Accordingly, we would not allege that the Union's procedure is unlawful on its face.

On the other hand, the Employer has adduced evidence that the Union intends to use this procedure for the purpose of holding individual unit contracts hostage to the reaching of final agreements in other units.[4] We also note that the Union's procedure is clearly susceptible to that use. The Union avers that the vote by a majority of individual bargaining subcommittees is merely a mechanism for the coordination of bargaining proposals on matters of common concern. However, these bargaining subcommittees may well choose to vote against individually reached agreements for another purpose, i.e., holding up individual agreements until agreements in all units are attained. Such a purpose is clearly unlawful under Paperworkers, supra.

Therefore, the Region should issue complaint alleging that the Union has threatened to interpret and use its procedure for such an unlawful purpose. [*FOIA Exemption 5*

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B.J.K.

[4] For example, there is insufficient evidence to discredit the Charging Party's version of its March 2000 conversation with the Union's Chief Negotiator, in which the Union Negotiator allegedly confirmed the rumor heard by the Employer.