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Subject:	Teamsters Local 63 (Bellflower Dental Grp.), 21-CG-324363 (case closing email)
Date:	Wednesday, September 11, 2024 3:31:39 PM

The Region submitted this case for advice as to whether certain unfair labor practices allegedly committed by Bellflower Dental Group ("Employer) were sufficiently serious and flagrant enough to allow Teamsters Local 63 ("Union") to strike the Employer without providing Section 8(g)[1] notice pursuant to application of *Mastro Plastics*.[2] We conclude that under the circumstances presented, the Union was not required to provide Section 8(g) notice. *See Mastro Plastics*, 350 U.S. 270 (1956*); District 1199-E, Health Care Emps (CHC Corp.)*, 299 NLRB 1010, n.3 (1977); *Washington Heights – West Harlem Inwood Mental Health Council d/b/a The Council's Center for Problems of Living*, 289 NLRB 1122 (1988), *enforcement denied*, *NLRB v. Washington Heights – West Harlem Inwood Mental Health Council*, 897 F.2d 1238 (2d Cir. 1990). Thus, the Section 8(g) charge should be dismissed.

The Employer operates a dental practice. The Union has represented a unit of its employees for many years. After two consecutive collective bargaining agreements, the first of which expired on December 1, 2019 and the second on December 31, 2020, the parties extended the latter agreement day-to-day until the Union canceled any and all collective bargaining agreements by letter dated August 15, 2023.

Although the parties reached a full agreement on substantive terms and conditions of employment by late 2022, after ratification, they realized that no agreement was reached on retroactivity. Thus, they negotiated that issue from September 2022 through June 2023 without reaching agreement. Given the lack of progress, the Union held a strike vote in July 2023 at which time the Union's business agent asked bargaining unit members for 30 days to reach an agreement. Concurrently, the pension fund provided for in the day-to-day contracts (Western Conference of Teamsters Pension Trust) issued a letter warning that if a fully signed CBA was not received within 60 days, no further contributions would be accepted and withdrawal liability could be assessed. Notably, this was not the first letter the parties had received from the fund; but the earlier letters merely sought updates. This letter struck a different tone through the imposition of a deadline.

In or about early August, the Employer sent two letters addressed to employees.[3] The second letter accuses the Union of misleading employees, falsifying the Employer's original proposal and continuing to delay employees' ability to receive new employment terms. The letter then offers a bulleted list of eight different terms, the last of which states that after a CBA is ratified, individual evaluations/meetings will be held with every employee to discuss potential promotions/increases that are INDIVIDUALLY determined. The Employer claims that these individual meetings are a past practice. The Union disputes this, instead asserting this was a new proposal and that the Employer only meets with employees from time to time to

discuss wage increases when an employee *asks* for a raise. Either way, it is significant that this term was not in any of the Employer's previous bargaining proposals.

Upon receipt of the letter, bargaining unit members met a second time on or about August 9, with the Union Business Agent to vote to strike. The Business Agent explained that a strike could not happen immediately; that it would take some time to prepare for it. In addition, on August 10, the Union filed the charge in Case 21-CA-323646 alleging direct dealing related to the aforementioned letter. Meanwhile, although the Union sent a letter to the fund advising that it would be striking the company on August 12, the Union later explained that was in error and indicated that the tentative date of the strike was August 16.

On August 15, whether in preparation to strike on the 16th or some other day, the Union sent a letter to Employer's counsel (b) (6), (b) (7)(C), stating, "Please be advised Teamsters Local 63 is hereby providing notice to Bellflower Dental of its intent to cancel any/all collective bargaining agreements in effect between the Union and the [Employer] on August 16.[4]

The Employer understood this to mean that the Union was withdrawing or disclaiming interest in the unit notwithstanding that the language of the Union's letter was written in typical Section 8(d) style and mentioned nothing about an intention to disclaim interest or otherwise withdraw from representation.[5] Regardless, this prompted the (b) (6), (b) (7)(C) to conduct a series of meetings with employees, again on August 15th. According to two employees who attended different meetings held by (b) (6), that day, (b) (6), told employees that the Union no longer represented them; that the Employer was reducing sick leave and holidays, and that later they could sign a document acknowledging that they were no longer Union members. Specifically, employees state that (b) (6), said that employees would no longer get the day after Thanksgiving, Christmas Eve or New Year's Eve off; that employees would go from five to three sick days and that if they already used three, they would lose the other two; that the Union is gone and there is no pension anymore and that they would have to pay more for insurance. (b) (6), told employees that now that the Union was gone, they would be non-Union employees and would have to apply for the medical and dental insurance the Employer was offering (which notably the Union rejected during negotiations in 2022). As referred to above, (b) (6), also told employees that they could sign a paper indicating they were no longer Union members, and made it sound like this document would be handed out either later that afternoon or soon thereafter.

Sometime after the meetings took place, the Union Business Agent began receiving phone calls and texts from bargaining unit members who were reporting the things that (b) (6), was telling them. Specifically, they told (b) that (b) (6), said the Union had walked away from them and that the Employer was reducing certain benefits. The Union Business Agent corroborated that (b) (6), told employees their holidays and sick pay would be reduced and that employees would be on a new healthcare plan.

Within two hours of receiving these calls from bargaining unit members, the Union Business Agent went to the Employer's facility and met in the parking lot with approximately 30 employees who reiterated to (b) what had been reported to (b) earlier in the day. At that time, the Business Agent asked the employees if they wanted to go on strike and the employees held another strike vote at about 5:00 PM.

The next day, the employees struck and picketed holding ULP picket signs. The strike is ongoing and there is no evidence that the Union has made a mass offer of unconditional return or that the Employer has declined one. However, some employees have individually made unconditional offers to return, which the Employer has accepted resulting in their reinstatement.

We conclude that the Section 8(g) charge should be dismissed. In sum, while prior to August 15th, the Union may have been preparing to strike on August 16th in response to direct dealing ULPs that would not be serious enough to allow the Union to dispense with providing Section 8(g) notice, the August 16th date originally was only tentative – that is prior to the commission of the August 15th ULPs. The evidence shows that the Union Business Agent met with up to 30 employees in the parking lot of the Employer's facility late on the 15th, after the Employer's commission of serious ULPs, at which time (b held a strike vote. Although earlier strike votes had been held, decisions to strike based on those votes appear to have been provisional. Significantly, if the vote to strike on the 9th was final and a determined date to strike on the 16th had already been reached at that time, there would have been no reason to take another strike vote on the 15th in the aftermath of significant ULPs committed by the Employer. It is the final strike vote that is the last one before the employees actually go on strike. It is this final strike vote whose significance should not be understated.[6]

Here, the ULPs committed by the (b) (6), (b) (7)(C) the day before the strike are serious ones.[7] (b) is telling the bargaining unit that they have no union anymore and that the Employer, almost in light of that, is going to make unilateral changes and have employees sign a document that recognizes that they are non-Union. All that predicated on what the Employer claims is a misunderstanding of language that it would be difficult to misunderstand.[8] And, as noted earlier, whatever the fund or its administrator thought cannot lead to a different conclusion: the Union never disclaimed; never said it was going to disclaim; never withdrew from representing the unit; and was never decertified.

Accordingly, we conclude that the ULPs committed by the Employer on August 15th were sufficiently serious as to fit within the Board's application of *Mastro Plastics*, allowing the Union to dispense with Section 8(g) notice in this case. *CHC Corp, supra*; *West Harlem Inwood Mental Health Council, supra; cf. Arlan's Department Store of Michigan*, 133 NLRB 802 (1961). That the Employer never actually withdrew recognition or otherwise carried out or implemented the announced unilateral changes is of little significance. *See Troy Grove, Inc.,*

372 NLRB No. 94 (2023)(unilateral changes become actionable once the threat to implement is made; actual implementation is unnecessary).[9]

Finally, it should be noted that to the extent some unidentified number of employees have made individual unconditional offers to return resulting in their reinstatement, any contention that those employees lost and no longer retain the Act's protection due to an alleged Section 8(g) infraction has been condoned. Section 8(d) of the Act makes clear that, although any employee who engages in any strike within the period set out in Section 8(g) loses their status as an employee of the employer, "such loss of status for such employee shall terminate if and when he is reemployed by the employer"; *see Shelby County Health Care Corp. v. Am. Federation of State, County and Municipal Employees*, Local 1733, 967 F.2d 1091 (6th Cir. 1992)

In view of the foregoing, the Region should dismiss the Section 8(g) charge.

This email closes the case in Advice. Please let us know if you have any questions.

Thank you,
Kayce

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1. Section 8(g) provides in pertinent part that: "A labor organization, before engaging in any strike, picketing or other concerted refusal to work at any healthcare institution shall, not less than ten days prior to such action, notify the institution in writing and the Federal Mediation and Conciliation Service of that intention."

2. As a threshold matter, the Union argues that the Employer is not a healthcare institution within the meaning of the Act, and as such, it had no obligation to furnish Section 8(g) notice in advance of any strike. However, the Board has held that dental facilities that provide patient care do, in fact, meet the definition of a healthcare institution within the meaning of Section 2(14). *See Georgetown Univ. Dental Clinic*, 262 NLRB 698 (1982). Accordingly, we conclude that the Employer is a healthcare institution within the meaning of Section 2(14).

3. It is not clear how the letters were distributed, but there is evidence that they were received.

4. In addition, though not central to the events leading to the strike, the Employer contacted the benefits plan administrator to which the Employer made its pension fund payments, asking what kind of contributions the Employer needed to make in response to the Union's letter. Ultimately both the administrator and the fund believed the Union was either disclaiming interest or being decertified. However, there is no factual basis for such a belief – neither on their part nor on the Employer's part.

5. Not before us is whether the Union furnished Section 8(d)(1) and Section 8(d)(3) notice, the latter of which appears to have been accomplished many months earlier.

6. It is entirely possible that employees at that final vote could have chosen not to strike, perhaps believing the Employer was telling them the truth about the Union essentially abandoning them. Yet that didn't happen. Indeed, at least one employee said that (b) voted yes to going on strike at the Aug 15th strike vote because (b) feared that the Employer was going to require (b) to sign the promised document indicating (b) was a non-Union employee. This serious ULP obviously had not occurred when prior strike votes were taken.

7. Underscoring the seriousness and egregiousness of (b) (6), August 15th ULPs, the Employer further amplified them after the strike began when, on August 17, it issued a letter which, *inter alia*, offered striking employees permanent non-union employment – this despite that they were represented by the Union. The Employer also sent a text message at about that time with a similar tone, urging employees to "strongly consider" non-union employment, and making clear that there would not be a new CBA under any circumstances – this despite an ongoing bargaining obligation.

8. It should be noted that this is not an unsophisticated employer. It is familiar with collective bargaining and had labor counsel throughout the events in this case.

9. We do not reach whether the contract was properly canceled or whether the employees lost protection of the Act based on some other claim. However, to the extent we are relying on the seriousness of certain ULPs so as to trigger *Mastro Plastics* applicability to the Section 8(g) issue here, the Region should issue complaint on those ULPs. In addition, to the extent the Employer attempts to introduce evidence about the Union's failure to send Section 8(g) notices as a defense to any ULP, the Region should object. Until the Employer declines an unconditional offer to return, Section 8(g) notice is neither relevant nor is it an otherwise ripe defense.