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Enright Seeding, Inc. *and* International Union of Operating Engineers, Local 150, AFL–CIO. Case 25–CA–210670

July 21, 2026

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

This case is on remand from the United States Court of Appeals for the Eighth Circuit. On August 19, 2022, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding.[1] The Board found that the bargaining relationship between Enright Seeding, Inc. (Respondent), a construction-industry employer, and the Charging Party, International Union of Operating Engineers, Local 150 (Union), was governed by Section 9(a) of the Act rather than Section 8(f), and that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the Union with requested presumptively relevant information.

Subsequently, the Board applied for enforcement of its Order in the Eighth Circuit and the Respondent cross-petitioned for review. On July 25, 2024, the court granted the Respondent's petition for review, denied enforcement, vacated the Board's Order, and remanded the case for further proceedings.[2] The court held that the Board had erred in concluding that the parties' bargaining relationship was governed by Section 9(a), but it declined to address whether the Respondent had a duty to comply with the Union's request for relevant information by virtue of a Section 8(f) bargaining relationship or whether the Respondent had repudiated its collective-bargaining agreements with the Union.

On October 18, 2024, the Board advised the parties that it had accepted the court's remand and invited them to file statements of position. The Respondent, the General Counsel, and the Union all filed such statements.

We have carefully reviewed the record and the parties' statements of position in light of the court's decision, which we accept as the law of the case. For the reasons explained below, we conclude that the Union's charge is barred by Section 10(b) of the Act, and we dismiss the complaint.

I. FACTUAL BACKGROUND

The Respondent is a subcontractor engaged in erosion control work around construction sites in Iowa. Jamie Enright is the Respondent's sole owner and one of its two equipment operators. In or around June 2007, Enright joined the Union as an owner-operator and, on the Respondent's behalf, signed two Memorandums of Agreement (MOAs) with the Union. The MOAs bound the Respondent to the relevant collective-bargaining agreements (Master Agreements) between the Union and a multiemployer bargaining association, with evergreen clauses providing that the MOAs would continue in effect unless a party provided timely written notice of termination. The MOAs included the following identical recognition clauses:

> The EMPLOYER recognizes the UNION as the sole and exclusive bargaining representative for and on behalf of the employees of the EMPLOYER within the territorial and occupational jurisdiction of the UNION. *Prior to recognition, the EMPLOYER was presented and reviewed valid written evidence of the UNION's exclusive designation as bargaining representative by the majority of appropriate bargaining unit employees of EMPLOYER.*

(Emphasis added.)

In the summer of 2011, Enright withdrew his membership from the Union. Enright mistakenly thought this step had ended the Respondent's contractual relationship with the Union as well as his individual membership and dues obligation. For the next 5 years, there was no contact of any kind between the Union and either the Respondent or Enright personally.

On August 4, 2016, union organizer Shannon Vickers saw Enright doing bargaining-unit erosion control work on a construction project in Moline, Illinois. Vickers advised Enright that the Respondent should not be doing the erosion control work because it did not have any union operators. Enright replied that he had resigned his union membership and did not have a contract with the Union. When Vickers returned to the union office later that same day, he filled out a Business Agent Grievance Worksheet documenting the event. In the "Summary of Violation(s)" section, he noted that although Enright had withdrawn from the Union, the Respondent remained contractually bound and Enright had not employed a union operator for the covered work. In the "Company's position" section, Vickers wrote, "Jamie said 'He took a withdrawal card so

[1] *Enright Seeding, Inc.*, 371 NLRB No. 127 (2022).

[2] *NLRB v. Enright Seeding, Inc.*,109 F.4th 1012 (8th Cir. 2024).

he was out of the Union *and didn't have a contract*."[3] (Emphasis added.)

Approximately 1 week after the August 4 exchange, Union Business Agent Ryan Drew called Enright to request a meeting. Enright declined, stating to Drew that "I wasn't interested. I wasn't in the Union, I had quit the Union. *I didn't have a contract*, so there was nothing else to talk about." (Emphasis added.) On September 2, the Union sent Enright a letter directing him to attend a Step II grievance meeting regarding alleged contract violations on August 4 and 5, 2016. The letter included a statement from the Union's business agent indicating that, on August 4, Vickers "met with Jamie who said he took a withdrawal card so he believed that *ended his company's agreement* . . . ." (Emphasis added.) Over the following months, the Union prevailed on the September 2016 grievance and a March 2017 grievance. Neither Enright nor any other Respondent representative appeared at the grievance meetings or acknowledged or responded to the filings.

On August 9, 2017, the Union submitted an information request seeking information necessary to determine the Respondent's compliance with its contractual obligations in the Master Agreements.

The two specific items sought were:

- Detailed list of all projects that Enright Seeding, Inc., has been hired or contracted to perform involving work covered by collective bargaining agreements during the past 24 months.
- Payroll records for all projects listed in response to the item listed above showing employee name, hours worked, and type of work performed by each employee.

On August 31, the Union sent Enright another letter, seeking the same information previously requested regarding projects performed under the Master Agreements and corresponding payroll records. On September 2, Enright responded by letter with a subject line captioned "Harassment," stating, "*I am not a signatory*. My contract was with [general contractor] and all certified payrolls were submitted to them." (Emphasis added.)

On September 5, the Union emailed Enright, attaching the MOA, asserting that the Respondent was contractually and statutorily obligated to respond to the Union's information request. Enright responded that he had only been affiliated with the Union as an owner-operator but had withdrawn after dues increased. On September 7, Union Business Agent Drew clarified that, despite Enright's resignation, the Respondent was still bound by its contract. The Respondent did not reply. On November 29, 2017, the Union filed an unfair labor practice charge alleging the Respondent had violated Section 8(a)(5) and (1) "by failing to respond to [the Union's] reasonable request for information."

II. BOARD AND COURT PROCEEDINGS

In his decision, Administrative Law Judge Keltner W. Locke found that the Respondent's failure to respond to the Union's August 9, 2017 information request violated Section 8(a)(5) and (1). The judge determined that the parties' MOAs established a Section 9(a) bargaining relationship under *Staunton Fuel & Material*, 335 NLRB 717 (2001), which held that contract language will be sufficient to establish a union's 9(a) status where certain minimum requirements are met. In the alternative, the judge also found that the Union was at least a Section 8(f) representative during the relevant period, relying on the MOAs evergreen provisions and the Respondent's lack of notice of termination. Moreover, the judge noted, Board precedent did not permit Section 8(f) agreements to be repudiated while they were still in effect, nor did the evidence establish that the Respondent had given the required "clear and unequivocal notice" of repudiation. Consequently, the judge concluded that the still-effective Section 8(f) Master Agreements required the Respondent to provide the requested information.

A Board majority adopted the judge's conclusion that the Respondent had violated Section 8(a)(5) and (1) by refusing to provide information requested by the Union. *Enright Seeding*, supra, 371 NLRB No. 127, slip op. at 1–2. In agreement with the judge, the majority found that the bargaining relationship between the Respondent, a construction-industry employer, and the Union was governed by Section 9(a), rather than Section 8(f), because the MOAs met the requirements of *Staunton Fuel* and the Respondent's challenge to the Union's 9(a) status was untimely under *Casale Industries*, 311 NLRB 951, 952-953 (1993). The Board did not address the judge's Section 8(f) bargaining relationship analysis, finding it unnecessary.

On review, the Eighth Circuit faulted the Board's Section 9(a) bargaining relationship finding as lacking "substantial evidence" because the contractual language was insufficient, without more, to establish majority status. *Enright Seeding*, supra, 109 F.4th at 1015-1018. The court started its analysis by noting that collective-bargaining agreements with construction-industry employers are pre-

[3] Consistent with that documentary evidence, Enright testified without contradiction that he told Vickers, "I was not in the Union anymore. *I don't have a contract.* I quit the Union . . . ." (Emphasis added.)

sumed to be Section 8(f) contracts. Id. at 1015-1016. Citing the District of Columbia Circuit's decisions in *Nova Plumbing Inc. v. NLRB*, 330 F.3d 531, 537–538 (D.C. Cir. 2003), and *Colorado Fire Sprinkler v. NLRB*, 891 F.3d 1031, 1040 (D.C. Cir. 2018), the court stated that in this case clear contractual language cannot alone establish a Section 9(a) relationship without actual evidence of majority support where the Board had adopted the judge's finding that the Respondent had never received valid written evidence of the Union's designation as bargaining representative by a majority of unit employees. *Enright Seeding*, supra, 109 F.4th at 1018. To rebut the presumption of Section 8(f) status, the court explained, it had previously agreed with the District of Columbia Circuit that "no matter how clearly a 9(a) agreement may be set out in a contract, all the evidence must be considered." Id. at 1017 (citing *NLRB v. American Firestop Solutions, Inc.*, 673 F.3d 766, 770 (8th Cir. 2012)). Because in this case the Board had found (and the parties did not dispute) that the Respondent never received such evidence, the court concluded that the Board's reliance on *Staunton Fuel* was misplaced.

Finally, the court determined that, contrary to *Casale Industries*, Section 10(b)'s 6-month limitation period did not bar the Respondent from contesting the Union's majority status. See id. at 1018. It noted that Section 10(b) restricts only the filing of a complaint based on an unfair labor practice occurring more than 6 months before the charge was filed, and, as such, does not bar the Respondent's defense regarding majority status. See id. Accordingly, the court held that the Union did not have Section 9(a) status and remanded the case to the Board for consideration of whether the Union was entitled to the information under a Section 8(f) contract or whether the Respondent had effectively repudiated its contract with the Union.

III. ANALYSIS ON REMAND

As noted above, the Eighth Circuit held that the Respondent and the Union did not have a Section 9(a) relationship. Having accepted the court's remand, that finding is law of the case. Accordingly, the sole remaining issue is whether the Respondent was obligated to provide the requested information based on its Section 8(f) agreement with the Union.[4] For the reasons discussed below, we find that the Union's unfair labor practice charge was filed more than 6 months after it was on clear notice that the Respondent had repudiated that agreement and was therefore untimely under Section 10(b) of the Act. Accordingly, we shall dismiss the complaint.

The Board's repudiation principles are well established:

> [W]hen an employer completely repudiates the contract, the unfair labor practice is committed at the moment of the repudiation, and the 10(b) period begins to run when the union has clear and unequivocal notice of the repudiation. Any subsequent failures or refusals to honor the terms of the contract do not constitute unfair labor practices themselves, but are simply the effect or result of the repudiation. Accordingly, the union must file its charge within 6 months after receiving clear and unequivocal notice of the repudiation or a complaint based on that conduct will be time-barred, even with regard to contract violations within the 10(b) period.

Vallow Floor Coverings, 335 NLRB 20, 20 (2001) (footnote and citation omitted). "[T]he burden of showing that the charging party was on clear and unequivocal notice of the violation rests on the respondent." *A & L Underground*, 302 NLRB 467, 469 (1991). The time bar does not apply where the charging party's "delay in filing is a consequence of conflicting signals or otherwise ambiguous conduct by the other party." Id.

Applying these principles, we find that that the Respondent provided "clear and unequivocal notice" of its repudiation of the parties' agreements on August 4, 2016, well before May 29, 2017, the start of the 6-month period preceding the Union's November 29, 2017 charge. As discussed above, the Respondent had ceased all contact with the Union in 2011 and made no effort thereafter to comply with the MOAs or provisions of the Master Agreements. On August 4, 2016, Enright told union organizer Vickers that the Respondent "didn't have a contract [with the Union]." This statement, corroborated by the Union's contemporaneous record of the conversation, establishes that the Union was on clear and unequivocal notice of the Respondent's repudiation of the agreements on August 4. See *A & L Underground*, supra, 302 NLRB at 467 (employer "clearly and unequivocally" repudiated agreement via letter to union stating that it "repudiate[d] any and all Section 8(f) prehire agreements"); see also *Logan County Airport Contractors*, 305 NLRB 854, 861–862 (1991) (employer clearly and unequivocally repudiated contract by telling union "the agreement was terminated").

Not only did the Respondent effectively repudiate the agreements on August 4, but it also consistently main-

[4] Under Sec. 8(f), employers and unions in the construction industry are permitted to enter into collective-bargaining agreements before the unions have established their majority status. See *John Deklewa & Sons*, 282 NLRB 1375, 1385–1387 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988). An employer may not repudiate the terms of a Sec. 8(f) agreement or withdraw recognition of the union as its employees' exclusive bargaining representative prior to expiration of the agreement, unless those employees vote against union representation in a Board-conducted election. Id.

tained that it did not have a bargaining relationship with the Union over the following weeks and months. Enright refused to meet with Business Agent Drew in August 2016 on the basis that the Respondent did not have a contract with the Union. He refused to respond to multiple communications from the Union or to participate in any procedures pertaining to grievances the Union had filed against the Respondent. There were no conflicting signals or other ambiguous conduct. The Respondent's position never wavered and the Union understood this, as reflected in its own internal documents. Based on this ample evidence, the Union indisputably had "clear and unequivocal notice" of repudiation long before May 29, 2017, and "[o]nce a party has notice of a clear and unequivocal contract repudiation [] a dispute is clearly drawn." Id. at 469.

The General Counsel and the Union argue that the Respondent remained bound to its 8(f) obligations because it could not lawfully repudiate the agreements during their term. But the issue here is not whether the Respondent acted lawfully when it repudiated the contract, but instead whether the charge over the repudiation is barred by Section 10(b).

Because the unfair labor practice charge in this proceeding was filed on November 29, 2017, and the Union had clear and unequivocal notice that the Respondent had repudiated its contract not later than August 4, 2016, the Union's charge was untimely filed.[5] Therefore, we shall dismiss the complaint.

ORDER

The complaint is dismissed.

Dated, Washington, D.C. July 21, 2026

James R. Murphy, Chairman

David M. Prouty, Member

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[5] The General Counsel's reliance on the Respondent's decision to enter into a 2018 informal settlement agreement after the charge was filed is likewise unavailing. At that point, the Respondent was managing litigation risk, and its actions under a later revoked settlement have no bearing on whether the Union was on clear and unequivocal notice of its repudiation in August 2016.