

JUN 23 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LABORER'S INTERNATIONAL  
UNION OF NORTH AMERICA, Local  
Union No. 169,

Petitioner,

v.

NATIONAL LABOR RELATIONS  
BOARD,

Respondent,

FREHNER CONSTRUCTION  
COMPANY,

Respondent-Intervenor.

No. 08-71053

NLRB No. 32-CB-5976

MEMORANDUM\*

NATIONAL LABOR RELATIONS  
BOARD,

Petitioner,

v.

LABORER'S INTERNATIONAL  
UNION OF NORTH AMERICA, Local

No. 08-71763

NLRB No. 32-CB-5976

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Union No. 169,

Respondent.

On Petition for Review of an Order of the  
National Labor Relations Board

Argued and Submitted June 3, 2009  
Las Vegas, Nevada

Before: RAWLINSON and BYBEE, Circuit Judges, and BURNS,\*\* District Judge.

Laborers' International Union of North America, Local Union No. 169 ("the Union") appeals a decision by the National Labor Relations Board ("NLRB" or "Board") finding that the Union violated Section 8(b)(3) of the National Labor Relations Act ("NLRA") by refusing to bargain with Frehner Construction Co., Inc. ("Frehner"). The NLRB has submitted a cross-application for enforcement of the Board's decision. The facts are known to the parties, and we do not repeat them here.

The Union argues that it had no obligation to bargain because Frehner was already bound to the terms of a collective-bargaining agreement negotiated by Associated General Contractors of America, Inc. ("AGC"). The Union asserts that the NLRB erred in determining that Frehner withdrew its proxy from AGC because

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\*\* The Honorable Larry Burns, United States District Judge for the Southern District of California, sitting by designation.

the NLRB failed to apply general agency principles, failed to apply the standard under *Retail Associates, Inc.*, 120 NLRB 388 (1958), and failed to find that Frehner's withdrawal was ineffective under *James Luterbach Construction Co., Inc.*, 315 NLRB 976 (1994).

Nothing in the NLRA or prior case law establishes that general agency principles *must* govern when determining whether a proxy-withdrawal is effective for relationships governed by Section 8(f). The NLRB has reasonably balanced the competing interests at stake and found that in order to be bound by the negotiations of a multiemployer unit, either the employer or the multiemployer association must engage in some affirmative expression that indicates to the Union that the employer intends to be bound by the terms of a new agreement. *See Luterbach*, 315 NLRB at 980 (plurality opinion); *id.* at 982 (concurring opinion). Moreover, based on these same principles the NLRB has reasonably concluded that the rule established in *Retail Associates* does not apply in the 8(f) context. *Id.* at 979, 982. Because there is no evidence of an affirmative expression from AGC or Frehner indicating to the Union that Frehner intended to be bound by a successive agreement, the Union's petition must fail.

The Union's **PETITION FOR REVIEW IS DENIED**; the NLRB's **CROSS-APPLICATION FOR ENFORCEMENT IS GRANTED**.