UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
1099 14th Street NW
Washington, DC 20570

December 13, 2010

Re: Voss Heating and Air Conditioning
Case No. 14-CA-30091

Pass One Hour Heating and A.C.
Case No. 14-CA-30129

Voss Heating and A.C.
Case No. 14-CA-30130

Holloway Heating and A.C., Inc.
Case No. 14-CA-30131

Collards Heating and Air Conditioning
Case No. 14-CA-30132

DeRousse Heating and Air Conditioning, Inc.
Case No. 14-CA-30133

Genesio Refrigeration, Inc.
Case No. 14-CA-30134

D and C Sheet Metal, Htg. and Clg., Inc.
Case No. 14-CA-30135

Charlies A.C. and Heating
Case No. 14-CA-30136

James I. Singer, Attorney
Schuchat, Cook & Werner
The Shell Building, Second Floor
St. Louis, MO 63103

Dear Mr. Singer:

Your appeal from the Regional Director's refusal to issue complaint in the above–captioned cases has been carefully considered. The appeal is denied.

The Regional office investigation found that the Union and the Employers were parties to collective bargaining agreements governed by Section 8(f) of the National Labor Relations Act.

On April 30 and May 1, 2010 the Employers gave notice to the Union that they were terminating the agreements and that they no longer recognized the Union as the collective bargaining representative of their employees. Contrary to your contentions on appeal, it was concluded that the language in Article XVI of the agreement which requires that conferences relating to bargaining be held prior to termination does not prevent the Employers from terminating their Section 8(f) agreement. *Deklewa & Sons,* 282 NLRB 1375 (1987), enfd. 843 F.2d 770 (3rd Cir. 1988) cert. denied 488 U.S. 889 (1988).

It was determined that the Board's decision in *Evans Sheet Metal*, 337 NLRB 1200 (2002), enfd. *N.L.R.B. v. Ronald E. Evans*, 92 Fed. Appx. 844 (3rd Cir. 2003), was distinguishable. In *Evans*, the employer failed to give notice necessary to terminate the agreement and continued to apply its terms past the expiration of the contract. The Board found that the Section 8(f) agreement did not expire because that union provided a reopener notice pursuant to the "extensions" clause and the employer failed thereafter to terminate the agreement. Here, all the Employers have provided the required notice of termination and have ceased to apply the terms and conditions of the contract.

Sheet Metal Workers International Assoc. v. McElroy's, Inc., 500 F. 3d 1093 (10th Cir. 2007), cited on appeal supports our decision in this matter. There the employer provided notice of its intent to terminate the contract; the matter was then submitted to interest arbitration pursuant to the terms of that extensions clause. When the arbitration panel directed the execution of a new agreement the employer refused to comply. The court found that the agreement obligated the parties to either negotiate or have a successor agreement imposed upon them. The court specifically noted, however, that the employer was "under no statutory obligation to negotiate a renewal contract..." 500 F. 3d at 1097. Rather, the Court was enforcing the employer's "bargained-for contractual obligation." Id.

Although five of the Employers failed to conference as required by the contract, this does not serve to extend the Section 8(f) agreement. As discussed above, those Employers, Voss, Pass One, Holloway, Charlies A.C. and DeRousse, were under no obligation to negotiate for a successor Section 8(f) agreement. Under *Deklewa*, the only Section 8(a)(5) obligation imposed on the Employers was to honor the contract during its term. Even if it could be argued that the five Employers breached their agreement with the Union by failing to meet pursuant to the "conferences" section of Article XVI, such a violation would involve a permissive subject of bargaining and thus would not constitute an unfair labor practice. *Chemical Workers v. Pittsburgh Plate Glass*, 404 U.S. 157 (1971).

Finally, since Voss Heating and Air Conditioning had the right to terminate the agreement, the complained-of statements made by its agents were not unlawful. Accordingly, further proceedings are unwarranted.

Sincerely,
Lafe E. Solomon
Acting General Counsel

By: Yvonne T. Dixon, Director
Office of Appeals

cc: Claude Harrell, Regional Director
National Labor Relations Board
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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

December 13, 2010

Re: Reed Heating and Air Conditioning
Case No. 14-CA-30162

James I. Singer, Esq.
Schuchat, Cook & Werner
The Shell Building
1221 Locust Street, Suite 250
St. Louis, MO 63103

Dear Mr. Singer:

Your appeal from the Regional Director's refusal to issue complaint has been carefully considered.

The appeal is denied. The Regional Office investigation disclosed that the Union and Employer were parties to a collective bargaining agreement governed under Section 8(f) of the National Labor Relations Act (Act). After expiration of the contract on April 30, 2010, both parties submitted letters reopening the agreement and met to negotiate on June 22, 2010. Despite reaching agreement on a number of items, the Employer's owner informed the Union he still needed time to consider the proposals because he may sell the business. On July 1, 2010, the owner informed the Union he no longer wanted to negotiate and was terminating the agreement.

Contrary to your contentions on appeal, the "extensions" clause in Article XVI of the agreement does not prevent the Employer from terminating the Section 8(f) agreement. *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. 843 F.2d 770 (3rd Cir. 1988) cert. denied 488 U.S. 889 (1988). Therefore, the Employer's termination of its Section 8(f) agreement with the Union and its withdrawal of recognition are not unlawful. Accordingly, further proceedings are unwarranted.

Sincerely,

Lafe E. Solomon
Acting General Counsel

By Yvonne T. Dixon, Director
Office of Appeals

cc: Claude Harrell, Regional Director
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