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

Advice Memorandum

DATE: June 7, 2006

TO : Alvin Blyer, Regional Director
Region 29

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

SUBJECT: Empire State Regional Council of Carpenters
(M. Parisi and Son Construction Co., Inc.)
Case 29-CC-1513

This case was submitted for advice on whether (1) the Union's bannering conduct, located 1500 feet from a common situs entrance and directed at the neutral general contractor, violated Section 8(b)(4)(i)(ii)(B); and (2) the Union's picketing, located at the entrance to the common situs and directed at the primary subcontractor, evinced a secondary object because the Union could have observed the absence of primary employees during several days of its picketing.

We conclude that (1) the Union's bannering conduct away from the jobsite entrance did not constitute unlawful inducement or coercion; and (2) the Union's continuous picketing at the common situs entrance did not violate Section 8(b)(4)(B) because the picketing during the few temporary, intermittent absences of the primary employees here by itself does not establish a secondary object, and there otherwise is insufficient evidence that the picketing was secondary.

FACTS

Parisi, a general contractor, owns property in Shirley NY that it is developing into several stores. In July 2005, Union representative Pellegrino asked Parisi about the carpentry work for the Shirley NY project. Parisi replied that the carpentry work had already been given out. When Pellegrino stated that there were ways around that problem, Parisi ended the conversation.

Around September 2005, Pellegrino spoke by telephone with both Parisi and project manager Belsito, stating that he wanted Union men to do the Shirley, NY job. Parisi responded that this was a non-union job. Pellegrino replied that the Union could be competitive and that he

wanted Parisi to sign a Union contract. Belsito stated that they would not sign a contract. Pellegrino then asked what wage scale the workers were being paid. Parisi and Belsito replied that they didn't know and the Union would have to contact the subcontractor for that information. Belsito admits that at one point in the conversation, Parisi stated that he "didn't give a damn" about how the subcontractor paid its workers.

During this conversation, there was no mention of any specific carpentry contract. Belsito avers that he thought the Union was talking about a framing and sheathing contract that the Employer had already given out. The Employer at this time had also awarded a foundation and concrete contract to C&L Concrete, a non-union contractor. C&L's work involves some carpentry in the building of wood forms into which concrete is eventually poured.

On October 5, the Union placed at the jobsite a large banner reading "Shame On M.Parisi & Son Const. Co. Joe Parisi says: 'I don't give a #?@! about community standards'." Written in the corners was "Labor Dispute." The banner was 5' by 10' and stationary, with around five to ten individuals seated around it. The Union located the banner at a street intersection at one corner of the Parisi jobsite. This street intersection was busy with car traffic but not with pedestrian traffic. The intersection was around 1500 feet away from what at that time was the only entrance to the jobsite. The Union faced the banner outward towards the street intersection and maintained the banner every work day, Monday through Friday, until Friday October 21.

On the following Monday, October 24, the Union began traditional picketing at the street entrance to the jobsite. The picketing consisted of from ten to twenty individuals wearing placards reading, "To the Public. C&L Concrete does not pay the wages and fringe benefits as established in this area by the Empire State Regional Council of Carpenters." Smaller language on the bottom of the placard read, "Provided to the public for information purposes only. We are not asking any individual to cease performing any service or to refuse to pick up, deliver, or transport any goods. Accompanying the picketers was a 15' to 20' inflated rat. The jobsite entrance picketing continued until November 20 when a Section 8(b)(7)(C) charge was filed.[1]

[1] A previous 8(b)(7)(C) charge filed by Parisi involving these same fact was dismissed by the Region. Appeals

Belsito asserts that during the Union's picketing, there were several days when C&L was not performing any work at the site. Belsito asserts that these single days, numbering no more than five, occurred as a result of breaks in the concrete and forming work. No one notified the Union when C&L was not working on these days. However, Belsito asserts that simple observation of the site on those days would have clearly revealed that no one was doing concrete or carpentry work on site.[2]

ACTION

We conclude that (1) the Union's bannering conduct located well away from the jobsite entrance did not constitute unlawful inducement or coercion; and (2) the continuous picketing at the common situs entrance did not violate Section 8(b)(4)(i)(ii)(B) because the picketing during the few temporary, intermittent absence of primary employees here does by itself not establish a secondary object, and there otherwise is insufficient evidence that the picketing was secondary.

1. The Bannering Activity

The mere presence of placards and/or patrolling by union agents does not constitute 8(b)(4)(i) inducement or 8(b)(4)(ii) coercion when the surrounding facts make clear that the union is not seeking to induce neutral employees to refuse to work, or to restrain or coerce the neutral.[3] Concerning Section 8(b)(4)(i), the words "induce or encourage" are broad enough to include every form of influence and persuasion.[4] This provision thus proscribes

---

upheld that dismissal because the Union was engaged in lawful area standards picketing.

[2] Belsito asserts that during this period, C&L had 8 to 10 employees out of the total of 15 to 20 site employees, and that the other employees were doing excavation work which was visually distinct from the C&L employee work.

[3] Chicago Typographical Union No. 16 (Alden Press, Inc.), 151 NLRB 1666, 1668-69 (1965).

[4] Electrical Workers IBEW Local 501 (Samual Langer) v. NLRB, 341 U.S. 694, 701-702 (1951). See also Service Employees Local 525 (General Maintenance Co.), 329 NLRB 638, 680 (1999) (by targeting tenants and other neutrals, union sought to induce or encourage employees to withhold their

communications that "would reasonably be understood by the employees as a signal or request to engage in a work stoppage against their own employer."[5] Such "signals" include union agents' presence near employee entrances,[6] or using signs or symbols to advise employees that a labor dispute exists.[7]

An essential element of 8(b)(4)(ii) coercion is some form of confrontation between union agents and third persons trying to enter or otherwise do business with the targeted entity. In Alden Press, the Board found that the union's conduct was publicity other than picketing. Although the means used by union agents to publicize its dispute entailed patrolling and the carrying of placards,

---

services); Laborers, Local 332 (C.D.G., Inc.), 301 NLRB 298, 305 (1991).

[5] Chicago and Northeast Illinois Dist. Council of Carpenters, 338 NLRB 1104, 1105 (2003), citing Los Angeles Bldg. & Constr. Trades Council (Sierra South Development), 215 NLRB 288, 290 (1974). See also Operating Engineers Local 12 (Hensel Phelps), 284 NLRB 246, 248 n. 3 (1987) ("signal picketing" is the term used to describe activity short of a true picket line that acts as a signal to neutrals that sympathetic action on their part is desired by the union) (citation omitted).

[6] Iron Workers Pacific Northwest Council (Hoffman Construction), 292 NLRB 562, 562 n. 2, 571-576 (1989), enfd. 913 F.2d 1470 (9th Cir. 1990) (union supporters standing near picket sign at neutral gate signaled employees); Electrical Workers Local 98 (Telephone Man), 327 NLRB 593, 593 and n. 3 (1999) (finding "signal picketing" where, among other things, union agent stood near neutral gate and wore observer sign that flipped over to reveal same sign being used by union picketers at primary gate).

[7] Teamsters Local 182 (Woodward Motors), 135 NLRB 851, 851 fn. 1, 857 (1962), enfd. 314 F.2d 53 (2d Cir. 1963)(union signaled employees when its agents stuck two picket signs in a snowbank and monitored the employer's facility from a nearby car); Laborers Local 389 (Calcon Construction), 287 NLRB 570, 573 (1987) (union signaled employees by placing signs at or near one or more of the entrances to common situs so that they could be read by anyone approaching them); Construction & General Laborers Local 304 (Athejen Corp.), 260 NLRB 1311, 1319 (1982) (union signaled employees by placing signs on safety cones, barricades, and on jobsite fence).

they did not involve any element of confrontation with the neutral employer's employees, customers, or suppliers.[8] Rather, the patrolling took place at shopping centers and public buildings far removed from the neutral employer's premises, and was not intended to halt deliveries or to cause employees to refuse to perform services.

Relying on Alden Press, we have concluded in several cases that bannering and other conduct were not tantamount to picketing because the activity was located too far from the neutral employer to have the requisite element of confrontation. The fact that potential customers or workers could enter the neutral premises without passing or seeing the Union's banner further reduced the likelihood of confrontation. In Sherman and Howard,[9] the union's display of a large banner did not violate 8(b)(4)(ii)(B) because it did not create a confrontation with people trying to enter the neutral employer's office. The banner not only was located 300 feet from the office building entrance, it was also positioned in such a way that few visitors would have seen it, because they would not have driven past it on their way to the parking garage or walked near it on their way from the parking garage to the building's rear entrance.[10]

---

[8] 151 NLRB at 1669.

[9] United Brotherhood of Carpenters & Joiners, Local 1506 (Sherman & Howard, LLC), Case 28-CC-964, Advice Memorandum dated June 21, 2004.

[10] See also IBEW Local 269 (Kay Construction, Inc.), Case 4-CC-2447, Advice Memorandum dated May 9, 2006 (placards and rat located 250' past entrance to jobsite neither (i) inducement nor (ii) confrontation). Compare Southwest Regional Council of Carpenters and United Brotherhood of Carpenters & Joiners, Local 1506 (Aesthetic Surgery, P.C.), Case 28-CC-1005, Advice Memorandum dated April 10, 2006 (bannering activity violated 8(b)(4)(ii)(B) where banner was 200 feet from the entrance to the neutral's parking lot and visitors driving to the neutral's facility had to pass the banner to access the parking lot); Pinecrest Construction and Development, Case 32-CC-1510-1, Advice Memorandum dated April 26, 2004 (placement of banner created gauntlet effect because there was no alternative access to site, and banner was visibly displayed on a corner through which all consumers doing business with neutral had to pass).

In Gore Acoustics,[11] the union did not violate 8(b)(4)(ii)(B) when it displayed banners some 200 yards from the neutral's worksite and 150 yards from its corporate offices. Although the banners were only some 50 feet from a street entrance to the corporate office complex, cars also entered the premises through two other entrances without having to pass the banner. The banners also did not violate 8(b)(4)(i)(B) because there was no evidence that the banners were either intended to or had the effect of inducing a work stoppage of any neutral persons.[12]

We conclude that the bannering here did not amount to Section 8(b)(4)(ii) coercion because it involved no element of confrontation for anyone entering Parisi's site. The bannering was located 1500 feet from the jobsite entrance, directed outward at passing traffic, and employees or delivery persons could enter the jobsite without necessarily passing by the banner. There also is no evidence that the banner was designed to halt deliveries or cause employees to refuse to perform services. The bannering activity was remotely located and not timed to employee arrivals on site. The evidence indicates that the bannering activity was intended solely as an informational appeal to the public and was not intended to induce any work stoppages. The Region therefore should dismiss this allegation, absent withdrawal.

2. The Picketing Activity

Under Moore Dry Dock,[13] the Board presumes that common situs picketing is lawful primary activity if: (1) it is "strictly limited to times when the situs of the dispute is located on the secondary employer's premises;" (2) "the primary employer is engaged in its normal business at the site;" (3) it is "limited to places reasonably close to the location of the situs;" and (4) it "discloses clearly that

---

[11] Carpenters Local 971 UBJCA (Gore Acoustics), 32-CA-1524-1, Advice Memorandum dated May 9, 2005.

[12] See also Carpenters Local 1506 (Universal Technical Institute, Inc.), Case 28-CC-960, Advice Memorandum dated May 5, 2004 (no 8(b)(4)(ii)(B) violation where banner, which was 600 feet away from driveway entrance and separated by a hotel, was too far removed from neutral premises to create confrontation with third persons approaching facility).

[13] Sailors' Union of the Pacific (Moore Dry Dock Co.), 92 NLRB 547 (1950).

the dispute is with the primary employer."[14] However, the Board in Moore Dry Dock merely set out evidentiary rules; it did not establish a conclusive guide for determining the legality of common situs picketing.[15]

"Continued picketing . . . when the union knows that the primary employer is absent from the site for reasons unconnected with the picketing violates [the first] two of the Moore Dry Dock criteria . . ."[16] On the other hand, the presence or absence of employees of the primary employer is not per se determinative of whether the picket line is secondary.[17] Rather the Board examines the totality of circumstances particularly including the reason for the absence of the primary employees.[18] A violation via noncompliance with Moore Dry Dock standards is not established when the absence of primary employees is because of the picketing[19] or where it is temporary and intermittent and the Union has no way of knowing when the primary employees will return.[20]

---

[14] 92 NLRB at 549.

[15] Teamsters Local 506 (E. J. Dougherty Oil), 269 NLRB 170, 175 (1984).

[16] Carpenters District Council of Milwaukee County (Farmers and Merchants Bank of Menomonee Falls), 196 NLRB 487, 490 (1972).

[17] Operating Engineers Local 675 (Industrial Contracting Co.), 192 NLRB 1188, 1189 (1971) citing Seafareres International Union of No. America v. NLRB, 265 F.2d 585, 590 (D.C. Cir. 1959).

[18] Carpenters District Council and Local 362 (Pace Construction Co.), 222 NLRB 613, 617 (1976).

[19] See e.g., Plumbers Union No. 307 (Zimmerman Plumbing and Heating), 149 NLRB 1361 (1964).

[20] IBEW Local 861 (Brownfield Electric), 145 NLRB 1163 (1964); IBEW Local 25 (Eugene Iovine, Inc.), 201 NLRB 531 (1973); Operating Engineers Local 450 (Linbeck Construction Corp.), 219 NLRB 997, 999 (1975) enf'd 550 F.2d 311 (5th Cir. 1977).

In Brownfield, during the union's continuous picketing, employees of the primary employer, an electrical subcontractor, were absent from the common situs on four days. The employees were not scheduled to work on the first day; no reason was provided for their absence on the other days. The primary continued to store materials on the site during these days and its work was not completed. The Board dismissed the Section 8(b)(i)(ii)(4)(B) allegations on the ground that the "temporary and intermittent" employee absences were an "insufficient basis for finding that [the primary] was not engaged in its normal business at the situs of the dispute." Id. at 1165.

In Eugene Iovine, the Board dismissed a Section 8(b)(4)(B) allegation based on the union's picketing a common situs on three days when neutral employees were present, but the primary's employees were absent and not working. The Board noted that the "absence of the primary employees was plainly temporary;" the primary's work had been done on an intermittent basis, remained uncompleted, and the union had no way of knowing in advance when the primary employees would return. The Board concluded that the "absence of primary employees herein did not in itself establish that an object of Respondent's picketing was to enmesh neutrals." (Emphasis in original). Id. At 531.

In Linbeck Construction, the general contractor Linbeck established a reserve gate for primary employer Luckie and also notified the union that the primary was scheduled to work on weekends round the clock, and on weekday evenings. However, during the daytime on a weekday, the union observed (1) the Luckie owner and his foreman on the site working to prepare for the regular evening work of the primary's employees; and (2) Linbeck bringing in materials through the Linbeck gate for the primary employees to use in the evening. The union therefore began picketing during weekday daytime hours. The Board found no violation because "the delivery of materials to be used by Luckie and the presence of Luckie and his foreman during the day . . . was clearly activity in support of the primary's normal operations." Id. At 999. The Board concluded that, in these circumstances, the union had no way of knowing in advance when the primary employees would come to the jobsite to do its work and the primary employees, though absent, would return. Id.

Here, we conclude that the Union's picketing on no more than five nonconsecutive days when C&L was not performing any work does not, standing alone, establish a secondary object. Belsito asserts that simple observation of the site on those days would have clearly revealed that C&L's employees were not doing concrete or carpentry work.

However, even if Belsito's assertion is true, the Union would also have observed the temporary, intermittent nature of those absences, and the fact that C&L's work remained uncompleted. Since neither Parisi nor C&L ever informed the Union what was occurring, the Union did not have "any way of knowing in advance when [the primary] would have come to the jobsite to do its work and [the Union] could not foretell whether the primary employees, though absent, would not return *instanter*." (Emphasis in original).[21]

The Union's asking Parisi to sign a Union contract in September indicates a separate Union dispute with Parisi in addition to its dispute with C&L. However, the Union's continuous picketing was expressly directed at C&L and occurred many weeks later. The September contract demand thus is an insufficient basis to infer that the Union's picketing had an additional secondary object of forcing Parisi to cease doing business with C&L and sign a Union contract.

On the other hand, the Union's bannering was activity expressly directed at Parisi and continued until only a few days before this picketing. We would not impute the bannering object to the Union's picketing. In analogous circumstances, when secondary picketing and handbilling are conducted simultaneously, the Board does not automatically link the two but evaluates whether each type of conduct has a separate and distinct message.[22] Here, the bannering and picketing were conducted in different locations, did not occur simultaneously, and had separate and distinct messages. We therefore would not impute the bannering activity object to the separate picketing activity.[23]

---

[21] Eugene Iovine, 201 NLRB at 531.

[22] Plumbers Local 155 (Kroger Co.), 195 NLRB 900, 903 (1972), reversed and remanded in this point, 477 F.2d 1104, 1108 (6th cir. 1973, on remand 209 NLRB 341 (1974)(Board accepted remand as law of the case). Compare Nashville Building & Construction Trades Council (Castner-Knott Dry Good Store), 188 NLRB 470 (1971) (picket signs stated "Please Read Handbills"; Board found both picketing and handbilling unlawful where two activities linked); CBS, Inc., 237 NLRB 1370, 1376 (1978) (where handbilling activity linked to picketing by express handbill statements, Board found both activities unlawful).

[23] See Mid-Atlantic Regional Council of Carpenters (Goodell, DeVries, Leech & Dunn, LLP), Case 5-CC-1289, Advice

Since the Union's picketing during the few temporary, intermittent absences of the primary employees here by itself does not establish a secondary object, and there otherwise is insufficient evidence that the picketing was secondary, the Region should also dismiss this allegation, absent withdrawal.

B.J.K.

Memorandum dated November 3, 2005 (where picketing and handbilling located at different locations at commons situs and did not refer to each other, object of lawful, secondary handbilling not imputed to otherwise primary picketing).