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

Advice Memorandum

DATE: January 17, 2003

TO : Robert H. Miller, Regional Director
Joseph P. Norelli, Regional Attorney
Timothy W. Peck, Assistant to Regional Director
Region 20

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

SUBJECT: Carpenters Local 22
(Laser Exhibitor Services, Inc.)
Cases 20-CC-3396; 20-CD-721

560-2575-6700
560-7540-4000
560-7580-0100
560-7580-0150
560-7580-4033-1000

This case was submitted for advice as to whether the Union's repeated threats that there would be "problems" if an employer continued to use certain non-Union employees on a job constituted unlawful threats within the meaning of Section 8(b)(4)(ii)(B) and (D). We conclude that the Union's repeated, and intentionally vague, references to "problems" were thinly veiled unlawful threats to engage in conduct violative of the Act.

FACTS

D&P plans, fabricates, assembles, and installs display cases for museums and other facilities. In 2001, the Asian Art Foundation retained D&P to create and install exhibit cases for the Foundation's new facility in San Francisco (the Museum).

D&P has a collective bargaining agreement with Carpenters' District Council of Washington, D.C. & Vicinity. That agreement requires that D&P use carpenters for installation work performed in the District of Columbia and certain parts of Maryland and Virginia. D&P's contract with the Foundation does not require that D&P use union-represented employees to perform the exhibit case work at the Museum.

In preparing for the installation of the exhibit cases, D&P contracted with TBI to install wainscoting and wood trim in the gallery and display areas of the Museum.

TBI has a collective bargaining agreement with San Francisco-based Carpenters Local 22.

D&P also contracted with Laser Exhibitor Services to perform only the installation of the exhibit cases, after deciding that TBI employees lacked the requisite skills to quickly and properly perform that work. Laser has a collective bargaining agreement with Sign Display Union Local 510.

Almost immediately after Laser began work on the project, Local 22 representatives claimed the exhibit case work as "carpenter work" and threatened Laser with unspecified "problems" if Laser did not sign a contract with Local 22 and reassign the work to Local 22-represented carpenters. Local 22 also threatened D&P with "problems" if Laser refused to reassign the work and D&P continued to do business with Laser. In the face of such threats, D&P asked Laser not to send any Local 510-represented employees to work at the Museum, effectively shutting down the project.

Over the next week, D&P repeatedly expressed its preference that Laser employees complete the exhibit case work and attempted to settle the dispute; Laser and TBI also offered possible staffing solutions. Local 22 rejected every attempt at compromise, insisting that only carpenters could do the exhibit case work, demanding that Laser execute an agreement with Local 22, and repeating its threats that Laser and D&P would face "problems" if Local 510 employees continued to do the exhibit case work.[1]

After several days, Laser faxed a letter to Local 22 asserting that Local 22 was interfering with Laser by not allowing it to work, that potential damages were accruing, and that Local 22 could be held liable. Local 22 president Wong responded, by telephone, and denied that Local 22 was keeping Laser from working. The Laser representative then asked Wong whether there would be any problems if Laser employees showed up to work at the Museum the following day. Wong explained that if Laser employees showed up to do the work, he would have to assess the situation and decide what to do, and that "there [would] be problems." The Laser representative then asked what Wong meant by "problems." Wong said that the Laser representative was "a

[1] Though Local 22 asserts the exhibit case work is "carpenter work," it cites no jurisdictional or contractual claim to the work. It is likewise undisputed that Local 510 employees are qualified to do the work at issue and that Laser pays more than the carpenters' prevailing wage.

smart man," that the Laser representative had "been in this situation before," and that he knew "what [Wong was] talking about."

Local 22's threats of "problems" kept the job shut down as D&P and Laser tried, unsuccessfully, to broker some compromise. By letter, D&P advised the Museum that issues related to D&P's selection of contractors to complete the exhibit case work would delay completion of the job and increase costs. Upon receiving a copy of that letter, Laser called D&P and stated that Laser would resume work the following day. In an ensuing telephone conversation, however, a D&P representative told Laser that the Museum had expressed concern that a threatened wildcat strike would shut down the project if Local 510 people showed up. According to the D&P representative, the Museum did not want to risk a strike, and had asked D&P to keep Laser employees off the job.[2] As a result, D&P told Laser not to bring any Local 510-represented employees to work. Laser has not been on the job since Local 22 made its initial threats, and Local 22-represented TBI employees are performing the disputed work.

ACTION

We conclude that Local 22 violated Section 8(b)(4)(ii)(B) and (D) of the Act when three different Local 22 representatives, on multiple occasions, threatened Laser with unspecified "problems" if it refused to sign a contract with Local 22 and award the exhibit case work to Local 22. We further conclude that Local 22 unlawfully threatened D&P with direct action if Laser refused to reassign the exhibit case work and D&P refused to cease doing business with Laser.

When evaluating whether there have been threats violative of Section 8(b)(4)(ii)(B) and (D), the Board considers the specific language used in the context of surrounding conduct and events.[3] While vague allusions to "problems," "trouble," and the like, without more, are not

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[2] The Region reports, however, that the Museum representative who allegedly made the remark has since denied hearing any such threat from the Union.

[3] Electrical Workers IBEW Local 98 (Telephone Man), 327 NLRB 593, 598 (1999), citing Laborers Local 1030 (Exxon Chemical Co.), 308 NLRB 706, 708 (1992); Teamsters Local 82 (Champion Exposition), 292 NLRB 794, 795 (1989); and Carpenters District Council (Apollo Dry Wall), 211 NLRB 291 n.1 (1974).

violative,[4] the Board has found otherwise ambiguous terms to constitute unlawful threats when the statements were made in a threatening context.

For example, in Iron Workers Local 167 (Tayloe Glass Co.),[5] the Board found a statement similar to one of the statements here to be an unlawful threat. In Tayloe Glass, the agent responded to the employer's refusal to reassign certain work by telling the employer "he wasn't going to go off half-cocked on this deal and he wanted to know what he was doing when he did it." When the employer asked what the union's agent was going to do, the agent replied, "I think you have been around long enough to know." The Board affirmed the ALJ's finding that in the context of the union's refusal to use the established procedure to resolve work disputes, the union agent's statement that the employer had "been around long enough to know" what the agent planned to do constituted an unlawful threat of direct action.[6]

In Electrical Workers IBEW Local 98 (Telephone Man)[7] a union agent told the employer that it "would not have any problems" if the employer used a union-affiliated contractor and had union members working on the job. The Board found these statements constituted unlawful threats because the agent's otherwise vague reference to "problems" came less than 24 hours after a union agent ordered two

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[4] See Teamsters Local 82 (Champion Exposition), 292 NLRB at 795 (single statement that there could be a problem if the employer worked with a non-union affiliated company did not constitute threat when considered in light of surrounding conduct and events, specifically no subsequent strike, picketing, etc.); Carpenters District Council (Apollo Dry Wall), 211 NLRB at 291 n.1 (threats of trouble and problems, without more, too vague to constitute unlawful threats); United Mine Workers Local 1368 (Bethlehem Mine Corporation), 227 NLRB 819, 820 (1977) (union statement that "the potential for problems existed" if work was not reassigned too ambiguous to constitute unlawful threat); Sheet Metal Workers Local 38 (Corbesco), 295 NLRB 1069, 1070 (1989) (union representative's statement that he could not sit idly by while others did unit work and vowed to do whatever was necessary to get that work for his members was too vague to constitute unlawful threat).

[5] 180 NLRB 201 (1969).

[6] Id. at 203.

[7] 327 at 593.

employees of a neutral secondary employer to leave a job site where the primary employer had a presence.[8]

Considering Local 22's specific language and conduct in the context of the surrounding events, we conclude that Local 22's warnings that D&P and Laser would have "problems" if the exhibit case work was not assigned to Local 22 were veiled threats of unlawful conduct against D&P and Laser. Thus, Local 22 agents repeatedly and consistently told D&P, Laser, TBI, and Museum employees that it would be a "bad thing" and there would be "problems" if Local 510-represented Laser employees showed up to work and D&P and/or Laser refused to assign the exhibit case work to Local 22 carpenters. When the Laser representative sought clarification of these vague statements, the Local 22 agent refused to explain, choosing to remain intentionally vague and threatening. Thus, rather than affirmatively state Local 22's intention to engage in only lawful activity, Wong appealed to the Laser manager's labor experience and imagination. We conclude that Wong's intentionally cryptic retort was intended to convey Local 22's threat of unlawful direct action.[9]

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[8] Id. at 598 (the administrative law judge had found that ordering the employees off the site constituted unlawful inducement and encouragement under Section 8(b)(4)(i)). See also, Plumbers Local 123 (Florida Maintenance and Construction), 338 NLRB No. 41, slip op. at 3 (2002) (business agent's declaration that he would bring a "f-ing war" constituted unlawful threat to engage in proscribed activity in violation of Section 8(b)(4)(D); the Board rejected union's claim that "war" referred to article XX proceeding against rival union); Carpenters (Society Hill Towers Owners' Assn.), 335 NLRB No. 67 slip op. at 1 fn. 2, 13 (2001) (union agent's statements that there should be union people working on the project, that "there could possibly be some problems in the future," and that the agent would have "100 of [his] men there and there might be trouble" if the employer did not contract with the union, unlawful); Iron Workers Local 27 (Commercial Building), 300 NLRB 682, 684 (1990) (union agent's statement that "there might be problems" if work was not reassigned to his members was unlawful, veiled threat of a work stoppage; agent also stated that his members might not come to work if they saw members of another union on the jobsite).

[9] See also Operating Engineers Local 18 (B.D. Morgan & Co.), 205 NLRB 487, 492-493 (1973), enfd. in rel. part 503 F.2d 780 (6th Cir. 1974) (employer reasonably assumed that union would bring job to a halt if employer did not capitulate to union demand to cease doing business with non-union employer; explicit threat unnecessary where no delays could

We also note that Local 22's characterization of Laser's presence at the Museum as a "bad thing" and warnings against "problems" were all made after Local 22 claimed the exhibit case work and effectively led D&P to shut down that portion of the project. Every time Laser announced it intended to report to work, Local 22 announced that Laser, and possibly others, would face problems; these threats effectively kept Laser employees from reporting for work. Thus, as in Telephone Man, Local 22's otherwise vague statements gained meaning from surrounding events. Local 22's initial threats effectively shut the job down; by continuing to make intentionally vague threats, Local 22 knowingly kept Laser and Local 510 employees idle. Thus, by threatening D&P and Laser with "problems" while exhibit case work had been suspended, Local 22 implied its willingness to disrupt Laser and D&P's operations if Local 510 employees attempted to perform that work.

Finally, while vague threats of "problems" or "trouble" would likely be interpreted as references to lawful conduct in some circumstances, such circumstances are not present here. Even if this part of the Museum were open to the public, Local 22 could not truthfully advise the public that either Laser or D&P operates non-union, pays substandard wages, or has committed some unfair labor practice and thereby cause lawful "problems" or "trouble." Local 22's only possible protected messages would be that Laser and D&P have (lawfully) refused to enter into contracts with Local 22, or that Laser and D&P have (lawfully) refused to reassign the exhibit case work to Local 22. Given that the Museum is under construction, there would likely be little if any consumer traffic at or near the site to receive such messages.[10] It is therefore hard to imagine how the mere advertisement of Laser and

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be tolerated and union had simultaneously induced work stoppage); Wells v. NLRB, 361 F.2d 737, 742 (6th Cir. 1966), rev'g Electrical Workers IBEW Local 38 (Wells Electrical), 148 NLRB 757 (1964) (Union agent told the employer, "Don't act like a school kid. You know what I am talking about," when referring to what the union intended to do if the employer allowed a non-union employee to work on the job. Court considered totality of conduct, whereas Board considered statement in isolation, in reaching the "inescapable" conclusion that union agent's statement was an unlawful threat).

[10] Moreover, if the Museum were closed, Local 22 could not claim that it would advertise Laser and D&P's lawful conduct for the purpose of encouraging a consumer boycott.

D&P's lawful conduct could create "problems" for Laser or D&P,unless the Union intended its handbilling to serve as a "careful 'wink and a nod' [to induce] employees to engage in a work stoppage."[11] Simple handbilling at the Museum would not necessarily tend to keep Local 22 members or other crafts from reporting to work absent such a scheme and, thus, would not cause "problems" for Laser or D&P. The only reasonable conclusion, therefore, is that Local 22's references to "problems" were threats of unlawful conduct intended to coerce Laser and D&P to reassign the exhibit case work to Local 22-represented carpenters.

In these circumstances, there is reasonable cause to believe that Local 22 violated Section 8(b)(4)(ii)(D); therefore, the Region should issue notice of a 10(k) hearing. The Region should also issue a complaint, absent settlement, alleging that the Union violated Section 8(b)(4)(ii)(B), consistent with the above analysis.

B.J.K.

[11] See, e.g., Iron Workers Local 386 (Warshawsky & Co.), 325 NLRB 748, 748-749 (1998) (Gould concurring), enf. denied sub. nom. Warshawsky & Co. v. NLRB, 182 F.3d 948 (D.C. Cir. 1999), cert. denied Ironworkers Local 386 v. Warshawsky & Co., 529 U.S. 1003 (2000) (union arguably appealed to neutral employees to engage in work stoppage by handbilling at a construction site at a time when its audience would consist solely of neutral employees).