

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

TEAMSTERS LOCAL 705, AFFILIATED WITH
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

and

Case 13-CB-18814

MIDWEST MOVING & STORAGE.

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of Chicago, Illinois, for the General Counsel

Brian J. Kurtz, Esq. (Ford & Harrison)
of Chicago, Illinois, for the Charging Party

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of Chicago, Illinois, for the Respondent

DECISION

Statement of the Case

DAVID I. GOLDMAN, Administrative Law Judge. This case involves allegations of impeding the movement of an employer's trucks during an afternoon of otherwise lawful picketing by Teamsters Local 705, International Brotherhood of Teamsters (Teamsters). The scene was a downtown Chicago office building on the afternoon of October 11, 2007.¹ The target of the picketing was Midwest Moving & Storage (Midwest), a moving company bringing stored equipment into the building for a tenant that had recently renovated its offices.

On October 15, Midwest filed an unfair labor practice charge with the Chicago Regional office of the National Labor Relations Board (Board). The Regional Director, acting on behalf of the Board's General Counsel, issued a complaint on November 8, alleging that the Teamsters violated Section 8(b)(1)(A) of the National Labor Relations Act (Act), 29 U.S.C. § 158(b)(1)(A), by its conduct on the picket line, specifically by impeding employees in the use of the entrance to and exit from the building located at 70 W. Madison Street and impeding the exit of Midwest's truck from a loading dock at the building.² The Teamsters filed a timely answer denying any violation of the Act. The case was tried in Chicago, Illinois, on March 25, 2008. On the entire record, including my observation of the demeanor of the witnesses and other indicia of credibility, and after considering the briefs filed by the General Counsel, the Charging Party, and the Respondent on April 24, 2008, I make the following findings of fact, conclusions, and recommended order.

¹ All dates are from 2007 unless otherwise indicated.

²At the hearing, the General Counsel moved to amend the complaint to delete allegations that the Union impeded tenants in the use of the building. The motion was granted.

FINDINGS OF FACT

I. JURISDICTION

5 The complaint alleges, Respondent admits, and I find that Respondent is a labor
 organization within the meaning of Section 2(5) of the Act. Charging Party Midwest is an Illinois
 corporation engaged in the business of moving and storage, with an office and place of
 business in Elk Grove Village, Illinois. The complaint alleges, Respondent admits, and I find
 10 that at all material times Midwest has been an employer engaged in commerce within the
 meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

15 In her opening statement, counsel for the General Counsel indicated that the evidence in
 the hearing would show that three incidents violative of the Act occurred during the afternoon of
 October 11. The incidents involved efforts to hinder Midwest's effort to perform work at the
 address of 70 W. Madison Street, otherwise known as Three First National Bank Plaza (or, in
 20 this decision, as the building).

25 First, the General Counsel alleged that as Midwest trucks attempted to enter the alley
 that provides access to the building's loading docks, the Teamsters blocked the Midwest trucks
 by parking two Teamsters vehicles in the alley entrance. Second, it was alleged that after the
 Midwest trucks were able to pull into the alley, the two Teamsters vehicles returned to the alley
 30 entrance and parked there again, thereby preventing Midwest's third and fourth trucks from
 staging and waiting in the alley as planned. Finally, it was alleged that Teamsters picketers
 blocked a Midwest truck that had completed its unloading and was leaving a loading dock.³

A. Background

30 Midwest operates a residential and commercial moving and storage business in the
 greater Chicago area. At the time of the trial it employed approximately 40 employees but that
 number increases between May and September, which is a busier time for the moving industry.
 The Teamsters represents numerous office and industrial moving companies in the Chicago
 35 area, but not Midwest. Another union represents Midwest employees (although the Teamsters
 expresses skepticism about the level of wages and benefits produced by the relationship).

40 Testimony at the trial indicated that the events of October 11 are part of a recurring
 series of encounters between the parties. In this case, in the weeks prior to October 11, the
 Union and Midwest exchanged correspondence indicating that the Teamsters was considering
 engaging in area standards picketing when Midwest performed its upcoming job for Morgan
 Stanley, a tenant at 70 W. Madison Street in downtown Chicago. On October 10, the Union
 informed the building management that it might engage in such picketing and requested the
 45 dates and times that Midwest would be on the premises as well as information about the
 entrances Midwest would be using. The letter foreswore any dispute with the building, tenants,
 or the public. In response to this letter, building manager Sharon Johnson called Richard de
 Vries, the Teamsters official who had authored the Teamsters' letter. Johnson advised de Vries
 that Midwest was going to be working at the building on October 11 and 12, that the building

50 ³These three incidents are more specific elaborations on the allegations found in the
 complaint at paragraphs 5(b) and (c), as amended.

was going to establish a reserved gate for Midwest's use, and that picketing should be limited to the reserved gate. Johnson followed up this call with a letter later that day to the Union. The letter explained that the reserved gate would be the eastern most dock bay on Calhoun Street, which is the alley running behind the building. The letter advised that Midwest would be using this entrance (and only this entrance) on Thursday October 11, and Friday October 12, between the hours of 6 p.m. and 4 a.m. The letter directed the Union to confine any picketing to the reserved gate and cited legal consequences of failing to do so. The establishment of the reserved gate was communicated to Midwest by the building in an email sent the morning of October 11.

Before turning to the events of October 11, some description of the setting and street layout is useful. The building is situated in a busy area of downtown Chicago. Its main public entrances are on W. Madison Street, the south face of the building. Another public entrance is on N. Clark Street, which runs along the west side of the building. N. Dearborn Street runs along the east side of the building. The loading docks are located on W. Calhoun Place, an alley which is the next block north, and which runs parallel to Madison, between Clark Street and N. Dearborn Street. Of some significance, the eastern end of the alley is also the pickup and drop-off point for a day care center located in the county building directly north of the building and across from the alley. Two spaces are painted along the northern edge of the alley for use by parents picking up and dropping off their children from the day care. As indicated by posted city signs in the eastern half of the alley, during the hours 7-9 a.m. and 4-6 p.m., the area is a 15 minute standing zone for pickup and drop-off from the child care center. According to witnesses, between 4-6 p.m. the alley is busy with parents picking up their children. Parents leave their cars along the northern edge of the alley extending both before (closer to the corner) and beyond (farther down the alley from) the two spaces officially designated for pickup. It is because of the child care pickup situation that property manager Johnson told Midwest not to arrive and begin the move until 6 p.m. Notably, signs in the alley indicate that beginning at 6 p.m., and continuing until 7 a.m., the same area that is the child care pickup area is designated a loading zone, with parking prohibited. Thus, the parking regulations encourage loading and unloading to be done after 6 p.m. as the building had planned.

B. October 11

Before heading over to the building, the Teamsters contacted the police and notified them that they would be picketing at 70 W. Madison. At about 3:30 the afternoon of October 11, approximately 20 Teamsters arrived at the building and began handbiling along Madison Street in front of the building. They arrived with two vehicles: a blue truck, in which the picket signs were kept, and a passenger van with a red, white, and blue American flag theme painted on the body. Both had "Teamsters" and "705" written on them and as well as other indicia marking them as Teamsters vehicles.

Property Manager Johnson came out from the building soon after the Teamsters arrived and approached Union Representative de Vries. While their testimony about this encounter varies, they agree, and the upshot, was that Johnson questioned the Teamsters right to be there, and de Vries maintained they had a right to handbill in front of the building's entrances. Johnson went back inside.

Midwest project manager Brian Taylor was in charge of the move for Midwest on October 11. He assigned approximately 20 Midwest employees to work on the move that day. He and a group of employees came in two cars, and the remaining employees rode with one of the four trucks assigned to the move. Taylor parked a couple of blocks west on Madison. Accompanied by four other Midwest employees, he walked to the building. When he had driven

past the building he had seen Teamsters outside, so when he walked to the building he removed his Midwest jacket so he could be “incognito” and “see what was going on.”⁴

Sometime around 4 p.m., after Taylor had arrived on the premises, he called his trucks which had been “staged” on Canal Street across the river, awaiting instructions. Taylor agreed with and adopted a statement in his pretrial affidavit that he made the decision to stage the trucks on Canal street before any trucks arrived, after he saw the “picketing” on Madison Street in front of the building.⁵ He stated that “I didn’t want them [the trucks] at the building until we could, you know, until I could get the people in there.” Taylor “called the trucks, and, and told them to bring the employees to the building.” He had two trucks remain on Canal Street, “I brought two first and I wanted the other ones to drop the employees and, and go to Canal Street.”

Neither the Teamsters nor building management had expected the movers until 6 p.m. The problem with starting earlier was that 4 to 6 p.m. was a busy pickup time for the day care center. Johnson came downstairs from her office when the Midwest trucks arrived and complained to them about arriving early, reminding them that they were supposed to begin the job at 6 p.m. She testified that she could not recall their response.

1. The first blocking allegation

It is at this point that the General Counsel claims the first incident of unlawful blocking occurred, blocking that allegedly kept the first two Midwest trucks from entering the alley. The General Counsel called Taylor as the primary witness on this allegation. Johnson also offered testimony on this allegation, although most of her testimony on the issue came on cross examination.

Taylor testified that after arriving at the building, he walked with the four employees onto Dearborn and towards the Calhoun Place alley. He testified that he saw picketers at the entrance to the alley and in the alley was the blue Teamsters truck. Taylor testified that the blue truck was “[a]ll the way in the alley” meaning “past the sidewalk and in the alley.” He also testified, at odds with his pretrial affidavit testimony, that the red, white, and blue van was

⁴Taylor repeatedly testified that, both when he passed the building in his car and when he walked back on Madison to the building, there were Teamsters handbilling *and picketing with picket signs* in front of the building and on the corner of Dearborn and Madison. He testified that he took pictures of this picketing, however none of the photos offered into evidence show any picketing on Madison, and I do not credit Taylor’s assertions. For one thing, Taylor’s credibility was undermined by his insistence that he took photos of the picketing, but no photographs showing this picketing surfaced. Taylor testified that he gave all of his photographs to counsel, and these photographs were subpoenaed and produced by Midwest. None showed picketing on Madison Street. (Counsel for the General Counsel tried to pose questions that would steer Taylor away from these picketing claims, but he would not be deterred.) Second, both de Vries and Union business agent Marcus Harris testified credibly that there was only handbilling and not picketing on Madison. Third, there is no allegation by the General Counsel that the Teamsters were picketing on Madison, and there surely would have been if they had been picketing the public entrances to the building even before Midwest was on the scene.

⁵See Fed. R. Evid. 801(d)(1), Notes Of Advisory Committee On Proposed Rules (“If the witness admits on the stand that he made the statement and that it was true, he adopts the statement and there is no hearsay problem”).

parked in the western most lane on Dearborn, “mostly out on Dearborn but towards the alley too,” but not close enough to the alley or the blue truck to obstruct the sidewalk.⁶

5 The Midwest trucks had not arrived at this point but, as referenced above, Taylor had called and told them to drop off the employees riding with the trucks. Taylor went into the dock area with the employees that were with him. Once in the dock Taylor talked with the building manager and security people to discuss the picketers and to determine whether the building was ready for the move and to work out last minute details. When the four trucks dropped off the employees, two of the trucks returned to the staging area at Canal Street, and two waited on 10 Dearborn for further instructions. Taylor met the dropped employees on Dearborn Street, approximately 16 of them, and escorted them into the building through the dock area. After escorting the employees into the building Taylor turned his attention to the two trucks on Dearborn. According to Taylor, the two trucks could not get into the alley because of the Teamsters vehicles. He also testified that he didn’t think that at this time even smaller cars 15 could pass through the alley because of the position of the Teamsters vehicles. Taylor asked the driver of the blue truck to move but says the driver smirked and refused. At that point Taylor says he called the police who arrived in five minutes. The police talked to the picketers and then the blue truck and the van pulled through the alley and exited the alley onto Clark Street. The Midwest trucks then pulled into the alley. According to Taylor, one of the trucks drove past 20 the loading dock and backed up into the bay.

Taylor’s account suffers from two major problems. The first is, again, as with the picketing on Madison (see above), his assurance that he “took pictures of, of the, the protesters I encountered. And when I had issues with not being able to get something in or whatever, I 25 took pictures of the things that I saw.” He also indicated specifically in his pretrial affidavit that he took pictures of both Teamsters vehicles blocking the alley just prior to the Midwest trucks arriving. Nevertheless, the photos did not match his testimony or his pretrial statement. The fact is no photographs were produced that showed the Teamsters vehicles blocking or in front of a Midwest truck, although, on the witness stand, Taylor repeatedly insisted that he took such 30 pictures. A number of photos show the Teamsters vehicles at or near places in the alley and on Dearborn *after* the Midwest trucks had come into the alley, but none show the Teamsters vehicles blocking Midwest trucks’ access. Finally, after cross examination left it excruciating clear that none of the photographs produced to Respondent showed the scenes that Taylor claimed he photographed, Taylor retreated from his earlier testimony about the extent of his 35 photography.

The second difficulty with Taylor’s testimony is not of his own making. Rather, it is the fact that the other witness called by the General Counsel recounted events in a manner irreconcilable with Taylor’s account. Property manager Johnson testified that she came 40 downstairs from her office in the building when she got a call that the movers had arrived, at approximately 4:00 pm. Johnson testified that she walked north on Dearborn and when she got to the alley she saw the blue Teamsters truck on Dearborn, blocking the alley, with the red, white, and blue Teamsters van behind it, on Dearborn. Behind the Teamsters van were the two Midwest trucks. Johnson’s repeated testimony was that the Teamsters vehicles were “facing 45 northbound”; “[t]hey were on Dearborn.” The blue vehicle may have been angled toward the alley (Johnson was not sure), but it was “more north-south,” and therefore not, as Taylor had testified, “[a]ll the way in the alley . . . past the sidewalk and in the alley.” Johnson estimated that this situation continued for 15–20 minutes (although I adjudged Johnson very unsure of the

50 ⁶In his pretrial affidavit Taylor stated that when he arrived at the alley, the red, white, and blue Teamsters van was “in the alley, just behind the blue Teamster truck.”

length of time involved) before the Teamsters vehicles moved through the alley and left (for the moment). The Midwest trucks immediately moved into the alley. Johnson could not recall what happened or what she was doing during these 15–20 minutes, although she also stated that she was telling people and perhaps the driver of the blue truck, that they could not block the alley.

5 Johnson said that during this period no vehicles, including passenger cars, such as those day care parents would drive, could get in the alley. In addition, Johnson testified that the police did not arrive until after Midwest trucks were in the alley. In terms of the location of the Teamsters vehicles and the absence of police, her version of events is irreconcilable with Taylor's.

10 Teamsters representative de Vries, and Teamsters business representative Marcus Harris, on the other hand, denied that the Teamsters vehicles blocked the entrance of the Midwest trucks into the alley. De Vries testified that he was handbilling on Madison with the other Teamsters at about 4 p.m., when received word that the Midwest trucks were on the way. De Vries called the driver of the blue Teamsters truck and "told him to meet us in the alley so we
15 could get out the picket signs." The handbillers from the front of the building headed to the alley and began picketing. De Vries also headed to the alley. After he got there, the blue Teamsters truck arrived and pulled into the alley immediately in front of (beyond and to the west of) the parking spots marked for the day care center. This placed the Teamsters vehicle nearly across from the loading dock designated as the Midwest reserved gate. The Teamsters van pulled up
20 behind the Teamsters truck. The picket signs, sticks and staple guns were unloaded and distributed. According to de Vries, the Midwest trucks arrived "almost immediately." De Vries testified that there was traffic from the day care center in the alley throughout this time. "All the parking places from Dearborn up to the bay were filled with people picking up kids," and the day care parents were able to exit the alley without being delayed by the Teamsters vehicles. De
25 Vries said that as soon as the signs were out of the truck the Teamsters vehicles "took off" through the alley. The Midwest trucks then moved into the alley, after some delay attendant to difficulty negotiating the left turn into the alley from Dearborn due to the tightness of the alley and the cars associated with the day care. By the time the Midwest trucks were putting their noses into the alley the police had arrived. When the Midwest trucks pulled into the alley one of
30 them repeatedly attempted to back into the loading dock facing westward. It was unsuccessful. One of the Midwest trucks then left the alley, circled around, and with the aid of the police holding off traffic on Dearborn, backed in from Dearborn, facing eastward, which enabled it to successfully back into the dock.

35 This version of events was backed up by Union Business Agent Marcus Harris who testified that the Teamsters were finishing up unloading in the alley when the Midwest trucks arrived. Harris agreed that when the Midwest trucks arrived, both Teamsters vehicles were in the alley. According to Harris, "once [the Teamsters] saw them, we was just practically finished getting the stickers, the picket signs, and they got completely out of the way as soon as they
40 showed up." He denied that the blue truck or the other Teamsters vehicle was blocking the Midwest trucks. Harris testified that the Midwest trucks then entered the alley, albeit with some difficulty and delay caused by the logistics of making the left hand turn from Dearborn due to the length of the trucks and the cars in the alley picking up children from the day care. In concurrence with de Vries, Harris testified that, the first Midwest truck that was able to enter the
45 loading bay did so after exiting the alley, and reentering by backing in from Dearborn.

Given the above testimony, I conclude that the claims of the General Counsel's witnesses are unproven on this record. There was, I believe, some overlap in the time between when the two Midwest trucks arrived on Dearborn and the Teamsters trucks finished unloading
50 and moved through the alley. It seems clear from de Vries, Harris', and Taylor's testimony that the Teamsters vehicles were in the alley unloading before the Midwest trucks arrived. The Teamsters had not completely finished when the Midwest trucks arrived. Part of this overlap

would include the time period that Midwest trucks were discharging the 16 employees that Taylor then escorted through the alley into the building through the loading dock. The trucks could not enter the alley and negotiate the loading bay until this was done. There was, no doubt, a chaotic situation with Teamsters vehicles unloading picketing paraphernalia in the alley, picketers assuming positions along the alley and on Dearborn, Midwest employees being discharged from the Midwest trucks and walking through the alley, building security personnel in the alley, and parents picking up their children from day care, all milling about and going about their business in this narrow city alley. But neither of the mutually contradictory claims of Johnson and Taylor about where the Teamsters vehicles sat to block the Midwest trucks from entering are proven, particularly given that the one necessarily undercuts the accuracy of the other. In terms of demeanor, I found nothing lacking in de Vries and Harris, and I credit their account, which places the Teamsters trucks far into the alley, nearer the reserved loading dock than the corner. De Vries and Harris answered questions directly and in detail, and consistently.⁷ The “mistakes” in their testimony that the General Counsel and Employer point to do not amount to much and none concerns this incident.⁸ Johnson’s manner on the stand was fine, although she was significantly less sure in her recall compared to de Vries or Harris (or Taylor), and had to resort to answering a number of questions by admitting she did not recall, a vagueness that did not reinforce confidence in her recollection.⁹ Taylor’s insistence on asserting that he took photographs of the specific union misconduct alleged, but the inability of Taylor, the General Counsel, or the Employer, to produce even one such picture was undermining to his credibility, as was his testimony about a subsequent incident that day, discussed at length below. In addition, in contrast to Taylor, both de Vries and Harris asserted that a Midwest truck first attempted to back into the bay with its front facing Clark Street, but

⁷The main difference between their testimonies was their divergent views on whether the first or second Midwest truck into the alley was the one that ended up first pulling into the bay. This is not a significant discrepancy, as they entered together and probably looked a lot alike.

⁸I have considered the questions raised by the General Counsel and the Employer about de Vries’ and Harris’ credibility. But they do not alter my view. De Vries maintained that during the afternoon when the red, white, and blue Teamsters van came to a stop at various parts of the alley, including the entrance at Dearborn and Calhoun, the driver did not leave the van, presumably ready to move if someone needed to get through. In a photograph of the van taken that afternoon, and introduced into evidence, no driver can be seen (although, frankly, the angle is not the best. See G.C. Exh. 5). This kind of statement does not cause me to question de Vries’ testimony generally. If it is an overstatement on de Vries’ part, it is also entirely unproven that the van was left unattended for any length of time, which is the larger point. For his part, Harris testified, erroneously that when the first Midwest truck was unloading in the bay the second Midwest truck was not in the alley. It was, and there is a photograph of Harris next to both. But again, this misstatement does not prove anything about Harris’ testimony overall. The fact is, both were strong witnesses, providing plausible, consistent testimony with a believable demeanor.

⁹The General Counsel contends (G.C. Br. at 9 fn. 7) that Johnson’s testimony should be considered “particularly credible” on the grounds that she was a “neutral witness.” That is an unrealistic assessment. While not an agent of any party to this case, she was an agent of the building, and the building management was deeply enmeshed in the events of October 11, and, understandably, did not welcome picketing at the building. It is not surprising that Johnson was not a neutral observer of events, and this was apparent in her demeanor. Of course, being “interested” or “not neutral” does not, by itself, impugn testimony. In this case all of the witnesses, with the exception of police officer Martyka, were clearly “non-neutral” witnesses.

failed, and that the first Midwest truck to get into the bay did it by backing in from Dearborn with the police holding off traffic on Dearborn to allow this maneuver. As noted below, this testimony was corroborated by Chicago police officer Thaddeus Martyka, and I credit this observation, something else that Taylor was certain did not happen.

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The other factor that strikes me, and it is relevant both to credibility and to the overall plausibility of the witnesses' claims, is the lack of any evidence of complaint by the day care or parents, and the lack of evidence of any disruption to the day care pickup procedures. The testimony was undisputed that this alley was busy during the hours 4-6 p.m. with parents driving and parking in the alley to pick up their children from day care. The alley was marked for this purpose, and it is the stated reason that Johnson had not wanted Midwest to do the moving job prior to 6 p.m. Common sense suggests that had the Teamsters blocked off the alley with vans for 15 or 20 minutes during the middle of rush hour pickup for children, witnesses would have at least noticed the parental and school reaction and the aggregation of cars. There are labor management disputants, and there are harried working parents picking up their children from day care in rush hour traffic. The latter is not a group to be trifled with. In other words, we would have heard about it if the alley was blocked for a significant period of time. But while the General Counsel's witnesses each indicated that passenger cars could not get through the alley when the Teamsters blocked it (Johnson firmly stated this, Taylor said he did not think they could), neither recalled any parental or day care reaction, or even whether parents were parked in the alley, or on Dearborn at this time. Neither Taylor nor Johnson, nor counsel for the General Counsel or the Employer offered any explanation of what happened to the day care crowd and cars during the blocking incident. De Vries and Harris, by contrast, offered an explanation: they assert that the alley was busy the whole time with cars picking up children from the day care because the alley was not blocked. The lack of any evidence by any party that the Teamsters actions caused a problem for the day care center certainly suggests, at a minimum, that inaccessibility to the alley was far more limited than alleged by the General Counsel.

Finally, I note that building property manager Johnson had ten minutes of security film showing the entry of all the Midwest trucks "and a few minutes after." A disc of this footage was provided to the Respondent. Despite this, no party thought it necessary or advantageous to show that film or enter it into evidence. I have certainly wondered about it. Under these circumstances, I am unwilling to draw a firm conclusion adverse or in favor of any party based on this, as the film was readily accessible to all. But I must assume it was inconclusive in terms of proving or rebutting the allegations of the complaint. At the end of the day I have to remember, and the absence of the tapes reinforces this feeling, that the General Counsel bears the burden of proof in this (and every) case, and there is something missing here.

Accordingly, I find that the Teamsters blue truck and van were in the alley, west of the marked day care parking spots, unloading when the Midwest trucks arrived. There is no evidence that they were there for the purpose of preventing Midwest from entering the alley, nor did they have this effect for any period beyond that incidental to completing the unloading. Given the narrowness of the alley, their presence would have made it difficult for the Midwest trucks to pass, but the Midwest trucks would have had to turn the corner and enter the alley before they confronted the Teamsters vehicles that were unloading farther down the alley. I am unable to determine a precise amount of time of the overlap of the blue Teamsters truck and the presence of the Midwest trucks on Dearborn, but I find that it was far shorter than that described by General Counsel's witnesses. I do not find that police intervention was required to get the Teamsters vehicles to move (as Taylor testified but Johnson denied). Rather, I find that the Teamsters vehicles moved through the alley after finishing distribution of the picket signs and materials to its members.

2. The Second Blocking Allegation

The second allegation referenced in the General Counsel's opening statement was the claim that, after the first two Midwest trucks entered the alley, the Teamsters stationed their vehicles at the end of the alley, thus blocking the third and fourth Midwest trucks from entering or staging in the alley. On brief (G.C. Br. at 6), the General Counsel's claim is that "Respondent prevented the remaining two Midwest trucks from staging at the jobsite as Taylor had planned and done on previous occasions."

It is undisputed that throughout the afternoon the Teamsters vehicles moved about and through the alley, coming to a stop at various places over the course of the afternoon, including on Dearborn in front of the alley. Johnson testified that after the entry of the two Midwest trucks, the Teamsters vehicles drove through the alley several times and at some point (within the first half hour of her arrival in the alley), the Teamsters vehicles took up positions on either end of the alley. Taylor saw the Teamsters vehicles in front of the Dearborn entrance to the alley on numerous occasions during the afternoon. De Vries confirmed that the Teamsters vehicles stopped throughout the alley and its entrances at various times that afternoon. A photo introduced into evidence shows the red, white, and blue Teamsters van in that position.

The notable thing about this allegation is that, notwithstanding an array of speculation and insinuation that the third and fourth Midwest trucks could have been waiting around the corner out of eyeshot and blocked from entering the alley, there is no evidence to suggest this. Indeed, putting aside the dispute over the approach of the first two Midwest trucks (discussed above), there is no evidence that the third or fourth Midwest vehicles or anyone else attempting to enter the alley was blocked by the Teamsters. To the contrary, in its brief (C.P. Br. at 7), Midwest asserts only that "Taylor did not ask the other two Midwest trucks to come to the alley because he knew that the presence of the Teamsters trucks would make it impossible for all four Midwest trucks to operate as he done in the past at 70 West Madison."

This is the nub of the allegation: that Taylor had to change his unloading plans because of the Teamsters actions. However, the record is clear that it was not the blocking that caused Taylor to "stage" the Midwest trucks offsite, but rather, it was the picketing he observed upon first passing and then approaching the site. The staging plan was developed by Taylor before any allegations of blocking. Thus, while I accept that the picketing may have influenced the Employer to alter its plan of operation, I reject the claims of Taylor that, but for the Teamsters vehicles being parked and stopped at various times in the alley and in front of the alley, he would have brought all four Midwest vehicles over to the alley, or to the Dearborn entrance to the alley, at once. To the contrary, just as the Teamsters had an unchallenged right to picket in a lawful manner, Midwest had, and knew it had, a right to enter the alley and perform its work. There is no basis to believe that Midwest would have or did accept restrictions on its right to work as it saw fit because of any unlawful conduct on the part of the Teamsters.

3. The Third Blocking Allegation

Finally, the General Counsel contends that picketing Teamsters blocked the exit from the loading bay of a Midwest truck that had finished unloading and was trying to leave. It is undisputed that while the truck was unloading picketers circled in front of the truck. No violation there is alleged, or to be found. The issue is whether the picketers blocked the truck from leaving. I reject this allegation based on the record evidence.

Midwest manager Taylor testified that it took at most 20 minutes to unload the first truck and that approximately ten picketers were around and in front of the truck, very close to it, the

whole time. The scene is captured by one of the photographs taken by Taylor (GC Exh. 6). Taylor testified that he asked de Vries to move. De Vries told him "Fuck you." Taylor says he then told de Vries he would call the police, and he did so, exiting the alley to get better phone reception. According to Taylor the police were there within five minutes. Taylor said he talked
 5 to them and the building manager talked to them. The police talked to the picketers "[t]he picketers were told to move, they [the police] helped me get the truck out of there."

It is notable that in this recitation of events, in his initial testimony, Taylor did not testify that when he asked de Vries to move, the truck was attempting to leave. I guess it could be
 10 inferred, since he says he then called the police, they came, there were discussions, the picketers moved, and, what must have been 10 or 15 minutes after his conversation with de Vries, the truck left. But given this was the General Counsel's only witness on a central allegation, I could not but help notice the indirect treatment the witness gave it. The Charging Party attempted to correct this by calling Taylor back to the stand on rebuttal, and, with the aid
 15 of questioning so leading it undermined the value of the answer, managed to get Taylor to testify that he was asking de Vries to move because he wanted to get the truck out of the dock.¹⁰ But even this was a far cry from testimony describing the efforts of the truck to leave but impeded from doing so by picketers who refused to allow it to pass. To me, it seemed like Taylor had to be pulled over the goal line on this one.

This is especially true since de Vries disputed this precise point, thus prompting the rebuttal. De Vries admitted that the picketers picketed in front of the truck, and admitted cursing in response to Taylor's request that he move. According to de Vries, he cursed "because
 25 there's no driver in his truck. He was getting smart-mouthed, there was no one in the truck. He says I want to pull my truck out, there was no driver in the truck. . . . As soon as the guy started his engine, we moved out of the way. . . . It started up and pulled out of the bay and left." De Vries denied that the picketers blocked the truck or that police had to tell them to move. Harris also testified that the picketers did not block the truck, explaining, "[o]nce we heard the truck start up, we instantly got clear of the truck."¹¹

Taylor was the General Counsel's only witness on this allegation. The driver allegedly sitting in the cab seeking to exit the dock was identified but did not testify.

Contrary to Taylor, both de Vries and Harris testified that there were police in the area
 35 the entire time the truck was unloading. This was corroborated by the testimony of city of Chicago Police Officer, Thaddeus Martyka. Officer Martyka confirmed that police officers were already present when he arrived on the scene. This undercuts Taylor's assertion that he had to make a telephone call to the police to gain their assistance when the Midwest truck sought to leave the bay. The police were already on the scene.

¹⁰Q. [COUNSEL]: Brian, this is regarding your apparently undisputed conversation with Mr. de Vries where you said 'fuck you' as he testified to and
 45 you testified to. At that time, you were asking him to please move because you wanted to get your truck out of the dock, is that correct?

A. That's correct.

¹¹On rebuttal, Taylor also denied de Vries' claim that there was no driver in the truck when
 50 he asked de Vries to move. He gave the name of the driver. Still, his testimony lacked any significant or credible account of the truck being unable to move.

Even more important, Officer Martyka testified credibly that for the entire half hour to hour that he was present at the scene he saw no blocking or untoward behavior by picketers, including when the Midwest truck backed into and later exited the loading bay. Based on Officer Martyka's credible (and disinterested) demeanor, his testimony is conclusive of the issue.¹²

I find that the Union did not block the exit of the Midwest truck from the loading bay. De Vries was impolite and did not move as soon as requested. But when the engine of the truck started up, the picketers cleared away, and there was no interference by the picketers with the truck's exiting of the bay or the area.¹³

¹²I reject the General Counsel and the Employer challenge to Martyka's credibility. They have little to work with. The General Counsel challenges (G.C. Br. at 11-12) Martyka's statement that the Teamsters picketed in the alley "in front of the truck and *the side of the truck*," (General Counsel's emphasis) and claims the evidence is undisputed that the picketers were only in front of the truck, and could not have been beside the truck. But it is undisputed that the truck stuck out of the loading bay (how much is disputed) and, Taylor agreed with the General Counsel's suggestion that the picketing extended from directly in front of the truck to cover the width of the bay, "from one side to . . . the other." So, indisputably, the picketers were to "the side of the truck," not just directly in front of it. The Employer derides Martyka's testimony as "hazy and vague," but I did not have that sense at all. Rather, my sense was that for Martyka the scene was uneventful. In any event, there was nothing vague about Martyka's unequivocal testimony that there was no blocking of the Midwest truck as it departed the alley.

¹³This is based on the additional finding that Officer Martyka witnessed the first Midwest truck entering the loading bay and then exiting without incident, the one Taylor claimed was blocked. Neither the General Counsel nor the Employer question whether Martyka could have been viewing a later truck pull into the bay, but I wondered about that. Martyka was unsure what time he arrived, and if he observed the second truck pulling into and exiting the bay, his testimony would not shed light on whether the Union blocked the exit of the first truck in the bay. I have considered this possibility, but the record as whole convinces me that Martyka was, in fact, describing the first truck to unload, the one Taylor claimed was blocked by picketers. While the record is not entirely clear, I believe, and conclude, that more likely than not, the Union was not present for the exit from the bay of the second Midwest truck. De Vries' testimony suggested, albeit not very clearly, that the Union left after the second truck went into the bay but before it completed unloading ("It started getting cold. The truck left, . . . another truck came and then we left"). Harris' testimony was also inconclusive on this point. Johnson left the alley before the first truck unloaded. Taylor testified that he thought the Union had left by the time the fourth Midwest truck arrived, but did not recall when they left. However, if the Union was present and still picketing when the second truck left the bay, I believe that it would have been clearly mentioned by Taylor, De Vries, Harris, or another witness. Moreover, Martyka testified that he arrived in time to see the truck backing in the alley from Dearborn and backing into the loading bay. I have confidence in that testimony. And while Taylor denied that any Midwest truck entered the bay this way, both De Vries and Harris testified that the first truck to enter the bay and unload—the one Taylor claims the picketers blocked when it tried to exit the bay—backed into the bay in this manner. Accordingly, I find that Martyka's testimony, which clearly placed union picketers at the scene and actively picketing, but without blocking the Midwest truck, concerned the picketing of the first truck into the bay.

Analysis

Section 8(b)(1)(A) of the Act provides that “[i]t shall be an unfair labor practice for a labor organization or its agents . . . to restrain or coerce . . . employees in the exercise of the rights guaranteed in section 7 [of the Act].” The Supreme Court has held that:

§ 8(b)(1)(A) is a grant of power to the Board limited to authority to proceed against union tactics involving violence, intimidation, and reprisal or threats thereof—conduct involving more than the general pressures upon persons employed by the affected employers implicit in economic strikes.

NLRB v. Teamsters, Local 369 (Curtis Brothers), 362 U.S. 274, 290 (1960) (holding that the statutory prohibition on threats, coercion, and restraint was “nonspecific, indeed vague,” and therefore should be interpreted with “caution” and not given “broad sweep”).

The question is whether the conduct at issue is “reasonably calculated to coerce anti-union or non-union [employees] in the exercise of their right, under the amended Act, to refrain from joining the Union.” *Ladies Garment Workers (Seamprufe, Inc.)*, 82 NLRB 892, 894 (1949), *enfd.* 186 F.2d 671 (10th Cir. 1951), *cert. denied* 342 U.S. 813 (1951).

It is settled Board precedent that blocking employee ingress to and egress from an employer’s premises, or in a manner that prevents employees from performing their work, constitutes coercive conduct prohibited by Sec. 8(b)(1)(A). *IBEW, Local Union No. 98 (TRI-M Group)*, 350 NLRB No. 83, slip op. at 4–5 (2007); *Tube Craft*, 287 NLRB 491, 492–493 (1987); *Longshoremen ILA Local 1291 (Trailer Marine)*, 266 NLRB 1204, 1207 (1983). In order to constitute coercive conduct, the blocking need not be accompanied by violence and need not last more than a few minutes. *Shopmen’s Local Union No. 455 (Stokvis Multi-Ton Corp.)*, 243 NLRB 340, 346 (1979) (pickets delaying truck from backing into loading dock for approximately 5 minutes violates 8(b)(1)(A) as does 10 pickets blocking truck from driving off premises for “several minutes” before police break up the congregation of pickets); *Metal Polishers, Buffers, Platers and Helpers International Union, Local No. 67 (Alco-Cad Nickel Plating Corp.)*, 200 NLRB 335, 336 & fn. 10 (1972) (overruling trial examiner’s conclusion that a delay of one to five minutes under peaceful circumstances does not constitute blocking or barring of ingress so as to constitute a violation of the Act).

On the other hand, it also must be recognized that isolated instances of brief impediments to entry or exit do not violate Section 8 (b)(1)(A). *SEIU Local 525*, 329 NLRB 638, 655 (1999) (“Even assuming this incident qualifies as blocking, it was momentary and noncoercive, amounting to an inconsequential act of misconduct”), *enfd.* 52 Fed. Appx. 357 (2002); *TKB International Corp.*, 240 NLRB 1082, 1099 (1979) (where “two employees and a foreman were delayed briefly in their attempts to enter the parking lot; one employee was shoved or jostled; and a picket threw himself on the hood of the other employee’s car. No damage was done. No one was injured. No threats were made. No employee was prevented from working. . . . the evidence falls short of establishing an intent to intimidate or interfere with the employees’ right to refrain from joining the pickets, or that the pickets’ conduct tended to, or did, have such an effect”); *Service Employees Local 50 (Evergreen Nursing Home)*, 198 NLRB 10, 12 (1972) (dismissing 8(b)(1)(A) allegations based on “trivia[.]” impeding of two employees and three trucks, where “everything in the record suggests a run-of-the mill picket line”).

In this case, I have found that the General Counsel’s factual allegations have not been proven. As to the first allegation of blocking, I have found that there was an incidental overlap in time that the Teamsters were unloading their picket signs and paraphernalia in the alley and the

time that the Midwest trucks arrived on Dearborn Street. This does not constitute a violation of Sec. 8(b)(1)(A). Delays attendant to traffic congestion are not coercive. Like building management, the Teamsters were not expecting Midwest to arrive so early and they had to scramble to distribute the picketing materials. It is for that purpose that the Teamsters rushed to the alley when they heard Midwest was on the way. The Teamsters had a right to unload their truck in the alley. They began doing so before Midwest arrived in the alley and, by all evidence that I have found reliable, there was no undue delay in finishing for the purpose of, or giving the objective appearance of being for the purpose of blocking the Midwest trucks. Indeed, for part of the time of the overlap, Midwest was discharging employees from their trucks and these employees were being escorted through the alley into the building. As referenced above, even blocking of a short duration may constitute unlawful coercive activity, but the salient point in this case is not the short duration of the overlap of the Teamsters vehicles being in the way of the Midwest vehicles, but rather, the circumstances and objective conduct. See, *General Iron Corp.*, 224 NLRB 1180 (1976) (dismissing 8(b)(1)(A) allegation where parked cars blocked most plant driveways on first day of strike and were moved after company notified police, where parking was difficult to obtain on busy street; even assuming the cars were related to strike activity, no basis for concluding that cars were parked there in support of strike or intended to obstruct ingress or egress to plant); *Laborers, Local 275, (S.B. Apartments, Inc.)*, 209 NLRB 279, 287 (1974) (delay of truckdriver entering plant while waiting for pickets to pass in front of truck does not constitute 8(b)(1)(A) where "there does not appear to have been any effort to obstruct his way"). It would be different if it was proven that the Teamsters made a deliberate show of slowly unloading while Midwest trucks were stymied in the effort to enter the alley, in a manner that objectively conveyed activity designed to thwart Midwest's operations. But here, the evidence falls short of that.

As to the second incident, as discussed, there is no evidence that the Teamsters vehicles blocked the third and fourth Midwest trucks, or anyone else during the times they came to stop at the ends of the alley. The evidence is clear that throughout the afternoon the Teamsters vehicles roamed through and around the alley, stopping repeatedly. There can be no violation unless someone tried to enter the alley or the loading bay, and the Teamsters vehicle refused to yield or move for them. The General Counsel's contention reduces to the claim that Midwest anticipated that this could occur, so it chose to unload two vans at a time instead of bringing all four vans at once into the area.

Taylor's testimony made clear that in response to the Teamsters presence, before any allegations of blocking, he made logistical decisions about the staging and delivery of the trucks that he would not have made in the absence of protests. That sort of "impediment" is a price of doing business under the Act in this country. It does not constitute the restraint or coercion that the Act proscribes.

Finally, I reject as wholly unproven the allegation that Teamsters pickets stopped a Midwest truck from exiting the alley after unloading. The one witness who claims it happened testified in an unconvincing fashion, and cited a lack of police on the scene that is at odds with more plausible testimony. Two union officials credibly denied that the incident occurred, as did an on-the-scene City of Chicago police officer who specifically testified that there was no blocking of the truck exiting the loading dock. I find that the pickets cleared from the truck when it attempted to exit.

In sum, the events of October 11 are an example of picketing that was obviously unwelcome, but that is to be expected, and, obviously, does not render the conduct unlawful. On the entire record, reviewing the entire afternoon of picketing, there are no allegations or evidence of violence, no allegations or evidence of threats, no allegations or evidence of

damage to equipment or property of any kind. There are allegations that trucks were obstructed in their work by misconduct on the part of the Respondent, but those allegations have not been proven. I will recommend dismissal of the complaint.

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CONCLUSIONS OF LAW

1. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

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2. Respondent did not violate the Act as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁴

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ORDER

The complaint is dismissed.

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Dated, Washington, D.C. May 14, 2008

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David I. Goldman
U.S. Administrative Law Judge

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¹⁴If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

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