

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

# Advice Memorandum

DATE: March 19, 2008

TO : Gary W. Muffley, Regional Director  
Region 9

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

578-8075-2092

SUBJECT: SEIU Local 3 (Executive Management  
Services, Inc.)  
Case 9-CP-371

This Section 8(b)(7)(C) case was submitted for advice on whether the Union's recognitional and organizational picketing of the Employer in Indianapolis, Indiana and Cincinnati, Ohio should be aggregated in determining whether the picketing exceeded 30 days. We conclude that the picketing should not be aggregated because the Union picketed in support of separate disputes involving separate questions of representation. Since the Union did not picket in Cincinnati for over 30 days, the Union did not violate Section 8(b)(7)(C).

### **FACTS**

Executive Management Services (EMS or the Employer) operates a largely nonunion janitorial service with customers located in 16 states, including Indianapolis, Indiana and Cincinnati, Ohio. The Employer's Cincinnati customers include Western Southern Life Insurance and Cincinnati State University.

Since 2005, SEIU Local 3 (the Union) has been engaged in a "Three Cities Union Future" campaign to organize janitors in Indianapolis, Columbus, and Cincinnati. In support of that campaign, the Union has sought neutrality agreements with janitorial companies in those areas. On December 5, 2005, Union contract administrator Dennis Dingow contacted the Employer's president, David Bego, and invited him to meet and agree to neutrality. On May 18, 2006, the parties met, and Dingow explained that the Union's organizing effort encompassed employees in all three cities.<sup>1</sup> Bego requested sample neutrality agreements and other information.

Over the next several months, Dingow and Bego continued to communicate intermittently, with the Union

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<sup>1</sup> The Employer does not service any buildings in Columbus, Ohio.

sending sample neutrality agreements. The proposed neutrality agreements differed in each city but basically required that the employer: 1) would not oppose the Union as a bargaining agent; 2) would provide names and address of unit employees; 3) would agree to a card check to establish a majority; 4) would not file a Board election petition; and 5) would commence bargaining for a master agreement in that market, once the Union demonstrated that 60% of the combined square footage of office space in the area specified by the agreement was serviced by contractors who have recognized the Union.<sup>2</sup> In Cincinnati, the Union's proposed market encompassed four counties in Kentucky and four in Ohio, including Hamilton County where Cincinnati is located.

On August 21, 2006, Dingow advised Bego that the Union would start targeting buildings unless Bego agreed to neutrality. EMS and the Union continued to discuss the neutrality issue and exchange emails. On December 9, 2006, the Union asked for an "answer" regarding the neutrality issue. The Employer did not agree to neutrality.

The Union began its organizational activities in Cincinnati on February 9, 2007, which continued intermittently until mid-August 2007. The Region has determined that the Union engaged in picketing on five occasions during this time. On four of the five occasions (March 19, 20, 21, and 28), eight to 14 individuals walked in a circle on the public sidewalk about 20 to 30 feet in front of the main doors of the main building of the Western Southern Life Insurance complex distributing handbills and carrying "Justice for Janitors" signs. The Union also stationed an individual inside a phone booth type "jail" that displayed a sign stating, "EMS Janitorial Poverty Wage Prison." On the last occasion on April 4, 2007, about 30 to 35 individuals demonstrated outside of the main building of Western Southern Life Insurance complex.<sup>3</sup>

Meanwhile, the Union also began handbilling at Employer locations in Indianapolis beginning in January 2007. The Union increased its Indianapolis activity in late March/early April 2007, continued demonstrating periodically throughout the summer, and commenced a strike

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<sup>2</sup> One of the sample agreements provided by the Union states that bargaining will begin once 60% of contractors in the area specified by the agreement "are signatory to recognition procedure agreements with the Union."

<sup>3</sup> The Region has not submitted for Advice the issue of whether these five incidents or others constituted picketing.

of EMS employees in September 2007. The Employer filed Section 8(b)(7)(C) charges with Region 25 regarding these incidents.<sup>4</sup>

By late March 2007, contractors that together serviced at least 60% of the office space for the eight counties in Ohio and Kentucky specified in the neutrality agreement recognized or signed recognition procedure agreements with the Union. The Union and the contractors therefore began negotiating for a master collective-bargaining agreement for this geographic area. Consequently, the Union ceased all picketing activity in Cincinnati and has focused its efforts in Indianapolis.

### **ACTION**

We conclude that the picketing in Indianapolis and Cincinnati should not be aggregated because the Union picketed in each location in support of separate recognition and organizational objects; the Union sought in each city separate neutrality agreements that would ultimately result in bargaining on a regional, multi-employer basis, not on an Employer-wide basis. Since the Union did not picket for a period in excess of 30 days in Cincinnati, the charge should be dismissed, absent withdrawal.

Union picketing of an unorganized employer, which has as its goal either the organization of the employer's employees,<sup>5</sup> or voluntary recognition by the employer,<sup>6</sup>

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<sup>4</sup> [FOIA Exemptions 5 and 7(A)]

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<sup>5</sup> See e.g., New Otani Hotel and Garden, 331 NLRB 1078, 1080 fn.6 (2000); Chefs, Cooks Local 89 (Cafe Renaissance), 154 NLRB 192 (1965); Int'l Typographers (Greenfield Printing), 137 NLRB 363, 372-374 (1962), *enfd.* 326 F.2d 634 (D.C. Cir. 1963).

violates Section 8(b)(7)(C) when it is conducted without an election petition being filed within a reasonable period of time from its commencement, not to exceed 30 days. In determining whether union picketing is for an object proscribed by Section 8(b)(7)(C), the Board considers the totality of the circumstances.<sup>7</sup> Recognition or organization need not be the sole object of picketing for a violation of Section 8(b)(7)(C) to arise; rather it need only be one of the reasons for the picketing.<sup>8</sup>

As a threshold matter, we agree with the Region that the Union had an organizational and recognitional object. Thus, "an" object of the Union conduct was obtaining a neutrality agreement from the Employer to assist the Union in its effort to organize the Employer's employees and to ultimately obtain recognition.<sup>9</sup> While the agreement urged by the Union would not require immediate recognition, as evidenced by the sample agreements provided to the Employer, such an agreement would require the Employer to give up its right to an election<sup>10</sup> and to recognize the Union if presented with a verified card majority. Such an ultimate recognitional object is proscribed by Section 8(b)(7)(C).<sup>11</sup>

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<sup>6</sup> See e.g., Building Service Employees Union, Local 87 (Liberty House/Rhodes), 223 NLRB 30, 36 (1976).

<sup>7</sup> See, e.g., Iron Workers Local 10 (R & T Steel Constructors, Inc.), 194 NLRB 971, 973 (1972).

<sup>8</sup> St. Helens Shop N Kart, 311 NLRB 1281, 1286 (1993), citing to Stage Employees IATSE Local 15 (Albatross Productions), 275 NLRB 744-745 (1985), and the cases cited there at fn.4.

<sup>9</sup> See New Otani Hotel and Garden, 331 NLRB at 1080 ("undisputed" that union's campaign, which primarily relied upon picketing for a neutrality/card check agreement, had "an overall organizational objective").

<sup>10</sup> Linden Lumber Div. v. NLRB, 419 U.S. 301 (1974) (employer not required to recognize union based on card majority).

<sup>11</sup> See [*FOIA Exemption 5*

]; Operating Engineers, Local 17 (Zoladz Construction Co.), Case 3-CP-398, Advice Memorandum dated June 11, 2003 (same); UNITE (Hennes & Mauritz d/b/a H & M), Case 2-CP-1040 et. al., Advice Memorandum dated January 21, 2004 (same).

The Region concluded that the Union engaged in recognitional picketing on five occasions between March 19 and April 4, 2007, a period less than 30 days. Accordingly, the Union did not violate Section 8(b)(7)(C) by picketing for an organizational/recognitional object for more than 30 days unless the Cincinnati conduct is aggregated with the Indianapolis conduct.

A Union violates Section 8(b)(7)(C) where it pickets at an employer's various locations for a period in excess of 30 days where a single question of representation exists at a number of those employer locations.<sup>12</sup> In Los Angeles Building and Construction Trades Council (Church's Fried Chicken),<sup>13</sup> for instance, the Board held that a union violated Section 8(b)(7)(C) where it picketed at two employer locations for more than 30 days without filing a 9(c) petition. The Board reasoned that "the picketing at both sites was for the single objective," to obtain the employer's signature to a building trades agreement, and thus, "the same dispute was involved at the two sites."<sup>14</sup> Thus, where a union pickets to obtain recognition in a single unit, it is "of no moment" that the picketing occurs at several places where the employer performs work.<sup>15</sup>

The Board has not determined under what circumstances picketing for a neutrality agreement that does not specify a unit, in multiple locations in excess of 30 days, violates Section 8(b)(7)(C). However, in UNITE (H & M), 2-CP-1040, Advice Memorandum dated January 21, 2004, p. 10, we determined that a union violated Section 8(b)(7)(C) where it picketed multiple employer locations to pressure the employer to sign a neutrality agreement. Advice aggregated the number of days picketing occurred at each location because the union's campaign was clearly national in scope.<sup>16</sup>

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<sup>12</sup> Retail Clerks Store Employees Union Local 1407 (Jaison's), 215 NLRB 410, 412 (1974).

<sup>13</sup> 183 NLRB 1032, 1038 (1970).

<sup>14</sup> Id. See IBEW Local 3 (M.F. Electrical Service Co.), 325 NLRB 527, 527 fn. 1, 528 (1998) (rejecting union's contention that it was entitled to picket each of the employer's locations for 30 days; union sought to represent all of employer's employees in single unit).

<sup>15</sup> IBEW Local 113 (I.C.G. Electric), 142 NLRB 1418, 1427 (1963).

The dispute here did not concern a single question of representation but, rather, separate organizing drives that would ultimately result in separately negotiated contracts. Thus, the Union sought to negotiate separate regional neutrality agreements with the Employer, one for Cincinnati and one for Indianapolis, that contemplated separate card check recognition. Further, bargaining for master labor agreements would occur only once 60% percent of the office space in that region was serviced by contractors who had recognized the Union. This separate bargaining further supports a finding that the disputes were regionally based, not Employer-based. Indeed, the Union's cessation of picketing in Cincinnati once it began negotiating for a master labor agreement in that region demonstrates that the dispute with EMS in Cincinnati was separate from the still ongoing dispute with EMS in Indianapolis. Finally, unlike the dispute in H & M, the Union's dispute with EMS was clearly not national in scope, as EMS services buildings in 14 other states in which the Union did not seek neutrality agreements.

In sum, the picketing activity in Cincinnati and Indianapolis was in support of separate disputes involving separate questions concerning representation, and thus must be viewed separately. The Union did not picket in excess of 30 days in Cincinnati. Accordingly, the Region should dismiss the Section 8(b)(7)(C) charge, absent withdrawal.

B.J.K.

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<sup>16</sup> The union's initial letter to the employer referred to collective bargaining rights of "H & M employees in the U.S," and the parties' discussions indicated that the union was attempting to organize all of the employer's employees.