

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

# Advice Memorandum

DATE: May 11, 2001

TO : Peter B. Hoffman, Regional Director  
Region 34

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

512-5009-1500

SUBJECT: Donald Sullivan & Sons, LLC  
34-CA-9592-1 and 2

This case was submitted for advice as to whether the Employer unlawfully threatened to sue two discriminatees because they filed charges and gave testimony under the Act in a prior Board case.<sup>1</sup>

In a Decision and Order dated January 18, 2001 (333 NLRB No. 7), the Board adopted the decision of the Administrative Law Judge that the Employer violated Section 8(a)(3) by discharging Ceraldi and Ostroski because they had applied for membership with Plumbers Local 777 (the Union). Compliance discussions were unsuccessful and the Region submitted its "Recommendation for Enforcement on an Expedited Basis" on March 20, 2001.

On or about February 15, 2001, the day following the initial compliance deadline, Respondent, by its counsel, served on Ostroski and Ceraldi copies of a civil "Summons" and "Complaint" (the lawsuit) which it had purportedly filed against them in the State of Connecticut Superior Court. The "lawsuit" contained two identically worked counts, the first against Ostrowski and the second against Ceraldi, alleging that "[o]r before February 17, 1999" Ceraldi and Ostrowski each "maliciously failed to tighten a mechanical fitting on an underground water main", which "leaked and caused substantial damage to said commercial premises." The lawsuit further alleges that as a result of this "intentional" act, respondent "incurred expenses" and "sustained permanent damage to its business reputation and an immeasurable amount of lost profits." The "lawsuit" seeks money damages in the amount of \$15,000 or more from each defendant. Although the Summons and Complaint was

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<sup>1</sup> Initially, the Region requested advice as to whether the Employer's lawsuit filed against the discriminatees violated Sections 8(a)(1) and (4) under Bill Johnson's Restaurants, 461 U.S. 731 (1983). However, the Region has informed us that no lawsuit was filed and thus withdrew that issue from its submission.

served on defendants, it was never filed with the court. In the event a new lawsuit is instituted, it will have to be served on defendants again.

The threat to sue in retaliation for the exercise of Section 7 activity violates Section 8(a)(1).<sup>2</sup> Here, the Employer served a Summons and Complaint on Ceraldi and Ostrowski shortly after the Board order directing the Employer to reinstate them with backpay. The Summons and Complaint sought damages for Ceraldi and Ostrowski's malicious shoddy workmanship that the Employer knew had not been performed by Ceraldi and Ostrowski. In this regard, we note that the Employer admitted at the hearing that Ceraldi was not responsible for the damages. Further, in a signed statement submitted to Unemployment Compensation, the Employer stated that Ostrowski had no job related misconduct. This statement appears to post-date the time that the Employer learned about the water main leak allegedly caused by the discriminatees. And during investigation of the underlying unfair labor practice charge in September 1999, the Employer did not mention the water main incident. And, the Employer never threatened to sue or sued the employee whom the Employer knew was directly responsible for the underground plumbing work. In these circumstances, we agree with the Region that the evidence indicates that the Employer's threat to sue Ceraldi and Ostrowski was in retaliation for their exercise of Section activity, filing charges and giving testimony to the Board, rather than because of any misconduct on their part.

Accordingly, complaint should issue, absent settlement, alleging that the Employer violate Section 8(a)(1) in threatening to sue Ceraldi and Ostrowski.

B.J.K.

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<sup>2</sup> See Clyde Taylor Co., 127 NLRB 103, 108 (1960); GHR Energy Corp., 294 NLRB 1011, 1014 (1989); Government Employees (IBPO), 327 NLRB 676, 682 (1999), and cases cited therein.