

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

Advice Memorandum

DATE: June 12, 2003

TO : Dorothy L. Moore-Duncan, Regional Director
Daniel E. Halevy, Regional Attorney
John D. Breese, Assistant to Regional Director
Region 4

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

SUBJECT: Teamsters Local 830
(Wilkie Chevrolet-Buick-Suburu)
Case 4-CC-2392

This Section 8(b)(4)(ii)(B) case was submitted for advice on whether the Union's parking of a large tractor-trailer marked "Teamsters" in front of a neutral employer's establishment constituted coercive conduct. We conclude that the Union's entire course of conduct, including its prior picketing, the oversized Union-marked trailer, the contemporaneous distribution of misleading handbills, and the use of either loud music or a bullhorn, constituted confrontational conduct tantamount to picketing.

FACTS

In August 2002, the Union was certified to represent a unit of sales representatives at Wilkie Lexus. Wilkie Lexus and the Union then began negotiating for an initial agreement. The Region has concluded that the Charging Party Employer, Wilkie Chevrolet, is a neutral entity in the Union's bargaining dispute with Wilkie Lexus.

On May 12, 2003, the Union picketed Employer Wilkie Chevrolet with signs stating: "Wilkie Unfair to Its Employees. How Can You Get a Fair Deal on a Car?" The picketers also distributed leaflets which displayed in large typeface the name "Wilkie" encircled and back slashed. The leaflet was entitled "There's No Deal Here!" and asked how customers could expect to get a fair deal "from Wilkie if they do not think their own employees are worthy of one?" Although the leaflets thus did not distinguish between the two Wilkie dealerships, the leaflets did explain that the Union had a contract dispute with Wilkie Lexus.

Two days later on May 14, the Employer filed the instant charge. That same day, Union's counsel wrote the Employer's counsel acknowledging that the Union did not

have a primary dispute with the Employer and that the picketing was a result of "some confusion" and was "inadvertent." Union counsel's letter stated that the picketing would cease and that there would be no activity at the Employer's premises "for a period of time sufficient to clear the air . . ."

Two weeks later on May 28, a large tractor-trailer marked "Teamsters" over its entire side was parked in front of the Employer's dealership from 8:30 a.m. until 2:00 p.m. During this time, loudspeakers blared unpleasant music and individuals distributed the noted above leaflets. The tractor-trailer appeared the following day at 8:30 a.m. at the same location. The Employer noted that street signs allowed only one hour parking and called the police who required the tractor-trailer to move. The tractor-trailer was then parked across the street from the Employer. At all times on this day, the tractor-trailer was accompanied by handbillers who distributed the above noted leaflet, and also by an individual with a bull horn shouting "Wilkie Unfair" and "No Deals Here."

ACTION

The Union's entire course of conduct including its prior picketing, the oversized Union-marked trailer, the contemporaneous distribution of misleading handbills, and use of either loud music or a bullhorn, constituted confrontational conduct tantamount to picketing.

Traditional union picketing involves individuals patrolling while carrying placards attached to sticks. However, the Board has long held that the presence of traditional picket signs and/or patrolling is not a prerequisite for finding union conduct to be the equivalent of picketing.¹ On the other hand, the Board has also stated that "[o]ne of the necessary conditions of 'picketing' is a confrontation in some form between union members and employees, customers, or suppliers who are trying to enter the employer's premises."² Along the same lines, "[t]he important feature of picketing appears to be the posting by a labor organization . . . of individuals at the approach to a place of business to accomplish a purpose

¹ See, e.g., Lawrence Typographical Union No. 570 (Kansas Color Press), 169 NLRB 279, 283 (1968), enfd. 402 F.2d 452 (10th Cir. 1968), citing Lumber & Sawmill Workers Local No. 2797 (Stoltze Land & Lumber Co.), 156 NLRB 388, 394 (1965).

² Chicago Typographical Union No. 16 (Alden Press), 151 NLRB 1666, 1669 (1965), quoting NLRB v. United Furniture Workers, 337 F.2d 936, 940 (2d Cir. 1964).

which advances the cause of the union, such as keeping employees away from work or keeping customers away from the employer's business."³

Picketing involves a "'mixture of conduct and communication,'" and does not solely depend upon the persuasive force of the idea being conveyed, but rather on "the conduct element [which] 'often provides the most persuasive deterrent to third persons about to enter a business establishment.'"⁴ Picketing is meant to cause those approaching the location of the demonstration to take some sympathetic action, such as not entering the facility involved. The Board has also recognized that the "conduct element" in picketing invokes a response regardless of any message.

In determining whether employees are engaged in DeBartolo handbilling or picketing, the Board looks to whether, under the totality of the circumstances, a union is using conduct rather than speech to induce a sympathetic response. For example, because of its confrontational and coercive nature, the presence of mass activity involving crowds that far exceed the number of people necessary for solely free speech activity may constitute picketing.⁵ The photographing of neutrals as they pass through an entrance has also been found to be an indicium of picketing in

³ Stoltze Land & Lumber Co., above, 156 NLRB at 394; see also United Mine Workers District 12 (Truax-Traer Coal Co.), 177 NLRB 213, 218 (1969), enfd. 76 LRRM 2828 (7th Cir. 1971).

⁴ See DeBartolo II, above, 485 U.S. at 580, quoting NLRB v. Retail Store Employees Union Local 1001 (Safeco), 447 U.S. 607, 619 (1980) (Stevens, J., concurring).

⁵ See, e.g., Mine Workers (New Beckley Mining), 304 NLRB 71, 71, 72 (1991), enfd. 977 F.2d 1470 (D.C. Cir. 1992) (finding mass picketing in violation of 8(b)(4)(ii)(B) where 50-140 union supporters milled about in parking lot outside neutral facility around 4:00 a.m. while shouting antagonistic speech to replacement employees); Service & Maintenance Employees Union No. 399 (William J. Burns Int'l Detective Agency), 136 NLRB 431, 432, 436 (1962) ("[t]hat such physical restraint and harassment must have been intended may be inferred from the number [20-70] of marchers engaged in patrolling (far more than required for handbilling or publicity purposes)"); Truax-Traer Coal Co., above, 177 NLRB at 218 (finding picketing where approximately 200 union agents arrived at the worksite and congregated around or in their parked cars).

circumstances where it is found to be coercive.⁶ The Board has even found that signs placed in proximity to the entrance may constitute picketing under certain circumstances.⁷

[FOIA Exemption 7(A)]⁸

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[FOIA Exemption 7(A)

⁶ See General Service Employees Union Local 73 (Andy Frain), 239 NLRB 295, 306, 307 (1978) (finding union's handbilling was picketing that violated 8(b)(4)(i) and (ii)(B) where union distributed handbills, displayed signs in parked cars, photographed neutrals, and previously picketed facility; finding union's photographing under circumstances inherently coercive where it took place at reserved neutral gate and where cameras had no film).

⁷ See, e.g., Teamsters Local 182 (Woodward Motors), 135 NLRB 851, 851 fn. 1, 857 (1962), enfd. 314 F.2d 53 (2d Cir. 1963) (finding picketing that violated 8(b)(7)(B) where the union stuck two picket signs, which were monitored by union agents from a nearby car, in a snow bank in front of the employer's facility after the union had engaged in three months of traditional picketing at the facility); see also Laborers Local 389 (Calcon Construction), 287 NLRB 570, 573 (1987) (union signs were placed 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 placed signs on safety cones, barricades, and on jobsite fence).

⁸ [FOIA Exemption 7(A)
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.⁹] We reach the same conclusion in this case.

The totality of the Union's conduct, beginning with the actual picketing, establish that the Union was not using pure speech to evoke a sympathetic response. [FOIA Exemption 7(A) .] The Union here used a tractor-trailer marked "Teamsters" similarly to symbolize a union labor dispute.¹⁰ [FOIA Exemption 7(A)

.] Similarly, the Union's handbills here gave the false impression that neutral Wilkie Chevrolet was part of the Union's primary dispute with Wilkie Lexus. In sum, the Union's tractor-trailer symbol, misleading handbilling, and the blaring music or bull horn exhortations, all combine to constitute confrontational picketing.

Accordingly, the Region should issue complaint, absent settlement, alleging that the Union violated Section 8(b)(4)(ii)(B).¹¹

B.J.K.

⁹ [FOIA Exemption 7(A)

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¹⁰ See also Teamsters (Overnite Transportation Co.), Cases 26-CC-525, Advice Memorandum dated July 13, 2001, pp. 6-8, 34-35 (parking white van marked "Local 673" and "Strike & Organizational Unit" near the employee gate was the equivalent of a picket sign and constituted unlawful Section 8(b)(4)(i)(B) inducement).

¹¹ The Region should notify the Injunction Litigation Branch prior to filing any Section 10(1) petition.