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

Advice Memorandum

DATE: July 18, 2000

TO : Sandra Dunbar, Regional Director
Region 3

FROM: Barry Kearney, Associate General Counsel
Division of Advice

SUBJECT: Hotel, Motel & Restaurant Employees
& Bartenders Union, Local 471
(University Auxiliary Services at Albany, Inc.)
Case 3-CC-1482

This Section 8(b)(4)(ii)(B) case was submitted for advice on whether the Union engaged in unlawful secondary conduct by its role in the sit-in demonstration at the premises of a neutral employer.

FACTS

Charging Party University Auxiliary Services at Albany, Inc. (UAS) provides auxiliary services to the State University of New York at Albany(SUNY), including food service operations on campus. From March 1998 through July 1999, UAS entered into consulting agreements with Sodexho Marriott Services, Inc. (SMS) for those services. On June 1, 1999, the Hotel, Motel & Restaurant Employees & Bartenders Union, Local 471(the Union) was recognized by UAS as the collective bargaining representative of employees employed by UAS in its cafeteria service operations. On July 1, 1999, UAS contracted with SMS to provide cafeteria service operations. Since that time, the Union has been involved in a dispute with SMS and has filed an unfair labor practice charge alleging that SMS has unlawfully refused to recognize and bargain with the Union.[1]

On March 30, 2000, a group of students led an anti-sweat shop rally on campus. After that rally was over, the Union President and Union staff organizer marched with a group of students, faculty, and community members to the University's administration building. The Union states that the movement from the rally to the University Administration Building was unplanned. For over 4 hours, approximately 20 to 40 demonstrators stood or sat in the

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[1] See Case No. 3-CA-22050.

waiting area outside the offices of the University officials, including the president and provost. The waiting area measures approximately 25 feet by 30 feet. Sometime during this demonstration, a letter was given to a SUNY representative. This five-page letter, drafted by the union organizer, was on union letterhead. The letter listed several "demands" including a request that the University president intervene with SMS to have the company refrain from its anti-union campaign. At various times during its demonstration, individuals shouted Union chants such as "Hey, Hey, Ho, Ho, Sodexho Marriott has Got to Go" and "SMS Got to Go." In addition, some of the demonstrators had signs that read "Dump Suxho Marriott," and others wore stickers featuring a red circle with the words "Sudexho Marriott" crossed out inside the circle.

In response to the Union's letter, the University president requested that the student leaders meet with her the following day. According to the Union President, the students drafted a reply declining the University President's request for a meeting and urging her to include representatives from various unions, including Local 471. The reply also listed the contact person as Local 471's President.

After more than 4 hours in the waiting area, university security personnel requested that the demonstrators leave the premises. All the demonstrators left the area.

ACTION

Complaint should issue, absent settlement, alleging that the Union's conduct at the sit-in demonstration violated Section 8(b)(4)(ii)(B).

Initially, we assume without deciding, that both the rally and sit-in demonstrations were student led. We nevertheless conclude that there is sufficient evidence that the Union endorsed or adopted the sit-in demonstration. We reach this conclusion in the particular circumstances described above, given not just the mere presence of the Union President and staff organizer at the demonstration, but rather their active participation and thus apparent endorsement of a Union-cause demonstration.[2]

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[2] Thus we are not deciding whether the mere presence of Union officials at a rally is sufficient to find a violation of Section 8(b)(4)(ii)(B) of the Act.

The sit-in demonstration was in furtherance of the Union's dispute with SMS. Demonstrators chanted Union slogans and displayed Union signs. During all this activity, which would appear to have been a Union demonstration, Union officials engaged in supportive conduct. They introduced themselves as Union officials to University officials, provided a letter drafted by the staff organizer on Union letterhead listing several demands on the university, and had the Union President listed as the contact person for the University to respond to concerning a meeting with the demonstrators and the University President. These Union officials did not merely fail to disavow the actions of the demonstrators. Rather they were present at and actively participated in the demonstration, and thus adopted the conduct of the demonstrators. Thus, these activities are clearly chargeable to the Union and the Union bears responsibility for such conduct.[3] Next, we concluded that this conduct fell within Section 8(b)(4)(ii)(B).

Section 8(b)(4) proscribes more than just picketing. It prohibits all conduct where the union coerces, threatens or restrains third parties to cease doing business with the neutral employer, or induces or encourages its employees to stop working.[4] The Board has found many types of conduct to be "coercive"[5] even though they did not involve any strike or picketing activity.

It is clear that the Union officials and other demonstrators occupied the waiting area for over 4 hours and presented university officials with a letter on Union letterhead which made demands on the university to enmesh itself in the labor dispute between the Union and SMS. In addition, many demonstrators carried signs, had stickers,

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[3] See, Mine Workers District 29 (New Beckley Mining Corp.), 304 NLRB 71 (1991); Service Employees Local 87 (West Bay Maintenance), 291 NLRB 82 (1988).

[4] NLRB v. Denver Bldg. & Constr. Trades Council, 341 U.S. 675, 688-89 (1951). See also NLRB v. Fruit and Vegetable Packers, Local 760, 377 U.S. 58, 68 (1964) (whether a particular activity is prohibited by Section 8(b)(4) depends upon the "coercive nature of the conduct, whether it be picketing or otherwise").

[5] "Coercion" is defined as a disruption of the neutral employer's business. NLRB v. Local 825, Operating Engineers, 400 U.S. 297, 304-05 (1971).

and chanted anti-Sodexho Marriott slogans. Thus the Union-adopted demonstration clearly evinced a secondary object. We conclude that the demonstration also was coercive within the meaning of 8(b)(4)(ii).

Given the small dimensions of the waiting area and the large number of demonstrators, it would be hard to maneuver through the demonstrators in order to enter and exit the offices of university officials. In fact, there is evidence that a mail clerk asked a university security officer to escort him through the crowd of demonstrators. All this activity is analogous to the mass gathering or coercive blocking and interference with neutral employers' business found unlawful in New Beckley Mining, supra. Such activity is not the persuasive "communication" protected by DeBartolo.[6] Therefore, we conclude that the demonstrators used unprotected coercion, rather than protected persuasion, to achieve their goals.

Finally, the Union may argue that SUNY has a policy of permitting demonstrations in this waiting area, and that the University thus consented to this sit-in demonstration. However, the record indicates only that the University may have permitted student demonstrations in this area. This is insufficient to show that the University consented to its use for unlawful activities by the Union. In any event, since "the statute was enacted in the public interest," the Union may not avoid a violation by claiming that the Employer consented to secondary activity.[7]

Accordingly, the Region should issue a complaint, absent settlement, alleging a violation of Section 8(b)(4)(ii)(B).

B.J.K.

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[6] Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council, 485 U.S. 568, 128 LRRM 2008 (1988).

[7] See Medo Photo Supply Corp. v. NLRB, 321 U.S. 678 (1944).