

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

Advice Memorandum

DATE: November 28, 2000

TO : John Kollar, Acting Regional Director
Region 8

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

SUBJECT: Northeast Ohio District Council of Carpenters
(D-A-S Construction Co.)
Case 8-CC-1651

560-7540-2080-5000

This case was submitted for advice as to whether the Union's "area standards" picketing and handbilling on the sidewalks outside a strip mall where construction workers, the primary employees, performed services was lawful common situs picketing or unlawful because the pickets broadcast "do not patronize" messages over a bullhorn.

D-A-S Construction (the Employer) was engaged in remodeling a branch office of Ohio Savings Bank (Bank) in a strip mall in Richmond Heights, Ohio. On the morning of September 29, 2000, five Union pickets began patrolling the public sidewalk on the perimeter of the parking lot of the strip mall, approximately 50 feet from the Bank. There is no dispute that the picket signs and handbills distributed by the pickets bore lawful area standard messages. The Employer states that for a period of about an hour, the pickets used a bullhorn every 5 minutes to make statements to the following effect:

Please don't patronize Ohio Savings Bank. They use DAS Construction who pays their workers substandard wages. Please do not patronize Ohio Savings Bank. Help keep up the standards of our community. Do not patronize Ohio Savings . . .

The Employer asserts that at some point police asked the pickets to lower the volume of the bullhorn. The pickets left the site at the same time the Employer's employees

left the site, at approximately 2:00 p.m. The pickets did not return to the site.

We agree with the Region that the Union violated Section 8(b)(4)(ii)(B) by engaging in picketing with an object of forcing the neutral Bank to cease doing business with the Employer. Although there is apparently no contention that the Union did not comply with the Moore Dry Dock standards for common situs picketing,¹ there is direct evidence of an unlawful secondary object. Thus, the Board has held otherwise lawful common situs picketing unlawful where statements by pickets reveal a proscribed secondary object.²

While area standards picketing by itself would have been lawful here, the "do not patronize" messages directed at the neutral Bank evidenced an unlawful secondary object in addition to the lawful area standards message. If there had been no picketing or equivalent coercive conduct,³ but

¹ Sailors' Union of the Pacific, AFL (Moore Dry Dock Company), 92 NLRB 547 (1950). Compliance with the Moore Dry Dock standard is not conclusive evidence that the picketing constitutes lawful primary activity if the "totality of a union's conduct in a given situation . . . disclose[s] a real purpose to enmesh neutrals in a dispute". Local No. 441, International Brotherhood of Electrical Workers (Rollins Communications), 222 NLRB 99 (1976), enf'd. 569 F.2d 160 (D.C.Cir. 1977), on remand from 510 F.2d 1274 (1975), denying enf. to 208 NLRB 943 (1974). See also General Teamsters, Warehouse and Dairy Employees Union Local No. 126 (Ready Mixed Concrete), 200 NLRB 253, 254-55 (1972).

² See, e.g., Carpenters Union Local No. 1622 (Robert Wood & Associates), 262 NLRB 1211, 1218 & n.26, enf'd. 786 F.2d 903 (9th Cir. 1986); Electrical Workers, Local 6 (Intercontinental Hotels), 286 NLRB 680, 685 (1987).

³ In these circumstances, where there was actual picketing, we need not reach the question of whether the use of a bullhorn for part of one day would, in and of itself, constitute coercive conduct. See generally, e.g., UMWA (New Beckley Mining Corp.), 304 NLRB 71, 73 (1991), enf'd.

only "area standards" handbilling, the additional "do not patronize" message would appear to have been lawful under DeBartolo,⁴ which privileges peaceful non-picketing appeals urging a consumer boycott of a neutral employer. However, there was picketing, rendered unlawful by the consumer boycott message. Accordingly, the Region should issue complaint, absent settlement, alleging violation of Section 8(b)(4)(ii)(B).

B.J.K.

977 F.2d 1470 (D.C. Cir. 1992); Service Employees Union, Local 87 (Trinity Building Maintenance Co.), 312 NLRB 715 (1993), enf'd. 103 F.3d 139 (9th Cir. 1996)(table).

⁴ Edward J. DeBartolo Corp. v. Florida Gulf Coast Building Trades Council, 485 U.S. 568 (1988).