

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

# Advice Memorandum

DATE: December 11, 2000

TO : Victoria E. Aguayo, Regional Director  
Region 21

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

SUBJECT: IBT, Teamsters Joint Council 42, 560-7540-4020-5033  
Teamsters Local 692 560-7540-4020-5067  
(Interfreight Transport, Inc.)  
Case 21-CC-3299

This Section 8(b)(4) case was submitted for advice as to whether the purported neutral employer is a "struck work ally" of the primary employer.

### FACTS

Interfreight Transport, Inc., a cargo delivery company whose employees are not represented by a labor organization, operates out of a single facility in Rancho Dominguez, California. In August 1999, Interfreight executed a contract to provide cartage services to Overnite Transportation Company's Montebello, California facility on an as-needed basis.

In October 1999, the International Brotherhood of Teamsters began a nationwide strike against Overnite. Since the beginning of the strike, there has been intermittent picketing at Overnite's Montebello facility. The employees at that facility are not represented by any labor organization and have never refused to report to work as a result of the intermittent picketing. In addition, Overnite's counsel has informed the Region that no work from other Overnite facilities has been diverted to the Montebello facility or to the cartage warehouses where Interfreight picks up freight. Overnite also asserts that it has no need to farm out "struck work" from the Montebello facility because the intermittent picketing there has not affected Overnite's ability to meet customer needs.

In March 2000,<sup>1</sup> Overnite's Montebello facility expanded its service area into geographical areas that Overnite had

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<sup>1</sup> All remaining dates are in 2000, unless otherwise noted.

not previously served.<sup>2</sup> In addition to the expanded service area, Overnite also had an increase in its overall volume of business and a decrease in its number of drivers. Although Overnite usually employs about 55 drivers at the Montebello facility, in about March the number of drivers decreased to about 50 as a result of the natural fluctuation of Overnite's workforce.<sup>3</sup>

At this time, Overnite's Montebello facility began using Interfreight's services, mainly to do pick-ups or deliveries at independent cartage warehouses. This work is more time-consuming because of the wait involved at the warehouse. In addition to these types of orders, Overnite also gave Interfreight "overflow" work. For example, if Overnite had too many orders to fill in a particular day, it would use Interfreight to execute the remaining orders.<sup>4</sup> These orders were picked up or delivered by Interfreight drivers at the Montebello facility. Currently, Overnite uses Interfreight almost every day for "overflow" work. During slower seasons, such as June or July, Overnite only uses Interfreight about 3 times a week for that work.

By letter dated September 13, legal counsel for Teamsters Joint Council 42 (the Union) notified Interfreight that it believed Interfreight to be an ally of Overnite, and that it would commence picketing at Interfreight's facility. While the Union has not provided any basis for its belief, it apparently relies on the frequency with which Interfreight's trucks have been present at Overnite's Montebello facility to pick up cargo since March. By letter dated September 18, Interfreight's legal counsel responded

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<sup>2</sup> Overnite's facilities operate in areas of exclusive geographical jurisdiction.

<sup>3</sup> According to Overnite, it previously contracted with another cartage agent, Desert Empire, to perform overflow work. Desert Empire was used by Overnite for about 3 to 6 months because Overnite was, at that time, experiencing a similar situation involving an increase in work volume and a decrease in its workforce.

<sup>4</sup> Overnite also uses two other cartage agents who charge much higher rates than Interfreight and are therefore seldom used. These other cartage agents are used on occasions where Overnite has so much overflow work that neither Overnite nor Interfreight has sufficient resources to make all the deliveries.

to the letter, denying that Interfreight is an ally of Overnite.

On September 26, approximately 50-80 individuals began picketing Interfreight's facility carrying signs that said: "Teamsters Strike against Overnite for Unfair Labor Practice." Hand-written on the sides of some of the signs were the words: "Interfreight Ally." The picketing has been ongoing each day since September 26. The picketers usually arrive at about 6 or 7 a.m., and stay until about 10 a.m. Because of the picketing, Interfreight's drivers have not been able to start on their routes until after 10 a.m. During the picketing, no employee of Overnite has been present at Interfreight's facility.

The Region's investigation has revealed that there is no common ownership or management between Interfreight and Overnite. Interfreight and Overnite are not involved in each other's personnel or labor relations matters. There is no evidence of any relationship between Interfreight and Overnite other than that of independent subcontracting entities.

#### **ACTION**

We conclude that Interfreight is not an "ally" of Overnite, and therefore the Union's picketing of Interfreight violated Section 8(b)(4) of the Act.<sup>5</sup>

Congress intended the enactment of the secondary boycott provisions of the Act to "shield[] unoffending employers and others from pressures in controversies not their own."<sup>6</sup> Accordingly, the Board has implemented Section 8(b)(4)(B) by enjoining labor organizations from putting economic pressure on employers genuinely neutral in a labor dispute. Thus, a union violates Section 8(b)(4) when it pickets neutral employers and their employees in furtherance

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<sup>5</sup> Although the charge is filed against the International, Teamsters Joint Council 42, and Teamsters Local 692, we note that the September 13 letter threatening the picketing was issued solely on behalf of Teamsters Joint Council 42 and the Region has adduced no evidence indicating agency status of or involvement by the International or any local. Accordingly, in agreement with the Region, we conclude that the complaint should issue solely against Teamsters Joint Council 42.

<sup>6</sup> Edward J. DeBartolo Corp. v. NLRB, 463 U.S. 146, 156 (1983).

of its dispute with the primary employer at locations and times when no employees of the primary were present.<sup>7</sup>

A union may lawfully picket an employer other than the primary if it demonstrates that an entity has lost its neutrality for the purposes of Section 8(b)(4)(B), because the entity is so closely identified with, and allied to, the primary employer that it has ceased being neutral to the dispute.<sup>8</sup> A union can satisfy its burden in this regard by establishing that the targeted entity is an "ally" of the primary employer, either because the allied employer exercises substantial and actual control over the working conditions of the primary's employees, or because the allied employer accepts and performs farmed-out "struck work" which, but for the strike against the primary employer, would not be sent to it. As stated in Tennessee Coal,<sup>9</sup> if the purported neutral "engages in conduct which is inconsistent with his professed neutrality in the dispute such as [knowingly] performing farmed-out struck work of the primary employer . . . , the third party employer ha[s] abandoned his 'neutral' status and laid himself open to economic pressure by the union."

In the instant case, there is no evidence of common ownership or management between Interfreight and Overnite, involvement in each others' personnel or labor relations matters, or any relationship between Interfreight and Overnite other than that of independent subcontracting entities. Therefore, the only issue is whether Interfreight is performing struck work of Overnite.

In this regard, we note that the employees at Overnite's Montebello facility have never struck or refused to report to work as a result of the intermittent picketing, and that Overnite's counsel has informed the Region that no work from other Overnite facilities has been diverted to the

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<sup>7</sup> See, e.g., Teamsters Local 959 (Anchorage Cold Storage), 266 NLRB 834, 838 (1983), *enfd.* 743 F.2d 734 (9th Cir. 1984). The Union has not contended that Overnite employees were present at Interfreight's facility during the time of the picketing, nor has the Region's investigation revealed any evidence to that effect.

<sup>8</sup> *Id.*; Teamsters Local 456 (Carvel Corp.), 273 NLRB 516, 519 (1984).

<sup>9</sup> United Steelworkers of America, AFL-CIO (Tennessee Coal & Iron Div.), 127 NLRB 823, 824-825 (1960), *enfd.* as modified 294 F.2d. 256 (D.C. Cir. 1961).

Montebello facility or to the cartage warehouses where Interfreight picks up freight. In any case, the Union has not, and apparently cannot, meet its burden of showing that the work done by Interfreight would not have been sent to it but for the strike against Overnite.<sup>10</sup> Thus, Overnite executed its contract with Interfreight in August 1999, before the nationwide strike began. Overnite did not actually utilize Interfreight's services until March, when Overnite's Montebello facility expanded its service area into geographical areas that Overnite had not previously served,<sup>11</sup> had an increase in its overall volume of business, and had a decrease in its number of drivers as a result of the natural fluctuation of Overnite's workforce. It appears that the work given to Interfreight resulted from these factors, similar to past subcontracting in times of increased work and decreased staffing levels. Therefore, it does not appear that any of Interfreight's work was work that it obtained because of the picketing at Montebello or the nationwide strike,<sup>12</sup> and Interfreight is not a "struck work ally" of Overnite.

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<sup>10</sup> See, e.g., Industrial Workers Local No. 657 (Truck Transport, Inc.), 245 NLRB 796, 797-798 (1979), *affd. mem.* 642 F.2d 456, (9th Cir. 1981) and 659 F.2d 252 (D.C. Cir. 1981) (secondary employer not struck work ally because it did not perform struck work of the primary).

<sup>11</sup> Overnite's facilities operate in areas of exclusive geographical jurisdiction. In this regard, Overnite is unlike the employer in Teamsters Local 560 (Curtin Matheson Scientific, Inc.), 248 NLRB 1212 (1980), which would have one of its geographically-defined branches ship an item to a customer whenever another branch was unable to supply the item.

<sup>12</sup> Interfreight also performs work for Overnite's Fullerton facility approximately once every 2-3 weeks. [FOIA Exemptions 2 and 5

.] The Board has held that a secondary employer may be considered a struck work ally even if it continues to do the same kind of work it did for the primary before the strike, if the amount of work it performs increases due to the strike. Oil, Chemical and Atomic



Accordingly, the Region should issue complaint in the instant case, absent settlement.

B.J.K.