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

Advice Memorandum

DATE: March 25, 2009

TO : Daniel L. Hubbel, Regional Director
Region 17

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

SUBJECT: Southern Hills Country Club
Case 17-CA-24411

This case was submitted for advice as to whether the Employer's response to the Union's bannering activity violated Section 8(a)(1). Because the Employer has ceased its conduct and because the legality of the underlying bannering activity presents a close question that is currently before the Board, we conclude that it would not effectuate the purposes and policies of the Act to hold the charge in abeyance.

Briefly, in early 2009, Charging Party Arkansas Regional Council of Carpenters began a bannering campaign on or directly adjacent to the property of Respondent Southern Hills Country Club located in Tulsa, Oklahoma. The campaign was designed to advertise the Union's dispute with an area non-union contractor, Green Country Interiors. The large, 20 x 4 foot banner was located about twenty feet away from the Club's main driveway and displayed the legend "Shame on David Hannagan," with "labor dispute" in smaller letters at the top corners. Hannagan is the owner of Green Country Interiors and a member of Southern Hills. The Union did not accompany the bannering with handbilling or traditional placard picketing.

On February 3, Union agents rejected the Club's instruction to move and refrain from bannering near the Club's entrance. Subsequently, on February 4, 5, 10, and 11, the Club attempted to interfere with the bannering by repeatedly turning on water sprinklers near the site of the bannering, spraying water from hoses at Union agents, and engaging in other landscaping activities adjacent to the banner. This conduct caused Union agents either to move its banner farther from the Club's driveway, or to conclude bannering early each day. On February 11, Tulsa police, at the Union's request, instructed Club employees to cease this interference. Subsequently, the Union has continued its bannering campaign without incident.

Initially, we conclude that the Union's bannering arguably violates Section 8(b)(4)(ii)(B) under the General

Counsel's previously articulated "bannering" theories.[1] Under the first theory of violation in those cases, the following four factors, viewed together, can create an element of "confrontation" with the public or constitute a "signal" to a neutral's customers that they should not cross an invisible picket line: (1) the display of large banners; (2) the presence of individuals supporting the banners; (3) the close proximity of the banners to the targeted neutral employer; and (4) misleading language on the banners. All of those factors are present here. With regard to the fourth factor, although the banner names an individual who is the primary's owner, and not the neutral employer, it does not name the primary company and the public would reasonably assume that the targeted individual is an employee in some way of the Country Club, a neutral business where the bannering is taking place. Therefore, the language on the banner is misleading as to the neutral's involvement in a labor dispute.

Under this theory, the Union's conduct was unprotected and thus the Country Club's response was not facially unlawful.[2] However, this theory of bannering has yet to be adopted by the Board and a series of bannering charges are currently being held in abeyance pending Board resolution of this matter, in order to conserve the limited resources of the Agency and prevent possibly unwarranted litigation expenses of the concerned parties. Accordingly, in the circumstances here, where the Country Club has ceased its conduct and where the Union has subsequently been able to engage in bannering activity without interference, we conclude that it would not effectuate the purposes and policies of the Act to hold the instant case in abeyance, pending the Board's resolution of the bannering cases currently before it. Thus, the Region should dismiss this charge, absent withdrawal.

B.J.K.

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[1] For a full explication of the General Counsel's bannering theories, see, e.g., Carpenters Locals 184, et al. (Grayhawk Development), Cases 28-CC-971, et al., Advice Memorandum dated August 17, 2004.

[2] Because of the posture of this case, we need not determine whether and under what circumstances an employer's response to unprotected union activity could violate Section 8(a)(1).