

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

Advice Memorandum

DATE: December 18, 2006

TO : Alan Reichard, Regional Director
Region 32

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

SUBJECT: District Council 16, International
Union of Painters & Allied Trades
(J.R. Roberts Corp.)
Case 32-CC-1540

This case was submitted for advice as to whether the Union violated Section 8(b)(4)(i)(ii)(B) by displaying a banner near the neutral gate of a construction jobsite after engaging in lawful picketing at the primary gate in prior weeks. We conclude that the Region should issue complaint, absent settlement, because the use of the banner in this manner constituted (i) inducement of neutral employees.

FACTS

The Union has a primary labor dispute with a subcontractor, Trabil Enterprises, working at a construction site in Livermore, California. On August 25, 2006,¹ the Union began engaging in lawful common situs picketing at the site, using traditional picket signs proclaiming a dispute with Trabil. On August 28, General Contractor J.R.Roberts established a reserved gate system that designated the primary gate for Trabil. On three successive Fridays beginning in October (Oct. 13, 20, 27), the Union picketed at the primary gate.

On Friday, November 3, there was no such picketing but two individuals, both of whom had been involved in the earlier picketing, came to the site and displayed a large banner near the neutral entrance to the site. The banner stated "SHAME ON J.R.ROBERTS" with "Labor Dispute" and "Unfair" appearing in smaller text in the banner's four corners. The neutral gate is approximately 50 feet from the primary gate, and the banner was displayed on the far side of the neutral gate (i.e., the neutral gate stood between the banner and the primary gate). The individuals did not wear Union insignia, display picket signs, or

¹ All dates hereafter are in 2006.

engage in any handbilling. They left, with the banner, after several hours.

There is evidence that employees of at least one neutral subcontractor refused to work on that date as a result of the bannering conduct.² According to Superintendent Jeff Wentz, employees of ASI, a unionized sheet metal subcontractor, did not show up to work, as scheduled, on November 3 and an ASI manager told Wentz that the employees "did not want to cross the picket line." ASI's field superintendent, Hymie Gonzales, confirmed to the Region by telephone that his employees had refused to work after showing up at the jobsite on November 3.³ ASI's work must be done from a scaffolding and, because the crew did not show up on Friday, after which the scaffolding had to be removed, J.R.Roberts and ASI are sharing the additional cost for a man-lift being used to complete the work.

There has been no further action at the Livermore site since the November 3 bannering incident.

ACTION

We conclude that the Region should issue a Section 8(b)(4)(i)(ii)(B) complaint, absent settlement, because the Union's bannering conduct, under these circumstances, constituted unlawful inducement of neutral employees.

The Region recommends holding this case in abeyance pending the Board's disposition of cases involving bannering conduct similar to that involved here. However, the bannering cases currently pending before the Board involve the novel argument that banners falsely identifying neutral employers as primary labor disputants unlawfully signalled customers to cease doing business with those employers.⁴

² Employees of other subcontractors had refused to work during the October picketing, notwithstanding its confinement to the primary gate. As a result, these subcontractors had modified their schedules (working ten hour days) so that they would not be at the site on future Fridays, when picketing was to be conducted. These employees were not at the site on Friday, November 3 because they were not scheduled to work that day.

³ [FOIA Exemption 5 .]

⁴ See, e.g., Carpenters Local 1506 (AGC San Diego Chapter, Inc.), 21-CC-3307, Appeals Minute dated August 22, 2002;

Here, on the other hand, the Union's bannering at a construction jobsite, not accessible to the general public or any "customers," was a clear attempt to signal employees that there was an invisible picket line they should not cross. The bannering followed traditional picketing that had occurred on previous successive Fridays. And, although the individuals holding the banner did not wear Union insignia, they were recognizable as the same individuals who had been picketing at the primary gate. Moreover, there were no handbills distributed by the agents holding the banner, and therefore no traditional "no inducement" statements made. In these circumstances, it was reasonably foreseeable that neutral employees would refuse to enter the site, and at least one neutral crew did refuse to enter the site. Therefore, although the Region should not allege that the banner was a per se continuation of the prior picketing,⁵ it is clear that the employees viewed it as an extension of the Union's "picketing" to the neutral gate and as a signal to withhold their labor.

Accordingly, the Region should issue a Section 8(b) (i) (B) complaint, and derivatively allege a violation of Section 8(b) (ii) (B), absent settlement.

B.J.K.

Carpenters Local 184, Case 28-CC-971, Advice Memorandum dated August 17, 2004.

⁵ See Mid-Atlantic Regional Council of Carpenters (Goodell, DeVires, Leech & Dunn, LLP), 5-CC-1289, Advice Memorandum dated November 3, 2005 [FOIA Exemption 7(A)]

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