

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

# Advice Memorandum

DATE: February 23, 2007

TO : Victoria E. Aguayo, Regional Director  
Region 21

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

SUBJECT: United Brotherhood of Carpenters and  
Joiners of America; Southwest California  
Regional Council of Carpenters 536-2509-0100  
(Snaidero Design Team) 536-2512  
Case 21-CB-14205 536-2530

This case was submitted for advice as to whether the Union violated 8(b)(1)(A) of the Act by photographing employees who did not support it during an organizing campaign and posting and distributing flyers which included photographs of these employees, identified them by name, and called them "scabs," in the context of other coercive Union conduct towards the same employees.<sup>1</sup> We conclude that the Union's entire course of conduct violated Section 8(b)(1)(A), as it had a reasonable tendency to intimidate employees in the exercise of their Section 7 right to refrain from Union activity.<sup>2</sup>

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<sup>1</sup> The Region also submitted this case for advice as to whether an informal settlement agreement, without a non-admission clause, might be appropriate in the instant case.  
[FOIA Exemption 5

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<sup>2</sup> [FOIA Exemption 5

**FACTS**

Snaidero Design Team (the Employer) is a non-union company which installs kitchen cabinetry, employing 6 to 12 employees at a time, including cabinet installers and laborers. In July 2006,<sup>3</sup> the Employer began supplying and installing kitchen cabinetry in more than 200 residential units in a construction project in Irvine, California. This installation project is scheduled to continue for approximately 12 months. Besides the Employer's employees, there are hundreds of other employees working on this project, including employees represented by United Brotherhood of Carpenters and Joiners of America; Southwest California Regional Council of Carpenters (the Union).

Shortly after the Employer began working on the Irvine jobsite, a Union representative talked with the Employer's installers about their wages and discovered that they were being paid considerably less than the area standard Union wage. Based on this information, the Union continued speaking to the Employer's installers about wages, and attempted to solicit them to join the Union, without success.

Beginning in August, the Union took photographs of the Employer's installers on various occasions in and around the job site. In October and November, the Union distributed two flyers with the installer's photographs. One had the Employer's name printed on the top, followed by photos of four of the installers accompanied by handwritten comments, such as "scab," "workers," and "rat contractor." The other had pictures of eight installers on it with handwriting at the top that states "Snaidero just hired new scabs." There are handwritten comments on the flyer such as "scab." Union representatives passed out both these flyers to other employees working on the project, posted them in various places around the jobsite, including in the elevators, and placed them on the windshields of cars parked in the employee parking lot.

During this same period, Union representatives became increasingly more aggressive in their dealings with the Employer's employees, including committing at least one act

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*FOIA Exemption 5, continued*

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<sup>3</sup> All dates hereinafter are in 2006, unless otherwise noted.

of vandalism, mass picketing blocking ingress and egress, and making threats, all of which the Region has determined violated the Act.<sup>4</sup>

### ACTION

We conclude that the Union's course of conduct, taken in its entirety, violated Section 8(b)(1)(A) of the Act, as it had a reasonable tendency to intimidate employees in the exercise of their Section 7 right to refrain from Union activity. The Board has made it clear that a union violates Section 8(b)(1)(A) when it photographs or videotapes employees who are exercising their Section 7 right to refrain from supporting the union, when such conduct is "coupled with abusive remarks or other conduct having a reasonable tendency to instill fear of retribution" in the minds of the targeted employees.<sup>5</sup> Thus, while a union's mere photographing of employees is not by itself violative of Section 8(b)(1)(A), such conduct may violate the Act when it takes place in conjunction with other actions that indicate that the union might restrain or coerce employees engaged in protected activity.<sup>6</sup> This is consistent with the Board's approach to allegations that an employer has violated Section 8(a)(1) by photographing employees engaged in protected activity -- in such cases, the Board has long held that the photographing of employees engaged in protected concerted activities violates the Act, absent proper justification, because it has a tendency to intimidate employees.<sup>7</sup> Similarly, the Board has found that an employer may violate the Act by permitting the posting of offensive flyers targeting an employee engaged in

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<sup>4</sup> These conclusions were not submitted for advice.

<sup>5</sup> Teamsters Local 890 (Basic Vegetable Products), 335 NLRB at 687.

<sup>6</sup> See Interstate Cigar Co., Inc., 256 NLRB 496 (1981) ("Photographing of employees by pickets, or the recording of license plate numbers, is not by itself violative of Section 8(b)(1)(A) of the Act. It is only when conduct takes place in conjunction with other actions indicating that a union might react adversely to employees who honor a picket line that such conduct exceeds the boundaries of permissible action").

<sup>7</sup> See, e.g., F.W. Woolworth Co., 310 NLRB 1197 (1993); Waco, Inc., 273 NLRB 746, 747 (1984), and cases cited therein.

protected activity, as it condones abusive behavior toward the employee shown on the flyer.<sup>8</sup>

Here, of course, the Union did not merely photograph employees who refrained from supporting it, or even merely photograph such employees and post the flyers identifying them. Rather, the Union undertook an extended course of conduct clearly designed and intended to restrain and coerce the targeted employees because they refrained from supporting the Union. Thus, the Union unlawfully threatened these employees, committed at least one act of vandalism and engaged in mass picketing blocking ingress and egress, as well as photographing the employees and distributing flyers identifying them and targeting them as "scabs." In the context of the other unlawful conduct determined by the Region, it is clear that the Union's entire course of conduct would reasonably lead the Employer's employees to fear reprisal for their protected conduct. Therefore, this conduct violated Section 8(b)(1)(A).

Accordingly, the Region should issue complaint, absent settlement, alleging that the Union's conduct here, including photographing employees who did not support it during its organizing campaign and distributing flyers which included photographs of these employees, identified them by name, and called them "scabs," in the context of the other coercive Union conduct towards the same employees, violated Section 8(b)(1)(A) of the Act as it had a reasonable tendency to intimidate employees in the exercise of their Section 7 right to refrain from Union activity.

B.J.K.

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<sup>8</sup> St. Francis Medical Center, 347 NLRB No. 35, slip op. at 2 (2006).