

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

# Advice Memorandum

DATE: June 10, 2005

TO : Irving E. Gottschalk, Acting Regional Director  
Region 30

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

SUBJECT: Chicago Regional Council of Carpenters  
(Renner Architects, LLC)  
Case 30-CC-595

This case was submitted for advice as to whether the Union violated Section 8(b)(4) of the Act by bannering the Employer while engaging in other confrontational conduct. We conclude that, under these circumstances, the Region should issue complaint, absent settlement, and litigate this matter.

### FACTS

Renner Architects, LLC is a developer with two condominium projects in Milwaukee, WI: Waterfront and Harbor Front. The Union, Chicago Regional Council of Carpenters, has been engaged in a labor dispute with Ollman Construction for the last five years. Renner is using Ollman to perform metal stud and finish carpentry work at its Harbor Front project; Ollman has never performed work at the Waterfront project, where Renner's sales office is located.

In November 2004, the Union began handbilling the public at Renner's Waterfront sales office. Additionally, on April 13-14 and between April 28 and May 6, 2005,<sup>1</sup> the Union displayed a three by six foot banner on the sidewalk directly in front of Renner's Waterfront sales office. The legend on the banner provides, in apparent reference to a Renner principal: "Don't buy a condo here! Boycott the wife-beater!"<sup>2</sup> In smaller lettering, the banner further provides: "The Carpenters Union is engaged in a labor dispute with Ollman Constr. Corp., a subcontractor of Renner Architects." Most of the time, the banner faced the

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<sup>1</sup> All dates are in 2005 unless specified otherwise.

<sup>2</sup> A handbill identifies a Renner principal as the alleged "wife-beater."

street; however, on at least one occasion, the Union turned the banner to block all or most of the sidewalk. Two individuals held the banner throughout the campaign, while between eight and twelve other people simultaneously handbilled the public outside Renner's sales office. Members of the public had to walk through or around the handbillers to enter the sales office.

Although the Region has not found the majority of the Union's activities to be coercive, it has concluded that the Union violated Section 8(b)(4) by aggressively handbilling the public in a confrontational manner. Some of this conduct occurred on days when the Union also displayed the banner. Thus, on April 13, a Union agent followed an individual leaving Renner's office for about a block, took photographs of him, and insisted that he accept a handbill; on April 30, a Union agent attempted to force an individual to accept a handbill by reaching over and around a Renner sales representative who was attempting to block the agent from confronting the customer; and on May 1, a Union agent repeatedly insisted that a condominium resident accept a handbill after she told the agent to leave her alone. On other days, the Union displayed the banner, but did not engage in aggressive handbilling tactics. In addition, before the Union erected the banner on April 13, a Union agent attempted to gain access to private property in order to handbill condominium residents. The Region has not submitted the legality of the confrontational handbilling for Advice.

On April 15, the Union engaged in a street demonstration by marching, with permit and police escort, from Harbor Front to Waterfront, then back toward the Harbor Front site. Over 100 people participated, holding signs and yelling slogans adverse to Ollman and Renner and its principals. Union participants carried the banner described above at the head of the march. Once they returned to Harbor Front, demonstrators held a picnic in a parking lot near the site. The Region has concluded that the Union did not violate the Act by holding this march.

By letter dated May 16, the Union advised that as of May 5, it had ceased all handbilling and bannering activities outside of Renner's sales office. The Union further stated that it has no plans to reinstitute these activities in the near future.

#### **ACTION**

We conclude that the Region should issue complaint, absent settlement, regarding the Union's bannering activities, which at times were concurrent with other

confrontational conduct, and at other times were not simultaneous with the Union's aggressive handbilling tactics.

The Region should allege that, under the totality of the circumstances, the Union's banner on April 13, April 30 and May 1 - days when the Union also engaged in unlawful, aggressive handbilling tactics - was merely one aspect of its confrontational campaign to unlawfully coerce Renner, a secondary employer. Although the banner itself was not misleading (it specifically named Ollman as the subject of its dispute), it exhorted the public to "boycott the wife-beater," a reference to a Renner principal made explicit in a Union handbill. In addition to two to three Union agents who supported the large banner stationed directly in front of Renner's sales office, an additional group of up to a dozen agents distributed handbills nearby. On these dates in April and May, the Union's banner was accompanied by - and part and parcel of - an aggressively confrontational campaign against Renner, including following and aggressively exhorting the public to accept handbills. We conclude that the Union's concurrent display of a large banner as part of its aggressive, unlawful campaign lent a confrontational element to the banner that tended to elicit the desired sympathetic response of a consumer boycott regardless of any message the Union may have been presenting.<sup>3</sup> Thus, we conclude that the Union's confrontational campaign on these days - encompassing banner and aggressive handbilling - violated Section 8(b)(4)(ii)(B).

The Region should also allege that the Union violated Section 8(b)(4)(ii)(B) by banner on the days when it did not engage in unlawful, aggressive handbilling. The presence of traditional picket signs and/or patrolling is not a prerequisite for finding that a union's conduct is tantamount to picketing.<sup>4</sup> Rather, "[o]ne of the necessary conditions of 'picketing' is a confrontation in some form between union members and employees, customers, or

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<sup>3</sup> See, e.g., Carpenters Local 1765 (Capform, Inc.), Cases 12-CC-1259, et al., Advice Memorandum dated June 26, 2003 (display of banner that truthfully named primary employer, unlawful where used in conjunction with other unlawfully confrontational conduct).

<sup>4</sup> See, e.g., Lawrence Typographical Union No. 570 (Kansas Color Press), 169 NLRB 279, 283 (1968), enfd. 402 F.2d 452 (10th Cir. 1968), citing Lumber & Sawmill Workers Local No. 2797 (Stoltze Land & Lumber Co.), 156 NLRB 388, 394 (1965).

suppliers who are trying to enter the employer's premises."<sup>5</sup> Patrolling/picketing provokes people to respond without inquiring into the ideas being disseminated and thereby distinguishes picketing from handbilling and other forms of communication.

In several cases, the General Counsel has alleged that the display of banners was unlawfully coercive and tantamount to picketing.<sup>6</sup> In those cases, the General Counsel could establish the requisite confrontation by relying on factors such as the misleading language on the banner, the size of the banner, the presence of union agents, and particularly the display of the banner in close proximity to the premises of the named employer. In contrast, in other cases Advice has concluded that bannering was not tantamount to picketing because the banners failed to create sufficient confrontation.<sup>7</sup>

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<sup>5</sup> Chicago Typographical Union No. 16 (Alden Press), 151 NLRB 1666, 1669 (1965), quoting NLRB v. United Furniture Workers, 337 F.2d 936, 940 (2d Cir. 1964).

<sup>6</sup> See, e.g., Carpenters Local 209 (King's Hawaiian Restaurant & Bakery), Case 31-CC-2103, Significant Appeals Minute dated September 25, 2002; Carpenters Local 1506 (Associated General Contractors, San Diego Chapter), Case 21-CC-3307, Significant Appeals Minute dated August 21, 2002; Carpenters 961 (Pinecrest Construction and Development), Case 32-CC-1510, Advice Memorandum dated April 26, 2004; Southwest Regional Carpenters (New Star General Contractors), Case 27-CC-878, et al, Advice Memorandum dated July 23, 2004.

<sup>7</sup> See, e.g., Carpenters Local 1506 (Sherman & Howard, LLC), Case 28-CC-964, Advice Memo dated June 21, 2004 (banner 300' from neutral's entrance and few visitors would have driven or walked past the banner); Carpenters Local 1506 (Universal Technical Institute, Inc.), Case 28-CC-960, Advice Memorandum dated May 5, 2004 (banner not picketing because it was 600 feet from driveway entrance and separated from facility by a large building); Carpenters Local 1506 (Brinker Intl. Payroll Co.), Case 21-CC-3335, Advice Memorandum dated February 19, 2004 (display of banner not picketing because, among other things, banner at one location was stationed 450 feet from facility's entrance and "patrons would not feel . . . confronted as they entered"; banner at other location, much closer to a neutral employer's pedestrian entrance, patrons "would not necessarily drive by the banner" because other vehicular entrances were available); Carpenters Local 1765 (Capform, Inc.), Advice memorandum, *supra* (banner at Whitley Bay

Here, although the bannering on these days was not simultaneous with other violative conduct, it occurred close in time to that conduct and clearly was part and parcel of its campaign of confrontation against Renner's customers and potential customers. Accordingly, we agree with the Region that the bannering was tantamount to picketing, unlawful under Section 8(b)(4)(ii)(B).<sup>8</sup>

However, we further agree with the Region that the Union did not engage in similar confrontational conduct during the April 15 march. The demonstration primarily occurred away from the Waterfront situs of the bannering and was devoid of other, confrontational conduct that the Region has found to be unlawful.

B.J.K.

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location not picketing because location and positioning of banner away from access road and towards public highway was "innocuous").

<sup>8</sup> See Advice memoranda and Appeals minutes cited above at n.5. Although the General Counsel has decided that new administrative complaints are no longer necessary to place bannering issues before the Board, we agree with the Region that it should litigate the instant allegations, since it was part of the same campaign as the other Section 8(b)(4)-violative conduct. See "Regional Office Procedures for Handling Pending Section 8(b)(4)(ii)(B) Charges Involving Union 'Bannering' of Neutral Persons," Memorandum OM 05-14, dated November 29, 2004.