

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

Advice Memorandum

DATE: May 2, 2008

TO : Willie L. Clark, Regional Director
Region 11

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

SUBJECT: CWA, Local 3602 536-2501
Cases 11-CB-3876, 3877, 3878, 3879, 536-2509-9900
3880, 3892, 3893, 3894, 3896, 3897,
3898, 3899, 3900, 3901

These cases were submitted for advice as to whether the Union violated Section 8(b)(1)(A) by posting a list on its bulletin board that contained nonmembers' social security numbers. We agree with the Region that the Union's posting violated Section 8(b)(1)(A) by restraining and coercing employees in exercise of their Section 7 rights.

FACTS

The Charging Party is an AT&T service technician who withdrew from the Union, CWA Local 3602, in 2007. One day in late September or early October 2007, at about 6 p.m., the Charging Party noticed on the Union's bulletin board a three-page document that listed former Union members and their social security numbers. This document, entitled "2007 Union Cancellations by Local," contained the names of 33 former CWA members as well as their national identification numbers,¹ union locals, company names, and other information.

The Charging Party saw his name as well as names of other bargaining unit members. He called his supervisor, who advised him to remove the document and slide it under the supervisor's locked office door. The Charging Party did as his supervisor suggested, but later changed his mind and asked his supervisor for the original document back.

The Union claims that the document was an excerpt from an internal membership report and was posted in error. The Union, however, neither directly admits responsibility for the posting nor indicates who posted the document. It is unknown how long the document had been posted before the Charging Party removed it. The Union claims the document

¹ The national identification numbers are plainly social security numbers, indicated by their XXX-XX-XXXX format.

was posted at 4:30 p.m. that same day. There is no evidence as to whether anyone other than the Charging Party saw the document.

At the time of the bulletin board posting, the facility's front door was likely unlocked, so that anyone could enter the building. The bulletin board is located down a hallway where anyone who enters the building may view it without having to enter a separate room or office.

In addition to the Charging Party, 13 other employees have filed similar charges because their social security numbers were also posted.²

ACTION

We agree with the Region that the Union violated Section 8(b)(1)(A) by posting nonmembers' social security numbers on the Union bulletin board because such action coerced employees in violation of their Section 7 rights.

A union violates 8(b)(1)(A) if its conduct reasonably tends to restrain or coerce employees in exercise of their Section 7 rights.³ The test for restraint or coercion is thus objective, and proof of actual intent to coerce is not essential to finding a violation.⁴

In analyzing whether a union's conduct restrained or coerced employees, the Board will consider whether the conduct serves a legitimate purpose.⁵ For instance, the Board recently held that union photographing of employees engaged in Section 7 activity reasonably tended to coerce employees because it tended to induce them into accepting union literature, thereby interfering with their free choice in an election, and because the photographing served

² None of the other Charging Parties saw the document while it was posted. They became aware of posting by subsequent conversations with the Charging Party, coworkers, or the National Right to Work Foundation.

³ Carpenters (Society Hill Towers Owner's Assn.), 335 NLRB 814, 815 (2001), enfd. 50 Fed.Appx. 88 (3d Cir. 2002) (unpublished decision).

⁴ Ibid.

⁵ See Randell Warehouse of Arizona (Randell II), 347 NLRB No. 56, slip op. at 6, 8 (2006).

no legitimate union function.⁶ On the other hand, in Auto Workers Local 148 (McDonnell-Douglas),⁷ the Board held that a union's posting of employee names, addresses, and phone numbers on a bulletin board did not restrain or coerce employees because the posting served the lawful purpose of allowing employees to communicate with each other and because there were a "variety of ways" addresses and telephone numbers could be obtained.⁸

While the Board has not addressed whether the disclosure of social security numbers violates Section 8(b)(1)(A), the Board treats the disclosure of names and addresses differently from the disclosure of social security numbers in other contexts.⁹ For example, an individual who requests hiring hall dispatch records is entitled to the names and addresses of referred registrants but not their social security numbers.¹⁰ Thus, the Board has recognized that taxpayer identification numbers are "highly confidential," and their disclosure can result in great harm and "mishap."¹¹ This is consistent with how courts analyze the disclosure of social security numbers in other areas of law.¹²

⁶ Ibid. Compare Local 78, Asbestos, Lead and Hazardous Waste Laborers (Ace Restoration Services, Inc.), Cases 2-CC-2688, et al., Advice Memorandum dated December 18, 2006 [FOIA Exemption 5

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⁷ 296 NLRB 970, 990-991 (1989).

⁸ Id., at 991.

⁹ Postal Service, 307 NLRB 1105, 1105 (1992) (employer required to provide employee absence records to the union disclosing employee names but redacting social security numbers), enfd. mem. 17 F.3d 1434 (4th Cir. 1994).

¹⁰ See Operating Engineers Local 12 (Nevada Contractors Assn.), 344 NLRB 1066, 1006 fn. 2 (2005); Carpenters Local 102 (Millwright Employers Assn.), 344 NLRB 1099, 1099 (1995); Iron Workers Local 27 (Morrison-Knudson), 313 NLRB 215, 218 (1993).

¹¹ Gary's Electrical Service Co., 326 NLRB 1136, 1142 (1998) (denying union's request for respondent company's taxpayer identification number).

¹² See, e.g., Sherman v. U.S. Dept. of Army, 244 F.3d 357, 365-367 (5th Cir. 2001) (under FOIA, the disclosure of social security numbers constitutes an "unwarranted

We conclude that posting employees' social security numbers has a reasonable tendency to coerce employees in exercise of their Section 7 right to withdraw from the Union because nonmember employees would be fearful of the public disclosure of their private information. The Union's conduct suggests that if these employees were members of the Union, their social security numbers would not be disclosed to the public. Moreover, the Union's conduct also restrains and coerces current Union members, fearing that their social security numbers will be publically posted, from exercising their Section 7 right to withdraw from the Union.

Unlike the posting of addresses and phone numbers in Auto Workers Local 148, the posting of social security numbers does not promote substantive communication or any other legitimate union activity and can potentially cause identity theft and other misuse. The Union has not provided a legitimate reason for the disclosure of the highly confidential social security numbers. While the Union claims the posting was in error, it has not fully cooperated with the Region's investigation, and proof of intent to coerce is not required. Therefore, the disclosure of nonmembers' social security numbers served no lawful purpose and restrained or coerced employees in exercising their Section 7 rights.

Accordingly, complaint should issue, absent settlement, alleging the Union violated Section 8(b)(1)(A) for the reasons set forth above.¹³

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invasion of personal property"); Greidinger v. Davis, 988 F.2d 1344, 1354 (4th Cir. 1993) (under state voter registration procedure, "the harm that can be inflicted from the disclosure of a SSN to an unscrupulous individual is alarming and potentially financially ruinous").

¹³ It is unnecessary to analyze the Union's conduct as a breach of its duty of fair representation because the remedy would be the same.