

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

Advice Memorandum

DATE: January 16, 1998

TO : William C. Schaub, Regional Director
Region 7

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

SUBJECT: Triangle Electric Company 506-4033-9400
Case 7-CA-39041 506-6090-0500
and 506-6090-1900
General Motors Corp.
Case 7-CA-40075

This case was submitted for advice as to whether a subcontractor's employee was engaged in protected activity when she sold and distributed, to employees at the jobsite, a newspaper published by striking employees of another employer.

FACTS

Lucinda Darrah (the Charging Party) is an ardent supporter of the Detroit newspaper strike, although she is not a newspaper employee and has no personal involvement in the strike. Darrah has supported the strike since its inception by selling and distributing the Detroit Sunday Journal (Journal), a weekly newspaper published by striking newspaper employees to publicize the labor dispute and finance the strike. Darrah makes no profit on these sales, but gives all proceeds to the Journal.

In April 1996, Darrah was referred by IBEW Local 58 (the Union) to work as an electrician for Triangle Electric (Triangle), an electrical subcontractor performing renovations at General Motors' (GM) Poletown plant. On several occasions in April and May, Darrah attempted to sell the Journal to employees of GM and of various subcontractors, while off-duty and in non-work areas of the GM facility. On each occasion, Pinkerton security guards working for GM told her to stop her activities and that she was not permitted to solicit, distribute, or sell the newspapers on GM property. On May 21, the day after the last such warning, a Triangle foreman terminated Darrah at the request of GM.

On January 31, 1997, Darrah was referred by the Union to work for Superior Electric Company, which was also doing renovation work at the GM Poletown plant. On February 3, her first day of work, security guards approached her at her work station and told her she had to leave the plant because she had been removed the previous year for selling the Journal at the plant.

GM has a no-solicitation/no-distribution rule that prohibits solicitation and distribution by employees in work areas and during work time. GM asserts that it also has a policy which prohibits "visitors," i.e., anyone not employed by GM, from selling, distributing or soliciting on GM property.

ACTION

We conclude that Darrah was engaged in protected activity when she sold and distributed the Journal strike newspaper, and that Triangle and GM violated Section 8(a)(1) and (3) by prohibiting that activity, on non-work time and in non-work areas of the plant, and by discharging Darrah for engaging in that activity.¹ The complaint may also include a disparate treatment allegation against GM, based upon evidence that GM's employees were permitted to engage in activities similar to Darrah's on non-work time and in non-work areas. In addition to naming GM as a respondent with regard to its interference with Darrah's protected activities and its removal of Darrah from the jobsite in February 1997, the Complaint should allege, under Dews Construction,² that GM unlawfully secured her discharge from Triangle in May 1996.

As an initial matter, we agree with the Region that the Charging Party's activities are within Section 7's protection notwithstanding that they were for the mutual aid and protection of employees of another employer.³

¹ See Republic Aviation Corp. v. NLRB, 324 U.S. 793 (1945).

² 231 NLRB 182, n. 4. See also Black Magic Resources, 312 NLRB 667, 668 (1993).

³ See Eastex Inc. v. NLRB, 437 U.S. 556, 564-565 (1978).

We further agree with the Region that Darrah was not a "stranger" to GM's property, and that her right to solicit on the premises is governed by Republic Aviation and not Babcock & Wilcox.⁴ Thus, Darrah presumptively had the right to engage in protected Section 7 activities on non-work time and in non-work areas of the plant. GM and Triangle have produced no evidence of special circumstances regarding safety, production, or discipline that would permit a prohibition of Darrah's activities.

Finally, we conclude in agreement with the Region that Darrah's activities, albeit somewhat atypical in that she was selling newspapers rather than verbally soliciting or handbilling, were protected activities within the meaning of Section 7 of the Act. Thus, there is substantial objective evidence that Darrah was selling the newspapers for the purpose of publicizing and supporting the newspaper employees' strike, and not for the purpose of making a profit or for any other purpose unrelated to that labor dispute. Specifically, Darrah has a history of activities in support of the newspaper strike, and consistently has given all proceeds from sales of the newspaper to the Journal publishers. Furthermore, the strike newspaper, which Advice thoroughly analyzed in Case 7-CB-11282,⁵ is not a standard daily paper but a weekly tabloid which devotes a significant amount of its space to the strike and other labor-related issues. Although it provides limited local and national news, and other incidentals of a newspaper (such as a TV guide), its focus is on the labor dispute. The GM security guards who prohibited Darrah's activities and removed her from the jobsite were fully aware that she

⁴ NLRB v. Babcock & Wilcox, 351 U.S. 106 (1956). See Gayfers Department Store, 324 NLRB No. 188 (November 8, 1997) (subcontractor's employees have Republic Aviation rights at jobsite). See also Roziers Electric, Inc., 17-CA-19002-2, Advice Memorandum dated December 23, 1997 (applying Gayfers to efforts by subcontractor's employees directed at contractor's employees).

⁵ See Teamsters Local 372 (Detroit Newspapers), 7-CB-11282, Advice Memorandum dated July 16, 1997.

was distributing a strike-related publication, as evidenced by statements in their security reports.

Accordingly, the Region should issue complaint, absent settlement, consistent with the foregoing.

B.J.K.