

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

## Advice Memorandum

DATE: November 21, 2007

TO : Helen E. Marsh, Regional Director  
Region 3

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

SUBJECT: Local 12A, International Association of  
Heat and Frost Insulators and 560-2550-8333  
Asbestos Workers 560-2575-6767  
(LaChase Construction Services, LLC) 560-7540-2080-3700  
Case 3-CC-1548

This case was submitted for advice on whether the Union violated Section 8(b)(4)(i)(B) and 8(b)(4)(ii)(B) of the Act by displaying a large inflated rat and handbilling at a common work site, and/or by displaying a large inflated rat at a neutral employer's corporate headquarters.

We conclude that the Union's display of the large inflated rat accompanied by handbilling, including handbills targeting neutral employers, was activity designed to induce employees to withhold services from a neutral employer in violation of Section 8(b)(4)(i)(B) and 8(b)(4)(ii)(B) of the Act. In all other respects, we conclude that the Union's activity did not violate 8(b)(4)(ii).

### FACTS

LaChase Construction Services, LLC (LaChase) is the general contractor on the Kodak Park demolition project in Rochester, New York. LaChase subcontracted the asbestos abatement work on the project to two non-union contractors, PDG Envirotech (PDG) and Royal Environmental (Royal).<sup>1</sup>

Local 12A, International Association of Heat and Frost Insulators and Asbestos Workers (the Union) seeks to represent the asbestos abatement employees working at Kodak Park, i.e.,

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<sup>1</sup> LaChase itself employs no asbestos abatement employees.

the employees of PDG and Royal. In May 2007,<sup>2</sup> a Union organizer approached a LaChase official and told him that the Union would be picketing the site. A few weeks later, the Union erected a large inflated cockroach on the public sidewalk near the entrance to the Kodak Park demolition site, accompanied by two or three Union representatives distributing handbills. The Union representatives had no signs or banners, nor were any signs attached to the cockroach itself. The Union continued to handbill alongside the inflated cockroach for several weeks, arriving in the early morning and staying for two-and-one-half to three hours.

On August 20, the Union replaced the inflated cockroach with an inflated rat. By this time, the Union had moved across the street, due to barriers erected on the sidewalk next to the Kodak Park in the normal course of the demolition project. The Union representatives would cross the street to distribute its handbills at the project entrance. The Union did not impede the flow of traffic. The Union continued to handbill with the inflated rat until September or October, at which time it discontinued its activity at Kodak Park. The Union has not returned since.

Throughout the entire period at Kodak Park, the Union used a variety of handbills, including handbills naming LaChase and several other employers as being unfair to their employees, and others urging employees of PDG to "strike these rat bastards." All of the handbills appear to be directed at employees working on the demolition project. The Union did prepare one handbill that appeared to be directed at consumers, and threatened LaChase that it would distribute it, but there is no evidence that the Union ever actually distributed it to anyone else.

In addition to its conduct at Kodak Park, the Union also erected an inflated rat at LaChase's corporate headquarters in Rochester for two or three days in late August, accompanied by two or three Union representatives. The Union representatives had no signs or banners, nor were any signs attached to the rat itself. No handbills of any kind were distributed at LaChase's headquarters. After two or three days, the Union discontinued its activity at the headquarters building, and it has not returned.

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<sup>2</sup> All dates hereinafter are in 2007, unless otherwise noted.

**ACTION**

We conclude that the Union's display of the large inflated rat accompanied by handbilling, including handbills targeting neutral employers, was activity designed to induce employees to withhold services from a neutral employer in violation of Section 8(b)(4)(i)(B) and 8(b)(4)(ii)(B) of the Act. In all other respects, we conclude that the Union's activity did not violate 8(b)(4)(ii).

Section 8(b)(4)(B) makes it unlawful for a labor organization or its agents (i) to induce or encourage employees to withhold services from their employer, or (ii) to threaten, coerce, or restrain any person, where an object is for that person to cease doing business with another employer. Picketing is both inducement or encouragement of neutral employees under 8(b)(4)(i)(B) and restraint or coercion of neutral employers under Section 8(b)(4)(ii)(B).<sup>3</sup> In addition, in some circumstances, (i) inducement of neutral employees qualifies as (ii) restraint and coercion of a neutral employer.<sup>4</sup>

Traditional union picketing involves individuals patrolling while carrying placards attached to sticks. The Board has long held, however, that the presence of traditional picket signs and/or patrolling is not a prerequisite for finding that a union's conduct is the equivalent of traditional picketing.<sup>5</sup> The "important

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<sup>3</sup> See generally Service Employees Local 87 (Trinity Maintenance), 312 NLRB 715, 743 (1993), enfd. mem. 103 F.3d 139 (9th Cir. 1996) (citations omitted).

<sup>4</sup> United Food and Commercial Workers Union (Carpenters Health & Welfare Fund), 334 NLRB 507, 509 n.8 (2001) (if the union successfully induced or encouraged employees to withhold their services in violation of 8(b)(4)(i), that would have constituted evidence of coercion of a neutral in violation of 8(b)(4)(ii)); Teamsters Local 315 (Santa Fe), 306 NLRB 616, 631 (1992).

<sup>5</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).

feature of picketing appears to be the posting by a labor organization . . . of individuals at the approach to a place of business to accomplish a purpose which advances the cause of the union, such as keeping employees away from work or keeping customers away from the employer's business."<sup>6</sup>

The concept of "signal picketing" was developed by the Board to describe union conduct that did not involve traditional picketing, but could be characterized as such because it evoked the same response as a traditional picket line. In other words, "'[s]ignal picketing' . . . describe[s] activity short of a true picket line that acts as a signal to neutrals that sympathetic action on their part is desired by the union."<sup>7</sup> By directing such conduct at neutrals, a union can violate both 8(b)(4)(i)(b) and 8(b)(4)(ii)(B).<sup>8</sup>

The General Counsel has argued to the Board that a union's use of a large inflated rat, considered a well-known symbol of a labor dispute, could constitute signal picketing intended to induce neutral employees to withhold their labor or to persuade third persons not to do business with neutral business establishments.<sup>9</sup> In The Ranches at Mt. Sinai,<sup>10</sup> the General Counsel argued that the union engaged in secondary signal picketing in violation of

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<sup>6</sup> Stoltze Land & Lumber Co., 156 NLRB at 394.

<sup>7</sup> Operating Engineers Local 12 (Hensel Phelps), 284 NLRB 246, 248 fn. 3 (1987) (citation omitted). Accord: International Broth. of Electric Workers, Local 98 (1987) (Telephone Man), 327 NLRB 593, 593 n. 3 (1999) (finding "signal picketing" at neutral gate where, among other things, union agent stood near gate and wore observer sign that flipped over to reveal same sign being used by union picketers at primary gate).

<sup>8</sup> See generally Service Employees Local 87 (Trinity Maintenance), 312 NLRB at 743.

<sup>9</sup> See Sheet Metal Workers Local 15 (Brandon Regional Medical Center), Case 12-CC-1258, Advice Memorandum dated April 4, 2003.

<sup>10</sup> Laborers' Eastern Region Organizing Fund (The Ranches at Mt. Sinai), 346 NLRB No. 105 (2006).

Section 8(b)(4)(i)(B) when it handbilled and also deployed a large inflated rat at the entrance to a common situs construction site. In Ranches, the ALJ agreed that the display of a rat was the "functional equivalent of picketing" and violated Section 8(b)(4)(i)(B).<sup>11</sup> The ALJ explained that the rat "sent a signal to those who approached the entrance that a labor dispute was occurring and that action on their part was desired."<sup>12</sup> In its decision in Ranches, the Board held that it need not decide whether the use of an inflated rat symbol constituted signal picketing because the union's patrolling and other conduct in front of the entrances in both cases was confrontational, tantamount to actual picketing.<sup>13</sup>

Here, we conclude that the Union's conduct in front of the Kodak Park demolition site after August 20 was signal picketing aimed at LaChase, a neutral, intended to induce employees of LaChase and other neutral employers to withhold their services. First, we conclude that the Union's use of a large inflated rat, combined with handbills specifically naming LaChase and several other employers as being unfair to their employees, and urging employees of PDG to "strike these rat bastards," together constituted signal picketing. In this respect, a rat is a well-known symbol of a labor dispute and is a signal to third persons that there is an invisible picket line they should not cross.<sup>14</sup> The handbills only served to amplify and reinforce that message. Second, we conclude that, in these circumstances, the picketing was aimed as a signal to induce employees of neutral employers to stop work. This is evident from the placement of the pickets as close as possible to the demolition site, combined with the fact

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<sup>11</sup> Id., slip op. at 22. See also Local 79, LIUNA (Calleo Development Corp.), Cases 2-CC-2546, et al., Appeals Minute dated January 24, 2003.

<sup>12</sup> Ibid.

<sup>13</sup> Brandon, 346 NLRB No. 22, slip op. at 2 n. 3 (2006); Ranches, 346 NLRB No. 105, slip op. at 3.

<sup>14</sup> See Ranches, 346 NLRB No. 22, slip op. at 21 (rat's well-known meaning in the construction industry supports finding that it was being used as a signal to third persons that there was an invisible picket line).

that the picketers were present only at the beginning of the work day when employees were entering and working at the demolition site.<sup>15</sup> Finally, the handbills' identification of the neutral employers as "unfair" to their employees and urging employees of PDG to "strike these rat bastards" further emphasized the picketing's work-stoppage message. Therefore, the Union's conduct after August 20 violated Section 8(b)(4)(i)(B) because it was picketing with the object of inducing employees of neutral employers to withhold their services.<sup>16</sup>

In all other respects, we conclude that the Union's conduct at the Kodak Park demolition site did not violate Section 8(b)(4)(ii)(B). Thus, it is clear that the picketing here was not aimed at convincing consumers to boycott LaChase or any other employer. The Union may have prepared one consumer-directed handbill, but only as a threat to the neutral employers -- it never actually distributed the handbill to the public. Indeed, the Union never made any appeals to the public, and any individuals passing the picketing location would have been highly unlikely to have any business with any of the employers engaged in the demolition project there. Therefore, the Union could not have intended to effectuate a cease-doing business object through a consumer appeal. Instead, the true intent of the activity was to induce employees to stop their work on behalf of LaChase and other neutral employers at the jobsite.

Finally, we conclude that the Union's display of a large inflated rat at LaChase's corporate headquarters did not violate the Act, as there was no information

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<sup>15</sup> See id., slip op. at 22 (inducement is shown in that the rat and handbilling began each day when the construction trades arrived).

<sup>16</sup> The Union's conduct prior to August 20, however, did not constitute signal picketing. In this regard, an inflated cockroach does not have the same symbolic meaning or historical connection to labor disputes to establish an "invisible picket line," and the Union's handbills were not sufficiently explicit calls to strike any neutral employer to even arguably make out a violation of 8(b)(4)(i)(B) in the absence of a traditional symbol, such as a rat, or some other indicia of signal picketing.

accompanying it. In the absence of some identifying signs or banners, or other outward indicia of a labor dispute that might raise the possibility of signal picketing, the intended expressive meaning of the protest was not clear - to anyone seeing it, the rat was just a rat. The mere display of the rat, without anything more, was not enough to induce or encourage anyone to strike, or to threaten, restrain, or coerce anyone. Therefore, it did not violate Section 8(b)(4) of the Act.

Accordingly, the Region should issue complaint, absent settlement, alleging that the Union's conduct at Kodak Park after August 20 violated Section 8(b)(4)(i)(B) and 8(b)(4)(ii)(B). The Region should dismiss, absent withdrawal, the allegations regarding the Union's conduct at Kodak park prior to August 20, and its conduct at LaChase's corporate headquarters.

B.J.K.