

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

Advice Memorandum

DATE: April 22, 2010

TO : Robert Chester, Regional Director
Region 6

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

SUBJECT: UNITE HERE LOCAL 57 578-2025-2075
(Levy Premium Foodservice
Limited Partnership)
Case 6-CP-514

This case was submitted for advice on whether Local 57 engaged in picketing in violation of Section 8(b)(7)(C) where it picketed and threatened to picket for a period less than 30 days in November and December 2009. We conclude that Local 57 did not violate the Act.

FACTS

Levy Premium Foodservice (the Employer) is a food service concessionaire at the David L. Lawrence Convention Center in Pittsburgh. The Employer recognized Local 57 as the representative of its employees in 2002.

In November 2005, Local 57 affiliated with the Pennsylvania Joint Board ("PAJB"), which had been part of UNITE-HERE. Pursuant to their affiliation agreement, Local 57 conferred many of its representational duties to the Joint Board. In February 2009, the Joint Board voted to disaffiliate from UNITE HERE, and Local 57 voted to disaffiliate from the PAJB. Since that time, the Joint Board and Local 57 have both claimed to be the representative of the Employer's employees.¹

The Employer stopped dealing with Local 57 at some point during the unions' representational dispute. On November 18, 2009, Local 57 picketed at the Convention Center. The picket signs stated, "Levy Premium Foodservice at David L. Lawrence Convention Center/Local 57/We are the Union."

On December 2, 2009, Local 57 sent a letter to the Employer indicating its intent to picket on December 4 and

¹ [FOIA Exemption 7(A)

.] Omni William Penn Hotel,
6-CA-36516, Advice Memorandum dated March 11, 2010.

5 and to "continue doing so" until the Employer "deals with Local 57 as the representative of its employees."

Pursuant to Local 57's letter, two individuals picketed on December 4 and 5 with picket signs similar to those used on November 18.

The Employer asserts that Local 57 picketed on multiple dates in January 2010, but it could not substantiate that claim, nor did the Region's investigation uncover any evidence of picketing after December 5, 2009.

ACTION

We conclude that the charge should be dismissed, absent withdrawal.

A union violates Section 8(b)(7)(C) where it pickets or threatens to picket an employer where (1) an object of such picketing is forcing or requiring the employer to bargain with the union as representative of its employees and (2) the picketing is conducted without a petition being filed within a reasonable period of time, not to exceed 30 days from the commencement of the picketing. Actual picketing and threats to picket are held to the same standard.² However, unretracted recognitional or organizational threats to picket do not become unlawful simply because a reasonable period of time elapses without the filing of an election petition.³ Rather, once picketing for recognitional or organizational purposes has continued for a reasonable period of time, not to exceed 30 days, without a petition's filing, any additional picketing or threats to picket will violate Section 8(b)(7)(C).⁴

Here, there is no evidence that the Union picketed in excess of 30 days, nor did the Union threaten to picket outside of the 30 day period. Thus, regardless of whether the Joint Board or Local 57 is the bargaining representative, Local 57 did not violate Section 8(b)(7)(C) of the Act because it did not picket or threaten to picket for a period in excess of 30 days.

B.J.K.

² Mine Workers Local 2236 (Hatfield Dock and Transfer), 302 NLRB 441, 444 (1991).

³ Id.

⁴ Id. at 443.