

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

Advice Memorandum

DATE: December 22, 2004

TO: Rik D. Lineback, Regional Director
Region 25

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

SUBJECT: WGE Federal Credit Union, Inc.
Case 25-CA-29101

506-4033-1200
506-4033-7600
512-5012-0133-2200
512-5012-0133-2250
512-5012-0133-4400
512-5012-2500
530-6050-0120
530-6050-0140
530-6050-5825
530-8049

This memorandum supplements the Advice memoranda in the above case dated October 21 and 27, 2004. In our initial memorandum, we concluded, among other things, that the Employer violated Section 8(a)(5) by unilaterally promulgating a rule that prohibits employees from campaigning for candidates for the Employer's board of directors during working hours. We rejected the Employer's reliance on Peerless Publications, Inc., 283 NLRB 334 (1987), to support its contention that the Employer was privileged to implement its rule without bargaining. We concluded that Peerless did not privilege the Employer's unilateral conduct because its rule was not necessary to protect a distinctive "core purpose" of a credit union.¹

On November 9, the Board issued a decision in ANG Newspapers, 343 NLRB No. 69, in which it applied Peerless Publications to hold that the employer lawfully told a reporter who interviewed city officials for stories he wrote that he created an impression of a conflict of interest by appearing before a city council to seek its support for the union's bargaining position with the employer. The Respondent in this matter requests

¹ WGE Federal Credit Union, Inc., Case 25-CA-29101, Advice memo dated October 21, 2004, at pp. 8-12.

reconsideration of our decision in light of ANG Newspapers. After reviewing this decision, and in agreement with the Region, we adhere to our conclusion that the Employer unlawfully promulgated its rule against employee electioneering activity.

The Board's decision in ANG Newspapers did not alter the formulation or application of the Peerless exception to the general prohibition against unilateral changes. It merely reaffirmed the Board's holdings that a "core purpose" of a newspaper includes maintaining its credibility and editorial integrity, there by eliminating perceived conflicts of interest among its reporters.² Moreover, the Board concluded that the newspaper's conversation with the reporter complied with the Peerless requirement that, in protecting a core purpose, the substance of a rule be "narrowly tailored" and its applicability be "appropriately limited."³ The Board noted that the newspaper offered a compromise, suggesting that a different reporter who is unlikely to cover the city council should have been selected to speak at the meeting. It further noted that the newspaper spoke privately to only the reporter involved in the city council lobbying effort, and only to that one event that the employer considered to have been inappropriate.

Initially, the ANG Newspapers decision does not impact our conclusion that the Credit Union's stated goal behind its electioneering prohibition -- to maintain its reputation as a respected financial institution -- does not advance a core purpose distinct from that of any other enterprise. Second, as opposed to the circumstances in ANG Newspapers, the Credit Union's unilaterally implemented rule was neither "narrowly tailored" nor "appropriately limited" to advance that goal. The newspaper made clear it did not object to another Union representative appearing before the Council. The Credit Union, however, issued a flat ban by prohibiting all employees from electioneering, without regard to whether they, like the loan officer-discriminatee, may be perceived by customers as speaking for the Credit Union itself.

² ANG Newspapers, 343 NLRB No. 69, slip op. at 3.

³ Id., quoting Peerless Publications, 283 NLRB at 335.

Thus, we adhere to our conclusion that the Region should issue a Section 8(a)(5) complaint, absent settlement.

B.J.K.