

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

# Advice Memorandum

DATE: August 3, 2000

TO : Mary Zelma Asseo, Regional Director  
Region 24

FROM : Barry J. Kearney, Associate General Counsel  
Division of Advice 560-2525  
560-2550

SUBJECT: Local 1408, International Longshoremen 560-2575  
Assn., AFL-CIO (Sea Star Lines LLC) 560-7540  
Case 24-CC-262 601-5050-9600  
712-2500  
and 712-5000  
712-5042-6701-5000

Local 1593, International Longshoremen  
Assn., AFL-CIO (Sea Star Lines LLC)  
Case 24-CC-263

and

Union de Trabajadores de Muelles  
de Puerto Rico, Local 1740, International  
Longshoremen Assn., AFL-CIO (Sea Star Lines LLC)  
Case 24-CC-264

This case was submitted for advice on the following questions: (1) whether pickets in Puerto Rico were agents of Florida ILA Locals 1408 or 1593, such that the Florida locals can be held liable for the pickets' secondary conduct; and (2) whether Puerto Rico ILA Local 1740 authorized its members' action in not crossing the picket line.

## ACTION

### **I. Background**

Florida ILA Locals 1408 and 1593 have a dispute with the Florida stevedoring company Coastal Maritime because it employs members of the Seafarers International Union (SIU), and not members of ILA Locals 1408 or 1593, in handling Sea Star ships. Region 12 has concluded that ILA Locals 1408 and 1593 have violated Section 8(b)(4)(i)(ii)(B); 8(b)(4)(i) and (ii)(B) and Section 8(b)(7)(A) of the Act in related conduct occurring in Florida. The picket line at issue, involving some eight or nine pickets, occurred in

Puerto Nuevo, Puerto Rico, on May 23. Its object was to induce employees of International Shipping Agency, a neutral Puerto Rican stevedoring company, to refuse to handle goods for the Sea Star ship "El Morro" because SIU-represented Coastal Maritime employees serviced the "El Morro" in Florida.

## **II. Whether ILA Locals 1408, 1740 or 1593 Violated the Act**

We conclude that complaint should issue, absent settlement, alleging that Florida ILA Local 1408 violated Section 8(b)(4)(i) and (ii)(B) by authorizing the unlawful Puerto Rico picket line. Further, we conclude that Puerto Rico ILA Local 1740 authorized its members to refuse to cross the Local 1408 picket line and handle goods for their employer, the International Shipping Agency. Thus, complaint should issue, absent settlement, alleging that ILA Local 1740 violated Section 8(b)(4)(i) and (ii)(B) of the Act.

Finally, with respect to Local 1593, Region 12 has concluded that Local 1593 was liable, along with Local 1408, for the picket line involving the same dispute which took place in Port Everglades, Florida. The Region relies on a joint venture theory.<sup>1</sup> We see no legal distinction between Local 1593's presence in Port Everglades and its presence in Puerto Rico. Therefore, complaint is warranted, absent settlement, as to Local 1593's involvement in Puerto Rico.

### **1. Florida ILA Local 1408**

None of the Puerto Rico pickets was an officer of Local 1408. Accordingly, it must be determined whether the pickets were acting as Local 1408's agents, thereby making the Local liable for the pickets' activities.

A union may be found liable for an unlawful picket line, even absent overt union involvement establishing that it initiated the picketing or that a union official was present at the picket line, where an agency relationship exists between the pickets and the union.<sup>2</sup> Pickets are vested with apparent authority when the union knows about

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<sup>1</sup> See Sheet Metal Workers Local 19 (Delcard Associates), 316 NLRB 426 (1995) enf. denied in relevant part and remanded, 154 F.3d 137 (3d Cir. 1998).

<sup>2</sup> Service Employees Local 87 (West Bay Building Maintenance), 291 NLRB 82 (1988).

the picketing and manifests to a third party a reasonable basis to believe that the union has authorized the pickets to do the acts in question. A reasonable basis is created when the union intends to cause or should realize that its conduct is likely to cause the third person to believe that it has authorized the picket line.<sup>3</sup>

In Teamsters Local 85,<sup>4</sup> the Board found that the union became responsible for employees' picket line in violation of Section 8(b)(4)(i) and (ii)(B) when it knew that its signs were being used by the pickets; took no steps to end the use of the signs; and took only token affirmative action to curtail the use of its name. Similarly, in West Bay Maintenance,<sup>5</sup> the Board found that pickets were agents of the union, and that the union violated Sections 8(b)(4)(i) and (ii)(B), even though there was no overt union involvement in initiating the picketing and no union official present. First, the union was notified about the picket line but did nothing to stop it. Second, the pickets used 30 or more preprinted signs, which the employer had reason to believe were in the exclusive possession of the union. In sum, for a union to be responsible for unlawful picketing activity in which it did not take direct part, it must know about the activity and must manifest in some way, either through action or inaction, that it had authorized the picket line.

Similarly, in cases addressing the analogous issue of a union's liability for the misconduct of persons engaged in picketing, the Board "applies the 'ordinary law of agency.'"<sup>6</sup> In so doing, the Board will "'impute the conduct of the union's pickets to the union only where it is shown that the union, either actually or impliedly, authorized the picket's conduct beforehand or ratified the conduct after it occurred."<sup>7</sup> In Local 32B-32J, SEIU,<sup>8</sup> for example,

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<sup>3</sup> West Bay Maintenance, 291 NLRB at 82.

<sup>4</sup> Teamsters Local 85, 191 NLRB 107 (1971) enf. 82 LRRM 2847 (9th Cir. 1972).

<sup>5</sup> West Bay Maintenance, 291 NLRB at 82-83.

<sup>6</sup> Local 32B-32J, SEIU, 293 NLRB 325, 329 (1989).

<sup>7</sup> Local 32B-32J, SEIU, 293 NLRB at 329, quoting Teamsters Local 860 (Delta Lines), 229 NLRB 993, 994 (1977).

the Board found no reasonable basis on which isolated acts of picket line violence could be assumed to represent authorized policies of the union involved in a strike, where there were no actions by undisputed union agents that could be reasonably construed as authorization or ratification of the misconduct.<sup>9</sup>

In the instant case, the evidence supports a finding that Local 1408 knew about and authorized the picketing that took place in Puerto Rico. Most significantly, the evidence indicates that Local 1408 coordinated the entire secondary picketing campaign, including the Puerto Rico picket line. Thus, it was Local 1408 President Spencer who communicated with management officials and arranged the two meetings with management officials to discuss the issue. Local 1408 officials were present at both the Jacksonville, Florida, and Port Everglades, Florida, picket lines. Although Local 1408 officials were not in Puerto Rico, the Puerto Rico pickets carried signs specifically describing Local 1408 as a party to the dispute. The signs, in English and Spanish, stated:

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<sup>8</sup> See also Teamsters Local 860 (Delta Lines), 229 NLRB at 994 (conduct of the union's pickets imputed to the union only where the union, either actually or impliedly, authorized conduct beforehand or ratified conduct after it occurred); NLRB v. SEIU Local 254, 535 F.2d 1335 (1<sup>st</sup> Cir. 1976), modifying enf. of 218 NLRB 1399 (1975) (liability does not extend to isolated incident that took place away from picket line, with no union officials present, where there was no subsequent conduct to indicate union acquiescence and the court would not impute it to the union).

<sup>9</sup> Compare Teamsters Local 783 (Coca Cola Bottling), 160 NLRB 1776 (1966) (union, having authorized strike, knew of misconduct and violence but took no steps reasonably calculated to stop them); Teamsters Local 327 (Coca Cola Bottling) 184 NLRB 84 (1970) (business representatives did nothing to discourage coercive acts of pickets, even though they were aware of them and even committed some themselves); Local 248, Meat & Allied Food Workers, 222 NLRB 1023 (1976) (union was accountable for picket line misconduct committed by union officers or agents; union officers knew of misconduct, made no conscientious serious attempts to curtail it).

Be advised that 'Sea-Star Line,' whose vessel is docked here, transports cargoes that are handled for it in the Port of Jacksonville, Florida by longshore workers not represented by Local 1408, ILA . . .

The signs were identical to the signs the pickets carried in Port Everglades, and they bore the same style and typeface as the signs used in Jacksonville. Finally, our conclusion that Local 1408 knew about, and authorized the Puerto Rico picketing is buttressed by the fact that the picket lines in Puerto Rico and Jacksonville were timed to occur simultaneously, on the morning of May 23, and that at least one of those Puerto Rico pickets was a Local 1408 member. On the basis of these factors, we conclude that there is sufficient evidence to find that Local 1408 authorized the Puerto Rico picket line.<sup>10</sup>

## **2. Puerto Rico ILA Local 1740**

The evidence indicates that members of ILA Local 1740 did not cross the picket line and report to work for International Shipping Agency, a neutral employer. We conclude that there is sufficient evidence to find that Local 1740 authorized its members' decision not to cross the picket line, thereby making the Local liable for its members' conduct.

First, according to management witnesses, Local 1740 representatives, including presidential assistant Cotto, delegate Crespo, and a Local 1740 attorney, were present at the picket line. Management witnesses claimed that it was Cotto who stopped the crew members' incoming cars as they were arriving for work and signaled them to park. Management witnesses also asserted that both Cotto and the union attorney spoke with the pickets and the crew members and told the pickets "not to go in." Further, according to management witnesses, a Local 1740 attorney stated that the employees "were not going to work the ship because Sea Star was using a non-ILA stevedoring agent." A management witness also allegedly overheard presidential assistant Cotto ask a union member to buy two canvas covers, apparently for the purpose of offering protection from bad weather to the police and the pickets. Finally, the fact that none of the employees did cross the picket line buttresses the argument that they acted with the Local's

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<sup>10</sup> Based upon Region 12's theory, Local 1593 is also liable for Local 1408's conduct.

authorization.<sup>11</sup> Thus, there is sufficient evidence to find that Local 1740 knew that its members were refusing to cross the picket line, and that it authorized the members' decision.

Accordingly, based on the foregoing, complaint should issue, absent settlement, alleging that Puerto Rico ILA Local 1740 authorized its members' decision not to work on the Sea Star ship "El Morro" in violation of 8(b)(4)(i) and (ii)(B) of the Act. Complaint should also issue, absent settlement, alleging that Florida ILA Locals 1408 and Local 1593 violated Section 8(b)(4)(i) and (ii)(B) of the Act by authorizing the Puerto Rico picket line. [FOIA Exemptions 2 and 5

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B.J.K.

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<sup>11</sup> See Teamsters Local 85, 191 NLRB at 110 ("Indeed, it appears that [the members] did interpret" the union's conduct as a "signal" that they should respect the picket line, since the picket lines "were respected by all of [the union's] approximately 6,000 members.")