

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

Advice Memorandum

DATE: November 18, 2010

TO : James J. McDermott, Regional Director
Region 31

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

SUBJECT: Carpenters Local Union 150
(Doc Burnstein's Ice Cream Lab) 560-7540-4000
Case 31-CC-2175

This case was submitted for advice as to whether the Union's bannering and dissemination of a handbill containing knowingly false information violates Section 8(b)(4)(ii)(B) of the Act. We conclude that the charge should be dismissed, absent withdrawal, because although the banner and handbills contained knowingly false information, there is no evidence of a cease-doing-business object.

Facts

Carpenter's Local 150 ("the Union") had a labor dispute with United Wall Systems, a drywall contractor operating in the California Central Coast area, regarding United Wall System's failure to maintain area labor standards. Doc Burnstein's Ice Cream Lab, Inc. is a wholesale distributor and retail sales company located in Arroyo Grande, California.

In or about May 2009, Doc Burnstein's agreed to lease space at the Santa Maria Town Center Mall ("the Mall"). The Mall agreed to provide the wall work, rough plumbing and electrical work, and the façade for that space; Doc Burnstein's was responsible for the installation of the equipment and countertops, decoration of the façade, and the flooring in the front of the space. Although the Mall had previously done business with United Wall Systems, it had no current relationship with United Wall Systems, and that company did not perform the drywall work for Doc Burnstein's space at the Mall. Doc Burnstein's has never had any dealings with United Wall Systems.

On or about October 22, 2009, the Union sent Doc Burnstein's a letter entitled "Notice of Labor Dispute - United Wall Systems." In this letter, the Union stated that it had come to its attention that United Wall Systems might have been bidding and/or performing work on one or more of

Doc Burnstein's projects. The letter informed Doc Burnstein's of the Union's labor dispute with United Wall Systems and of its bannering and handbilling campaign, and requested that Doc Burnstein's not allow United Wall Systems to perform work on any of its projects unless and until they met area labor standards. The letter asked Doc Burnstein's to notify the Union immediately if it agrees to comply with this request or if the information about a non-area-standard contractor being involved with any of its projects is incorrect.

On October 28, the Employer replied in writing to the letter, asserting that it has "never heard of United Wall Systems, and we have no construction projects out for bid."

On October 30, the Union appeared at Doc Burnstein's main facility in Arroyo Grande, California (about 15-20 miles from the Mall) with a banner. The banner was large (approximately 4x20 feet) and was accompanied by approximately three individuals holding or standing near it. The Union placed the banner on a public sidewalk across the street and about 20 feet from the only entrance to Doc Burnstein's facility, forcing employees as well as members of the public to encounter it on their way to do business with or make deliveries to the neutral. The banner stated, "SHAME ON DOC BURNSTEIN'S ICE CREAM LAB" in large red letters and stated "LABOR DISPUTE" in smaller black letters at each top corner. The banner bearers also distributed a handbill, which stated: "Shame on Doc Burnstein's Ice Cream Lab for desecration of the American Way of Life... United Wall Systems is performing drywall work on the Doc Burnstein's Ice Cream Lab project in Santa Maria."

The banner bearers/handbillers appeared Tuesdays through Fridays, from 9 a.m. to 3 p.m., until at least late November 2009. According to Doc Burnstein's, the banner and handbilling did not have any effect on Doc Burnstein's employees, vendors, suppliers, or sales. None of the businesses along the street reported being disturbed by the banner or handbilling. There was no loud noise, threats, patrolling, blocking, or otherwise confrontational behavior in conjunction with the banner or handbilling.

Doc Burnstein's notified the Union of the falsity of its claims many times. In addition to its October 28 letter, discussed above, Doc Burnstein's representatives left several messages with the Union at the number listed on the flier, discussed the falsity with the banner bearers/handbillers, and spoke with the handbillers' "boss"

on two occasions over the phone to explain the situation.¹ Doc Burnstein's representatives also stood next to the banner with a poster saying "NOT TRUE" and distributed a counter-handbill stating that it had no relationship with United Wall Systems.

Action

We conclude that because Doc Burnstein's has never had any business relationship with United Wall Systems whatsoever, and the Union knew or should have known that those companies had no business relationship, we cannot say that the Union's bannering and handbilling in this case had the proscribed secondary object of coercing Doc Burnstein's to cease doing business with United Wall Systems or any other person. Thus, regardless of whether the bannering and handbilling here could be considered to be coercive because it was either knowingly false or published with reckless disregard for the truth and therefore enjoys no constitutional First Amendment protection,² such activity was not unlawful under Section 8(b)(4)(ii)(B).³

Accordingly, the Region should dismiss this charge, absent withdrawal.

B.J.K.

¹ During these conversations, the Union told them that they should call the number listed on the flier, which they explained that they had already done several times. The Union never responded to Doc Burnstein's messages at that number or its letter.

² See New York Times Co. v. Sullivan, 376 U.S. 254 (1964); Linn v. United Plant Guard Workers of America, Local 114, 383 U.S. 53 (1996).

³ Thus we do not reach the issue of when, if ever, pure speech that is knowingly or deliberately false, published with reckless disregard for the truth, or otherwise unprotected by the First Amendment can be considered alone to be coercive and thus violative of Section 8(b)(4)(ii)(B).