

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

Advice Memorandum

DATE: March 9, 2011

TO : Claude T. Harrell, Jr., Regional Director
Region 14

Leonard J. Perez, Acting Officer-in-Charge
Subregion 33

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

SUBJECT: United Union of Roofers, Waterproofers
and Allied Workers Local No. 11
(Sentry Roofing, Inc.)
Case 33-CC-1417

The Region submitted this case for advice as to whether the Union's use of an inflatable rat balloon, in coordination with traditional area standards picketing against a primary employer, was unlawful. We conclude that the Region should dismiss the charge because the use of an inflatable rat balloon does not convert otherwise lawful primary area standards picketing into unlawful Section 8(b)(4)(i)(ii)(B) activity.

Briefly, Sentry, the primary, is a nonunionized roofing contractor. Bunge Oils, the neutral, engaged the primary to reroof its administrative building. For four days after Sentry began construction work, and before Sentry set up a primary gate, the Union picketed, handbilled, and erected a rat at a common situs located on the public road at the entrance to the driveway leading to the administrative building. At that time, that was the only entrance to the building. The Region has determined that the Union's picketing activities conformed to Moore Drydock standards.¹ About a week later, Sentry set up a primary reserve gate with a separate driveway leading from the public road to the administrative building. At that time, the Union shifted all its picketing activity to the

¹ Thus, the picketing was at the locus of the primary dispute; the primary employer was on the site; the picketing occurred only during the primary's normal operations; and the picket signs identified the primary. See Sailors Union of the Pacific (Moore Dry Dock), 92 NLRB 547 (1950).

primary reserved gate. The Union's activity at the primary gate, which lasted four days, consisted of area standards pickets and the erection of inflatable rats. The Union engaged in no picketing activity at the neutral gate after the establishment of the primary reserve gate.² The picketing stopped for about one week when Sentry notified the Union that its employees would not be working at the site.

We conclude that the Union's picketing conduct, including the use of the rat balloon, constituted lawful area standards picketing directed at primary activity. 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. Thus, for example, in Brandon Regional Medical Center, a union with a primary dispute with a non-union contractor working inside a hospital handbilled alongside a large rat balloon located around 100 feet from the hospital main entrance. The totality of the union's conduct, including the positioning of the symbolic rat, intentionally created the misleading impression that the neutral hospital was involved in a primary labor dispute with the union, and thus arguably violated 8(b)(4)(B) because it constituted an invisible picket line designed to dissuade hospital customers from entering the hospital.³ Thus, the crux of the General Counsel's theory of violation in those cases is that the use of the rat is tantamount to picketing - and thus, when displayed at neutral locations, threatens to mislead the public into believing that the neutral business has a primary labor dispute with the union.

Here, by contrast, the picketing activity, including the use of the rat, was aimed at primary activity. Thus, even assuming that the rat balloon, as a well known symbol of a labor dispute, constituted a form of signal picketing, nothing about its use here, which entailed traditional area standards picketing against the primary employer, would

² The Union handbilled and erected a banner at the neutral gate during that period. We agree that the handbilling and erection of a banner at the neutral site were not unlawful and the Region has not submitted that issue for advice. See, e.g., Carpenters Local 1506 (Eliason & Knuth), 355 NLRB No. 159 (2010); Carpenters Local 1506 (AGC of San Diego Chapter), 355 NLRB No. 191 (2010).

³ Sheet Metal Workers Local 15 (Brandon Regional Medical Center), 346 NLRB 199 (2006), enf. den. and remanded, 491 F.3d 429 (D.C. Cir. 2007).

have converted that lawful picketing into unlawful Section 8(b)(4)(B) activity.

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

B.J.K.