

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

Advice Memorandum

DATE: November 22, 2005

TO : Victoria E. Aguayo, Regional Director
Region 21

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

SUBJECT: Sheet Metal Workers International 578-6035
Association, Local Union No. 105, AFL-CIO 578-6095
(Omni Duct Systems) 578-8075-2050
Cases 21-CP-833 and 21-CP-834

These cases were submitted for advice on whether the Union's picketing both at the Employer's place of business and later at the private residences of its managers violated Section 8(b)(7)(C) of the Act.

We conclude that the Union's picketing at the Employer's place of business and the private residences of its managers was unlawful because it continued for more than 30 days and at all times was in furtherance of an organizational and recognition object.

The Employer manufactures duct work for heating and ventilating systems and operates five facilities, in Anaheim, Ontario, Santee, San Marcos, and Sacramento, California. Though some of the Employer's production employees have union representation, the "yellow label" employees, who work on diameters that are above 26 inches, are currently not represented.

Around September 1, 2004, the Sheet Metal Workers, Local 105 (the Union), wrote the Employer indicating its interest in organizing the Employer's unrepresented employees. The Union informed the Employer of an ongoing organizing effort, and that the employees had formed an "in house organizing committee." The Employer did not respond to the letter. The Union wrote again on September 21, expressing its interest in organizing. The Union asked for a meeting, and indicated that it was "look[ing] forward to working with you towards an amicable agreement." The Employer did not respond.

The Union made no further attempts to contact the Employer and immediately began a picketing campaign at the Employer's facilities. According to the Employer, the picketing occurred at all the facilities, but the witnesses generally had first-hand knowledge of only the picketing at

the Anaheim location. The Union continuously picketed at this facility beginning September 21, 2004, with four to twelve union representatives at a time during business hours, 5:00 a.m. to 6:00p.m., about 2 to 3 times per week, for about 3 weeks per month. The picketers carried signs that read, "*Omni Duct Family Needs, Not Corporate Greed.*" Although the Employer witnesses could not recall all of the specific dates in which the Union picketed outside of the Employer's Anaheim facility, they did note that it occurred continuously from September 2004 through the end of July 2005. The witnesses could recall picketing on the specific dates of May 12 in Sacramento, May 19 in Anaheim, May 26 in Ontario, June 2 in San Marcos, and June 9, 2005 in Santee, California, since that picketing occurred while the Employer conducted customer training at those locations on those dates.¹

On August 10, 2005, the Union began picketing outside the residences of two of the Employer's principals. This picketing continued on August 11, 15, 16, and 17. Essentially, the Union stationed 4 to 9 picketers outside the two residences, holding signs and placing signs in the ground stating "*Family Need - Not Corporate Greed,*" with the name of the principal printed inside a circle with a slash across it. The Union has not conducted any picketing since August 17.

We agree with the Region that the Union's conduct violated Section 8(b)(7)(C) because the picketing was in furtherance of an organizational and recognition object and occurred for more than thirty days without the Union filing a representation petition. We agree that the initial round of picketing occurring at the Employer's Anaheim facility was in itself unlawful, as it continued for at least 9 months, and the 5 days of residential picketing was a continuation of that unlawful activity.

Section 8(b)(7)(C) prohibits union picketing of an unorganized employer -- which has as a goal either the organization of the employer's employees,² or voluntary

¹ The Employer did not file any charges in response to this picketing, and the Union has not filed a petition for an election.

² See, e.g., New Otani Hotel and Garden, 331 NLRB 1078, 1080 fn. 6 (2000); Hotel & Restaurant Employees Local 89 (Café Renaissance), 154 NLRB 192, 192 (1965); Typographers Union (Greenfield Printing), 137 NLRB 363, 372-374 (1962), enfd. 326 F.2d 634 (D.C. Cir. 1963).

recognition by the employer³ -- when the union fails to file an election petition within a reasonable period of time not to exceed 30 days from the commencement of the picketing. "An unlawful objective in picketing is rarely proved by admission, but rather must be ascertained from the union's overall conduct, which would include past relations between the parties as well as the context in which the picketing occurred."⁴ The Board considers the totality of the circumstances to determine whether union picketing is for an object proscribed by Section 8(b)(7)(C).⁵

The statute does not require continuous conduct, and separate periods of proscribed conduct which together exceed 30 days will trigger a violation.⁶ Where there has previously been unlawful picketing, the Board also considers whether there has been a hiatus before the union

³ See, e.g., Building Service Employees Union, Local 87 (Liberty House/Rhodes), 223 NLRB 30, 36 (1976).

⁴ Id. at 33.

⁵ See, e.g., Iron Workers Local 10 (R & T Steel Constructors, Inc.), 194 NLRB 971, 973 (1972).

⁶ See Butcher's Union Local 120 (M. Moniz Portuguese Sausage Factory), 160 NLRB 1465, 1469 (1966), enf'd 67 LRRM 2768 (9th Cir. 1968) (ten days of intermittent picketing during a thirty-six day period). See also Operating Engineers Local 4 (Seaward Construction Co., Inc.), 193 NLRB 632, 632 (1971) (bouts of picketing separated at one point by a month of inactivity); Electrical Workers Local 3 (M.F. Electrical Service Co.), 325 NLRB 527, n.1 (1998) (fact that union did not picket for 30 consecutive days irrelevant to 8(b)(7)(C) finding where union engaged in organizational picketing for more than a reasonable period of time, i.e., 9 days of continuous picketing followed by intermittent picketing on various days over an approximately 12-month period); IBEW Local 113 (I.C.G. Electric), 142 NLRB 1418, 1427 (1963) (picketing at various jobsites with substantial continuity over 60-70 day period violates 8(b)(7)(C) even though longest continuous period at any site was 23 days).

resumes its proscribed conduct, and whether there has been an effective disclaimer of the prior unlawful conduct.⁷

In this case, the Union's letters to the Employer of September 1 and 21, 2004, and the commencement of the picketing immediately thereafter, together demonstrate that the Union's picketing had an organizational and recognitional object. Both letters explicitly indicate that the Union had an ongoing organizing effort with the Employer's employees who were not represented by a collective-bargaining agreement. Specifically, the first letter noted that the Union was organizing employees and alluded to an "in-house organizing committee" at the Employer's facility. The second letter expressly noted that the Employer's employees had conveyed an interest in joining the Union, and that the Union looked forward to working with the Employer towards an amicable "agreement." The fact that the Union's picketing commenced immediately following the Employer's refusal to respond to these letters supports the conclusion that the picketing was in support of the goals expressed in those letters, which the Union at no time disavowed.

In light of this object, and the continuous picketing of the Employer's facilities from September 2004 through June 2005 without filing an election petition, we conclude that the picketing violated Section 8(b)(7)(C) of the Act.⁸ Although the Employer's witnesses provided only 5 specific

⁷ See McClintock Market, Inc., 244 NLRB 555, 556 (1979); Retail Clerks, Local 1357 (Genuardi Super Markets), 252 NLRB 880, 885 (1980); Bldg. and Construction Trades Council (Altemose Construction Co.), 222 NLRB 1276 (1976), enf'd 93 LRRM 3085 (3d Cir. 1976). The length of the hiatus, standing alone, is not determinative of whether the resumed picketing, like the initial picketing, is unlawful. See, e.g., Altemose Construction, 222 NLRB at 1280-1281; IBEW Local 453 (Southern Sun Electric Corporation), 242 NLRB 1130 (1979), reversed and remanded 620 F.2d 172 (8th Cir. 1980).

⁸ We agree with the Region that the complaint allegation should cover only the picketing that occurred within the six months preceding the filing of the charges, but that the September 2004 letters may be utilized as evidence of the organizational and recognitional object.

dates of picketing, they provided uncontested evidence of a continued course of picketing over a period of 9 months.⁹

For the same reasons, we also agree with the Region that the residential picketing that occurred in August, 2005, was also unlawful. Initially, we note that the Board has found residential picketing unlawful when it occurs in support of an unlawful object.¹⁰ Here, the Union's signs carried the same basic message as the earlier picketing, with only the addition of the manager's name in a circle with a slash through it. The Union never disclaimed its earlier object and, in fact, has provided no other explanation or object for the picketing. Without a disclaimer, the residential picketing is a mere continuation of the earlier unlawful picketing and the brief hiatus in activity between late June and August 10 would not serve to purge the Union's picketing of its earlier, unlawful object.

Therefore, the Region should issue a Section 8(b)(7)(C) complaint in these cases, absent settlement.

B. J. K.

⁹ See cases cited at fn. 6, above.

¹⁰ See Service Employees Local 525 (General Maintenance Co.), 329 NLRB 638, 639 and n. 12 (1999) (picketing at private home of neutral employer violated Section 8(b)(4)), enf'd 52 Fed.Appx. 357, 173 LRRM 2256 (9th Cir. 2002).