

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

# Advice Memorandum

DATE: May 10, 2005

TO : Roberto Chavarry, Regional Director  
Region 13

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

SUBJECT: Service Employees International  
Union (Wackenhut Corporation)  
Cases 13-CC-2511-1 & 13-CB-18019

536-1200  
536-2506  
536-2512  
560-2575-6700  
560-2583  
560-7540-4000  
560-7540-4080-2500  
560-7540-4080-8700  
560-7540-6000  
560-7540-6083-2500  
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712-2500  
712-5014-0120  
712-5042-5000

The Region resubmitted this Section 8(b)(4)(ii)(B) case for advice as to whether the Union is liable under agency principles for third-party conduct directed at neutral employers and whether that conduct violated the Act.<sup>1</sup> The Employer subsequently filed the charge in Case 13-CB-18019, alleging that the Union, through its purported third-party agent, also violated Section 8(b)(1)(A).

We conclude that the evidence now establishes that the third-party acted as the Union's agent within the meaning of Section 2(13), and that much of its conduct on the Union's behalf violated Section 8(b)(4)(ii)(B). However, we also conclude that the Section 8(b)(1)(A) charge should be dismissed, absent withdrawal.

## FACTS

### Background

Wackenhut Corporation (Wackenhut or the Employer) is a Florida-based security contractor that provides services to private businesses and government agencies. The Employer

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<sup>1</sup> See Service Employees International Union (Wackenhut Corp.), Case 13-CB-17857, et al., Advice Memorandum dated December 20, 2004.

is a subsidiary of Group 4 Securicor, a European conglomerate.

The Service Employees International Union (the Union), a local affiliate of which represents a unit of Wackenhut employees in Chicago, proposed that the Employer agree to voluntary card-check recognition in a number of other cities. Although the Employer has entertained discussion of this proposal, it has to date refused to agree to it. As a result, in October 2003, the Union launched a "corporate campaign" against Wackenhut. The campaign consisted of sending letters to certain Employer customers and to senior Group 4 Falck officials,<sup>2</sup> handbilling the Employer's customers' locations, and maintaining two websites, [www.eyeonwackenhut.com](http://www.eyeonwackenhut.com) and [www.focusongroup4securicor.com](http://www.focusongroup4securicor.com). The Union's campaign called attention to its labor dispute with the Employer, alleged that the Employer had committed numerous security breaches, and detailed the Employer's alleged mistreatment of its employees.

The Employer claims that the Union subsequently unlawfully escalated its corporate campaign. Specifically, the Employer alleges that the Union contracted with the Prewitt Organizing Fund (Prewitt), a Washington, D.C.-based organization that assists unions and other groups, to engage in conduct against the Employer. The Employer contends that Prewitt created various "surrogates" to conduct unlawful secondary activity on the Union's behalf, including picketing, threats, and demonstrations targeting the Employer's clients, to pressure the Employer to agree to the Union's card check recognition proposal.

### **Agency**

On December 6, 2004, Wackenhut filed a federal lawsuit in the Eastern District of Virginia against Prewitt, Direct Organizing Group (another organization that Duane Stillwell, Prewitt's President, heads), and Virginia PROTECTS,<sup>3</sup> among others. In discovery, Wackenhut obtained evidence bearing on Prewitt's relationship with the Union. Thus, the evidence establishes that on or about November

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<sup>2</sup> Group 4 Falck preceded Group 4 Securicor as the Employer's parent company.

<sup>3</sup> "PROTECTS" is an acronym for People for Responsible Outourcing To end Excessive Costs To Stockholders. References to "PROTECTSUSA" and to [www.protectsUSA.org](http://www.protectsUSA.org) appear on the handbills distributed during the Prewitt-orchestrated demonstrations described below.

31, 2004, the Union and Prewitt executed a "POF Basic Agreement," (the Agreement) setting forth their "understanding" and providing for a one-year term. In relevant part, the Agreement provides that

[Prewitt] and [the Union] must agree on the deployments and actions of organizers [defined in the contract as people who, among other things, lead or assist field activities] assigned hereunder. However, [Prewitt's] employees, consultants and agents may carry out work on a day-to-day basis as required (with such programmatic assistance of or direction from [Union] personnel as both parties may agree to), unless and until [the Union] requests that any specific action or effort be halted or modified, in which case [Prewitt] will immediately comply with such requests and promptly consult with [the Union] to determine a modified course of action.

The Agreement provides that the Union will indemnify Prewitt for any liability resulting from Prewitt's work on "the Project," absent Prewitt's gross negligence or misconduct.<sup>4</sup>

Wackenhut also deposed William Ragan, Deputy Director of the Union's Building Services Division, and Adam Wilson and Susan O'Neill, Prewitt employees who led its efforts on the Union's behalf.

Ragan oversees the Union's efforts to organize security officers. At his deposition, he admitted that the Union came up with the idea for the Wackenhut "corporate campaign," and that the Union hired Prewitt to conduct it in the spring of 2004. Ragan provided Stillwell with a list of Wackenhut's national clients for Prewitt to target and identified certain cities Prewitt was to avoid so as not to jeopardize ongoing Union organizing efforts there. Stillwell, Wilson, and O'Neill regularly updated Ragan on the campaign: since January 1, 2004, Ragan and Stillwell have spoken by telephone about Prewitt's activities at least 10 and perhaps more than 20 times. Ragan and O'Neill have spoken more than 10 times, and Ragan and Wilson roughly half a dozen times. Prewitt also provided Union

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<sup>4</sup> The Agreement neither defines nor describes "the Project." Wackenhut also provided the Region with similar contracts between the Union and Prewitt and between the Union and Direct Organizing Group, neither of which was in effect during the period of time relevant to the instant cases. The earlier Union/Prewitt agreement merely defines "the Project" as "various growth projects."

representatives, including Ragan, with access to a database containing "action reports" on demonstrations it conducted against Wackenhut and its clients, to enable the Union to "keep abreast of [Prewitt's] efforts to publicize Wackenhut's [security] deficiencies." Prewitt also e-mailed the Union 20 to 24 campaign reports, describing where organizers went, what they did, and what happened. In addition, Ragan referred Prewitt to the Union's "Eye on Wackenhut" website for information it could use in the campaign and identified additional companies Prewitt might want to target.<sup>5</sup> Ragan reviewed and approved invoices that Prewitt submitted in connection with the campaign and testified that, pursuant to the Agreement, the Union has paid Prewitt approximately \$800,000 since January 1, 2004. He also stated at his April 7, 2005 deposition that the Union had yet to exercise its right to require Prewitt to halt or modify its campaign activity.

Wilson confirmed that he spoke with Ragan repeatedly about the campaign. Wilson once suggested to Ragan that Prewitt expand the campaign to London, where Wackenhut's owner is based. However, Ragan was unreceptive to the idea and Prewitt never pursued it. Wilson also confirmed that a Union Research Analyst involved with the campaign e-mailed Ragan asking that "Duane & Co. [i.e. Stillwell] rather than...Local 11 people" attend a Nuclear Regulatory Commission meeting at Florida Power & Light's Juno Beach, Florida offices on July 15, 2004 in order to ask a question concerning Wackenhut site and performance issues at the utility's Port St. Lucie, Florida plant. Wilson confirmed that Prewitt fulfilled the Union's request.

### **Picketing Threats**

Early in the Union's corporate campaign, Prewitt "surrogates" contacted various Wackenhut clients. For example, on June 15, 2004, a group identified as NY/NJ PROTECTS wrote Lucent Technologies informing it that NY/NJ PROTECTS planned to handbill and picket Lucent's Telecom Conference in New York and Lucent's New Jersey headquarters to protest Wackenhut's "egregious track record of providing poor security services." On June 16, 2004, NY/NJ PROTECTS contacted Allied Signal/Honeywell. Employing language similar to the letter to Lucent, NY/NJ PROTECTS advised Allied Signal that it intended to picket Allied's Morristown, New Jersey facility on June 18, 2004. NY/NJ

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<sup>5</sup> Prewitt followed at least one such suggestion. Wilson attended a May 14, 2004 Entergy shareholders meeting at the Hyatt New Orleans to "ask why they use a company like Wackenhut with its terrible record of security breaches."

PROTECTS members in fact visited Allied's property on June 18, 2004 and allegedly acquired visitor passes under false pretenses. The protestors then entered Allied's facility to handbill and photograph it. A group identified as Pennsylvania PROTECTS sent a similar letter dated June 24, 2004 to Ingram Micro threatening to picket Ingram's Jonestown, Pennsylvania facility.

### **Prewitt's Campaign Activities**

1. Bank of America, West Gray Banking Center, Houston, Texas

At 1:15 p.m. on January 18, 2005, as bank tellers assisted about five customers and 10 others stood in line, two new account representatives assisted customers at their cubicles, and a few other customers were in the waiting area, seven or eight people ran into the bank blowing very loud whistles. Most wore old-fashioned Keystone Kop police uniforms and one wore a striped prisoner's outfit. They ran between the customers in the waiting area, bank account representatives' cubicles, and the teller line. They tossed handbills at customers and employees, on waiting area sofas, and on the floor. At some point during the demonstration, which lasted roughly two minutes, all of the customers and employees stood still and watched. The demonstrators then went outside and distributed handbills to the approximately eight customers waiting in their cars in the drive-through line. Following this incident, several employees told the manager they thought the bank was being robbed. Other employees found the demonstration humorous.

2. Bank of America, Eldridge Banking Center, Houston, Texas

On January 14, 2005, an assistant manager witnessed five to seven people running around the bank lobby. Most wore Keystone Kop outfits and held spongy clubs. They blew whistles loudly during their entire two-minute demonstration, and threw handbills at customers and employees. The assistant manager believes one demonstrator held a small video camera, but she does not know what he or she filmed. Two or three customers were in the lobby, while one or two more were at teller windows. The assistant manager first thought the bank demonstrators were staging a "take-over robbery." She also stated that after the incident employees and customers looked startled and shocked.

3. Bank of America, Meyerland Banking Center, Sugarland, Texas

In early 2005, the assistant bank manager was aiding a teller with a customer, while three other tellers assisted customers and three people waited in the teller line. In addition, two personal bankers were at their desks on the right side of the lobby, and two drive-through tellers were on duty. The manager heard whistles and looked up to see four or five people running through the front door. Most tellers and customers stood still upon seeing them. Two of the demonstrators were dressed as prisoners, the others as Keystone Kops. One ran around distributing handbills to customers and employees; the others simply ran around the lobby. The Keystone Kops blew whistles during the entire one-minute incident. Afterward, a drive-through teller told the manager that the demonstrators also ran through that area while blowing their whistles, and that she thought they were staging a "take-over robbery." Another teller and several customers allegedly also told the manager they thought a robbery was underway. According to the assistant manager, about a month prior to the demonstration, all branch managers in her district were instructed by e-mail after a previous instance of such conduct to watch out for whistle-blowing demonstrators, and to report any such incidents to corporate security.

4. Publix Supermarket, Fort Lauderdale, Florida

On January 15, 2005, a Wackenhut security officer was stationed at the front of the store near the customer service department. Approximately six to eight very noisy people entered the store carrying sticks and dressed like Keystone Kops. They were not running but were moving very quickly. The guard initially thought a store promotion was underway. The demonstrators took two different paths through the store. First, they walked past certain fixtures to the left of the entrance, through an unoccupied checkout lane, and then exited the store. Their second route was similar, except that after passing through the checkout lane, they walked by the customer service area and handed the guard a handbill. The store manager approached the guard laughing and asked for the flyer. The demonstrators did not block anyone from entering or leaving the store. Between 10 and 12 customers and an equal number of employees were in the store when this incident occurred. The guard observed most customers laughing at the demonstration.

5. Oracle Corporation, Burlington, Massachusetts

A Wackenhut guard is stationed at the building entrance. In the fall of 2004, he observed 15 to 20 people in the lobby and 10 to 12 more near the elevators. In

order to enter the building, Oracle employees must swipe their badges, and visitors must sign in with the guard. At some point, the guard noticed a commotion down the hall near the back door. Three people, two dressed as Keystone Kops and the third as a prisoner, moved briskly toward the lobby from the area of the back door. The Keystone Kops carried clubs and the prisoner carried a ball and chain. Some people in the lobby moved away from the demonstrators as they passed by and appeared stunned, while others laughed. The prisoner left a handbill at the guard's station. The demonstrators ultimately exited out the back door, following a demonstration which lasted between three and four minutes.

The demonstrators did not block anyone in the lobby, though they may have impeded normal traffic flow. An incident report indicates that the demonstrators "tailgated" an employee entering through the secured back door. The demonstrators also ran through a cafeteria on the same floor before making their way to the lobby. This incident marks the only time Prewitt demonstrators breached a secure area inaccessible to the public.<sup>6</sup>

6. Bank of America, Greensboro, North Carolina

Each of this bank's four entrances has an airlock that permits people to enter the building from the street. Only employees can enter the foyer, however, without being let in by a Wackenhut guard. The guards can see people in the airlocks through the building's glass doors and on video monitors. On February 1, 2005, two security officers witnessed four to six people dressed as Keystone Kops and one dressed as a prisoner enter the south entrance airlock. One held a video camera and another picked up the security phone, asking to speak to a bank manager. The group remained in the airlock for about five minutes, when a manager arrived and cracked the door open. At that point, the prisoner fell to the ground and started swinging his arms and making noise with a horn. Another demonstrator gave the manager a handbill. No customers or employees attempted to enter the facility during this fifteen-minute incident. A security manager's incident report indicates

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<sup>6</sup> At his deposition, Wilson confirmed that during some demonstrations participants entered private areas of various employers' premises. O'Neill testified that Prewitt considers bank and office building lobbies public space, but internal offices private. She stated that Prewitt sought to ascertain in advance of its demonstrations what areas of targeted facilities were public and private, according to this definition.

that the demonstrators videotaped the activity in the airlock, and that after leaving the airlock, the demonstrators went to the shipping and receiving dock, which they also videotaped.

7. First Data Telecheck, Houston, Texas

On January 14, 2005, four people dressed as Keystone Kops and one dressed as a prisoner conducted a street theater demonstration outside the entrance to this building. A Wackenhut guard noticed them after hearing whistles and loud voices. The group ran in a circle twice while outside, after which one ran inside the facility and left a stack of handbills on the security desk. Some demonstrators handbilled customers entering the building and left handbills on cars in a nearby parking lot.

On March 8, 2005, two people dressed as Keystone Kops stood on the sidewalk of a public street adjacent to the same facility and distributed handbills. A Wackenhut guard called the police, and the pair left after police arrived and spoke with them. At no point during this 30-minute incident did they block anyone from passing by on the sidewalk. On March 10, two people engaged in the same activity for about 45 minutes.

8. Bank of America, Gessner Banking Center, Houston, Texas

On March 8, 2005, two people dressed as Keystone Kops stood on a sidewalk 20 to 30 feet from the bank's entrance. The sidewalk and bank entrance are located at the rear of the bank building, whereas the public street and public sidewalk are located at the front of the building. The pair, playing music on a boom box, spoke with and handbilled customers leaving the bank. When no one was present, the two paced in a circle. They left shortly after a bank employee asked if they had permission to be there. They did not block the bank entrance during this five-minute incident.

**Evidence of the Corporate Campaign's Secondary Object**

The handbills distributed during the above demonstrations included one captioned "Homeland Security Is Serious Business. Why Are Major Companies Treating it as a Joke?" It asked, "Why do some major U.S. corporations turn to Wackenhut to protect our investments and our lives? Wackenhut is looking like the Keystone Kops of security...[y]et essential homeland companies...continue to contract with the Keystone Kops to provide security." The handbill listed numerous prominent companies, such as AT&T,

Bank of America, Dell, and IBM, that use Wackenhut's security services.

At his deposition, Ragan stated that the Union provided a list of Wackenhut's national clients and their locations to Prewitt so that Prewitt could communicate with those clients about Wackenhut's deficiencies as a security services provider. He stated that the Union wanted to ensure that Wackenhut clients knew about Wackenhut's shortcomings. Ragan also stated that the corporate campaign would end once the Union obtained an agreement with Wackenhut like those it has reached with other major security contractors such as Securitas, Guardsmark, Allied, and ACSS. Ragan admitted that the Union wants a collective-bargaining agreement containing a neutrality/card-check agreement. Wilson indicated that Stillwell told him the Union was funding the corporate campaign because it wanted to "get a union at Wackenhut."

#### **ACTION**

We conclude that Prewitt acted as the Union's Section 2(13) agent for purposes of the Union's corporate campaign, and that much of Prewitt's conduct on the Union's behalf violated Section 8(b)(4)(ii)(B). However, we conclude that the Section 8(b)(1)(A) charge should be dismissed absent withdrawal.

#### **A. Prewitt acted as the Union's Section 2(13) agent in the corporate campaign.**

Common law principles guide the Board's agency status determinations.<sup>7</sup> Thus, an agent's authority may be actual or apparent, and the principal may create either type of authority expressly or by implication.<sup>8</sup> Actual authority refers to an agent's power to act on his principal's behalf when that power is created by the principal's manifestation to him; apparent authority results from a manifestation to a third party that another is his agent, and an individual will be held responsible for his agent's actions under this doctrine where he knows or should know that his conduct in relation to the agent is likely to cause third parties to believe the agent has authority to act for him.<sup>9</sup>

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<sup>7</sup> See, e.g., Electrical Workers Local 98 (MCF Services), 342 NLRB No. 74, slip op. at 3 (2004).

<sup>8</sup> Ibid.

<sup>9</sup> Ibid., quoting Communications Workers Local 9431 (Pacific Bell), 304 NLRB 446, 446 n.4 (1991) (internal citation omitted).

Section 2(13) provides that a principal is liable for his agent's actions even if the principal neither authorized nor ratified the agent's particular acts.<sup>10</sup> Therefore, a principal is responsible for its agents' conduct if such action is taken in furtherance of the principal's interest and is within the general scope of authority attributed to the agent; it is sufficient if the principal empowered the agent to represent the principal in the general area in which the agent has acted.<sup>11</sup>

Applying these principles here, we conclude that the Union expressly conferred actual authority on Prewitt to serve as its agent in connection with the Union's corporate campaign against Wackenhut, which was designed to further the Union's publicity and organizational objectives. We also conclude that Prewitt's Keystone Kop demonstrations were well within the general scope of the Union's delegated authority in this regard.

The Union's express conferral of actual authority is clearly contained in the Union/Prewitt Agreement, pursuant to which the Union has paid Prewitt \$800,000 to date. The Agreement provides, in relevant part, that Prewitt will carry out "deployments and actions," subject to the Union's right to request that Prewitt immediately halt or modify any specific action or effort, in which case Prewitt will promptly consult with the Union to determine a modified course of action. And, Ragan's deposition testimony reveals that on top of hiring Prewitt to conduct its corporate campaign (which he further admitted was the Union's idea) the Union provided Prewitt with a list of Wackenhut's national clients to target and identified cities Prewitt was to avoid. Significantly, the Union never exercised its contractual "veto" power over any of Prewitt's activities, despite being apprised of Prewitt's conduct in dozens of telephone calls with Prewitt officials, having received between 20 and 24 e-mailed campaign reports describing Prewitt's activities, and being granted access to a Prewitt database containing "action reports" on Prewitt's demonstrations highlighting Wackenhut's asserted security deficiencies. Moreover, the evidence reveals that the Union directed Prewitt to additional corporate events, at least one of which -- the May 14, 2004 Entergy shareholders meeting in New Orleans --

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<sup>10</sup> 342 NLRB No. 74, slip op. at 3.

<sup>11</sup> Ibid., quoting Bio-Medical Applications of Puerto Rico, Inc., 269 NLRB 827, 828 (1984).

Prewitt attended.<sup>12</sup> Ragan, who reviewed and approved Prewitt's invoices, also referred Prewitt to the Union's "Eye on Wackenhut" website for information Prewitt could make use of in its efforts on the Union's behalf.

The foregoing evidence amply demonstrates that the Union expressly authorized Prewitt to act as its agent on the Wackenhut corporate campaign, and that Prewitt acted within the general scope of this authority.

**B. Prewitt's Keystone Kop demonstrations violated Section 8(b)(4)(ii)(B).**

We conclude that many of Prewitt's Keystone Kop demonstrations were unlawful under Section 8(b)(4)(ii)(B). In relevant part, Section 8(b)(4)(ii)(B) forbids a union to coerce, threaten, or restrain any person in order to force or require that person to cease doing business with another employer, or to force any other employer to recognize or bargain with it.<sup>13</sup> This provision reflects the "dual congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressure in controversies not their own."<sup>14</sup> A Section 8(b)(4)(ii)(B) violation involves both a proscribed object and coercive conduct. Here, we first conclude that the evidence shows that the Union's corporate campaign and Prewitt's demonstrations embodied two proscribed objects: (i) pressuring Wackenhut's clients to cease doing business with Wackenhut; and (ii) forcing Wackenhut to recognize the Union.

Prewitt's demonstrations clearly embodied a cease doing business object. The handbills distributed during the Keystone Kop demonstrations list Wackenhut's asserted deficiencies as a security provider and name numerous leading companies that utilize Wackenhut's services. And, according to Ragan, the Union provided Prewitt with a list of Wackenhut's national clients and their locations so that Prewitt could ensure these clients were aware of

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<sup>12</sup> The Union, however, declined Prewitt's suggestion that it expand the campaign's reach to London.

<sup>13</sup> See NLRB v. Denver Bldg. & Const. Trades Council, 341 U.S. 675, 688-689 (1951); Teamsters Local 557 (General Motors), 338 NLRB 896 (2003).

<sup>14</sup> NLRB v. Denver Bldg. & Const. Trades Council, 341 U.S. at 692.

Wackenhut's shortcomings. Since the Union clearly intended for these clients to terminate their business relationships with Wackenhut, the Union and Prewitt acted with an unlawful cease-doing-business objective.<sup>15</sup>

Prewitt's demonstrations also sought Wackenhut's recognition of the Union. Ragan stated that the corporate campaign would end once the Union obtained an agreement with Wackenhut like those it has in place with other major security contractors. Ragan also admitted that the Union wants Wackenhut to accept its neutrality/card-check proposal. Wilson testified that Stillwell told him the Union was funding the corporate campaign because it wanted to organize Wackenhut. Thus, the Union and Prewitt's demonstrations also encompassed an unlawful forced-recognition object. Accordingly, the Union's demonstrations violated Section 8(b)(4)(ii)(B) if they were coercive.<sup>16</sup>

Initially, we conclude that Prewitt's demonstrations did not constitute either traditional or "signal" picketing. Thus, the Keystone Kop demonstrations did not embody the confrontational element of traditional picketing, posting individuals at entrances to an employer's premises, keeping employees or customers away from the business.<sup>17</sup> The demonstrators also were not a signal designed to alert customers and suppliers not to enter these premises. Nor do we regard these demonstrations as "signal picketing" under the recent

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<sup>15</sup> See, e.g., Mineworkers (New Beckley Mining), 304 NLRB 71, 73 (1991), enfd. 977 F.2d 1470 (D.C. Cir. 1992) ("[a]lthough our inquiry must be based on the intent, rather than on the effects of the union's conduct[,] the union's intent is measured as much by the necessary and foreseeable consequences of its conduct as by its stated objective [and] we look to the 'totality of the circumstances' to determine whether the union's conduct demonstrates an unlawful purpose").

<sup>16</sup> We agree with the Region that a Section 8(b)(4)(ii)(B) complaint should issue concerning Prewitt's June 2004 picketing threats directed at neutrals Lucent Technologies, Allied Signal/Honeywell, and Ingram Micro. See, e.g., Truck Drivers Local 705, Teamsters (Johns-Manville Products Corp.), 205 NLRB 387, 392 (1973), enfd. 509 F.2d 425 (D.C. Cir. 1974) (threat to picket neutral violated Section 8(b)(4)(ii)(B)).

<sup>17</sup> See, e.g., Lumber & Sawmill Workers Local No. 2797 (Stoltze Land & Lumber Co.), 156 NLRB 388, 394 (1965).

"banner" cases, because the Keystone Kop demonstrations largely occurred inside the targeted businesses.<sup>18</sup> In addition, unlike inflated rats, Keystone Kops have no historical significance in the labor context and thus would not "signal" employees or passersby that a labor dispute exists and they should not cross the Union's "picket line."<sup>19</sup>

Two Prewitt demonstrations, at First Data Telecheck and the Gessner Banking Center, involved mere handbilling and no coercive conduct. On March 8 and 10, 2005, two people dressed as Keystone Kops stood on a public sidewalk adjacent to First Data Telecheck and distributed handbills. At no point did the individuals block anyone from passing by on the sidewalk. At the Gessner Banking Center in Houston, two people dressed as Keystone Kops stood for about five minutes on a rear sidewalk 20 to 30 feet from the Bank of America branch playing music on a boom box, and spoke with and handbilled customers leaving the bank. At no point did they block the bank entrance. We conclude that the Union's activity on these occasions constituted

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<sup>18</sup> Compare, e.g., Southwest Regional Council of Carpenters & Carpenters Locals 184 & 1498 (New Star General Contractors), Cases 27-CC-877, et al., Advice Memorandum dated July 23, 2004 (union agents manning large stationary banners containing misleading language in close proximity to neutral employers constituted coercive "signal picketing" meant to keep customers and suppliers away from the targeted neutrals); and Carpenters Locals 184, 1498, 1506, & Southwest Regional Council of Carpenters (Grayhawk Development), Cases 28-CC-971, et al., Advice Memorandum dated August 17, 2004 (same).

<sup>19</sup> See, e.g., Bricklayers Local 1 (Yates Restoration Group, Ltd.), Cases 2-CC-2594-1, et al., Advice Memorandum dated January 12, 2004, at p.10, n.17 (inflated Uncle Sam balloon has no historical significance in a labor context and thus could not signal employees or passersby that a labor dispute exists and they should not cross the "picket line"); citing Construction & General Building Laborers Local 79 (C&D Restoration, Inc.), Case 2-CP-1036-1, Advice Memorandum dated August 15, 2003, at p. 9, n.18 (Union's use of inflated skunk not a factor in finding that union engaged in unlawful picketing; skunk has no significance in labor context and therefore its mere display does not operate as a signal to employees or passersby to take any particular action).

protected handbilling under DeBartolo<sup>20</sup> and did not constitute coercive conduct within Section 8(b)(4)(ii)(B).

However, we conclude that the other Keystone Kop incidents at issue here violated Section 8(b)(4)(ii)(B). "Coercion" has been defined as a disruption of the neutral employer's business.<sup>21</sup> Disruptive conduct need not achieve the desired effect in order to be "coercive" for purposes of Section 8(b)(4).<sup>22</sup> We conclude Prewitt's orchestrated, trespassory,<sup>23</sup> and noisy, disruptive campaign of harassment

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<sup>20</sup> DeBartolo Corp. v. Florida Gulf Coast Bldg. & Const. Trades Council, 485 U.S. 568, 580 (1988) (peaceful handbilling unaccompanied by violence, picketing, or patrolling not coercive and not violative of Section 8(b)(4) even if it has economic impact on neutrals; statutory phrase "threaten, coerce or restrain" excludes nonpicketing activities partaking of free speech).

<sup>21</sup> See NLRB v. Operating Engineers, 400 U.S. 297, 304-305 (1971). See also Carpenters, Kentucky District Council (Wehr Constructors), 308 NLRB 1129, 1130 n.2 (1992) ("'Coercion' within the meaning of Sec[ti]on 8(b)(4)(ii) broadly includes 'nonjudicial acts of a compelling or restraining nature, applied by way of concerted self-help consisting of a strike, picketing, or other economic retaliation and pressure in the background of a labor dispute.'"), quoting Sheet Metal Workers Local 48 v. Hardy Corp., 332 F.2d 682, 685 (5th Cir. 1964); NLRB v. Fruit and Vegetable Packers, Local 760, 377 U.S. 58, 68 (1964) (whether a particular activity is prohibited under Section 8(b)(4) depends upon the "coercive nature of the conduct, whether it be picketing or otherwise"); Pye v. Teamsters Local 122, 875 F.Supp. 921, 927 (D.Mass. 1995), enfd. 61 F.3d 1013 (1st Cir. 1995) ("[c]oercion can take many forms and is often most effective when it is very subtle").

<sup>22</sup> See Mineworkers (New Beckley Mining), 304 NLRB at 73, (Board's inquiry must be based on intent, rather than on the effects, of union's conduct).

<sup>23</sup> In this regard, we note that while the targeted neutral operations are open to the public, a person entering enjoys business invitee status; that is, he or she is invited to enter for the purpose of doing business, and certainly not for the purpose of disrupting business. Thus, contrary to Prewitt official O'Neill's assertion (above at n.6), we regard all of the inside demonstrations as trespassory, not just the incident at Oracle, where demonstrators "tailgated" behind an authorized entrant into a secured area.

constituted Section 8(b)(4) coercion. The demonstrations involved between 3 and 8 costumed people running and, in one instance, walking quickly, through the neutrals' premises, loudly blowing whistles, and in some cases throwing handbills at employees and patrons. Many neutrals' employees and customers were stunned, startled, or shocked into silence; many Bank of America employees and customers thought the demonstrators were bank robbers. Even those witnesses who found the demonstrations humorous stopped what they had been doing to watch. Thus, the net effect of each demonstration was the complete interruption of normal business at the targeted neutrals for the duration of each incident.

We would reject any argument that the incidents did not violate Section 8(b)(4)(ii)(B) because they were brief and targeted each business only once. On the contrary, as set forth below, the Union's conduct must properly be viewed in its entirety.

First, Prewitt repeatedly targeted Bank of America, staging five of the demonstrations at issue at its bank branches. In fact, the evidence shows that Bank of America's officials well knew that demonstrators had trained their sights on the company: an e-mail instructed branch managers to look out for whistle-blowing protesters and to report any such incidents to corporate security. From Bank of America's perspective, then, the Keystone Kop demonstrations were certainly not brief and isolated. Moreover, despite each individual incident being short-lived, the Keystone Kop demonstrations were arguably no less disruptive than the amplified broadcasts found unlawful under Section 8(b)(4)(ii)(B) in Society Hill Towers.<sup>24</sup>

In addition, these demonstrations represent but one component of SEIU's long and escalating corporate campaign against Wackenhut. Thus, the corporate campaign dates back to October 2003, when SEIU wrote to various Wackenhut and senior Group 4 Falck officials, handbilled Wackenhut customer locations, and created its [www.eyeonwackenhut.com](http://www.eyeonwackenhut.com) and [www.focusongroup4securicor.com](http://www.focusongroup4securicor.com) websites. These were the first steps in SEIU's concerted effort to publicize its labor dispute with the Employer, broadcast the Employer's numerous asserted security breaches, and detail Wackenhut's alleged employee mistreatment. Subsequently, the Union graduated to clearly secondary tactics, including its June

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<sup>24</sup> Carpenters (Society Hill Towers Owners' Ass'n), 335 NLRB 814, 815, 820-823, 826-829 (2001), *enfd.* 50 Fed.Appx. 88 (3d Cir. 2002) (unpublished decision).

2004 picketing threats directed at Lucent Technologies, Allied Signal/Honeywell, and Ingram Micro, and its Keystone Kop routines.

The evidence thus belies any claim that the Keystone Kop demonstrations were brief, isolated events. Rather, we conclude that they were part of a calculated, purposeful, and widespread pattern of disruption aimed at neutral employers.<sup>25</sup>

**C. The demonstrators did not violate Section 8(b)(1)(A).**

The gravamen of Wackenhut's Section 8(b)(1)(A) allegation is that the Union, through its agent Prewitt, coerced and restrained Wackenhut employees and neutrals' employees Section 7 rights by trespassing on neutrals' premises and by videotaping some of the Keystone Kop demonstrations. For the reasons set forth below, we conclude that this charge should be dismissed, absent withdrawal.

There is no evidence that any employees were restrained from exercising Section 7 rights because of the brief demonstrations. The Board has held that a union's mass demonstrations on the employer's premises, in the presence of employees and over the employer's objections, violates Section 8(b)(1)(A) because "employees, observing that the employer cannot withstand the force of the union, naturally conclude...that they too should yield to the union's wishes."<sup>26</sup> Here, even though trespassory (see n.23, above), the brief Keystone Kop demonstrations were insufficient to establish Union control over the neutral or

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<sup>25</sup> Cf. United Union of Roofers Local 135 (Advanced Coatings & Insulation of America, Inc.), 266 NLRB 321, 325 (1983), decision supplemented 269 NLRB 1067 (1984) (evidence that one person carrying a picket sign walked across the road in the vicinity of the neutral gate on one occasion insufficient to find Section 8(b)(4)(ii)(B) violation). Compare generally Service Employees Local 525 (General Maintenance), 329 NLRB 638, 638, 655 (1999), enfd. 52 Fed.Appx. 357 (9th Cir. 2002) (unpublished decision) (dismissing Section 8(b)(1)(A) allegation where no evidence incident was part of a pattern of obstructive conduct, and was "momentary and noncoercive, amounting to an inconsequential act of misconduct.")

<sup>26</sup> District 65, Retail, Wholesale & Department Store Union (B. Brown Associates, Inc.), 157 NLRB 615, 623 (1966), enfd. 375 F.2d 745 (2d Cir. 1967).

its premises and thus insufficient to coerce or restrain any Wackenhut or neutral's employees in the exercise of their Section 7 rights.

In Retail Store Employees,<sup>27</sup> four to six union representatives entered the employer's premises uninvited, refused the employer's request that they leave, and argued with the police for an hour over the employer's right to eject them.<sup>28</sup> The Board concluded that the union's conduct did not amount to the union imposing its will over the employer and its premises sufficient to constitute Section 8(b)(1)(A) restraint and coercion.<sup>29</sup> As in Retail Store Employees, we find that the Keystone Kop demonstrations did not restrain or coerce any employee's exercise of Section 7 rights.

We also conclude that Prewitt's videotaping did not violate Section 8(b)(1)(A). The Board has found that videotaping employees may violate Section 8(b)(1)(A) when such conduct takes place in conjunction with other actions indicating that a union might retaliate against them.<sup>30</sup> Here, however, the evidence reveals that the demonstrators were videotaping themselves, and any footage of Wackenhut or neutral employees was unintentional and incidental. In addition, there is no evidence that the videotaping was accompanied by any other conduct or remarks that would reasonably instill a fear of retribution in the mind of any Wackenhut or neutral employee who may have been filmed. In these circumstances, we find that Prewitt's videotaping did not violate Section 8(b)(1)(A).

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<sup>27</sup> Retail Store Employees Local 1001 (Levitz Furniture Co. of Washington, Inc.), 203 NLRB 580, 580-581 (1973).

<sup>28</sup> The Board noted that whether the union's conduct, which violated the employer's posted no-solicitation/no-distribution rule, constituted a trespass was a matter for state and local authorities, and the Board declined to make a finding in this regard. Id. at 581.

<sup>29</sup> Id. at 580-581, distinguishing District 65, Retail Store Union, *supra*.

<sup>30</sup> See, e.g., Teamsters Local 890 (Basic Vegetable Products), 335 NLRB 686, 686-687 (2001), and cases cited (videotaping employees may reasonably tend to restrain or coerce them in the exercise of their Section 7 rights, and therefore violate Section 8(b)(1)(A), when such conduct takes place in conjunction with other actions indicating that a union might react adversely to such employees).

**D. Conclusion**

For the foregoing reasons, the Region should issue complaint, absent settlement, alleging that the Union, through its agent Prewitt, violated Section 8(b)(4)(ii)(B) by threatening to picket various neutral employers and by staging Keystone Kop demonstrations at neutral businesses. However, the Region should dismiss the Section 8(b)(1)(A) charge, absent withdrawal.

B.J.K.