

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

Advice Memorandum

DATE: July 27, 2012

TO: Cornele A. Overstreet, Regional Director
Region 28

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

SUBJECT: Local Joint Executive Board of Las Vegas
(Culinary Workers Union Local 226 and
Bartenders Union 165) 578-2025-6700
Cases 28-CP-081474 and 28-CP-083042 578-8075-2017
578-8075-8000
578-8075-8050-5650

These cases present the issues of (1) whether the Union violated Section 8(b)(7)(C) by picketing the Employer for more than 30 days, with an organizational and recognitional object, without filing a petition; and (2) whether the Union violated Section 8(b)(4) by threatening to picket the Employer's customers. We conclude that the Union at all times had an organizational and recognitional object and that it engaged in picketing and other activity to achieve that object. However, that activity did not violate the Act because (1) the Union's picketing was protected by the informational proviso of Section 8(b)(7)(C), and (2) the Union did not threaten to unlawfully picket the Employer's customers. Accordingly, the charges should be dismissed, absent withdrawal.

FACTS

Station Casinos (the Employer) owns and operates 10 hotels and casinos in the Las Vegas metropolitan area, including Palace Station Hotel & Casino and Red Rock Casino Resort & Spa. The Employer's employees are not represented by a labor organization.

On February 18, 2010, the Local Joint Executive Board of Las Vegas Culinary Workers Union Local 226 and Bartenders Union 165 (the Union) notified the Employer that it would be commencing a public campaign for a "fair process." According to the Union, a fair process means that the Employer will agree to a neutrality/card check agreement. The Union successfully organized a majority of the Las Vegas hotels and casinos through card check agreements. During the course of its fair process campaign, the Union held rallies, handbilled and picketed at various hotels and casinos owned by the Employer. On September 22, 2011 and February 2, 2012, two ALJs concluded that the Employer violated Section 8(a)(1) and (3) for its

allegedly unlawful anti-Union campaign.¹ The Employer filed exceptions in both cases, which are pending review before the Board. In March and April 2012,² the Union engaged in demonstrations, rallies, marches, and picketing that are the subject of the charge in Case 28-CP-081474.

March 22: Red Rock rally, march, and picket line

Red Rock Casino Resort & Spa's premises encompass approximately two city blocks, bordered on the north by Charleston Boulevard and on the east by Pavilion Center Drive. The main entrance to the casino building faces Charleston Boulevard and is surrounded by several large parking lots. A main drive traverses the approximately 500 feet separating the casino's front entrance from the public sidewalks at the northern perimeter of the property on Charleston Boulevard. There are also several other locations on the premises where vehicles and pedestrians may enter and exit.

On March 22, the Union held a rally on Griffith Peak Drive, a side street near the Red Rock property but not on its perimeter. An estimated 4,000 people attended the rally. The rally was centered around a petition signed by thousands of the Employer's employees asking for a fair process to let the employees decide whether they want representation. The Union had eight large posters that displayed enlarged versions of the petition. The posters had photos of workers along the borders, and the top of the posters stated:

Station Casino Workers Want Justice
Trabajadores de Station Casinos Quieren Justicia

We are the hard working loyal Station Casino employees. Many of us have devoted over half of our lives working at Station Casinos. Our combined years of service to the company and customers reflect our dedication and perseverance. The future of Station Casinos should include us. We demand that Station Casinos Ownership and Management respect our signatures and agree to a fair process for us to decide whether to have union representation without management interference and intimidation. We also call on our customers to support us in our struggle for justice in this historic moment in Las Vegas.

¹ *Station Casinos, Inc.*, Cases 28-CA-22918, et al., JD-59-11 (September 22, 2011); *Station Casinos, Inc.*, Cases 28-CA-23436, et al., JD(SF)-05-12 (February 2, 2012).

² All dates hereafter are in 2012.

Employees' signatures were under the text and comprised about 75 percent of the poster.

Following the rally, Union leaders holding the petition posters led a march west on Griffith Peak Drive and then north on Pavilion Center Drive until the participants reached the Charleston Boulevard intersection. The march continued west on the sidewalk abutting the large parking lots in front of the casino. Once they reached the main drive connecting Charleston Boulevard to the casino's front entrance, the Union leaders with the petition posters broke away from the rest of the participants and proceeded south down the main drive toward the casino. The Union leaders met Employer management outside the front entrance and handed them the oversized petitions. The Union states that there was no marching back and forth with the petitions and that once the Union officials delivered the petitions, management brought them inside the casino. After the petitions were delivered, the Union states that the Union officials returned to the public sidewalk adjacent to the northern perimeter of the property on Charleston Boulevard, picked up picket signs, and began picketing along with the rest of the participants. The picketing featured hundreds of picket signs, which stated:

UNFAIR
STATION
CASINOS
NO CONTRACT
WITH CULINARY
LOCAL 226

Our dispute is only with
Station Casinos. We are not
asking the employees of any
employer to stop work.

The Union states that the picketing occurred only after it handed over the petition posters to the Employer. Photographs from the Union's website, however, show petition posters and picket signs being held up simultaneously, but it is unclear how long they were up together or whether the participants were marching with the signs at the time that the petition posters were present.

April 18-23: Palace Station "Fasting with Faith" event and picketing

The Palace Station Hotel & Casino is located in the middle of a large property surrounded by several large parking lots and garages. The property is bordered on the north by West Sahara Avenue and on the west by Teddy Drive, with a gas station

and a convenience store on the corner of that intersection. The casino's main entrance faces West Sahara Avenue, separated by a main drive that is approximately 500 feet long. The distance between the Teddy Drive intersection and the main drive on West Sahara Avenue is about 650 feet.

Between April 18 and 23, the Union held a "Fasting with Faith" event outside the Palace Station Casino. The event involved a seven-day fast by 17 employees of the Employer to draw attention to the Union's fair process campaign. The "fast site" was set up on the sidewalk along Teddy Drive about 300 feet south of the intersection with West Sahara Avenue and next to the western side of a parking garage exclusively used by Palace Station employees. The Union placed tents and porta-potties on the sidewalk and propped the large petition posters against the outside wall of the garage. The Union also propped up other large posters along the garage for individuals to write messages of support. Lastly, the Union set up two large stationary puppets with buttons that stated, "I'm standing up to Stations!" There was no patrolling during the event and there is no evidence of any confrontation between the fasters, their helpers, and anyone else or that the fasters or their helpers blocked access to the casino.

On April 19, 20, 21, and 23, while the fasting event was occurring, the Union also picketed on the West Sahara Avenue sidewalk along the northern perimeter of the property across the parking lots from the casino's main entrance. The fasting and the picketing were visually separated by the gas station and a convenience store at the intersection of West Sahara Avenue and Teddy Drive. The picketers used the "No Contract" picket signs from March 22 along with other signs that included a picture of Cesar Chavez and stated "Si se puede! Yes we can! We are not asking the employees or any employer to stop work." There also was at least one sign on April 20 that stated "Where is the media? Call and Ask! [list of media outlets with phone numbers]."

April 24: Red Rock Casino end-of-fast rally and march

On April 24, the Union held an end-of-fast rally on Griffith Peak Drive near Red Rock Casino, attended by approximately 800 to 1,000 people. An "end of fast" sign containing photos of the fasters, religious symbols, and a small text box that asked the Employer "to give Station Casino workers a fair process" was displayed at the rally. At the conclusion of the rally, a group of Union leaders, clergy, and fasters in wheelchairs led participants on a march with the end-of-fast sign along the same route as on March 22. When the Union leaders, clergy, and fasters in wheelchairs reached the main drive leading toward the casino's front entrance, they broke away from the other participants and proceeded toward the front entrance. That group then delivered the end-of-fast sign to Employer management outside the entrance and returned to the rest of the participants on the Charleston Boulevard sidewalk. The

rally participants remained on the sidewalk along the northern perimeter of the property and held glow sticks for approximately 20 to 30 minutes. The participants stood still and did not march or patrol. Additionally, there is no evidence that cars or pedestrians could not enter the property while the participants were holding their glow sticks. There is evidence, however, that out of the 800 to 1,000 participants, approximately 30 held the “No Contract” picket signs described above. After approximately 30 minutes, the participants disbanded.

Union letters and emails to the Employer’s customers

On May 5, the Union sent a letter to the Employer’s customers that informed them of the March 22 rally at Red Rock and the week-long fast at Palace Station. The letter stated that the Employer is running an illegal anti-Union campaign and that “[t]he high-profile dispute has been creating growing ill-will from the Las Vegas community toward [the Employer], and there is the potential for your event to be impacted by this situation.” The letter asked for the customers’ support by stating: “[b]esides the potential for this labor dispute to impact your event, we would urge you to consider the impact your event will have on thousands of Station Casinos workers standing up for justice against an increasingly aggressive anti-union campaign.” The letter also included a photograph of the Palace Station Casino picketing that showed only the “No Contract” picket signs.

On June 6, the Union sent an email to the Employer’s customers again informing them of the Employer’s “illegal anti-union campaign.” The email also stated: “[t]he high-profile labor dispute continues to grow, and there is the potential for your organization’s event to be impacted by this situation.” The email called on the customers to email the Employer and “demand the company stops unionbusting and lets its workers have a fair process to organize.” The email contained two photographs: the first one shows the Union’s large petition poster with picketers in the background, and the second one shows the Palace Station picketing. The picket signs in both photographs were the “No Contract” picket signs.

ACTION

We conclude that the Union at all times had an organizational and recognitional object and that it engaged in picketing and other activity on various dates in March and April to achieve that object. However, the Union’s picketing was not unlawful because it was protected by the informational proviso of Section 8(b)(7)(C). Additionally, we conclude that the Union did not violate Section 8(b)(4) by sending letters and emails to customers, because those communications were too vague to

constitute unlawful threats to picket.³ Accordingly, the charges should be dismissed, absent withdrawal.

Union picketing of an unorganized employer, which has as its goal either the organization of the employer's employees,⁴ or voluntary recognition by the employer,⁵ violates Section 8(b)(7)(C) when it is conducted without an election petition being filed within a reasonable period of time from its commencement, not to exceed 30 days. In determining whether union picketing is for an object proscribed by Section 8(b)(7)(C), the Board considers the totality of the circumstances.⁶ To establish a violation, it is only necessary that *an* object of the picketing be organizational or recognitional; that is, it need only be one of the reasons for the picketing.⁷

We conclude that the Union had an organizational and recognitional object throughout its campaign. It is apparent from its overall course of conduct that the Union's goal is to organize the Employer's employees and have the Employer agree to a card check process.⁸ Indeed, the Union expressly admitted that the goal of its campaign is for the Employer to agree to a card check agreement and to eventually

³ The charge specifically alleges that these threats violated Section 8(b)(7)(C). However, the Union's letters could not have violated Section 8(b)(7)(C) because they were addressed to third parties rather than the Employer. Under Section 8(b)(7)(C), a Union cannot "threaten to picket . . . any employer" where an object of the picketing is to require the employer to recognize or bargain. Here, the Union is not trying to require the customers to recognize the Union, so any alleged threat made to them clearly could not have violated Section 8(b)(7)(C).

⁴ See, e.g., *New Otani Hotel & Garden*, 331 NLRB 1078, 1080 fn. 6 (2000); *Chefs, Cooks Local 89 (Cafe Renaissance)*, 154 NLRB 192, 192 (1965).

⁵ See, e.g., *Building Service Employees Union, Local 87 (Liberty House/Rhodes)*, 223 NLRB 30, 36 (1976).

⁶ *Id.* at 33.

⁷ *Ibid.*

⁸ See *New Otani Hotel and Garden*, 331 NLRB at 1080 ("undisputed" that union's campaign, which primarily relied upon picketing for a neutrality/card check agreement, had "an overall organizational objective").

recognize the Union.⁹ Further, the language on the petition and picket signs indicated an organizational and/or recognitional object.¹⁰

Given the Union's organizational and recognitional objectives, it could not lawfully "picket" the Employer for more than 30 days¹¹ in the absence of an election petition, unless it is "informational" picketing within the scope of the second proviso of Section 8(b)(7)(C). To fall within the informational proviso, such picketing must: (1) be "for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization"; and (2) not have the effect of inducing a work stoppage.¹² Additionally, the mere fact that proviso-protected picketing is occurring simultaneously with other union activities for recognition, bargaining, or organization does not remove proviso protection.¹³ To meet the proviso's first requirement, the pickets' message need not reiterate the precise proviso language as long as the signs "embod[y] in substance the

⁹ See, e.g., *SEIU Local 3 (Executive Management Services, Inc.)*, Cases 25-CC-838, et al., Advice Memorandum dated November 30, 2007 at pp. 13-14; *UNITE (Hennes & Mauritz d/b/a H & M)*, Cases 2-CP-1040, et al., Advice Memorandum dated January 21, 2004 at pp. 5-7; *IUOE, Local 17 (Zoladz Construction)*, 3-CP-398, Advice Memorandum dated June 11, 2003 at pp. 3-4.

¹⁰ *Roofers Local 11 (Funderburk Roofing)*, 331 NLRB 164, 167 (2000) (picket signs stating that employers do not have a contract with a union indicate a recognitional objective).

¹¹ Picketing on two separate occasions separated by more than 30 days is sufficient. See, e.g., *Electrical Workers Local 265 (R P & M)*, 236 NLRB 1333, 1339 (1978), enforced 604 F.2d 1091 (8th Cir. 1979) (picketing on two separate occasions separated by 42 days violated Section 8(b)(7)(C)).

¹² *Hotel & Restaurant Employees Local 681 (Crown Cafeteria)*, 135 NLRB 1183, 1184-1185 (1962), review denied 327 F.2d 351 (9th Cir. 1964).

¹³ *Id.* at 1185 ("the proviso applies where organization, recognition, or bargaining is an object"); *Construction Laborers Local 1140 (Lanco Corp.)*, 227 NLRB 1247, 1247 fn. 2 (1972), enforced 577 F.2d 16 (8th Cir. 1978), cert. denied 439 U.S. 1070 (1979) (the proviso "carves out an exception" to the general ban on organizational or recognitional picketing).

language of the publicity proviso.”¹⁴ However, the Board has held that signs that posit complaints other than setting forth the information prescribed in the proviso are not privileged.¹⁵

March 22 Rally and Picketing at Red Rock Casino

We conclude that, under the totality of the circumstances, the Union engaged in recognitional or organizational picketing on this day that was protected by the informational proviso.

Initially, the rally and subsequent march, alone, are not the functional equivalent of picketing. Although the Board has held that the presence of traditional picket signs and/or patrolling is not a prerequisite for finding that a union’s conduct is the functional equivalent of picketing,¹⁶ one of the “necessary conditions” of picketing is a “confrontation in some form between union members and employees, customers, or suppliers who are trying to enter the employer’s premises.”¹⁷ Thus, non-traditional picketing conduct is the functional equivalent of picketing only if the conduct has the “coercive character of picketing.”¹⁸ The D.C. Circuit in *Brandon Regional Medical Center* recently noted that sufficiently coercive conduct includes physically or verbally interfering with patrons, confronting patrons entering or leaving the establishment,

¹⁴ *Retail Clerks Local 1404 (Jay Jacobs Downtown)*, 140 NLRB 1344, 1346 (1963) (picket signs stating that employer was nonunion, asking public to shop elsewhere, and listing stores where public could shop was within proviso).

¹⁵ See *Electric Workers, IBEW, Local 113 (I.C.G. Electric)*, 142 NLRB 1418, 1419 (1963) (picket signs stating that employees’ working conditions were “substandard” did not fall within the shield of the proviso); *Local 275, Laborers International Union (S.B. Apartments)*, 209 NLRB 279, 284 (1974) (picket sign stating that “Workers on this job . . . do not receive wages and working conditions as good as Local 275” was not protected by the proviso).

¹⁶ See, e.g., *Lawrence Typographical Union No. 570 (Kansas Color Press)*, 169 NLRB 279, 283 (1968), enforced 402 F.2d 452 (10th Cir. 1968), citing *Lumber & Sawmill Workers Local 2797 (Stoltze Land & Lumber Co.)*, 156 NLRB 388, 394 (1965).

¹⁷ *Chicago Typographical Union 16 (Alden Press)*, 151 NLRB 1666, 1669 (1965), quoting *NLRB v. United Furniture Workers*, 337 F.2d 936, 940 (2d Cir. 1964).

¹⁸ See *Sheet Metal Workers’ Int’l Ass’n v. NLRB (Brandon Regional Medical Center)*, 491 F.3d 429, 438 (D.C. Cir. 2007).

or signaling employees of secondary businesses to stop work.¹⁹ Additionally, because of its confrontational and coercive nature, the presence of mass activity involving crowds that far exceed the number of people necessary for solely free speech activity may constitute picketing.²⁰

Here, the rally and march did not involve confrontation, blocking of the entrance, patrolling, or posting of individuals.²¹ The rally took place far from Red Rock's main entrance on a public sidewalk. There is no evidence that participants blocked any entrances or otherwise confronted individuals trying to enter Red Rock. Although the Union leaders carried the eight large petition poster signs and delivered them to management, the presence of signs is only one indicium of picketing and is not determinative where the participants do not confront patrons or employees.²² Thus, standing alone, the March 22 rally and march were not picketing with a recognitional or organizational object.

¹⁹ *Ibid.*

²⁰ See e.g., *Mine Workers (New Beckley Mining)*, 304 NLRB 71, 72 (1991), enforced 977 F.2d 1470 (D.C. Cir. 1992) (unlawful mass demonstration where 50-140 union supporters milled about in parking lot outside neutral facility around 4 a.m. while shouting antagonistic slogans at replacement workers); *United Mine Workers District 12 (Truax-Traer Coal)*, 177 NLRB 213, 218 (1969), enforced per curiam 1971 WL 2957, 76 LRRM 2828 (7th Cir. 1971) (finding picketing where approximately 200 union agents arrived at the worksite and congregated around or in their cars). But see e.g., *Service Employees Local 525 (General Maintenance Co.)*, 329 NLRB 638, 683 (1999), review denied mem. 52 Fed. Appx. 357 (9th Cir. 2002) (no picketing found where 40 to 50 demonstrators wearing justice for janitors uniforms marched to building entrance and held brief rally; no evidence of picket signs, patrolling, blockage, or confrontation), and *United Nurses Association of California (Parkview Community Hospital Medical Center)*, Case 21-CG-26, Advice Memorandum dated February 11, 2009 (not picketing where 250 people held rally and marched to employer's entrance because the march was not confrontational).

²¹ *Service Employees Local 87 (Trinity Building Maintenance)*, 312 NLRB 715, 743 (1993), enforced mem. 103 F.3d 139 (1966) ("important or essential feature of picketing is the posting of individuals at entrances to a place of work").

²² See *Alden Press*, 151 NLRB at 1669 ("carrying of placards . . . does not *per se* establish that 'picketing' . . . was involved").

Additionally, although the Union picketed with a recognitional or organizational object after it delivered the petitions, that picketing was protected under the informational proviso. Thus, the Union's picket signs contained language that conformed to the informational proviso, i.e., they truthfully informed the public that the Employer has no contract with the Union.²³ And, there is no evidence that the picketing actually targeted employees rather than consumers.²⁴

April 18-23 "Fasting with Faith" Event and Picketing at Palace Station Casino

Initially, the picketing along the northern perimeter of the property near the drive leading to the casino's main entrance on April 19, 20, 21, and 23 complied with the informational proviso. Similar to the Red Rock Casino picketing on March 22, with minor exceptions, the picket signs truthfully informed the public that the Employer has no contract with the Union and that the picketers were not asking the employees or any employer to stop work. Further, there is no evidence that the picketing actually targeted employees rather than consumers, and it did not have the effect of inducing a stoppage of deliveries or services.

In addition, the Union's Fasting with Faith event did not constitute picketing. No picketing or patrolling occurred at the fast site, and the demonstrators did not confront patrons or employees, shout, hold picket signs, block ingress or egress from the property, or otherwise use coercive tactics.²⁵

²³ Photographic evidence showing the large petition posters and picket signs being used at the same time outside the Employer's main entrance suggests that the picketing may briefly have lost the proviso protection. However, in the absence of evidence that the petition posters and picket signs were held up together for more than a brief transition period, we would not find a loss of proviso protection.

²⁴ Cf. *Electrical Workers Local 3 (Jack Picoult)*, 144 NLRB 5, 8 (1963), enforced 339 F.2d 600 (2d Cir. 1964). The picketing also complied with the proviso's second requirement because it did not have the effect of inducing a stoppage of deliveries or services. There is no evidence that any deliveries or services were affected or that the picketing disrupted the Employer's business. Moreover, the Union's picket signs announced a desire not to cause a work stoppage. See *Retail Clerks Local 1404 (Jay Jacobs Downtown)*, 140 NLRB at 146-147 (finding that picketing did not have statutory "effect" on employer's business, in part, because of union's efforts to ensure that deliveries would continue notwithstanding its picketing activities).

²⁵ See *Sheet Metal Workers' Int'l Ass'n v. NLRB*, 491 F.3d 438-39 (mock funeral where participants walked back and forth nearly 100 feet away from a hospital's entrance

The fact that the Union picketed on West Sahara Avenue along the property's northern perimeter at the same time the Fasting with Faith event took place on Teddy Drive along the western perimeter did not remove the picketing from the informational proviso's protection. The two events were distinct: the fasting and picketing took place on different sides of the expansive property, with the fasting site about 1000 feet away from the main drive to the casino, separated by a gas station and convenience store on the corner of West Sahara Avenue and Teddy Drive; they involved different participants; and people entering the property from the northern entrance would not see the event taking place at the western entrance and vice versa. But even discounting those factors and assuming that the two events were inextricably intertwined, it is well established that informational picketing does not lose its protected character when conducted simultaneously with other non-coercive conduct that provides the public with additional details related to a labor dispute.²⁶ Here, the petition signs that were leaned against the garage advised the public about the dispute with the Employer, i.e. that the Employer did not want to enter into a neutrality agreement. Thus, despite the "additional details" provided to the public at the Fasting with Faith event, the picketing along the northern perimeter of the property across from the main casino entrance remained protected by the informational proviso.

was neither picketing nor otherwise coercive conduct because it was far removed from the entrance and there was no evidence of confrontation); *Alden Press*, 151 NLRB at 1669 (not functional equivalent of picketing where no confrontation, blocking or patrolling).

²⁶ See *Retail Stores Employees, Local 400 (Jumbo Food Stores)*, 136 NLRB 414, 415, 417, 420-22 (1962) (picketing and handbilling protected by informational proviso where picket signs included statutory proviso language, even though handbills stated, in part, that employer did not maintain prevailing wages and undermined living standards). See also *UNITE HERE, Local 217 (Waterford Venue Services Hartford LLC)*, Case 34-CP-24, Advice Memorandum dated January 10, 2007 (where picket signs conformed to proviso and handbills contained additional messages – such as the employer's unwillingness to sign a neutrality agreement, to give priority hiring to Hartford residents, and to disclose wages – conduct fell under protection of proviso); *Cleveland Moving Picture Operator's Local 160 (Ashtabula Entertainment Corp.)*, Case 8-CP-324, Advice Memorandum dated March 16, 1989 (picketing remained proviso protected where picket signs and some handbills contained precise statutory language, and other picket signs and handbills contained additional messages – such as "22 terminated without notice" and "Do not patronize this theatre, unfair to local school students").

April 24 End-of-Fast Rally at Red Rock Casino

We conclude that the Union’s April 24 rally, followed by a march and a prayer vigil, is not picketing. Although Union demonstrators walked around the perimeter of the property following the rally, the Union neither patrolled entrances to the facility nor posted demonstrators anywhere. Also, there was no evidence that the demonstrators interfered with cars or pedestrians or that cars or pedestrians were otherwise unable to enter the property at any time during the rally, march, or subsequent vigil on the sidewalk. Thus, the two essential elements of picketing—confrontation and posting of individuals outside the Employer’s entrance—were not present. While the vigil involved a mass of people standing on the sidewalk for about 20-30 minutes holding glow sticks following the delivery of the end-of-fast-sign to Employer managers, there is no evidence of confrontation between the crowd and the public or employees.²⁷ Additionally, although photographs show a few individuals holding the informational proviso picket signs during the vigil, the presence of signs is only one indicium of picketing, and the overwhelming majority of 800 to 1000 marchers did not carry signs and those who did were not patrolling. Thus, the Union did not engage in picketing with a recognitional or organizational object on April 24.

Based on the above, the Union, at all times, either engaged in recognitional or organizational picketing that was protected by the informational proviso or engaged in other conduct that was not picketing. Accordingly, the Union’s conduct from March 22 through April 24 did not violate Section 8(b)(7)(C) and the Region should dismiss the charge in Case 28-CP-081474, absent withdrawal.

The Union’s May and June communications to customers

We conclude that the Union’s letters and emails to the Employer’s customers did not violate Section 8(b)(4) because they did not contain unlawful threats to picket.

Section 8(b)(4) reflects the “dual congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary

²⁷ See *Service Employees Local 525 (General Maintenance Co.)*, 329 NLRB at 683 (march and rally of 40 to 50 demonstrators not picketing because no evidence of picket signs, patrolling, blockage, or confrontation), and *United Nurses Association of California (Parkview Community Hospital Medical Center)*, Case 21-CG-26, Advice Memorandum dated February 11, 2009 (not picketing even though 250 people held rally and marched to employer’s entrance because the march was not confrontational).

labor disputes, and of shielding unoffending employers and others from pressures in controversies not their own.”²⁸ Thus, this section proscribes all union conduct that coerces, threatens, or restrains third parties to cease doing business with a neutral employer.²⁹ On the other hand, appeals or requests to management to make business decisions benefitting the labor organization’s constituency, or threats to engage in protected activity to enlist neutral employers’ support, are not coercive and therefore are not unlawful.³⁰

When evaluating whether a union has made threats that violate Section 8(b)(4)(ii)(B), the Board considers the specific language used in the context of surrounding conduct and events.³¹ Vague allusions to “problems,” “trouble,” and the like, without more, are not violative because they do not clearly refer to unprotected activities.³² The Board, however, has found ambiguous statements to constitute unlawful threats when made within a threatening context, i.e. a union’s subsequent

²⁸ *NLRB v. Denver Building & Trades Council*, 341 U.S. 675, 688-89 (1951).

²⁹ *Id.* at 692. See also *NLRB v. Fruits & Vegetable Packers*, 377 U.S. 58, 68 (1964).

³⁰ *NLRB v. Servette, Inc.*, 377 U.S. 46, 54 (1964). See also *Longshoremen ILWU Local 151 (Port Townsend)*, 294 NLRB 674, 680 (1989); *Local 12, Operating Engineers*, 267 NLRB 272, 274 (1983).

³¹ *Electrical Workers IBEW Local 98 (Telephone Man)*, 327 NLRB 593, 598 (1999), citing *Laborers Local 1030 (Exxon Chemical Co.)*, 308 NLRB 706, 708 (1992); *Teamsters Local 82 (Champion Exposition)*, 292 NLRB 794, 795 (1989); *Carpenters District Council (Apollo Dry Wall)*, 211 NLRB 291 fn. 1 (1974).

³² See *Service Employees Local 525 (General Maintenance Co.)*, 329 NLRB at 678 (union agent’s statement that neutral employer “would be sorry” for permitting the shabby treatment of janitors “simply too vague” to constitute unlawful threat); *Champion Exposition*, 292 NLRB at 795 (single statement that there could be a “problem” if the employer worked with a non-union affiliated company did not constitute threat when considered in light of surrounding conduct and events, specifically no subsequent strike, picketing, etc.); *Apollo Dry Wall*, 211 NLRB at 291 fn. 1 (threats of “trouble” and “problems,” without more, too vague to constitute unlawful threats); *Mine Workers Local 1368 (Bethlehem Mine Corp.)*, 227 NLRB 819, 820 (1977) (union statement that “the potential for problems existed” if work was not reassigned deemed too ambiguous to constitute unlawful threat).

conduct provided a context that gave a coercive meaning to otherwise lawful statements.³³

Here, the Union's letters and emails contained vague statements that, without more, were too ambiguous to constitute threats of unlawful action against the customers. Thus, the Union's references to "a potential for [the customer's] event to be impacted" or "the potential for this labor dispute to impact [the customer's] event" could simply refer to the Employer's allegedly unlawful anti-Union campaign or to an intention to take some protected action. Moreover, when viewed along with the rest of the letter or email, the attached photographs, and the Union's ongoing "fair process" campaign, the statements were not made in a "threatening context." Indeed, the attached photographs show the Union picketing the Employer with signs directed at the Employer. The photographs therefore clarified that any potential picketing would be primary picketing against the Employer.³⁴ Thus, the letters and emails do no more than advise their recipients of the Union's intention to exercise its right to truthfully publicize its dispute with the Employer. Additionally, the Union's letters constituted the only contact it had with the recipients. There is no evidence of subsequent Union conduct, including picketing of any kind, that would suggest the Union's statements were veiled threats to engage in unprotected activity against the Employer's customers. In these circumstances, we cannot infer that the Union's ambiguous statements constituted unlawful threats of secondary action.

³³ See, e.g. *Carpenters' Council of Milwaukee*, 196 NLRB 487, 490 (1972) (finding Section 8(b)(4)(ii)(B) violation where union agent's euphemistic statement that the union might have to "advertise the job" if the neutral hired the primary took meaning from, and gave meaning to, union's subsequent picketing). See also, *Operating Engineers Local 150 (United Drilling)*, 337 NLRB 651, 652 (2002) (finding Section 8(b)(4)(D) violation where union agent's statement that "there would be problems" if employer did not reassign work was followed by picketing). Cf. *Apollo Dry Wall*, above, 211 NLRB at 291, fn. 1 (no violation where union did not engage in any subsequent conduct that would provide context for otherwise vague statements).

³⁴ Compare *Iron Workers Local 433 (United Steel)*, 280 NLRB 1325, 1332 (1986), enf. denied, 850 F.2d 551 (9th Cir. 1988) (Board will find an unqualified or ambiguous union threat to picket at a neutral jobsite to violate Section 8(b)(4)(ii)(B), absent assurances that the picketing will be conducted in conformity with the *Moore Dry Dock* criteria for common-situs picketing).

Thus, the Region should dismiss both of the charges, absent withdrawal.

/s/
B.J.K.