

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

Advice Memorandum

DATE: July 23, 2012

TO: William A. Baudler, Regional Director
Region 32

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

SUBJECT: Loomis Armored 512-5012-6787
Cases 32-CA-065838 and 32-CA-065843 512-5012-6787-3300

The Region submitted these cases for advice as to whether the Employer violated Section 8(a)(1) of the Act by prohibiting its armed-guard employees at its Richmond and Milpitas facilities from wearing two particular union stickers. The Richmond facility's sticker read "Never Again-Loomis Teamsters United" and had an image of a bullet hole in the middle of the sticker. The Milpitas facility's sticker read "Loomis Don't Doom Us;" there is a dispute, however, as to whether this sticker contained an image of a rat or a cat pointing a gun at the back of a guard, or whether the "O"s in the word "Loomis" were just scowling eyes. We conclude that the Employer had special circumstances to justify the prohibition on the wearing of the "Never Again" sticker. As to the "Loomis Don't Doom Us" sticker, the evidence is insufficient to establish the details of the sticker, and we conclude that it would not effectuate the purposes and policies of the Act to issue complaint regarding that prohibition where the Employer allows its employees to wear other Union paraphernalia that does not convey a potentially violent message.

Facts

The Employer has branch offices and places of business in Richmond and Milpitas, California, where it provides cash-handling services, including secure transport by armored vehicle. The Employer told armed-guard employees at both the Richmond and Milpitas branches to take Union stickers off of their uniforms when they were wearing them during work time. The Employer did not issue any discipline for wearing the stickers. The Employer has routinely allowed its employees to wear other Union pins and stickers on their security guard uniforms.

The Employer asserts that it was entitled to ask its employees to remove the two stickers in question because they contained violent images. As to the "Never Again" sticker, it asserts that its prohibition was justified because the bullet hole depicted violence and could potentially alienate its customers. As to the "Loomis

Don't Doom Us" sticker, the Employer contends that the sticker had a rat or a cat pointing a gun to the back of a security guard, and that this was "patently obscene and offensive" and promotes gun violence.¹ The Employer asserts that its reasons for asking the employees to remove the two stickers are especially compelling because they are armed guards, and that stickers with images of bullet holes and guns potentially interfered with its public image and sent a message that the Employer promotes gun violence.

The Unions,² on the other hand, contend that there were no special circumstances that justified the Employer's instructions that employees not wear the stickers. They assert that the "Loomis Don't Doom Us" sticker had cartoon eyes inside of the "O"s in the word Loomis and that it did not contain any images of guns, rats, cats, or people.³ The Unions assert that this sticker did not contain any obscene language and was clearly an expression of the employees' grievances with the Employer. The Unions created the "Never Again" sticker after a driver-guard was shot and seriously injured in August 2011 in an attempted armored-car robbery. The Unions believed that the Employer's reduction of crew size from three to two-guard crews increased the risk for the crews, and that the "Never Again" stickers were intended to inform the Employer that the driver-guards stood together in opposition to the reduction in crew size. They argue that these stickers did not disparage the

¹ In its initial investigation, the Region was unable to obtain a copy of the sticker, which the employees are no longer trying to wear, from either party. However, the Employer sent the Region a picture of a sign that the Employer contends was identical to the image on the stickers.

² Teamsters Locals 315 and 853 are referred to collectively herein as "Unions." Teamsters Local 315 represented the statutory guards at the Richmond branch, and Teamsters Local 853 represented the guards at the Milpitas branch, until September 30, 2010, when the Employer withdrew recognition from the Unions upon the expiration of the parties' last collective-bargaining agreement. The Region issued a complaint in Case 32-CA-025316. ^{FOIA Exemption 5} [REDACTED], alleging that the withdrawal of recognition was unlawful. That case is pending before the Board on exceptions to an ALJ decision (JD(SF)-01-12, January 11, 2012) finding that, under current Board law, the Employer lawfully withdrew recognition from the Unions.

³ FOIA Exemptions 6, 7(c) and (d) [REDACTED]

Employer as an armored-car service provider and were not maliciously false, vulgar, or obscene. They note that next to the words “Never Again” was a Teamsters emblem, below which were the words “Loomis Teamsters United,” and that the public would likely have perceived this sticker as a statement that “Loomis and Teamsters are united in their concern against the threat and actual violence against Loomis employees.” The Unions also assert that the Employer asked employees to remove the “Never Again” sticker because it said Teamsters.

Action

The Region should dismiss the charges, absent withdrawal.

Although employees have a presumptive right to wear union insignia while at work, an employer may be able to demonstrate "special circumstances" sufficient to justify a prohibition of or limitation on this conduct.⁴ Special circumstances can include, for example, a need to maintain decorum or discipline, legitimate safety concerns, attacks on an employer's products or services, or unreasonable interference with a public image that the employer has established.⁵

Here, the employees in question are armed guards who are responsible for the safe transportation of valuables. Given the nature of the Employer's business and the fact that the employees are armed guards, it was reasonable for the Employer to be concerned about the alienation of its customers that could occur if they saw guards wearing a sticker with a violent message—the “Never Again” sticker portraying a

⁴ See generally *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 801-804 (1945).

⁵ See e.g., *Pathmark Stores*, 342 NLRB 378, 379 (2004) (t-shirt reading "Don't cheat about the Meat" potentially interfered with customer relationship and could thus be prohibited); *Noah's New York Bagels*, 324 NLRB 266, 275 (1997) (special circumstances justified ban on delivery drivers wearing, during working time, a t-shirt mocking the employer's Kosher policy); *W San Diego* 348 NLRB 372, 373 (2006) (wearing union button in public areas would have interfered with employer's use of all-black server uniform to create special atmosphere in hotel); *Komatsu Am. Corp.*, 342 NLRB 649 (2004) (lawful ban on offensive and provocative Pearl Harbor t-shirt); *Southwestern Bell Telephone Co.*, 200 NLRB 667, 669-670 (1972) (permitting employer to ban sweatshirt criticizing employer in obscene manner). See also *Langer Security Associates*, Cases 21-CA-35324, et. al, Advice Memorandum dated February 9, 2004 at pp. 4-5 (employer could limit wearing of union insignia on security-guard uniforms because of potential interference with message of authority and public image as law-enforcement officers).

bullet-hole through the middle of it. And this image was not necessary to convey the essence of the labor dispute. We note that the Employer has not completely banned its armed guards from wearing Union insignia. Rather, it allows its employees to display Union paraphernalia addressing the labor dispute between the parties or simply expressing employees' support for the Union. Thus, in light of the potentially violent message that the "Never Again" sticker conveyed to the Employer's customers and public, we conclude that the Employer met its burden of establishing special circumstances to ban the use of this sticker.

With regard to the "Loomis Don't Doom Us" sticker, it is unclear what that sticker looked like, i.e., whether it showed a rat or cat pointing a gun at the back of a guard or whether it merely had two cartoon eyes in the word Loomis. Given these circumstances and that the Employer regularly allows its employees to wear other Union insignia and paraphernalia that do not contain violent images or content (e.g. "Loomis Give Back Our Union," "Teamsters Local 315," and others), we conclude that it would not effectuate the purposes and policies of the Act to issue complaint with regard to that sticker.

Accordingly, the Region should dismiss the instant charges, absent withdrawal.

/s/
B.J.K.