

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

RELEASE

DATE: September 13, 2012

TO: Karen P. Fernbach, Regional Director  
Region 2

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

SUBJECT: Local 32BJ, SEIU (U.S. Security Associates)      578-4093-5000  
Case 02-CP-081854      578-6007  
   578-6028  
   578-6031  
   578-6056  
   578-6084  
   578-8075-5050

RC M:  
U J J  
The Region submitted this case for advice concerning whether the Union violated Section 8(b)(7)(C) by picketing the Employer with an organizational and/or recognitional object. We agree with the Region that the Union's picketing did not contain the requisite (1) organizational or (2) recognitional object to violate Section 8(b)(7)(C). The Region should therefore dismiss the charge, absent withdrawal.

The Region correctly notes that the Union's mixed-guard status prohibits it from lawfully picketing the Employer, for any length of time, with an object of organizing the employees or obtaining recognition.<sup>1</sup> In determining whether union picketing is for an object proscribed by Section 8(b)(7)(C), the Board considers a union's overall conduct, including the context in which the picketing occurred.<sup>2</sup> To establish a violation, it is only necessary that *an* object of the picketing be organizational or recognitional; that is, it need be only one of several reasons for the picketing.<sup>3</sup>

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<sup>1</sup> See, e.g., *Northwest Protective Serv.*, 342 NLRB 1201, 1203-1204 (2004) (mixed-guard union violates Section 8(b)(7)(C) by picketing or threatening to picket employer for recognition); *Gen. Serv. Emps. Union (Rainey's Sec. Agency)*, 239 NLRB 1233, 1233 (1979) (same; mixed-guard union "had not been and could not be certified as representative of such employees by virtue of Section 9(b)(3)").

<sup>2</sup> See *Bldg. Serv. Emps. Union, Local 87 (Liberty House/Rhodes)*, 223 NRB 30, 33 (1976).

<sup>3</sup> See *ibid.*

First, we agree with the Region that the Union's picketing did not contain a proscribed organizational object. Although the Union has been attempting to organize the Employer's security guards at the Sony building since October 2011, the circumstances surrounding the Union's picketing establish that it was not directed at the employees, but was instead meant to publicize the Employer's alleged unfair labor practices<sup>4</sup> and enlist public sympathy to pressure the Employer to cease that conduct.<sup>5</sup> For instance, the Union's picket signs demanded that the Employer stop engaging in unlawful conduct, while Union leaflets described the Employer's alleged offenses and appealed to the public to "Tell U.S. Security Associates to Remedy Their Unfair Labor Practices Against These Hardworking Security Officers."<sup>6</sup> Even those leaflets depicting individual employees by name and their desires for better working conditions were similarly directed at the public and not the employees.<sup>7</sup> These circumstances demonstrate that any Union references to its organizing campaign related directly to its protest of the Employer's actions allegedly in response to that organizing effort. Nor did the Union pickets attempt to communicate with employees or persuade them to join the Union during the picketing demonstrations.<sup>8</sup> Indeed, the Union had already collected

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<sup>4</sup> The Region is currently investigating the Union's charges that the Employer engaged in unlawful surveillance, solicited grievance and promised employees benefits if they did not select the Union, threatened and interrogated employees, and unlawfully disciplined Union supporters.

<sup>5</sup> See, e.g., *Local 259, UAW (Fanelli Ford Sales)*, 133 NLRB 1468, 1468-69 (1961) (no organizational object found where union picketed to protest discharge of employee even while union organizing employees; "[s]o far as this record indicates, [union's] picketing would have ceased if the [e]mployer, without recognizing or, indeed, exchanging a word with the [union], had reinstated [employee]").

<sup>6</sup> Cf. *Elec. Workers IBEW Local 3 (Genmar Elec. Contracting)*, 332 NLRB 1288, 1288-89 (2000) (organizational/recognition object established by union picket signs that referred to better wages and working conditions and "were clearly directed at the employees with the message to join [the union]"); *Elec. Workers Local 3 (M.F. Elec. Svc.)*, 325 NLRB 527, 528 (1998) (organizational object established by picket signs directed at employees and urging them to join union); *Retail Clerks Int'l Ass'n (J.W. Mays)*, 145 NLRB 1091, 1094-95 (1964) (organizational object found where five of eight picket signs were addressed to employees and not to public, urged employees to join union, and made no mention of employer's unlawful conduct).

<sup>7</sup> Cf. *Local 345, Retail Store Emp. Union (Gem of Syracuse)*, 145 NLRB 1168, 1170-72 (1964) (organizational/recognition object established by union leaflets directed at, and given to, employees, stating in part that "the picket line is out there, acting in your behalf").

<sup>8</sup> Cf. *Elec. Workers IBEW Local 3*, 332 NLRB at 1289 (organizational object established in part by picket's question to employee about whether he wanted to join union). Cf. *Local 212, Retail Clerks Int'l Ass'n (Maxam, Inc.)*, 140 NLRB 1258, 1260-

the vast majority of authorization cards from employees prior to the start of its picketing on February 17, 2012, further establishing that the Union's picketing targeted the public and not the Employer's employees. In these circumstances, we agree with the Region that the Union's picketing did not evince an organizational object in violation of Section 8(b)(7)(C).

Second, we agree with the Region that the Union's picketing also lacked a proscribed recognitional object. Significantly, the Union has never demanded recognition, or its functional equivalent, from the Employer.<sup>9</sup> And, as the Region correctly notes, the Union's picketing does not constitute a *de facto*, immediate demand for recognition merely because the Union has an overall, long-term goal of organizing the employees.<sup>10</sup> Finally, as discussed above, the Union's picketing was directed at the public as a means to pressure the Employer to cease its alleged unfair labor practices, not to recognize the Union.<sup>11</sup> For instance, the Union's March 28 and May 3, 2012 press releases and its May 18, 2012 press interview publicly framed the Union's dispute with the Employer as a protest against the Employer's alleged unlawful response to the Union's organizing campaign.<sup>12</sup> In these circumstances, we agree with the Region that the Union's picketing did not contain a proscribed recognitional object violative of Section 8(b)(7)(C).

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62 (1963) (organizational object established by pickets' statements to drivers making deliveries that union was trying to organize store employees).

<sup>9</sup> Cf. *NLRB v. Iron Workers, Local 103*, 434 U.S. 335, 346 (1978) (picketing to enforce Section 8(f) contract "was the legal equivalent of picketing to require recognition;" Section 8(b)(7)(C) infringed where union picketed beyond 30 days without requesting election); *Hendrix v. Constr. Laborers Int'l Union, Local 1140*, 415 F. Supp. 727, 730 (D. Neb. 1976) (Section 10(l) injunction granted to enjoin union's picketing that sought employer's adoption of terms and conditions contained in union's contracts with other employers, which would make union *de facto* representative of employer's employees).

<sup>10</sup> See *New Otani Hotel & Garden*, 331 NLRB 1078, 1079-81 (2000) (union's picketing to pressure employer to sign neutrality agreement was informational and did not contain immediate demand for recognition).

<sup>11</sup> See *id.* at 1080 ("nor does the fact that the handbills accused the [e]mployer of engaging in unlawful conduct in response to the union organizing campaign demonstrate such an [immediate recognitional] object").

<sup>12</sup> Cf. *Retail Clerks Local 1357 (Genuardi Super Markets)*, 252 NLRB 880, 880 n.1, 882, 886 (1980) (recognitional object established by union's statements at rally that "this place will be union" and in union newspaper that union could not let employer "maintain this [nonunion] attitude").

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

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B.J.K.