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

DATE: March 18, 2013

TO: Kathleen M. McKinney, Regional Director
Region 15

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

SUBJECT: International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada and its Local 478 (The LookAlike, LLC)
Case 15-CC-096505

560-7540-4020-5000
560-7540-4020-5084

This case was submitted for advice on the issue of whether a union violated Section 8(b)(4)(ii)(B) by placing Yellow Brick Productions, LLC, a movie production company with no assets, liabilities or employees, on an unfair list that was distributed to its locals and to crew members of another production company, The LookAlike, LLC, that refused to voluntarily recognize and bargain with the union. Because Yellow Brick Productions is not a neutral entity, we conclude that the union did not violate the Act.

FACTS

Yellow Brick Productions, LLC ("Yellow Brick Films" or "YBF") was formed in California in 2010 by "J," who is its sole managing partner. J states that the company has no assets or liabilities–only a logo, email addresses, and a website. J also states that she works with a producer ("V"), a director ("R"), and a writer/producer ("M") in regards to YBF, and that the company serves as an entity to develop projects among a group of creative people, and gives credibility to the group. J, V, and R all have email addresses (@yellowbrickfilms.net) associated with YBF, but neither J, V, R, nor M are paid for their work with YBF. Indeed, YBF has no employees. In describing how YBF operates, J states that if someone brought a script for a particular movie to YBF, the YBF collaborators would read it and decide whether or not it might be worth producing. If so, J states that a separate LLC with a different name would be formed and the LLC would obtain funding, begin the production, and bear the expenses and liabilities.

Utilizing that model, The LookAlike, LLC ("Employer") was formed on July 16, 2012 in Louisiana in order to film and produce the movie "The LookAlike." R is the

director, V and J are co-producers, and M wrote the screenplay. J, R, and V are managing "members" of the Employer. J is the Employer's registered agent, while R, V, and J are all officers. Approximately 7 or 8 Australian entities have invested in the Employer so that the movie could be filmed.

From July through November 2012, J, V, R, and M scouted locations to film The LookAlike in New Orleans. Beginning in October 2012, the Employer hired approximately 30 crew members, some of whom were members of IATSE Local 478 ("Union"). In mid-December, the Union determined that approximately 20 Employer crew members had signed authorization cards. From December 2012 through January 2013,[1] the Union met with the Employer in an effort to obtain voluntary recognition and a collective-bargaining agreement. The Employer, however, did not recognize or bargain with the Union.

Unable to obtain recognition and a contract, the Union called a strike beginning on January 4. The Union picketed the location where the Employer's film and set equipment was stored, as well as any location in New Orleans where the Employer attempted to film.

On January 7, the Union's International President issued a letter to member locals stating, in relevant part, "I am hereby declaring **The Lookalike LLC** [sic] and **Yellow Brick Films** as being unfair and order you to refrain from rendering any service to this employer or to the production of **'The Lookalike'**." [sic] (Emphasis in original.) The filming of The LookAlike and the Union picketing ceased on January 18.

A Union business agent states that the Union understood YBF to be the parent company of the Employer, and that R informed the agent in numerous conversations that his company intended to produce other films in the U.S. The Union also states that it is industry custom to consult the Internet Movie Database (IMDB) when researching film productions and that IMDB lists Yellow Brick Films as the producer for The LookAlike. J, however, states that YBF has not invested any money into the production of The LookAlike and will receive no proceeds from the movie. V states that YBF is a production company, and that J, V, R, and M hope to credit YBF in association with the production of The LookAlike, as the four are collaborators within YBF, and plan on becoming members of YBF in the future. V further states that YBF is the base company that the collaborators intend to grow and that crediting YBF as a production company helps to strengthen the YBF name for the future. J likewise states that YBF is an entity whose reputation for future projects is important to their ability to collaborate as a team through the company. J, V, and R all used their Yellow

[1] All remaining dates are in 2013 unless otherwise indicated.

Brick Films email addresses in communications with the crew of the The LookAlike.[2] The website for The LookAlike contains nothing except the title of the movie and an email address, info@yellowbrickfilms.net, where visitors can presumably obtain more information.[3] The website for Yellow Brick Films highlights five films, including The LookAlike, which the website states is in post-production.[4] Of the five films featured on YBF's website, four are directed by R, four are written or co-written by M, and four are produced or co-produced by V.

ACTION

We conclude that the Union did not violate Section 8(b)(4)(ii)(B) by declaring Yellow Brick Films "unfair" and distributing the unfair letter to its locals and crew members of The LookAlike, because Yellow Brick Films is not a "neutral" entity under at least two possible theories: 1) Yellow Brick Films and the Employer constitute a single employer; 2) even if no single-employer relationship can be found, YBF is clearly not "wholly unconcerned" with the primary labor dispute. Moreover, as the Union's letter instructs members to withhold "any service" from YBF—and YBF has no employees—it does not appear that the Union has threatened, coerced, or restrained YBF within the meaning of Section 8(b)(4)(ii)(B).[5]

Section 8(b)(4)(ii)(B) states, in relevant part, that a labor organization shall not "threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce" with an object of "forcing or requiring any person to cease…doing business with any other person." Thus, Section 8(b)(4) distinguishes between lawful "primary" and unlawful "secondary" boycott activity.[6]

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[2] At least one of the four collaborators, V, also has a business card that prominently identifies her as a producer with Yellow Brick Films.

[3] The LookAlike, http://thelookalikemovie.com/ (last visited Mar. 11, 2013).

[4] Yellow Brick Films, http://www.yellowbrickfilms.net (last visited Mar. 11, 2013).

[5] The Region has determined that the Union did not violate Section 8(b)(4)(ii)(B) as to the Employer because it has a primary labor dispute with the Employer.

[6] *NLRB v. Denver Bldg. and Constr. Trades Council*, 341 U.S. 675, 692 (1951) (Court approvingly found that Board had balanced "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 pressures in controversies not their own.")

In determining whether an entity is "neutral" and therefore protected under Section 8(b)(4), the Board has taken special note of a statement made by Senator Taft in the provision's legislative history: "[t]his provision makes it unlawful to…injure the business of a third person who is *wholly unconcerned* in the disagreement between an employer and his employees."[7] Relying in part on this statement, the Board developed the "ally" doctrine: one branch of this doctrine holds that an employer's neutrality can be compromised through the performance of "struck work," while the other branch holds that a secondary employer is not really a neutral if it constitutes a single, integrated enterprise with the primary employer.[8] In determining whether two or more companies comprise a single employer, the Board considers four factors: 1) common ownership, 2) interrelation of operations, 3) common management, and 4) common or centralized control of labor relations.[9] However, the Board has stressed that the two branches of the ally doctrine should not be permitted "to take on lives of their own," but rather are "merely tools that must be used to reflect the full range of congressional policies underlying the primary-secondary dichotomy."[10] Thus, the individual factors for determining neutrality are not "considered in isolation[,]" and "all the strands of mutual interest" between two companies must be considered in order to determine whether one entity is truly neutral.[11]

Here, Yellow Brick Films and the Employer constitute a single employer under the traditional four-factor test. Thus, the two companies have common ownership and common management: J founded and owns YBF and states that she works with V and R in regards to YBF, while J is a managing "member" (i.e., owner) of the Employer

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[7] *Teamsters, Local 560 (Curtin Matheson Scientific, Inc.)*, 248 NLRB 1212, 1213 (1980) (emphasis in original) (internal citations omitted).

[8] *Ibid* (internal citations omitted).

[9] *Teamsters Local 50 (E.J. Dougherty Oil)*, 269 NLRB 170, 174 (1984).

[10] *Teamsters, Local 560 (Curtin Matheson Scientific, Inc.)*, 248 NLRB at 1214.

[11] *Ibid*. *See also Teamsters Local 50 (E.J. Dougherty Oil)*, 269 NLRB at 174 ("none of the factors…is to be considered in isolation, rather the Board weighs all of them to determine whether in fact one employer is involved or wholly unconcerned with the labor disputes of the other."); *Overton Markets*, 142 NLRB 615, 619 (1963) (based on a variety of factors, several companies did not have the "arm's length relationship" found among unintegrated employers); *Teamsters Local 174 (Airborne Express, Inc.)*, Cases 19-CC-1984 & 19-CD-483, Advice Memorandum dated June 20, 2002 (the Board "weighs all of [the four factors] to determine whether in fact one employer is involved in or is wholly unconcerned with the labor disputes of the other.")

(along with R and V), J is the registered agent of the Employer, and J, V, and R are all officers of the Employer.[12] Moreover, the two have interrelated operations, inasmuch as the website for each company promotes the other company; the same four collaborators that operate under the YBF umbrella are the producers, writer, and director of The LookAlike and used their YBF email addresses to communicate with the crew of The LookAlike; the stated purpose of YBF is to be the "base company" that develops film project ideas before separate companies, such as the Employer, are formed to obtain funding and film the movie; and YBF is credited as a production company on such films in order to help strengthen the YBF name. Finally, although the Board has accorded centralized control of labor relations "substantial importance" in the single-employer analysis, that factor is given less weight when one of the companies—such as YBF—has no employees.[13] Alternatively, since the principals of YBF directly control the labor relations of the *Employer's* employees, there is "common" control over labor relations.

Moreover, even if Yellow Brick Films and The LookAlike, LLC are not a "single employer" under the Board's four-factor test, YBF is not a neutral entity entitled to Section 8(b)(4)(ii)(B)'s protections. Thus, a determination of neutrality under Section 8(b)(4)(ii)(B) is not confined to the technical concepts of the "struck work" and "single employer" doctrines; rather, "all the strands of mutual interest" connecting the entities must be considered.[14] As described above, YBF is substantially interconnected with the Employer. Indeed, the two companies' websites engage in cross-promotion, Yellow Brick Films served as the launching pad for the Employer's The LookAlike film, and YBF plans to use its association with the Employer's film to help strengthen the YBF name for the future. Considering all the strands of mutual interest between the two companies, it is clear that Yellow Brick Films is not a

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[12] Also, a Union business agent states that R informed him that his company—likely a reference to YBF—intended to produce other films in the U.S.

[13] *Bolivar-Tees, Inc.*, 349 NLRB 720, 722 (2007) (finding single-employer status despite lack of evidence indicating centralized control of labor relations where some of the companies at issue had no employees), enforced 551 F.3d 722 (8th Cir. 2008); *Three Sisters Sportswear Co.*, 312 NLRB 853, 863 (1993) (finding single employer relationship among multiple companies that had common ownership, common management, and interrelated operations, despite the absence of centralized control of labor relations with respect to two of the companies, which had no employees), enforced 55 F.3d 684 (D.C. Cir. 1995). *See also Overton Markets*, 120 NLRB at 619 (single-employer finding premised on substantial evidence of operational integration despite lack of common control of labor relations).

[14] *Teamsters, Local 560 (Curtin Matheson Scientific, Inc.)*, 248 NLRB at 1214.

neutral company "wholly unconcerned" with the labor dispute between the Employer and the Union.

Finally, although the Union's January 7 letter instructed members to withhold "any service" to Yellow Brick Films, that arguably was not an unlawful Section 8(b)(4)(i)(B) inducement where YBF itself employs no employees. In other words, there are no employee services that conceivably could be withheld from YBF pursuant to the "unfair" listing. And, since there has been no picketing of YBF "situses" (apart from the Employer's storage facility and filming locations), i.e., there has been no conduct directed at YBF other than the unfair letter, there arguably has been no coercion under the meaning of Section 8(b)(4)(ii)(B).

For the foregoing reasons, the Region should dismiss the charge, absent withdrawal.

/s/
B.J.K.