

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

DATE: January 31, 2013

TO: Mori P. Rubin, Regional Director
Region 31

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

SUBJECT: Service Employees International Union –
United Healthcare Workers West 593-4000
Case 31-CG-083421 593-4042
593-4056

This case was submitted for advice as to whether a union satisfied the 10-day notice requirement of Section 8(g) when it faxed a notice of its intent to engage in informational picketing at the Employer healthcare institution to a fax number that it had been told two years prior would no longer be used by the Employer. We agree with the Region that the Union violated Section 8(g) because the Union sent its notice to a fax number that it knew was no longer used by the Employer for communication with the Union.

Under Section 8(g) of the Act, a union must notify a healthcare institution of its intent to engage in picketing “not less than ten days prior.” It is well established that, in computing the 10-day notice period required under Section 8(g), “the Board counts the date of *receipt* as the first day and the day before the onset of the activity in question as the last.”¹ Although the Union’s notice in the instant case was *transmitted* fourteen days before the planned informational picketing, the notice did not satisfy Section 8(g) because it was sent to a fax number the Employer no longer used.² The Employer had informed the Union that it would no longer use that fax

¹ *Retail Clerks Local 727 (Devon Gables Healthcare Center)*, 244 NLRB 586, 587 (1979) (emphasis added).

² *Cf. Vapor Recovery Systems Company*, 133 NLRB 580 n.1, 581–83 (1961) (union satisfied notice requirements of Section 8(d) where union attempted delivery of contract reopener notice on last day on which timely notice could be made but notice was not received that day because employer had chosen to close early for a holiday weekend and did not check its Post Office box), *enf. denied*, 311 F.2d 782 (9th Cir. 1962); *Sutter Solano Medical Center*, Cases 20-CA-032188, *et al.*, Advice Mem. 4–5 (June, 27, 2005) (finding union had satisfied its notice obligation under Section 8(g))

number in September 2010 and provided the Union with its new fax number, as well as its email address, at that time.³ Although the Union sent a fax to the old number at least once in 2011, there is no evidence that the Employer received that fax or otherwise indicated to the Union that it would receive messages at the old fax number in the future. Moreover, the Union used the Employer's new fax number several times in February 2012 to send the Employer information requests. Accordingly, the Region should issue a Section 8(g) complaint, absent settlement.

/s/
B.J.K.

where employer's HR Director timely opened email with attached 10-day notice on his Blackberry but did not open timely the attachment).

³ It is immaterial that the old fax number is now under the direct control of the Employer's Parent Company, rather than the Employer.