

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

## Advice Memorandum

DATE: June 25, 2013

TO: Wayne R. Gold, Regional Director  
Region 5

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

SUBJECT: Maryland Live Casino 512-5012-6712  
Cases 05-CA-083966, 083901, 090257 512-5012-8300  
512-5024-3700  
512-5024-4100  
512-5036-8391  
512-5048-6720  
512-5072-3800

The Region submitted these cases for advice on whether Maryland Live Casino (“MLC”) committed several alleged Section 8(a)(1) violations during Charging Party-UNITE HERE’s efforts to organize its employees. The primary issue is whether MLC unlawfully denied access to employees of an on-site restaurant, which leased space inside its casino, because they were distributing UNITE HERE literature to MLC’s employees at an entrance reserved exclusively for them. The remaining issues deal with whether MLC committed various Section 8(a)(1) violations that interfered with its employees’ rights to support UNITE HERE.

We conclude that the Region should dismiss the charge allegations, absent withdrawal. Initially, we conclude that MLC did not unlawfully deny access to the restaurant employees distributing handbills to MLC employees outside the casino employee entrance. Because the restaurant employees were strangers or outsiders at that location on the property, their statutory interests were more closely aligned with the narrow access rights of non-employee union organizers than with off-duty employees. Moreover, we agree with the Region that MLC did not commit the remaining alleged violations of § 8(a)(1).

### FACTS

In March and April 2012,<sup>1</sup> MLC entered labor peace agreements with Seafarers Entertainment and Allied Trades Union (“SEATU”) and United Food and Commercial

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<sup>1</sup> All subsequent dates are in 2012 unless otherwise noted.

Workers (“UFCW”). Under those agreements, MLC granted SEATU and UFCW non-employee organizers access to limited parts of its facility to speak with employees about organizing and provided each union with employee lists containing names and job classifications. In exchange, each union pledged to, among other things, not disrupt business by engaging in picketing, work stoppages, or other economic activity during any organizing efforts. UNITE HERE, the Charging Party in the current case, also requested similar access to MLC’s employees, but refused to sign the same labor peace agreement as the other two unions because it objected to certain of its terms. As a result, MLC denied UNITE HERE non-employee organizers similar access to its facility.<sup>2</sup> The current case involves other UNITE HERE efforts to organize MLC’s employees than those denied due to its refusal to sign the labor peace agreement.

Beginning in May, MLC began to hold new employee orientation and training sessions at its facility in preparation for its opening on June 6.<sup>3</sup> As set forth in the Region’s Request for Advice, UNITE HERE alleges that MLC committed the following § 8(a)(1) violations during that time in response to its attempts to organize the casino employees: (1) on May 10, engaging in surveillance of activities in support of UNITE HERE in its parking lot<sup>4</sup>; (2) on May 16, creating the impression that its employees’ union activities were under surveillance based on comments made by MLC’s General Counsel during an employee training session; (3) on May 29, threatening an MLC waitress with discharge because of her support for UNITE HERE; and (4) surreptitiously interrogating employees about their union sympathies by soliciting them to obtain state agency complaint forms from its HR department for the purpose of stopping home visits by UNITE HERE agents.

In addition, on June 11, Bobby’s Burger Palace (“Bobby’s”), which is a restaurant that subleases its space inside MLC’s facility, hired two employees who were UNITE HERE “salts” interested in assisting that union organize MLC’s employees. Bobby’s is located near the front of MLC’s facility and its employees enter either through the

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<sup>2</sup> In *Maryland Live Casino*, Case 05-CA-083966, Advice Memorandum dated January 28, 2013, the Division of Advice concluded that MLC did not violate § 8(a)(2) by granting access only to those unions that had signed a labor peace agreement. UNITE HERE was also the Charging Party in that case.

<sup>3</sup> MLC’s facility is on property that it leases from Arundel Mills Mall in Hanover, Maryland. Although MLC has only a leasehold interest in the property, there is no dispute that it has the right to exclude individuals from the property.

<sup>4</sup> UNITE HERE also alleges that an unlawful interrogation occurred during this incident. Because the Region states that UNITE HERE did not provide any evidence to support such an allegation, it will not be considered in this memorandum.

main entrance to the casino, which is also used by the public, or Bobby's kitchen entrance, which is near the main entrance. MLC has an exclusive entrance for its employees in the back of its facility. Employees of other employers, as well as the public, are not permitted to use that entrance without MLC's authorization.

On June 18, the two Bobby's employees were off-duty and stationed themselves outside the exclusive casino employee entrance. During an afternoon shift change they began distributing UNITE HERE handbills to casino employees entering and exiting the facility. A UNITE HERE official was also present to videotape the activity. The handbills encouraged employees to select the National Casino Workers' Union coalition, which includes UNITE HERE,<sup>5</sup> as their bargaining representative rather than SEATU or UFCW, asserting that the former organization had obtained better wages and benefits for the employees that it represents. After distributing handbills for about 15 minutes, the two Bobby's employees were approached by three MLC security guards and told to leave. The guards stated that they would call the police absent compliance with their directive.

The two Bobby's employees continued handbilling until MLC's General Counsel and Security Director arrived. MLC's General Counsel stated that they did not have the right to be at that location because they were Bobby's employees, and they were trespassing because they did not have a right to be in a casino work area distributing union literature. The two Bobby's employees disagreed that they were in a work area and presented these individuals with a red handbill prepared by UNITE HERE stating that under *New York New York*<sup>6</sup> and *Reliant Energy*,<sup>7</sup> they had the right, as off-duty Bobby's employees, to distribute handbills to MLC's employees on casino property. MLC's General Counsel replied that he was well aware of *New York New York*, but continued to contest their presence outside the casino employee entrance and asked why they were not near the entrance to Bobby's. MLC's Security Director then stated that if the two did not leave, MLC would call the police because they were trespassing on private property. Soon after that, a county police officer arrived. When the employees again refused MLC's request to leave the property, the police officer arrested them, as well as the UNITE HERE official videotaping the incident. Before the police drove them away, MLC's Security Director gave the employees an eviction notice that stated:

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<sup>5</sup> The National Casino Workers' Union is comprised of UNITE HERE, the Teamsters, and the Operating Engineers, and focuses its organizing efforts on casino workers.

<sup>6</sup> 356 NLRB No. 119 (2011), *enfd.* 676 F.3d 193 (D.C. Cir. 2012), *cert. denied* 133 S. Ct. 1580 (2013).

<sup>7</sup> 357 NLRB No. 172 (2011).

As a consequence of your actions, your permission to be upon any of the premises of [MLC] is hereby revoked, and any express or implied invitation of the owner or occupant of this land is specifically denied. . . . Any future unauthorized entry on [MLC's] property shall be considered trespassing and you will be subject to arrest and prosecution to the fullest extent of Maryland law. This remains in effect for a period of seven (7) days. . . .

On June 19, one of the two Bobby's employees was scheduled to work. Because he did not want to violate the terms of the eviction notice, he contacted Bobby's and explained that he was forced to quit because he could not come onto MLC's property. Later that day, MLC emailed and mailed a letter to the two Bobby's employees stating that "for the next seven days, you are only permitted on our premises to go to/from your place of employment, and other lawful purposes." The second Bobby's employee quit that evening after receiving this letter from MLC. She had not been scheduled to work again at Bobby's until June 20.

Based on these events, UNITE HERE filed a charge alleging that MLC had violated § 8(a)(1) by denying the two Bobby's employees access to MLC's property to distribute UNITE HERE literature to casino employees.<sup>8</sup>

### ACTION

We conclude that the Region should dismiss the charge allegations, absent withdrawal. Initially, we conclude that MLC did not unlawfully deny access to the two Bobby's employees distributing handbills to the casino employees outside the casino employee entrance. Because the Bobby's employees were strangers or outsiders at that location, their statutory interests were more closely aligned with the narrow access rights of non-employee union organizers, to whom MLC could lawfully deny access, than with off-duty employees. Moreover, we agree with the Region that MLC did not commit the remaining alleged violations of § 8(a)(1).

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<sup>8</sup> Several other alleged §§ 8(a)(1) and (3) violations are affiliated with this final allegation, including two constructive discharges. Each of them turns on whether the two Bobby's employees were unlawfully denied access to MLC's property.

**A. MLC Did Not Unlawfully Deny the Bobby's Employees Access to the Casino Employee Entrance.**

In *New York New York Hotel & Casino* (“NYNY”), the issue was whether the property owner could lawfully deny employees of an on-site contractor access to its property where they sought to engage in self-organizational activities.<sup>9</sup> In concluding that the contractor employees’ statutory interests were more closely aligned with those of the property owner’s employees and their broader access rights than those of non-employee union organizers and their narrower access rights, the Board relied on four factors.<sup>10</sup> Specifically, the contractor employees (1) were statutorily protected, (2) were exercising their own § 7 rights of self-organization, (3) were not strangers or outsiders to the property because they regularly and exclusively worked on the property, and (4) sought access to locations on the property that were uniquely suited for their purpose of self-organization. Regarding the last factor, the Board noted that the on-site contractor’s employees in NYNY distributed handbills in front of either their employer’s business inside the casino or the main casino entrance.<sup>11</sup> It emphasized that,

the location of the expressive activity here – the very threshold of the employees’ own workplace – has been a central site of protected Section 7 activity since the passage of the Act. Wholly excluding the [contractor employee] handbillers from these uniquely effective locations would place a serious burden on the exercise of Section 7 rights to communicate with the relevant members of the public.<sup>12</sup>

If these four factors are present, a “property owner may lawfully exclude [an on-site contractor’s] employees only where the owner is able to demonstrate that their activity significantly interferes with his use of the property or where exclusion is justified by another legitimate business reason, including, but not limited to, the need

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<sup>9</sup> 356 NLRB No. 119, slip op. at 4.

<sup>10</sup> *Id.*, slip op. at 10. See also *Eastex, Inc. v. NLRB*, 437 U.S. 556, 570-71 (1978) (noting distinction “of substance” between broader access rights of employees and narrower access rights of non-employee union organizers); *Postal Service*, 339 NLRB 1175, 1176 (2003) (same), *affd.* sub nom. *American Postal Workers Union v. NLRB*, 370 F.3d 25 (D.C. Cir. 2004).

<sup>11</sup> See NYNY, 356 NLRB No. 119, slip op. at 2 & n.9.

<sup>12</sup> *Id.*, slip op. at 9-10.

to maintain production and discipline (as those terms have come to be defined in the Board's case law)."<sup>13</sup>

This case is distinguishable from *NYNY*. The two UNITE HERE supporters working for Bobby's stationed themselves near the exclusive entrance for casino employees at the rear of MLC's facility. Bobby's is located near the main entrance to the casino. Because its employees enter their workplace from the front of MLC's facility, either through the casino's main entrance or the nearby restaurant kitchen entrance, they had not regularly, if at all, been present at the rear entrance to the building. Indeed, the evidence fails to show that Bobby's employees would be in any area on the casino property other than in Bobby's itself, which is far from the casino employee entrance. Moreover, neither the public nor employees of other employers were free to use the casino employee entrance since MLC required anyone to obtain its authorization before using that entrance.

Because Bobby's employees are not regularly and exclusively present near the casino employee entrance, we conclude that their statutory interests here are more closely aligned with those of non-employee union organizers than with those of the MLC employees. Unlike in *NYNY*, where the workplace of the on-site contractor's employees was coextensive with that of the property owner's employees,<sup>14</sup> there is no evidence here that Bobby's employees work throughout or at the rear of MLC's facility. Thus, they are essentially strangers or outsiders near the exclusive entrance for casino employees.<sup>15</sup> In that context, they are entitled to the same narrow access

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<sup>13</sup> *Id.*, slip op. at 13.

<sup>14</sup> *Id.*, slip op. at 8 ("The hotel and casino complex was their workplace. They worked not only inside [the contractor's] restaurants but throughout the premises, providing room service, carrying supplies, and servicing and patronizing *NYNY*'s employee cafeteria.").

<sup>15</sup> Charging Party-UNITE HERE, citing *Sahara Tahoe Hotel*, 292 NLRB 812 (1989), asserts that the location of the two Bobby's employees is not a relevant distinction from *NYNY* because they were in a non-work area. However, the Board made clear in *NYNY* that the location of § 7 activities on a property-owner's premises, even in non-work areas, is crucial in determining the access rights of an on-site contractor's employees. It specifically limited its holding in *NYNY* to the facts of that case, i.e., the distribution of handbills outside the on-site contractor's entrance and the main casino entrance, and stated that it would not "decide whether the [on-site contractor's] employees would be entitled to access to all other or, indeed, any other nonwork areas of the hotel and casino." *NYNY*, 356 NLRB No. 119, slip op. at 13, n.48. UNITE HERE's reliance on *Sahara Tahoe Hotel*, a pre-*Lechmere* case, is also

rights as non-employee union organizers, who similarly are strangers or outsiders at that entrance.<sup>16</sup> An employer may exclude non-employee organizers who do not work on its property from engaging in union activity there except in extraordinary circumstances, i.e., where the employees are otherwise inaccessible.<sup>17</sup> In this case, UNITE HERE cannot show that extraordinary circumstances warrant applying this exception because either MLC's or its employees' location is inaccessible. Accordingly, the denial of access allegation is non-meritorious.<sup>18</sup>

The Employer also contends that it lawfully excluded the two Bobby's employees from the casino employee entrance because they were not exercising their statutory right to self-organize, but rather sought to organize MLC's employees. Given our determination that MLC could exclude the Bobby's employees from a part of its property where they were "strangers," we need not resolve whether the employees' activity of seeking to organize another employer's employees further distinguishes this case from *NYNY*.<sup>19</sup>

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misplaced because that case applied a since-abrogated balancing test regarding the access rights of non-employee union organizers. See 292 NLRB at 817.

<sup>16</sup> See *Postal Service*, 339 NLRB at 1177 (employee of on-site contractor who worked regularly, but not exclusively, on property-owner's premises was entitled only to same limited access rights as non-employee union organizer under *Lechmere*).

<sup>17</sup> See *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 537, 539 (1992).

<sup>18</sup> We also agree with the Region that MLC did not cause Bobby's to constructively discharge the two employees after MLC had issued them eviction notices prohibiting entry on the property for seven days. Because MLC did not unlawfully deny them access, their refusal to leave was not protected activity and the eviction notices were not unlawful. See *San Antonio Control Systems*, 290 NLRB 786, 788 (1988) (no constructive discharges where employer acted lawfully in unilaterally reducing employees' wages and benefits after expiration of § 8(f) agreement). Moreover, MLC sent an email and letter to both employees on June 19 stating that they were permitted on the property to work.

<sup>19</sup> UNITE HERE asserts that *Reliant Energy*, 357 NLRB No. 172 (2011), and *Triangle Electric Co.*, 335 NLRB 1037 (2001), reversed in part 78 Fed. Appx. 469 (6th Cir. 2003) (unpublished decision) support finding a violation here. The Board was not presented with an access issue in either of those cases. Rather, the issue was whether the property owner had violated § 8(a)(1) by retaliating against the employee of an on-site contractor because of his or her § 7 activities. The Board emphasized in *Reliant Energy* that right-of-access cases, including *NYNY*, did not apply "where a

**B. MLC Did Not Engage in Unlawful Surveillance of Union Activities in its Parking Lot on May 10.**

An employer’s “routine observation of employees engaged in open Section 7 activity on company property does not constitute unlawful surveillance” unless conducted “in a way that is ‘out of the ordinary’ and thereby coercive.”<sup>20</sup> Indicia of coercion include “the duration of the observation, the employer’s distance from its employees while observing them, and whether the employer engaged in other coercive behavior during its observation.”<sup>21</sup>

Based on these principles, we agree with the Region that MLC did not engage in unlawful surveillance on May 10. After MLC’s General Counsel had casino security remove two UNITE HERE officials from the interior of the casino, they relocated to the employee parking lot where they continued to speak with and distribute handbills to casino employees for about 25 minutes. One of the officials noticed MLC’s General Counsel observing them while speaking on his cell phone shortly before Arundel Mills Mall management and security arrived and asked them to leave. This was open § 7 activity and there is no evidence that MLC’s General Counsel was present for an extended period of time, stood near the two UNITE HERE officials, or engaged in any coercive behavior during the observation.<sup>22</sup> In short, there is no evidence that MLC’s

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statutory employee has been retaliated against for engaging in protected concerted activity while at his workplace to perform work.” 357 NLRB No. 172, slip op. at 5.

<sup>20</sup> *Aladdin Gaming*, 345 NLRB 585, 585-86 (2005). See also *Wal-Mart Stores*, 340 NLRB 1216, 1217, 1220 (2003), enfd. 136 Fed. Appx. 752 (6th Cir. 2005).

<sup>21</sup> *Aladdin Gaming*, 345 NLRB at 586.

<sup>22</sup> See *Aladdin Gaming*, 345 NLRB at 586 (no unlawful surveillance where on two occasions employer managers observed for one or two minutes off-duty employees soliciting coworkers in dining room used by managers and employees before approaching and offering employer’s opposing view on unionization); *Wal-Mart Stores*, 340 NLRB at 1217, 1220 (no unlawful surveillance where employer manager, after receiving customer complaint about the conduct, observed non-employee union organizers distribute handbills for about 30 minutes from his usual place near store entrance where he took his cigarette break); *EDP Medical Computer Systems*, 284 NLRB 1232, 1265-66 (1987) (no unlawful surveillance where employer officials observed union handbilling near employer’s premises; although one official wrote on papers during observation, evidence showed these were work-related documents and official was not taking notes of union activity).

General Counsel engaged in any conduct that was out of the ordinary that would have caused casino employees to refrain from exercising their § 7 rights.

**C. MLC's General Counsel Did Not Create the Impression of Surveillance During the Employee Training Session on May 16.**

The “test for determining whether an employer has created an impression of surveillance is whether the employee would reasonably assume from the statement in question that their union activities had been placed under surveillance.”<sup>23</sup> Here, the statements by MLC's General Counsel at the May 16 training session would not have caused the employees in attendance to make such an assumption. He mentioned, (1) that “union stuff” was occurring at the facility, (2) that MLC had hired union representatives, whom he referred to as “plants” because their purpose was to organize on behalf of their affiliated labor organization, and (3) that the employees were free to join a union or not. He also mentioned that MLC had received reports about union home visits and that UNITE HERE, which had not promised to avoid such visits by signing a labor peace agreement like two other unions, had written to the state lottery agency to request the employees' contact information. MLC's General Counsel made these statements in a context where MLC already had signed labor peace agreements with SEATU and UFCW and had informed its employees, including at the May 16 meeting, that representatives of those unions were present at the facility to speak with them about unionization. In this context, the employees would not have reasonably concluded that MLC had obtained information about “union stuff” and “plants” through surreptitious monitoring of their union activities. In addition to the well-publicized organizing campaigns at the facility, this conclusion is reinforced by the fact that MLC's General Counsel did not refer to the protected activity of specific employees, did not suggest that MLC had obtained any information in a covert manner, and remarked that some of his statements were in response to reports MLC had received from employees regarding union home visits.<sup>24</sup>

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<sup>23</sup> *Grouse Mountain Lodge*, 333 NLRB 1322, 1322 (2001). See also *Waste Management of Arizona*, 345 NLRB 1339, 1339-40 (2005).

<sup>24</sup> See, e.g., *Grouse Mountain Lodge*, 333 NLRB at 1323 (employer did not create impression of surveillance where memo to employees stated employer “recently concluded . . . organizing activities had failed from lack of employee interest”; statement did not refer to specific employees, did not suggest how employer had reached its conclusion, and context was open union campaign that did not result in demand for recognition or representation petition); *Waste Management of Arizona*, 345 NLRB at 1340 (no violation where employer manager told union supporter he was aware employees had held union meeting because there was no evidence meeting was held in secret and manager did not suggest he either had learned of meeting in covert manner or had detailed knowledge of extent of employees' union activities).

**D. MLC Did Not Threaten to Discharge a UNITE HERE Supporter.**

We agree with the Region that the MLC's General Counsel did not unlawfully threaten a casino waitress with discharge on May 29 because she was a "plant" for UNITE HERE. UNITE HERE cites incidents that occurred on May 16 and 18 to establish that MLC was targeting UNITE HERE supporters for discharge and was aware of the waitress's support for that union. First, it relies on the statement of the MLC's General Counsel during the May 16 employee training session that the casino had hired union "plants" and that UNITE HERE, unlike SEATU and UFCW, had refused to sign a labor peace agreement. After that training session, the waitress asked a SEATU representative at the facility about the labor peace agreement with MLC, and a beverage supervisor who was present said she should choose either SEATU or UFCW if she wanted to unionize. The waitress never said during that exchange that she was a UNITE HERE supporter. Second, on May 18, the waitress again asked a SEATU representative about the labor peace agreement and then noticed MLC's General Counsel speaking quietly to a UFCW representative while staring at her. As the Region notes, these incidents fail to show that the MLC's General Counsel knew that the waitress was a UNITE HERE supporter. Accordingly, we cannot conclude that his statement to the waitress on May 29 that, "it's okay, if we need to kick you out, we will," was a threat of discharge that sought to interfere with her support for UNITE HERE.<sup>25</sup> Indeed, the statement is facially ambiguous and susceptible to non-coercive interpretations since it was made while the two were standing in a crowded area looking at work schedules and MLC's General Counsel had just motioned to have the waitress take a step back.

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<sup>25</sup> See, e.g., *Plated Plastic Industries*, 311 NLRB 638, 643 (1993) (no unlawful interrogation where employer's owner asked incumbent union's shop steward about rival union's organizing efforts; owner could not have sought to coerce steward's support for rival union where he did not know steward supported that organization); *Wexler Meat Co.*, 331 NLRB 240, 242 (2000) (no promulgation of unlawful no-solicitation rule when employer removed incumbent union's agent and employees from parking lot where, among other things, employer had no knowledge of nature of meeting and previously had received complaints from residential neighbors about problems in parking lot).

**E. MLC Did Not Surreptitiously Interrogate Its Employees About Their Union Sympathies.**

An employer violates § 8(a)(1) if its conduct “may reasonably be said to have a tendency to interfere with” its employees’ exercise of their § 7 rights.<sup>26</sup> The Board has long held that requiring employees to make an “observable choice” regarding their union sympathies chills the exercise of those rights.<sup>27</sup> Thus, an employer’s request that an employee take some action, such as wearing anti-union paraphernalia or obtaining a form from the employer to revoke a signed authorization card, constitutes an unlawful interrogation because the employee must openly declare his or her union support by accepting or rejecting the employer’s request.<sup>28</sup> Conversely, an employer may lawfully make anti-union paraphernalia available or inform its employees of their statutory right to revoke a signed card, provided that in doing so the employer neither pressures its employees into revealing their union sentiments nor creates a situation where the employees feel at peril if they do not display an anti-union sentiment.<sup>29</sup>

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<sup>26</sup> *Electrical Contractors*, 331 NLRB 839, 843 (2000), enfd. 245 F.3d 109 (2d Cir. 2001).

<sup>27</sup> See, e.g., *Kurz-Kasch, Inc.*, 239 NLRB 1044, 1044 (1978) (employer violated § 8(a)(1) where it announced availability of “vote no” buttons at captive audience meeting during which other unlawful statements were made, had supervisors offer buttons to individual employees, and stated buttons were only available in plant manager’s office).

<sup>28</sup> *Id.* See *A.O. Smith Automotive Products Co.*, 315 NLRB 994, 994 (1994) (employer violated § 8(a)(1) by having supervisors offer employees “vote no” paraphernalia); *Adair Standish Corp.*, 290 NLRB 317, 317-18 (1988) (employer violated § 8(a)(1) by posting notice, in response to employee inquiries, that advised employees they could obtain forms from their supervisor to revoke their signed authorization cards), enfd. in relevant part 912 F.2d 854, 860 (6th Cir. 1990). See also *Electrical Contractors*, 331 NLRB at 843-44 (2000) (employer violated § 8(a)(1) by having supervisors solicit employees to sign form letters to state labor commission asking it not to disclose personal information to union seeking to organize employees, and then by collecting signed letters despite simultaneous distribution of non-reprisal notices if employees did not sign).

<sup>29</sup> See, e.g., *Farah Mfg. Co.*, 204 NLRB 173, 175-76 (1973) (no violation where employer made pro-employer/anti-union badges available for employees and supervisors at central locations on premises); *University of Richmond*, 274 NLRB 1204, 1204 (1985) (no violation where, in response to employee requests, employer informed employees how to revoke signed authorization cards and provided letter and

Based on these principles, we conclude that MLC did not violate § 8(a)(1) by informing employees they could obtain from its human resources department MVA complaint forms for reporting improper accessing of their addresses from state records. UNITE HERE asserts that MLC repeatedly had accused it of seeking access to employee home addresses from state agencies, and that MLC's conduct regarding the complaint forms was a means of discouraging its employees from expressing their support for UNITE HERE. However, MLC did not engage in any conduct that would have pressured the employees to show that they were for or against UNITE HERE or to feel at peril if they did not display opposition to that organization. MLC announced the availability of the forms by means of the June 8 posting near the employees' work schedules. As the Region notes, there is no evidence of supervisors directly soliciting employees to obtain a complaint form or following up with employees who did not. The posting also made clear that MLC was making the forms available based on reports received from employees about unsolicited home visits. Moreover, MLC did not require the employees to return signed forms, so employees who took the forms had the option of, simply discarding them. Although MLC did keep copies of the signed forms that nine employees returned to it for mailing, it did not keep a record of the other employees who picked up the form and did not return it. Finally, the evidence here shows that MLC's employees did not feel coerced to display an anti-UNITE HERE sentiment, since only 19 of about 1,500 employees picked up the form. Therefore, MLC did not interfere with its employees' § 7 right to support a labor organization of their own choosing by making the MVA complaint forms available.<sup>30</sup>

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envelope addressed to Regional Office; employees were free to sign letter or throw it out); *Mariposa Press*, 273 NLRB 528, 529-30 (1984) (no violation where employer explained procedure for employees to revoke signed authorization cards, even absent employee requests for such information; employer did not attempt to monitor employees and gave no other assistance).

<sup>30</sup> We also agree with the Region that MLC did not create the impression of surveillance by making the MVA complaint forms available from its human resources department. The employees would not have reasonably assumed that their union activities were under surveillance where MLC neither pressured the employees to obtain a form nor required employees who did obtain a form to return it to MLC.

Based on the preceding analysis, we conclude that the Region should dismiss the charge allegations, absent withdrawal.

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B.J.K.