

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

DATE: November 19, 2013

TO: Ronald Hooks, Regional Director
Region 19

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

SUBJECT: SEIU Local 6 (BAGS, Inc.)
Case 19-CC-110073

560-2575
560-2575-6700
560-7540-4000
560-7540-2070
560-7540-6075

The Region submitted this case for advice regarding whether SEIU, Local 6 (“the Union”) coerced Alaska Airlines (“Alaska”) in violation of Section 8(b)(4)(ii)(B) of the Act by its conduct on April 18, 2013¹ and May 21, when it staged protest actions with an object of forcing Alaska to cease doing business with a contractor, BAGS, Inc. (“BAGS”) and/or forcing BAGS to recognize and bargain with the Union. We conclude that the Union’s conduct was not coercive and, therefore, did not violate Section 8(b)(4)(ii)(B), regardless of whether that conduct had a secondary object. Therefore, the Region should dismiss the charge, absent withdrawal.

FACTS

Alaska, the charging party and target of the alleged unlawful secondary conduct, is the largest carrier at the Seattle-Tacoma Airport (“the Airport”). The Union, by its agent, Working Washington, has engaged in an ongoing campaign to organize BAGS and other contractors performing ancillary functions at the Airport, including fueling, baggage handling, and wheelchair assistance. BAGS has a contract with Alaska to provide wheelchair assistance to its passengers needing help travelling within the Airport. Since at least March 26, the Union has sought to pressure Alaska in its attempts to organize wheelchair assistants and other employees of BAGS.²

¹ Hereinafter all dates are 2013 unless otherwise noted.

² Charge allegations related to the Union’s conduct on March 26 (delivery of letter to Alaska soliciting assistance in obtaining recognition from BAGS), June 14 (Union press conference at the Airport), and June 27 (action involving United Airlines at

On April 18, the Union made an unannounced visit to the Alaska ticket counter to present Alaska with customer comment forms filled out by its supporters earlier in another area of the Airport. Alaska's ground operations manager came to the ticketing area to meet the group of approximately 30-50 people after being alerted to their presence while attending a manager's meeting that morning. He observed a news television camera recording the group.³ The majority of the group assembled in front of two unmanned check-in kiosks. Alaska also has self-check machines located in an area separate from the full-service check-in kiosks. In total there are 48 check-in kiosks spread out over four aisles. A smaller number of people stood in front of the oversized baggage drop, which was in use at the time. There is no evidence that any customers were delayed in checking into their flights or attempted to use or avoided using the oversized baggage drop during the Union's visit. The Union's point person introduced himself to the manager and stated that a number of people were going to read something to him. The ground operations manager responded "ok, that's fine," after which about 15-20 people came up one at a time to read their customer comment forms, which contained complaints about BAGS and other Airport contractors. The group met with the operations manager for about 30 minutes, and the manager thanked them for their time and stated that he would make sure the comment forms got into the right hands. After someone thanked the manager for his time, the group walked to a common corridor in the departure level, chanted for an unspecified amount of time, and then disbanded. At no time did the Union attempt to speak with any customers or engage in any overtly disruptive conduct, and only one Alaska employee was spoken to briefly prior to management's arrival.

On May 21, Alaska held its annual shareholders' meeting. In advance, Alaska agreed that the Union could attend and speak during the question and answer period. At the outset of the meeting, approximately ten people affiliated with the Union, including a pastor, lined up in front of the stage, and the pastor said an opening prayer, lasting about one to two minutes and consisting of generic statements about justice and fair treatment of workers. The group sat down immediately following the prayer, and another group of approximately eight to ten people stood up and engaged

Airport) are being dismissed by the Region. Those allegations were not submitted to Advice.

³ A segment about the Union's April 18 activity appeared on Seattle television station KOMO TV that same day explicitly identifying BAGS as the employer of the airport workers in question, and portraying, at least in part, Alaska representatives as responsive to the complaints made by the Union. The news segment is available on KOMO's website at <http://www.komonews.com/news/local/Airport-workers-say-theyre-exposed-to-blood-vomit-and-worse-203703671.html?tab=video&c=y>.

in a mock debate about wages and working conditions. Some people had signs, but there is no evidence as to what they said. Afterwards around 50 people sang a song about subjects relating to unions for another minute. After these interruptions, Alaska's general counsel stated that he would end the meeting if there were further outbursts. The Union did not engage in further disruptive conduct following this announcement.

ACTION

We conclude that the Union's conduct on April 18 and May 21 was not coercive and, therefore, did not violate Section 8(b)(4)(ii)(B), regardless of whether that conduct had a secondary object. Thus, the Region should dismiss the charge, absent withdrawal.

Section 8(b)(4)(ii)(B) of the Act states, in relevant part, that it shall be an unfair labor practice for a labor organization or its agents to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where an object thereof is forcing or requiring any person to cease doing business with any other person or forcing or requiring any other employer to recognize and bargain with a labor organization as the representative of its employees. Thus, to make out a violation of Section 8(b)(4)(ii)(B) it must be shown not only that the Union had an impermissible secondary objective, but also that it was engaged in impermissible coercive conduct.

The Board has found non-picketing conduct to be coercive only when the conduct directly caused, or could reasonably be expected to directly cause, a disruption of the neutral's operations.⁴ Moreover, a union's appeal to management's business discretion to cease doing business with another company is not coercive absent a threat of penalty for nonacquiescence.⁵ For example, in *General Maintenance*,⁶ a case

⁴ *Carpenters Local 1506 (Eliason & Knuth of Arizona, Inc.)*, 355 NLRB 797, 805 (2010) (holding of stationary sign without impeding access, disruptive noisemaking, or other harassing conduct did not interfere with neutral's operations and was not coercive conduct).

⁵ *Southwest Regional Council of Carpenter (Carignan Construction)*, 355 NLRB 1301, 1310 (2010) (union may appeal to management's discretion to cease doing business with another employer, so long as its appeal does not involve coercion) (citing *NLRB v. Servette, Inc.*, 377 U.S. 46 (1964). See also *Carpenters Local 1976 v. NLRB (Sand Door)*, 357 U.S. 93, 99 (1958) (“... a union is free to approach an employer to persuade him to engage in a [secondary] boycott, so long as it refrains from the specifically prohibited means of coercion. . .”).

involving secondary activity during SEIU's campaign to organize janitors in the District of Columbia, a contingent of six SEIU agents attempting to hand deliver a letter to a neutral building manager trailed the receptionist into another employee's office despite her instructions to remain in the reception area. This conduct was not unlawful because, although six people were "not needed to bear the weight of one letter, and although they were where they were not invited, the delegation was neither disorderly nor impolite,"⁷ i.e., it did not cause any disruption to the employer's operations. The group's visit was brief, they left as soon as the letter was delivered, and they did not encourage any building employees to withhold their services. Furthermore, the letter itself was not coercive because it "contained no threat or promise of penalty in the event the building manager failed to acquiesce to [their] written request that she help resolve the SEIU's labor dispute with the janitorial contractors; she was free to ignore the letter if she chose."⁸

Nor is it per se coercive for a union to engage in secondary activity with a mass of people at a neutral employer's facility.⁹ In *General Maintenance*, the Board considered several mass protests organized by SEIU to persuade real estate owners and managers to exert their influence on their cleaning contractors to recognize the union as bargaining representative of the contractors' janitors.¹⁰ For example, SEIU conducted "prestrike civil disobedience training" with approximately 20-25 people in attendance outside of a neutral employer's building during which the group shouted slogans. At another protest, 40-50 demonstrators marched to a neutral employer's building for a rally and speech, which involved chanting and the use of noisemakers. Neither incident was found unlawful because there was no patrolling, no blocking of ingress or egress, and no confrontational conduct. Furthermore, no employees were induced to stop working and the normal operations of the neutral employers were not disrupted.¹¹

⁶ *Service Employees Local 525 (General Maintenance Co.)*, 329 NLRB 638 (1999), *affirmed*, 52 F. App'x 357 (9th Cir. 2002).

⁷ *Id.* at 676.

⁸ *Id.*

⁹ *See generally Laborers Local 332 (C.D.G., Inc.)*, 305 NLRB 298 (1991) (no violation where up to 100 people distributed handbills at various entrances to neutral employer's building).

¹⁰ *Service Employees Local 525 (General Maintenance Co.)*, 329 NLRB at 638-39.

¹¹ *Id.* at 677, 683.

However, where a union's conduct caused or was intended to cause disruption of normal business operations, or where it included threats of or actual violence, the Board has found that conduct to be unlawfully coercive.¹² Thus, another mass demonstration considered in *General Maintenance* was found to be unlawfully coercive where it was designed to interrupt the neutral's business operations. In that instance, SEIU representatives drove 40-60 people to a fitness club owned by a neutral employer. Once there, six members of the group passed out leaflets on the exercise track, interrupting patrons as they used the facility. At the same time, the rest of the group surrounded the reception desk while the leader facetiously asked about club membership. Once back outside, SEIU representatives refused to intervene after it appeared that violence might break out between the protesters and club employees. The ALJ, affirmed by the Board, concluded that the most plausible explanation for SEIU's conduct was that it had come specifically to disrupt the club's operations rather than to merely communicate a message regarding its dispute with the janitorial contractors used by the club owner and constituted unlawful coercion.¹³ Similarly, in the cases cited by Alaska where the Board has found mass activity to be a violation of the Act, the respondent union had engaged in otherwise coercive conduct including confrontational behavior,¹⁴ implied threats of violence and intimidation,¹⁵ or disruption of the neutral's business operations.¹⁶

¹² See, e.g., *Laborers Local 332 (C.D.G., Inc.)*, 305 NLRB at 298 (violation where 300-400 protesters marched around building for 30 minutes, some carrying signs, blocking ingress and egress).

¹³ *Id.* at 682.

¹⁴ See *Service Employees Local 87 (Trinity Maintenance)*, 312 NLRB 715, 746 (1993) (confrontational activity including excessive noise, harassment of the building manager, and hanging a large banner from the building), *enforced mem.* 103 F.3d 139 (9th Cir. 1996); *Service & Maintenance Employees Union, No. 399 (William J. Burns Int'l Detective Agency, Inc.)*, 136 NLRB 431, 436-37 (1962) (patrolling in order to impede access constituted "physical restraint and harassment").

¹⁵ See *Mine Workers (New Beckley Mining)*, 304 NLRB 71, 71-72 (1991), (shouting of confrontational phrases at striker replacements staying at motel created concern that motel manager couldn't protect them if the gathered crowd returned the following night), *enforced*, 977 F.2d 1470 (D.C. Cir. 1992).

¹⁶ *Carpenters (Society Hill Towers Owner's Assn.)*, 335 NLRB 814, 826-29 (2001) (excessive noise directed at neutral's residential apartment buildings and condominium complex), *enforced*, 50 F. App'x 88 (3d Cir. 2002); *Pye v. Teamsters, Local 122*, 61 F.3d 1013 (1st Cir. 1995) ("affinity shopping" causing disruption of

In the instant case, the Union was involved in an ongoing campaign to unionize BAGS employees and other Airport contractor employees, and, similar to SEIU's strategy in *General Maintenance*, the Union's engagements with Alaska were allegedly undertaken to force Alaska to put pressure upon or cease doing business with BAGS and/or for the purpose of forcing BAGS to recognize and bargain with the Union. However, even assuming the Union had an impermissible secondary objective, no violation of Section 8(b)(4)(ii)(B) occurred because the Union's conduct was not coercive. The Union issued no threats of violence, made no attempt to restrain Alaska from operating its business, and neither confronted nor intimidated Alaska's employees or its customers.

On April 18, the Union peaceably assembled in front of two check-in kiosks that were unmanned at the time, and it did not engage in any activity designed to coerce Alaska by causing its customers to withhold their patronage or otherwise interfere with its operation, e.g., by preventing customers from using Alaska's check-in facilities. Rather, the conduct on April 18 was orderly, short in duration, and permitted by the ground operations manager who came to meet with the group. To the extent that the Union's visit diverted the group operations manager from his normal duties, that disruption was de minimus. And, as in *General Maintenance*, even if the number of people present in the Alaska ticket area was greater than needed to bear the weight of the Union's complaints, the group was not disorderly or impolite, they did not encourage any Alaska employees to withhold their services, and, once the group read the complaints intended for Alaska, it promptly left the area. Furthermore, the complaints contained no threat of reprisal if Alaska chose not to intervene in the Union's labor dispute with BAGS.¹⁷ Thus, Alaska's reliance on the relatively large number of people present is insufficient to establish a violation of Section 8(b)(4)(ii)(B), particularly where the large space easily accommodated the group without any blocking of ingress or egress or other interference with customers or business operations.

neutral's business operations by creating long lines and crowded store aisles resulting in the loss of regular customers during peak sales times).

¹⁷ Rather than bolstering Alaska's claim that the Union's conduct was meant to coerce, the presence of television cameras illustrates that the Union was also attempting to communicate its concerns to the general public, similar in character to the non-coercive handbilling found lawful in *Debartolo Corp. v. Fl. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568 (1988) (Section 8(b)(4)(ii)(B) of the Act does not prohibit peaceful handbilling, urging a consumer boycott of a neutral employer, where such handbilling is unaccompanied by picketing or other coercive conduct).

At the May 21 shareholders meeting, the Union's conduct, although temporarily disruptive, was not threatening, was short in duration, and ceased immediately upon Alaska's request.¹⁸ Furthermore, the Union did not prevent the meeting from continuing, nor prevent Alaska's shareholders from conducting the business for which they were assembled.

Thus, the Union's actions on both April 18 and May 21 were not coercive in violation of Section 8(b)(4)(ii)(B), and the charge should be dismissed, absent withdrawal.

/s/
B.J.K.

¹⁸ Cf. *Atlantic Scaffolding Co.*, 356 NLRB No. 113, slip op. at 3 (Mar. 18, 2011) (where employees who engaged in peaceful work stoppage promptly complied with directions to vacate employer's premises, Board found they did not lose the protection of the Act as there was "no meaningful impairment of [the employer's] property rights"); *Goya Foods of Florida*, 347 NLRB 1118, 1134 (2006) (no violation where in-store protest was peaceful and "the disruption to the neutral employer was of short duration. . .and did not appreciably interfere with the activities of the store"), *enforced*, 525 F.3d 1117 (11th Cir. 2008).