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UNITED STATES GOVERNMENT
National Labor Relations Board

Memorandum

TO : Francis E. Dowd, Regional Director
Region 12

DATE: July 8, 1986

FROM : Harold J. Datz, Associate General Counsel
Division of Advice

SUBJECT: Miami Building and Construction Trades Council; Operating Engineers Local 487; South Florida Carpenters District Council; IBEW Local 349; Laborers Local 478; Plumbers Local 519
(P. J. Constructors, Inc.)
Case 12-CC-1201 560-5067-2050

This case was submitted for advice as to whether the Unions have violated Section 8(b)(4)(i)(ii)(B) of the Act by distributing handbills and bumper stickers, and posting billboards, aimed at publicizing their dispute with the Employer.

FACTS

P. J. Constructors (the Employer) is a nonunion subcontractor on a construction site for the new Burger King corporate headquarters in Dade County, Florida. On April 4, 1986, pickets from IBEW Local 349, Plumbers Local 519, Operating Engineers Local 487 and Laborers Local 478 (the Unions) appeared at the jobsite carrying area standards signs, some naming the Employer, and others naming another nonunion contractor, Peerless Electric, Inc., as primary contractors with whom they had a dispute. The Region has concluded that the picketing is lawful. The picketing has continued to the present time. On April 9, 10, and 11, handbills were distributed at the intersection immediately next to the jobsite entrance, and on April 10 at a nearby Burger King restaurant. The handbills stated that the construction work was being performed by contractors who pay substandard wages. The handbill did not identify the primary contractors by name. However, revised handbills distributed on May 23 and May 27 name the Employer and Peerless Electric, Inc., as the employers with whom the Unions have a dispute. On May 21, the Unions' business agents were seen distributing bumper stickers stating in large type "BOYCOTT--BURGER KING," and in much smaller type below, "Burger King builds with contractors who pay substandard wages." Finally, a billboard in the area advertises that Burger King Corporation is building its corporate headquarters with nonunion, low wage, out-of-town labor. There is no evidence, however, to establish Union responsibility for this billboard advertisement.

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ACTION

The Region should issue complaint, absent settlement, alleging that the Unions violated Section 8(b)(4)(i)(ii)(B) by their distribution of bumper stickers.

Under the publicity proviso to Section 8(b)(4)(B), publicity other than picketing is protected under the Act when it truthfully advises the public that a product is being produced by an employer with whom the labor organization has a primary dispute and is being distributed by another employer. 1/ To obtain such protection, however, the union's publicity must clearly identify the nature of the primary dispute and the neutral employer's relation to it. 2/ It is not essential that the primary's name be given, so long as the public is made aware that the dispute is with someone other than the handbilled employer. 3/

In the instant case, the Union's initial handbilling on April 9, 10 and 11 at the jobsite and at the nearby Burger King restaurant did not identify the primary Employer by name. However, it did make clear that the primary dispute was with the contractors with whom Burger King dealt, and not with Burger King itself. Thereafter, the handbills took the additional protective measure of actually naming the primary Employer. In these circumstances, the handbilling was protected.

The handbilling was not tainted by the picketing, inasmuch as these were separate acts, and the Region found the picketing to be lawful. Further, although the bumper stickers were unlawful (see discussion infra), they were viewed as a separate act from the handbilling and therefore did not taint the handbilling.

The bumper stickers stated in small type that the primary dispute was with the building contractors. However, the

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1/ See generally Edward J. DeBartolo Corp. v. NLRB, 453 U.S. 147 (1983), reversing and remanding Florida Gulf Coast Building Trades Council (Edward J. DeBartolo Corp.), 252 NLRB 702 (1980), on remand 273 NLRB No. 172 (1985).

2/ Hospital and Service Employees Union Local 399 (Delta Air Lines), 263 NLRB 996, 998 (1982).

3/ See Electrical Workers Local 73 (1961), 134 NLRB 498, where an "unfair list" was found protected, even though the primary employer's name was not mentioned.

larger type referred to Burger King. And, on the ordinary bumper, only the larger type could be seen. In these circumstances, the public could reasonably be misled into believing that Burger King was the primary disputant. Hence, the bumper stickers were not protected.

As to the billboards, the Region should dismiss, inasmuch as it is unable to establish union responsibility for this conduct.

H. J. D.