

***National Labor Relations Board***  
**OFFICE OF THE GENERAL COUNSEL**  
**Advice Memorandum**

**DATE:** December 21, 1992

Victoria E. Aguayo, Regional Director, Region 21, Robert E. Allen, Associate General Counsel, Division of Advice Southern California Conference of Carpenters, and Its Affiliated Local Unions, (Millie and Severson, Inc.), Case 21-CC-3164

Southern California Conference of Carpenters, and Its Affiliated Local Unions, (Western Medical Hospital), Case 21-CG-15

560-7540-2080-2500, 560-7540-2080-5000, 593-2050, 593-2025

These cases were submitted for advice as to whether the Unions violated Section 8(b)(4)(ii)(B) and 8(g) on several occasions.

**FACTS**

Millie and Severson (the Employer) is the general contractor building an addition to a facility of Western Medical Hospital. The collective-bargaining agreement between the Employer and the Los Angeles District Council of Carpenters expired in September 1992. On September 18, 1992, before the expiration of the contract, the Employer notified the Council that reserve gates had been established at the construction site; gate 1 (the primary gate) was reserved for the Employer and a few subcontractors, while gate 2 (the neutral gate), 20 feet from gate 1, was to be used by other subcontractors. There was also a public entrance to the Hospital's parking lot; a sign at that public entrance states, "This entrance is for the exclusive use of the patrons and employees of Western Medical. Construction personnel and deliveries must use gates located at North Alley, Anaheim Blvd."

On October 1 and 6, the Southern California Conference of Carpenters and affiliated locals (the Unions) engaged in mass picketing outside gates 1 and 2 and the entrance to the parking lot. The pickets carried signs stating that the Employer was unfair; the signs did not refer to the Hospital. On October 8, a state court issued a temporary restraining order limiting the number of pickets to six and restricting the picketing to the reserve gate.

On November 3, pursuant to a Regional determination to issue a Section 8(b)(4)(i)(ii)(B) complaint against the Unions because of the activity described above, the Unions executed a settlement agreement with a notice stating that the Unions agreed not to coerce neutral subcontractors "or any other person" by picketing with the object of forcing such persons to cease doing business with the Employer.

On November 7, the Hospital held a "Grand Opening and Baby Fair" to publicize the opening of its new maternity center. The Hospital had used flyers to invite the public to the opening, where it provided food, entertainment and health-related exhibits and demonstrations. The event was held around the perimeter of the parking lot described above. Around 10:45 a.m., approximately 50 to 75 agents and supporters of the Unions arrived at the fair. During the next 50 minutes, some of these Union agents or supporters engaged in orderly activities, talking among themselves and attempting to hand out literature to other visitors to the fair. However, a videotape of that period shows that a man dressed in a rat costume appeared, accompanied by another man with a megaphone who announced "rats in the building" several times. The rat tripped over a car curb, appeared to be eating food from a trash receptacle, while the man with the megaphone announced, "There's no need for this, if Western Medical Center were not so unfair. Can you believe Millie and Severson won't even give its employees health care." Other comments criticizing the Employer were heard, approximately 10 men surrounded a Hospital official who unsuccessfully asked the men to leave the fair. The film also shows that men wearing union T-shirts occupied many of the chairs in front of a stage where a children's fashion show was scheduled to begin.

The Region's investigation revealed disturbances in addition to the ones shown on the videotape described above. Thus, the children's fashion show had to be postponed because Union supporters occupied the seats in front of the stage. There is also evidence that men wearing union t-shirts surrounded a food table and threw the food into the garbage; as a consequence, the Hospital ran out of food early in the event. Various Hospital officials had angry conversations with some of the Union

demonstrators. When one Hospital official told a Union business agent not to disrupt the fair, because the Union's dispute was with the Employer, the Union agent replied, "Oh no. We had a grievance with the hospital also," and stated that the Hospital was equally responsible because it had hired nonunion workers.

At the Hospital's request, police officers were stationed at the event. Despite Hospital requests that the police arrest the demonstrators, the police did not do so.

The Unions did not notify the Hospital in advance of the events described above of their intent to demonstrate during the Hospital's fair.

#### ACTION

We conclude that the Unions' actions on November 7 violated Section 8(b)(4)(B). We further conclude that the Section 8(g) charge should be dismissed, absent withdrawal.

Initially, we conclude that the Unions' activities at the fair were confrontational, not merely protected informational handbilling. Hence, since the activity was directed against the Hospital, a neutral in the Unions' dispute with the Employer, the Unions violated Section 8(b)(4)(B). In reaching this conclusion, we noted that, in addition to handbilling visitors to the fair, the Unions engaged in mass disruptions of scheduled activities, such as the children's fashion show and blood pressure tests, and confronted Hospital representatives. Moreover, a Union representative dressed in a rat costume and his accomplice proclaimed that there were rats in the Hospital's building. In these circumstances, we conclude that the Unions' mass activities resembled a form of picketing intended to force the Hospital to cease doing business with the Employer. We specifically find that these activities more clearly resembled the activities that the Board recently found unlawful in *United Mine Workers of America and District 29 (New Beckley Mining Corporation)*<sup>(1)</sup> and *Laborers International Union, Local 332 (C.D. G., Inc.)*<sup>(2)</sup> than the activity that the Board found protected in *C.D.G., supra*, slip op. at 2, because handbillers merely "milled about and talked and moved aside when people approached the entrances." Accordingly, any settlement of the instant Section 8(b)(4)(B) charge should remedy the Unions' violative conduct on November 7 as well as the Unions' earlier unlawful activity.

However, we concluded that further proceedings on the Section 8(g) charge are not warranted even though the Unions never gave a 10-day notice as to any of the activities described above.

Initially, we note that Section 8(g) requires a union to give a 10-day notice if it intends to picket or strike a health-care provider. This obligation attaches to a union when its target is a health-care provider, even though the employees involved in the dispute do not perform direct patient-related functions.<sup>(3)</sup> However, there is no notice obligation if the targeted facility is not involved in the hospital's operations.<sup>(4)</sup>

In the instant case, the Unions' primary target was the Employer with whom it had previously had a contractual relationship. The Employer is not involved in the providing of health care. However, the Unions attempted to enmesh the Hospital in their dispute with the Employer, as evidenced by the Unions' Section 8(b)(4)(B) conduct. Moreover, various Union agents who participated in the disruption at the fair stated that they had disputes with the Hospital because it had nonunion employees and because it had contracted with the Employer to handle its construction project. Moreover, the Hospital's fair was held on the Hospital's grounds, adjacent to a patient-care building, and involved demonstrations and tests by Hospital employees who provided health-care services. Thus, the fair was more integrally related to the Hospital's health-care purpose than the warehouse that was picketed in *Presbyterian Hospital, supra*.

Nonetheless, we conclude that a Section 8(g) complaint is not warranted because the Union activity, although confrontational, was neither picketing nor a strike,<sup>(5)</sup> and Section 8(g) requires a 10-day notice only in advance of those specific activities "or other concerted refusal to work." The fact that we deemed this Union activity confrontational for purposes of addressing the Section 8(b)(4) charge does not mean that the activity was clearly picketing within the meaning of Section 8(g).

R.E.A.

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<sup>1</sup> 304 NLRB No. 8 (1991).

<sup>2</sup> 305 NLRB No. 32 (1991).

<sup>3</sup> See *Painters Orange Belt District Council 48 (St. Joseph Hospital)*, 243 NLRB 609, 612 (1979) (Union had to give 8(g) notice because target of its activity was renovation work being performed by hospital employees).

<sup>4</sup> See *Presbyterian Hospital in the City of New York*, 285 NLRB 935 (1987) (No 8(g) notice obligation where union picketed largely unoccupied hospital-owned warehouse that was located three miles from the hospital and whose operations were not integrated with hospital operations).

<sup>5</sup> Compare style