

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

Advice Memorandum

DATE: July 23, 2004

TO : B. Allan Benson, Regional Director  
Region 27

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

SUBJECT: Southwest Regional Council of Carpenters  
and Carpenters Locals 184 and 1498  
(New Star General Contractors)  
Case 27-CC-877 (CA10)

Carpenters Locals 184 and 1498  
(East West Partners, Inc.)  
Cases 27-CC-878, -879

560-2575-6746  
560-2575-6767-2500  
560-7540-2000  
560-7540-8060-6717  
712-2500

Carpenters Locals 184 and 1498  
(Staples and Co.)  
Cases 27-CC-880, -881

Southwest Regional Council of Carpenters  
and Carpenters Locals 184 and 1498  
(Okland Construction)  
Cases 27-CC-882, -883, -884

Southwest Regional Council of Carpenters  
and Carpenters Locals 184 and 1498  
(New Star General Contractors)  
Cases 27-CC-885, -886, -887

Southwest Regional Council of Carpenters  
and Carpenters Locals 184 and 1498  
(Okland Construction)  
Cases 27-CC-888, -889, -890

The Region submitted these cases for advice as to whether three associated labor organizations of the same international union violated Section 8(b)(4)(ii)(B) of the Act when two or more individuals displayed large, misleading banners at varying distances from the facilities of targeted neutral employers.

We conclude the following: (A) the Region should allege that Carpenters Locals 184 and 1498 are liable for the bannering activity in close proximity at every neutral location and that the Southwest Regional Council of

Carpenters is also liable for the bannerings directed at the Prudential Main Street office and Stampin' Up locations; (B) the bannerings constituted unlawful secondary picketing that violated Section 8(b)(4)(ii)(B) when it occurred in close proximity to a targeted neutral facility, and it also violated Section 8(b)(4)(i)(B) when directed at "neutral" gates at common situs construction sites; (C) the bannerings also constituted unprotected speech that unlawfully coerced the neutral under Section 8(b)(4)(ii)(B) when it occurred in close proximity to a targeted neutral facility; (D) the Region should not hold these meritorious cases in abeyance, should issue the appropriate Section 8(b)(4)(i) and (ii)(B) complaint with a notice of hearing, and should seek a "broad" Section 8(b)(4)(i) and (ii)(B) remedial order in both the administrative case and any necessary Section 10(1) injunction proceeding; and (E) Section 10(1) proceedings should be initiated only against Locals 184 and 1498 if they fail to assure the Region in writing that they will not engage in further unlawful activity.

#### FACTS

The primary labor dispute between New Star General Contractors and Okland Construction, on one hand, and three subordinate bodies of the United Brotherhood of Carpenters, on the other, stems from the following facts. New Star and Okland are construction contractors based in Salt Lake City, Utah. For approximately 20 years, New Star and Okland were party to successive Section 8(f) labor contracts with Mountain West Regional Council of Carpenters and Carpenters Locals 184 and 1498. In July 2003, the Southwest Regional Council of Carpenters (Southwest) took over the administration of both of those contracts, which were set to expire on October 31, 2003.

In September 2003, Southwest began separate negotiations with New Star and Okland for successor contracts. During this time, some of New Star's and Okland's employees discussed severing ties with the Carpenters Unions and forming their own in-house union. During a Union meeting held by Southwest on April 14, 2004,<sup>1</sup> Southwest President McCarron told those present that "those guys planning to sign [with the new in-house union] should not because the Southwest Council has a \$20 million strike fund and if those guys sign we will bring Okland and New Star to their knees. We will hit them hard and heavy in every state where they do business and we will hit their business associates also" (emphasis added).

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<sup>1</sup> Unless otherwise noted, all subsequent dates are in 2004.

On April 15, New Star and Okland withdrew recognition from the Carpenters Unions and terminated negotiations. On the same day, New Star and Okland each signed initial labor contracts with the Utah Carpenters Association (UCA), the labor organization formed by New Star's and Okland's employees. Locals 184 and 1498 then filed Section 8(a)(2) and 8(b)(1)(A) charges against New Star, Okland, and UCA alleging that UCA was an employer dominated and assisted labor organization.<sup>2</sup>

On April 26, some of New Star's employees commenced an alleged unfair labor practice strike against New Star based on its entering into contracts with UCA. Starting the next day, Locals 184 and 1498, along with representatives from Southwest, picketed New Star at its offices and at certain common-situs job sites.<sup>3</sup>

Subsequently, Locals 184 and 1498 sent identical letters to many of the targeted neutral employers, or to businesses affiliated with them, entitled "Notice of Labor Dispute and Unfair Labor Practice Strike."<sup>4</sup> The letters described the primary labor dispute with New Star or Okland, asked the neutral to exercise its managerial discretion to cease doing business with the relevant primary, and then stated the Locals would extend their "protest activities" to companies that continued to do business with the relevant primary. The letter stated in relevant part, "[t]hese activities will include . . . highly visible banner displays, and handbill distribution."

From April 27 to the present, banners have been displayed and handbills distributed near the facilities of ten neutral employers located in Utah and Colorado that do business with one of the primary employers. At each location, two or more individuals support a large banner (4' x 20') stating in large letters across the middle "SHAME ON [NAME OF NEARBY NEUTRAL EMPLOYER]" with the words "LABOR DISPUTE" in slightly smaller letters in the top corners. At most locations, the same individuals also

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<sup>2</sup> These charges are currently under Regional investigation.

<sup>3</sup> The Region concluded that the Unions' actual picketing either did not violate the Act or was a de minimis violation that did not support issuance of a complaint.

<sup>4</sup> This letter will be referred to as the "Notice of Labor Dispute" letter.

distribute handbills that accurately describe the primary labor dispute and asked recipients to contact the named neutral and tell it to not do business with the relevant primary. The handbills, which are identical except for the names of the neutrals, only name Locals 184 and 1498 as the aggrieved unions. At none of the locations has the activity resulted in either a work stoppage or interruption of deliveries to the targeted neutral employers.

1. Utah Transit Authority

Utah Transit Authority (UTA) hired Jacobsen Construction Co. as the general contractor for an expansion project at its rail service center. Jacobsen hired primary employer New Star as a subcontractor on the project. Locals 184 and 1498 sent a "Notice of Labor Dispute" letter to Jacobsen dated April 27.

a. UTA administrative office

On several dates from April 27 to May 14, two or more individuals displayed the banner and distributed handbills on the grassy area near the main vehicle entrance to UTA's administrative offices. This facility is far from the construction project. The banner, which named "Utah Transit Authority," and the individuals holding it were stationed about 30 or 40 feet from the facility's front door. The banner was displayed between the hours of 9 a.m. and 3 p.m. on the relevant dates.

b. UTA customer service center

UTA also has a customer service center in the ZNMI Mall in downtown Salt Lake City. The customer service center is immediately inside the mall's south entrance and most UTA customers utilize that entrance. Beginning on May 17, three individuals have displayed the same banner and distributed handbills about 20 yards north and east from the mall's east entrance on the public sidewalk. At that location, the banner was about 400 yards from the UTA service center inside the mall.

2. Prudential Utah Real Estate

Prudential Utah Real Estate markets the sale of the Ironwood condominium units located in Park City, Utah. Ironwood Partners hired primary employer New Star to build the condominiums. Neither Prudential nor Ironwood Partners received the "Notice of Labor Dispute" letter.

a. Main Street office

On several dates from May 3 to May 11, two or more individuals displayed the banner and distributed handbills on the sidewalk immediately outside the main entrance to Prudential's office on Main Street in Park City. The individuals departed from the standard bannering technique at this location because "Ironwood Partners" was named on the banner rather than nearby Prudential.<sup>5</sup> Prudential's Main Street office, which opens onto the sidewalk, occupies most of a two-story building that also houses a small clothing store that opens onto the sidewalk. This facility is far from the Ironwood condominiums, which are outside the downtown Park City area. On May 11, Southwest's attorney orally informed the Region and Prudential's attorney that the banner would no longer be displayed at that location. Since then, the Unions have not displayed the banner at Prudential's Main Street office.

b. Saddleview office

In early May, two or three individuals began to display the banner outside of Prudential's Saddleview office, which is located in a four-building office complex.<sup>6</sup> Although there are other tenants, Prudential occupies portions of three of the four buildings. Unlike at Main Street, the banner here named "Prudential Real Estate." The banner and the individuals holding it are about 25 to 30 feet from the parking lot entrance to the complex. The banner is present from Monday to Friday from 9 a.m. until some point in the afternoon. Handbills were not distributed at this location.

c. Pine Brook office

Beginning on May 24, two or three individuals have displayed the banner in front of Prudential's Pine Brook office, which consists of two log cabins occupied

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<sup>5</sup> The handbill named both Ironwood Partners and Prudential and accurately described the Unions' primary dispute with New Star and secondary disputes with Ironwood and Prudential.

<sup>6</sup> The Saddleview office is about two miles from the Main Street office.

exclusively by Prudential.<sup>7</sup> As at Saddlevue, this banner names "Prudential Real Estate." The banner and the individuals holding it are stationed about five feet from the parking lot entrance and about 50 feet from the buildings. As at Saddlevue, this banner names "Prudential Real Estate." The banner is present every weekday from 8 a.m. to 2 p.m. Handbills were not distributed at this location.

### 3. Miners Club Condominiums

Miners Club hired primary employer New Star to construct its condominium units at the Canyon Ski Resort in Park City, Utah. Although the project was completed in November 2003, New Star performed warranty work at the facility as recently as May 5. Raintree Resorts manages this property. Locals 184 and 1498 sent a "Notice of Labor Dispute" letter to Raintree dated April 27.

On May 4, two or more individuals displayed the banner and distributed handbills outside the Miners Club sales office on Main Street in Park City from 8 a.m. to 11 a.m. The banner named "Miners Club/Raintree." Subsequently, on several dates between May 5 and May 12, several individuals stationed the same banner near the intersection of Highway 224 and Canyon Resort Road. This is the main entrance for individuals going to the Miners Club condominium units. To get to the those units, an individual must turn onto Canyon Resort Road, continue on for about a quarter mile past a convenience store and other condo units, and then turn right onto another road and travel another quarter mile. If an individual does not turn right to go to the Miners Club units, Canyon Resort Road continues on and provides access to other condo units, resort hotels, and businesses.

### 4. Research Park Associates

Research Park Associates (RPA) hired primary employer New Star as the general contractor for a remodeling project at its building at 585 Komas Drive in Salt Lake City, Utah. RPA's offices are located about a half mile away at 423 Wakara Way in a facility that is part of an interconnected, three-building office complex. Locals 184 and 1498 sent RPA a "Notice of Labor Dispute" letter dated May 5.

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<sup>7</sup> The Pine Brook office is about nine miles from the Main Street office and about seven miles from the Saddlevue office.

Beginning on May 4, two or more individuals have displayed the banner and distributed handbills near RPA's offices. The banner, which names "Research Park Associates," was stationed about 20 feet from the parking lot entrance to the office complex on public property between the complex and the road. Individuals going to the complex must use this vehicle entrance because the complex's front door does not face the road, but faces the parking lot located on the backside of the buildings. The banner and the individuals holding it are about 75 yards from the front door. The bannering and handbilling occurs Tuesday through Thursday from 9 a.m. to 4 p.m.

5. Black Diamond Condominiums and Premier Resorts

Primary employer New Star was the general contractor that constructed the Black Diamond condominium units in Park City, Utah. New Star completed work on the project in November 2003, but more recently has performed warranty work at the facility. Premier Resorts, which manages that property, is the parent corporation of Deer Valley Resorts. Locals 184 and 1498 sent a "Notice of Labor Dispute" letter to Deer Valley dated May 25.<sup>8</sup>

Beginning on May 13, two or more individuals have displayed the banner and distributed handbills in front of the Deer Valley Plaza strip mall in Park City. The banner names "Black Diamond/Premier." Premier Resorts has an office at the Deer Valley Plaza strip mall, which is about one mile from the Black Diamond condominiums. It is unclear how far the banner is from Premier's office.

6. East-West Partners, Inc.

East-West Partners hired primary employer New Star to complete two construction projects in Park City, Utah. Locals 184 and 1498 sent a "Notice of Labor Dispute" letter dated April 27 to Jim Hill, a principal of East-West.

East-West's offices are located in a building, which is known as the Park Place Lofts, at 1610 Little Raven Street in Denver, Colorado. The Lofts, which also houses a

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<sup>8</sup> The Region stated in its Supplemental Request for Advice dated June 9, 2004, that neither Black Diamond nor Premier received a "Notice of Labor Dispute" letter. However, to support the charges in Cases 27-CC-885, -886, -887, the Charging Party submitted the "Notice of Labor Dispute" letter sent to Deer Valley.

restaurant called Zengo, is part of a 25-acre lot owned by East-West. Across the street from the Lofts is the Riverfront Towers, a 13-story residential building that houses retail businesses on the ground floor. East-West manages the Towers through a subsidiary and owns the retail areas on the ground floor.

For about a week beginning May 21, two or more individuals displayed the banner and distributed handbills at a location about 18 feet from the entrance to the Lofts. The banner named "East-West Partners." This activity occurred Monday through Friday from 9 a.m. to 3:30 p.m. and never interfered with ingress or egress to the building. After that week, the individuals relocated the banner to a position contiguous with a plaza on a public right of way between the Lofts and the Tower.

#### 7. Staples and Company

Terry Staples is a real estate developer who operates under various business names, including Staples and Company. He develops projects with his partner, Jack Kosen, who operates under the business name of Ironwood Partners. As stated above, Ironwood hired primary employer New Star to build condominium units near Park City, Utah. Staples and Co. did not receive a "Notice of Labor Dispute" letter from the Locals.

Staples and Co. has its office at 215 St. Paul Street in Denver, Colorado in a three-story commercial building that houses various other tenants, including DBC Properties, who is the landlord. Since May 27, four individuals have displayed the banner and distributed handbills about 20 feet from the entrance to the Staples and Co. office. The banner, which names "Staples/Ironwood," is present during weekdays from 9:30 a.m. to 3 p.m. There is no evidence of any interference with ingress or egress. DBC Properties has directed Staples and Co. to either have the banner removed or move out of the building.

#### 8. Zermatt Resort and Spa

Okland has been the general contractor of the Zermatt Resort and Spa in Midway, Utah. On May 27, the Unions struck primary employer Okland. Locals 184 and 1498 sent a "Notice of Labor Dispute" letter to Zermatt.

Okland had a reserved gate system in place at the Zermatt construction site. On May 27, individuals engaged in traditional picketing with placards at the gate reserved

for primary employer Okland.<sup>9</sup> That was the only day such activity occurred.

Since June 2, three individuals have displayed the banner and distributed handbills near the primary gate reserved for Okland. The banner, which names "Zermatt Resort & Spa," is located about 30 or 40 feet south of the gate and is about 400 feet away from the neutral gate reserved for two subcontractors on the project. The banner is present from about 11 a.m. to 3:30 p.m. and the three individuals supporting the banner wear shirts and other clothing identifying Southwest.

On June 24, the individuals who hold the banner relocated it to an area directly across from the Zermatt sales office at the construction site. At this location, the banner was on Zermatt property and after about two and a half hours the police arrived and asked the individuals holding the banner to move. The individuals did move and never returned to that location.

9. Private residence of Mike Malone

Mike Malone is a resident of the Glenwild Development in Park City. Primary employer New Star built his home. On June 3, two or more individuals began displaying the banner on the frontage road off Interstate 80 near Park City. Although the banner names "Mike Malone," it is not clear if it also contains the normal "Labor Dispute" statement. From this location, the banner is about one mile away from the main gate to Glenwild and about two miles away from Malone's residence. Handbills were not distributed at this location and Malone did not receive a "Notice of Labor Dispute" letter.

10. Stampin' Up

Stampin' Up is a Utah corporation that manufactures and distributes decorative stamps. Its shareholders created On-Point Properties, LLC to manage the building of a distribution center and office building for Stampin' Up. On-Point hired primary employer Okland as the general contractor for the project. Neither Stampin' Up nor On-Point received the "Notice of Labor Dispute" letter.

Okland established a reserved gate system at the construction site. There are three gates to the project,

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<sup>9</sup> It has not been established that these individuals were agents of the Unions.

with the southern most gate reserved for primary Okland. On about May 26, the Carpenters Unions began traditional picketing at the primary gate with signs that named Okland.

Initially, the northern most gate at the site was reserved for neutral subcontractors, of which there are about 40, and their employees. On about May 28, that gate was shut down and the neutral subcontractor gate was moved to the center of the site. There are two driveways at this center gate. The southern driveway is fenced off and the northern driveway is used as an entrance to the site. This new neutral gate was not marked during the first part of May 28 and the Carpenters Unions engaged in traditional picketing at this gate for about two hours. Later in the day, the sign from the original neutral gate was relocated to this new gate and placed near the fenced off southern driveway. No additional traditional picketing occurred at this center gate and it has since been used exclusively by neutral subcontractors.

After the neutral subcontractor gate was relocated on May 28, the northern most gate became the exclusive entrance for Stampin' Up employees. A sign reading "NO CONSTRUCTION ACCESS" is at that gate. When work on the distribution center was completed on or about June 1, five to twelve Stampin' Up employees began to report for work at the distribution center through this gate. In mid-July, about 90 Stampin' Up employees are expected to report for work at the new distribution center.

Although work on the distribution center is complete, primary Okland and the neutral subcontractors continue performing work on the new office building, which is expected to be finished in November. The Carpenters Unions continued their traditional picketing at the primary gate until June 4. On that day, three individuals began to display a large banner about 50 feet south of the neutral gate at the center of the property reserved for the neutral subcontractors. The banner was stationed near the fenced off southern driveway near the sign establishing the neutral gate. At this location, the banner, which names "Stampin' Up," and the individuals holding it are about 850 feet from the northern gate reserved for neutral Stampin' Up and about 600 feet from the southern gate reserved for primary Okland. The banner is present everyday from 9 a.m. to 3 p.m. On the first day the banner was displayed, Bruce Bachman, a special representative for Southwest, was present and remained with the banner for about an hour. The individuals supporting the banner also passively distribute handbills only to individuals who approach them.

Subsequently, Okland relocated the reserved gate sign at the center neutral gate from just south of the fenced off southern driveway to just north of the active northern driveway. The individuals holding the banner then relocated it to an area about 40 feet north of the northern driveway at the center gate. On the afternoon of July 16 and certain dates thereafter, the individuals holding the banner relocated it to an area directly outside the northern gate reserved for Stampin' Up employees.

#### ACTION

We conclude that the Region should take the following action: (A) allege that Locals 184 and 1498 are liable for all the meritorious bannering activity and that Southwest is also liable for the bannering directed at the Prudential Main Street office and Stampin' Up locations; (B) allege that the bannering constituted unlawful secondary picketing that violated Section 8(b)(4)(ii)(B) when it occurred in close proximity to a targeted neutral facility, and it also violated Section 8(b)(4)(i)(B) when directed at "neutral" gates at common situs construction sites; (C) allege that the bannering also constituted unprotected speech that unlawfully coerced the neutral under Section 8(b)(4)(ii)(B) when it occurred in close proximity to a targeted neutral facility; (D) issue complaint in these meritorious cases with a notice of hearing, absent settlement, and seek a "broad" remedial order in both the administrative case and any necessary Section 10(1) injunction proceeding; and (E) promptly initiate Section 10(1) proceedings only against Locals 184 and 1498 if they fail to assure the Region in writing that they will not engage in further unlawful activity.

- A. THE EVIDENCE SHOWS THAT LOCALS 184 AND 1498 ARE RESPONSIBLE FOR THE BANNERING ACTIVITY AT EACH MERITORIOUS NEUTRAL LOCATION AND THAT SOUTHWEST IS ALSO RESPONSIBLE FOR THE BANNERING ACTIVITY DIRECTED AT THE PRUDENTIAL MAIN STREET AND STAMPIN' UP LOCATIONS.

Union responsibility for violations of Section 8(b) of the Act is governed by the ordinary common law rules of agency.<sup>10</sup> Where a union agent is engaging in misconduct

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<sup>10</sup> See, e.g., ILWU (Sunset Line and Twine Co.), 79 NLRB 1487, 1507-08 (1948); SAIA Motor Freight, Inc., 334 NLRB 979 (2001); Local 1814, I.L.A. v. NLRB, 735 F.2d 1384, 1393 (D.C. Cir. 1984); NLRB v. Local Union No. 3, IBEW, 467 F.2d 1158, 1159 (2d Cir. 1972); Vulcan Materials Corp. v. United Steelworkers of America, 430 F.2d 446, 457 (5th Cir. 1970);

under the Act, the union can be held liable.<sup>11</sup> Agency, of course, can be proved by circumstantial evidence.<sup>12</sup> Further, a union can be held responsible for violating Section 8(b)(4)(B) when it fails to disavow unlawful secondary activity that points to its involvement. For example, in cases where picket signs name a particular union, that union can be responsible for any unlawful secondary picketing where it has knowledge of the picketing and fails to disavow the unlawful activity.<sup>13</sup>

Here, the evidence shows that Locals 184 and 1498 are responsible for the bannering at all the meritorious locations. Thus, the Locals sent "Notice of Labor Dispute" letters to most of the targeted neutral employers stating that "highly visible banner displays" would occur. The bannering that occurred at most of the neutral locations was also accompanied by the distribution of handbills that named the Locals as the aggrieved labor organizations.<sup>14</sup> This evidence not only implicates the Locals in the bannering, but shows that rather than disavow their involvement, the Locals ratified the bannering that

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United Steelworkers of America v. CCI Corp., 395 F.2d 529, 532 (10th Cir. 1968).

<sup>11</sup> See, e.g., Squillacote v. Meat & Allied Food Workers Local 248, 534 F.2d 735, 748 (7th Cir. 1976) and the cases there cited.

<sup>12</sup> Id.

<sup>13</sup> See, e.g., Service Employees Local 87 (West Bay Maintenance), 291 NLRB 82, 83 (1988); Teamsters Local 85 (San Francisco Newspaper Printing Co.), 191 NLRB 107, 109-110 (1971), enfd. mem. 82 LRRM 2847 (9th Cir. 1972).

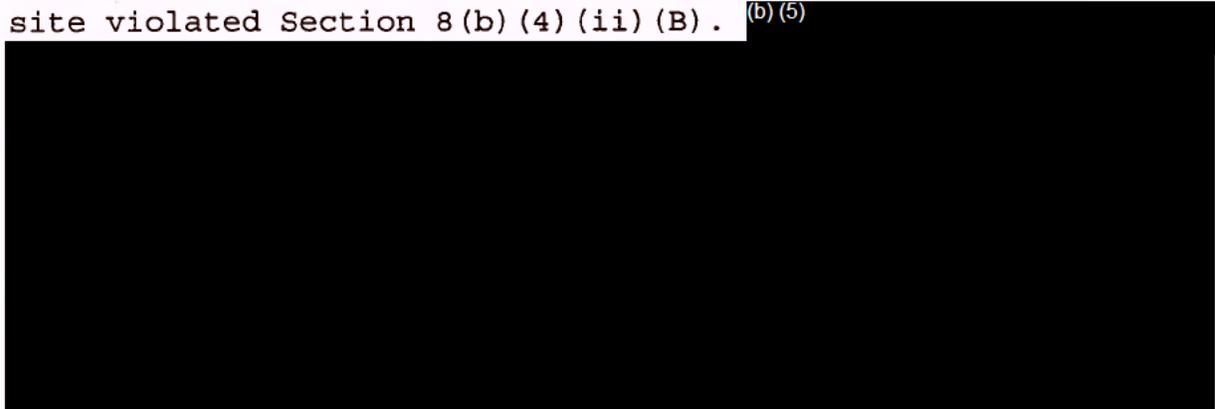
<sup>14</sup> Of the locations where we conclude below that unlawful secondary activity occurred, Prudential's Saddlevue and Pine Brook offices are the only locations where neither a "Notice of Labor Dispute" letter nor a handbill was present. However, handbills naming the Locals were distributed during the bannering activity at Prudential's Main Street office. We conclude that the similarity of conduct at Saddlevue and Pine Brook to the Locals' conduct elsewhere, including at another Prudential site, warrants the inference that the Locals were responsible for the activity at Saddlevue and Pine Brook as well.

accompanied the handbilling, which bore the names of the Locals.

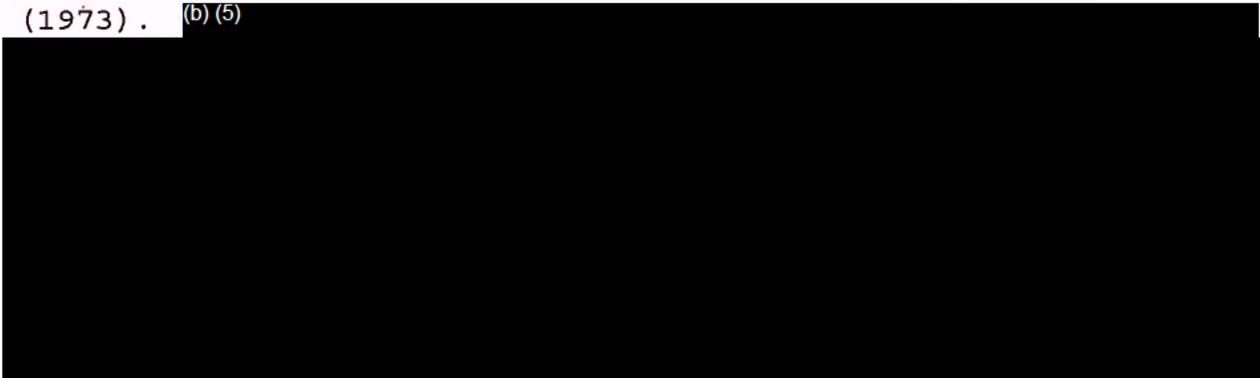
Moreover, the following evidence shows that Southwest was responsible, along with the Locals, for the bannering directed at the Prudential Main Street office and Stampin' Up locations. Thus, two weeks before the first bannering incident, Southwest President McCarron stated at a Union meeting that Southwest had a large strike fund and it would target the primaries' business associates. Subsequently, after Southwest's attorney informed Prudential's attorney that the bannering at its Main Street office would stop, the banner was removed and never reappeared. Also, at the Stampin' Up construction site, a Southwest representative was present during the bannering.<sup>15</sup> All of this evidence points to Southwest's responsibility in these incidents of bannering and Southwest took no steps to disavow its involvement.<sup>16</sup>

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<sup>15</sup> As discussed below, we find that the bannering directed at the Zermatt sales office at the Zermatt construction site violated Section 8(b)(4)(ii)(B). (b)(5)



<sup>16</sup> See generally National Cash Register Co. v. NLRB, 466 F.2d 945, 961 (6th Cir. 1972), cert. denied 410 U.S. 966 (1973). (b)(5)



B. THE UNIONS' CONDUCT AS TRADITIONAL OR SIGNAL PICKETING THAT UNLAWFULLY COERCED THE TARGETED NEUTRAL EMPLOYERS IN VIOLATION OF SECTION 8(b)(4)(i)(B) AND, WHEN DIRECTED AT "NEUTRAL" GATES AT COMMON SITUS CONSTRUCTION SITES, UNLAWFULLY INDUCED OR ENCOURAGED A WORK STOPPAGE IN VIOLATION OF SECTION 8(b)(4)(i)(B).

1. Locations where the bannering constituted traditional or signal picketing.

Under the analysis set forth below, we conclude that the Unions' bannering at the following neutral facilities constituted unlawful secondary picketing: (1) UTA's administrative office; (2) Prudential's Saddlevue and Pine Brook offices; (3) the Main Street office of Miners Club Condominiums; (4) Research Park Associates; (5) East-West Partners (first week only); (6) Staples and Company; and, (7) Zermatt (near sales office). Although we also conclude that the Unions' bannering at Prudential's Main Street office and the Stampin' Up construction site constituted unlawful secondary picketing, a slightly different analysis applies, which is set forth below.

Four factors show that the Unions' bannering at these locations constituted traditional or "signal" picketing that coerced the neutral employers to cease doing business with one of the primary employers.<sup>17</sup> Those factors are: (1) the large size of the banner; (2) the presence of two or more individuals supporting the banner; (3) the close proximity of the banner to the targeted neutral employer; and (4) the misleading language on the banner.<sup>18</sup>

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<sup>17</sup> Although the concept of "signal" picketing is more commonly applied to non-traditional union activity that induces or encourages a work stoppage in violation of Section 8(b)(4)(i)(B), we use the concept here to show how the Unions' non-traditional conduct was coercive picketing meant to keep customers and suppliers away from the targeted neutral employers.

<sup>18</sup> For a more thorough recitation of the legal theory involving these four factors, the Region should consult pages 10-16 of the Model Memorandum of Points and Authorities (revised July 2004) prepared by the Injunction Litigation Branch (ILB) for potential Section 10(1) litigation in Section 8(b)(4)(B) union bannering cases. The Region should also consult Section II.B.1.a. of the Board's opening brief in Overstreet v. Carpenters Local

Regarding the first through third factors, they all show how the Union's banner activity is the functional equivalent of traditional or signal picketing that seeks to coerce the neutral employers by keeping consumers away from the targeted facilities.<sup>19</sup> Specifically as to the third factor, the Unions stationed their agents and the misleading banner no more than 30 or 40 feet from the pedestrian or vehicle entrance to each targeted neutral facility. The Unions were engaged in picketing because they created the necessary element of confrontation that would discourage third parties from approaching the neutral facilities and transacting business with them.

Moreover, the fourth factor further shows that the Unions' banner activity was confrontational and constituted picketing. The banner at each location announces the existence of a "labor dispute" and then names only the nearby neutral employer. The banners do not name the primary employers or accurately state that the Unions only have a secondary labor dispute with the named neutral. In an effort to keep them away, the Unions are intentionally misleading consumers or delivery persons approaching the targeted neutral facilities into believing that the Unions have a primary labor dispute with the named neutral employer.<sup>20</sup>

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1506, Docket No.03-56135, Section 10(1) appellate case argued and submitted to Ninth Circuit on March 2, 2004.

<sup>19</sup> See generally Mine Workers (New Beckley Mining Corp.), 304 NLRB 71, 72 (1991) (finding picketing where 50-140 union supporters milled about in motel parking lot during early morning hours and shouted statements at replacement workers), enfd. 977 F.2d 1470 (D.C. Cir. 1992); Iron Workers Pacific Northwest Council (Hoffman Constr.), 292 NLRB 562, 562 fn. 2, 571-572, 583 fn. 18 (1989) (finding signal picketing where union supporters stood near stationary sign at neutral gate), enfd. 913 F.2d 1470 (9th Cir. 1990); Laborers Local 389 (Calcon Constr.), 287 NLRB 570, 571-572, 573 (1987) (finding traditional picketing where union supporters stood near stationary signs near construction site entrance).

<sup>20</sup> See generally Soft Drink Workers Local 812 v. NLRB, 657 F.2d 1252, 1264-68 (D.C. Cir. 1980); Carpenters Local 1827, et al. (United Parcel Service, Inc., et al.), Cases 28-CC-933, et al., JD(SF)-30-03, at p. 54, 2003 WL 21206515, dated May 9, 2003; Jon E. Pettibone, Bannerings Neutrals -

We also conclude that the Unions' conduct at Prudential's Main Street office was picketing even though the banner named "Ironwood Partners" rather than Prudential. Although it does not name the nearby neutral, this banner still misleads the public into believing that the Unions have a primary labor dispute with a developer whose real estate Prudential is marketing for sale. As a result, the presence of the banner at Prudential still coerces it to cease doing business with Ironwood, which in turn may cease doing business with primary New Star, because consumers would not purchase Ironwood condominiums.

Finally, we conclude that the Unions' conduct at the Stampin' Up common situs construction site constituted traditional or signal picketing that violated both Section 8(b)(4)(i) and (ii)(B).<sup>21</sup> On the majority of the days the banner was present, the Unions' departed from their traditional technique. They stationed the banner, which names neutral project owner Stampin' Up, near the center neutral gate used by about 40 neutral subcontractors on the construction project, rather than the northern neutral gate used by the named neutral, i.e., owner Stampin' Up. Thus, the only factor that is different at this location is that the banner is stationed geographically far (about 850 feet) from the neutral gate reserved for Stampin' Up's employees, customers, and suppliers. Despite this fact, the banner still constituted picketing at this location because it was close enough to the center neutral gate to confront neutral persons using that gate.<sup>22</sup>

As a result of the Unions' failure to restrict their bannering activities to the primary gate, i.e., the one reserved for Okland, the banner unlawfully coerced the neutral subcontractors using the center neutral gate in

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Coercive Secondary Boycott or Free Speech?, 18 Labor Lawyer 349, 353 fn. 29 (2003).

<sup>21</sup> Accordingly, the Region should solicit an amended charge that adds a Section 8(b)(4)(i)(B) allegation.

<sup>22</sup> See, e.g., Hoffman Constr., 292 NLRB at 562 & fn. 2, 571-572, 583 fn. 18. Moreover, as the Region notes, the bannering at this gate followed traditional picketing at the primary gate and neutral employees may consider this a mere continuation of that prior picketing. Cf. Lawrence Typographical Union No. 570 (Kansas Color Press), 169 NLRB 279, 284 (1968), enfd. 402 F.2d 452 (10th Cir. 1968).

violation of Section 8(b)(4)(ii)(B).<sup>23</sup> Moreover, because the Unions' conduct is tantamount to picketing, it also violated Section 8(b)(4)(i)(B) because it was directed at the neutral employees using the center gate and sought to induce or encourage a work stoppage among those employees.<sup>24</sup> The Unions' failure to name only primary employer Okland on the banner and their failure to limit their activities to the primary gate evidence their intent to enmesh neutral employers in their primary labor dispute with Okland.<sup>25</sup>

Regarding the Unions' bannering at the northern gate reserved for named neutral Stampin' Up, that conduct, because of its confrontational nature, also constituted traditional or signal picketing that violated Section 8(b)(4)(i) and (ii)(B). At this location, the banner both unlawfully coerces Stampin' Up by attempting to keep away third persons who seek to do business with Stampin' Up and induces or encourages a work stoppage among its employees.

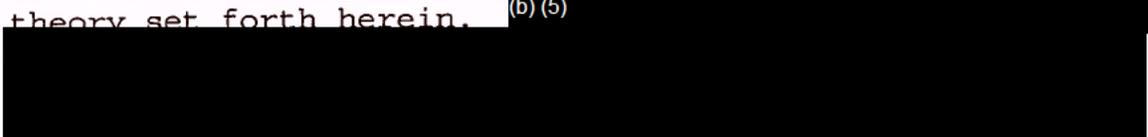
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<sup>23</sup> See, e.g., United Brotherhood of Carpenters (Sharp & Tatro Development, Inc.), 268 NLRB 382, 388-391 (1983) (rejecting union's defense that restricting picketing to primary gate would have unjustly impaired union's right to appeal to general public), petition for review dismissed 767 F.2d 934 (9th Cir. 1985) (table).

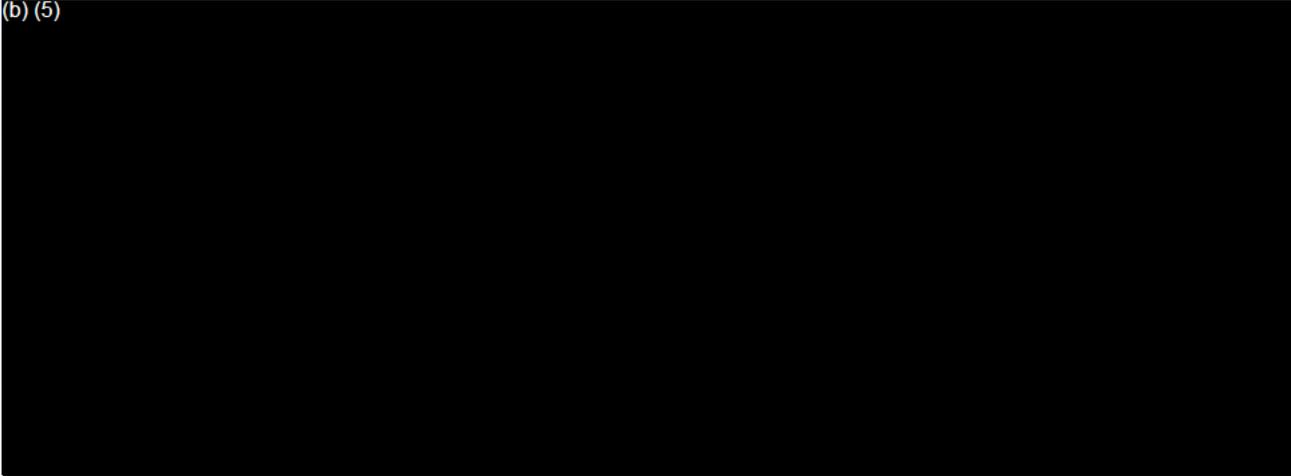
<sup>24</sup> See, e.g., Teamsters Local 85 (Graybar Electric), 243 NLRB 665, 665-666 (1979).

<sup>25</sup> See Sailors' Union of the Pacific (Moore Dry Dock Co.), 92 NLRB 547, 549 (1950).

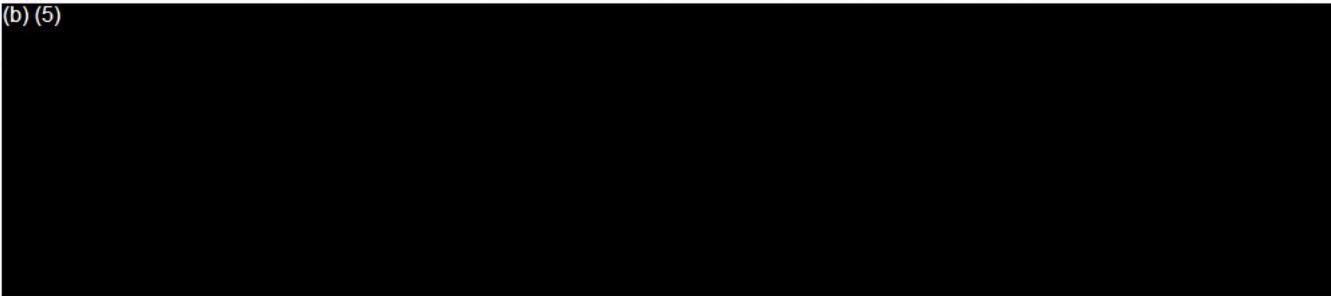
We also conclude that it is irrelevant that the Unions are relocating the banner from near the fenced off southern driveway to the active northern driveway at the center neutral gate. In both situations, the banner is sufficiently close to the neutral gate. Moreover, even if the Unions move the banner at the Stampin' Up site slightly further away from the neutral gate than its current position, e.g., 30 additional feet, we would still find that the bannering constituted unlawful picketing under the theory set forth herein. (b)(5)



(b) (5)



(b) (5)



3. Locations where the bannering did not constitute traditional or signal picketing.

Based on the rationale set forth in Carpenters Local 1506 (Universal Technical Institute, Inc.), Case 28-CC-960, at pp. 3-4, Advice Memorandum dated May 5, 2004, we conclude that the Unions' bannering did not constitute picketing at the following neutral facilities: (1) UTA's customer service center at ZNMI Mall; (2) the Miners Club condominiums at Canyon Ski Resort; (3) Black Diamond Condominiums; and (4) the private residence of Mike Malone. At each of these facilities, the banners and the individuals supporting them were far removed geographically from the premises of the targeted neutral employers.<sup>28</sup> As a

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26 (b) (5)



27 (b) (5)



<sup>28</sup> Regarding the Black Diamond condominiums, they are located about one mile from the Unions' banner stationed at

result, there was no confrontation between the Unions and individuals entering the neutral facilities that would have caused those individuals to turn away.<sup>29</sup> Thus, the Unions' conduct did not constitute picketing at these facilities.<sup>30</sup>

We also conclude that the Unions' conduct at the Zermatt construction site that was directed at the primary gate did not constitute coercive picketing within the meaning of Section 8(b)(4)(ii)(B). This bannering activity, as with that involving neutral employer Stampin' Up, occurred at a common situs construction project. However, unlike at Stampin' Up, the Unions here stationed their banner near the primary (Okland) gate and about 400 feet from the neutral subcontractor gate. Moore Dry Dock principles would condemn picketing at this location if the picket signs failed to identify the primary.<sup>31</sup> Here, however, the question of whether the Unions are engaged in "picketing" is a difficult issue. We have been unwilling to find that a banner constitutes "picketing" where it is so far distant as to not confront neutral customers and employees.<sup>32</sup> Given the distance of the banner from the neutral gate here, we would not allege that the banner coerces Zermatt as was the case at Stampin' Up.

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the Deer Valley Strip mall and which names "Black Diamond/Premier." Black Diamond has no office in the Deer Valley Plaza strip mall. Thus, the Unions' banner was not considered coercive picketing directed at Black Diamond within the meaning of Section 8(b)(4)(ii)(B). However, the Unions' banner may constitute coercive picketing directed at Premier Resorts, which manages the Black Diamond condominiums, because Premier does have an office at the strip mall. See the discussion, supra, at Section B.2.

<sup>29</sup> See generally Chicago Typographical Union No. 16 (Alden Press, Inc.), 151 NLRB 1666, 1669 (1965).

<sup>30</sup> See also Carpenters Local 1506 (Brinker Intl. Payroll Co.), Case 21-CC-3335, at p. 5, Advice Memorandum dated February 19, 2004 (finding union's display of banner was not picketing because, among other things, banner was 450 feet away from facility's entrance and "patrons would not feel . . . confronted as they entered").

<sup>31</sup> 92 NLRB at 549. Accord: NLRB v. Plumbers Local 457, 299 F.2d 497, 501 (2d Cir. 1962).

<sup>32</sup> See fn. 30, supra.

Accordingly, we would not allege a Section 8(b)(4)(ii)(B) violation at this location.

4. Locations where meritorious bannerings  
allegations are not also violations of  
Section 8(b)(4)(i)(B).

The charge in Case 27-CC-877 also alleges a violation of Section 8(b)(4)(i)(B) with respect to the conduct directed at UTA, Prudential, Miners Club, Research Park Associates, and the private residence of Mike Malone. We find no merit to that allegation. At these locations, the Unions' banners were directed at potential customers or consumers rather than neutral employees. The evidence fails to show that the Unions' banners or handbills urged neutral employees to not work for or make deliveries to the targeted neutral employers.<sup>33</sup> Moreover, the bannerings did not cause any work stoppages at or interfere with deliveries to the neutral employers. Thus, the Region should dismiss that allegation.<sup>34</sup>

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<sup>33</sup> See Upholsterers Local 61 (Minneapolis House Furnishing Co.), 132 NLRB 40, 41-42 (1961) (finding union's picketing did not violate 8(b)(4)(i)(B) because it was directed at the consumer public and not neutral employees), enf. denied on other grounds 331 F.2d 561 (8th Cir. 1964).

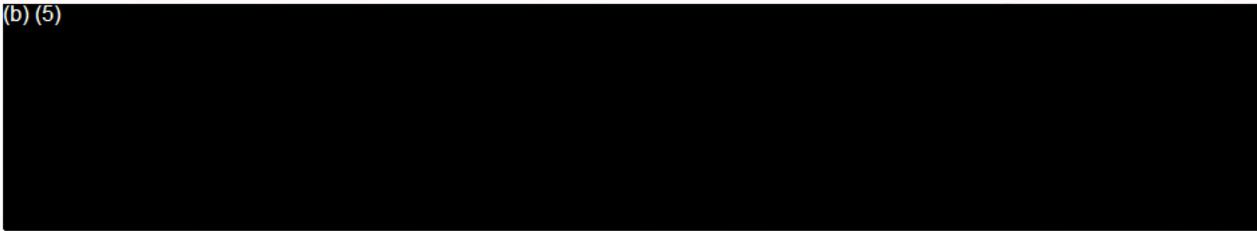
<sup>34</sup> See also Service Employees Local 254 (Women & Infants Hosp.), 324 NLRB 743, 743, 749 (1997). We recognize that the Board has held that union picketing at a common situs which names a neutral employer is calculated to induce or encourage a work stoppage of neutral employees under Section 8(b)(4)(i)(B). See Teamsters Local 85 (Graybar Electric), 243 NLRB at 665-666. However, as the instant bannerings has not yet been held by the Board to be the equivalent of picketing, the non-construction site bannerings were not viewed as appropriate vehicles to advance a Section 8(b)(4)(i)(B) theory of violation. But compare pp. 16-17, supra, dealing with the Section 8(b)(4)(i)(B) allegation at a common situs construction site.

C. THE UNIONS' CONDUCT AS UNPROTECTED SPEECH THAT UNLAWFULLY COERCED THE TARGETED NEUTRAL EMPLOYERS IN VIOLATION OF SECTION 8(b)(4)(ii)(B).

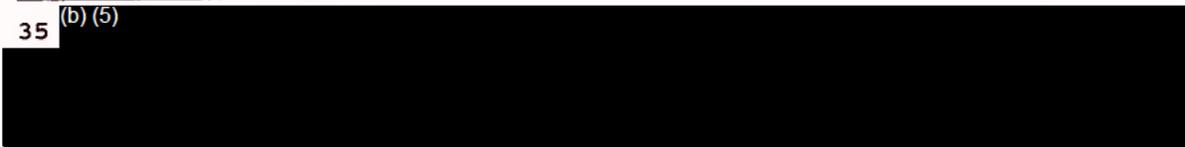
1. Locations where the message on the banner was unprotected speech that unlawfully coerced the neutral employers.

Based on the theory of violation set forth at pages 16-19 of the Model Memorandum of Points and Authorities (revised July 2004),<sup>35</sup> the Region should allege that the bannering also constituted unprotected speech that unlawfully coerced the neutral employers at the following locations: (1) UTA's administrative office; (2) all three Prudential offices; (3) the Main Street office of Miners Club Condominiums; (4) Research Park Associates; (5) East-West Partners (first week only); (6) Staples and Company; (7) Zermatt (near sales office); and (8) Stampin' Up.<sup>36</sup>

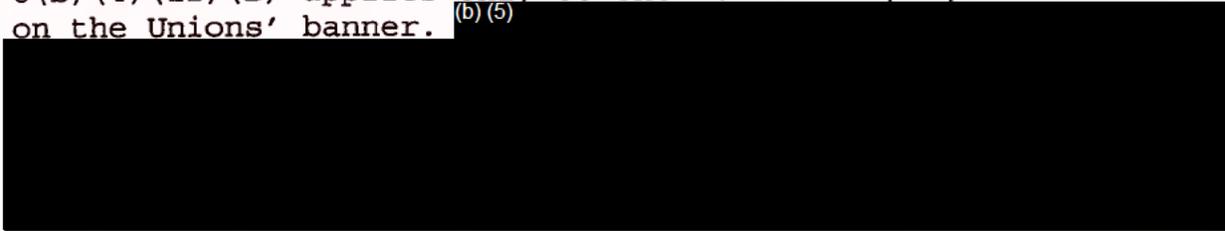
(b) (5)



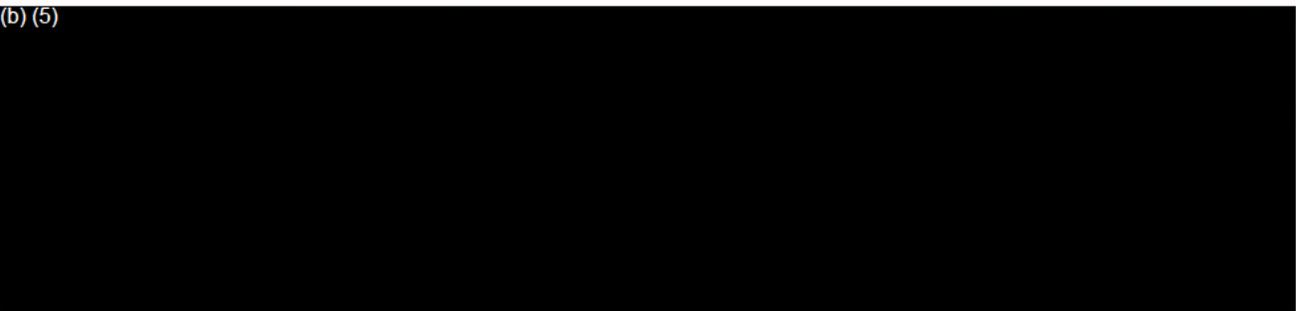
35 (b) (5)



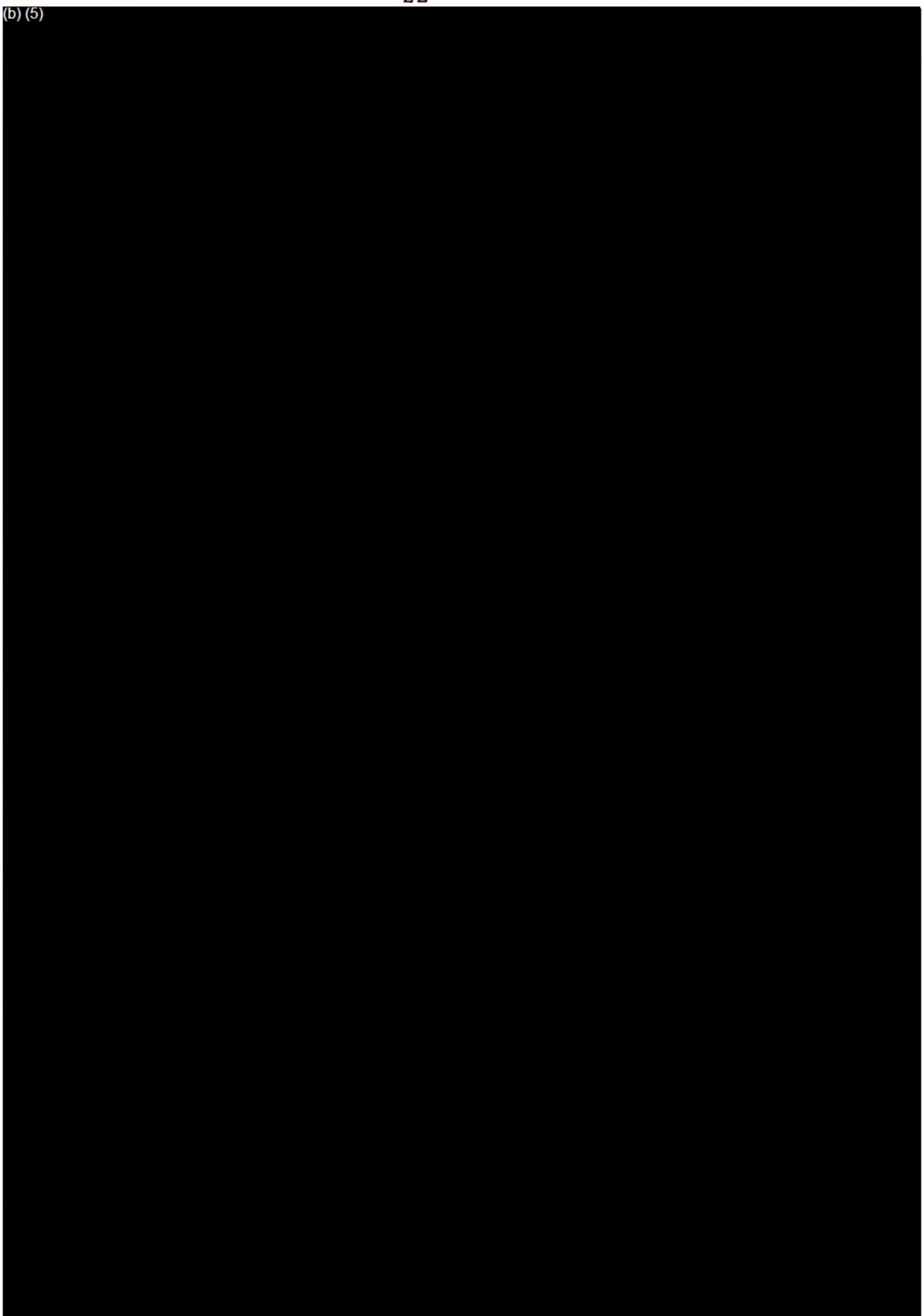
<sup>36</sup> The unprotected speech theory under Section 8(b)(4)(ii)(B) applies only to the neutral employer named on the Unions' banner. (b) (5)



(b) (5)



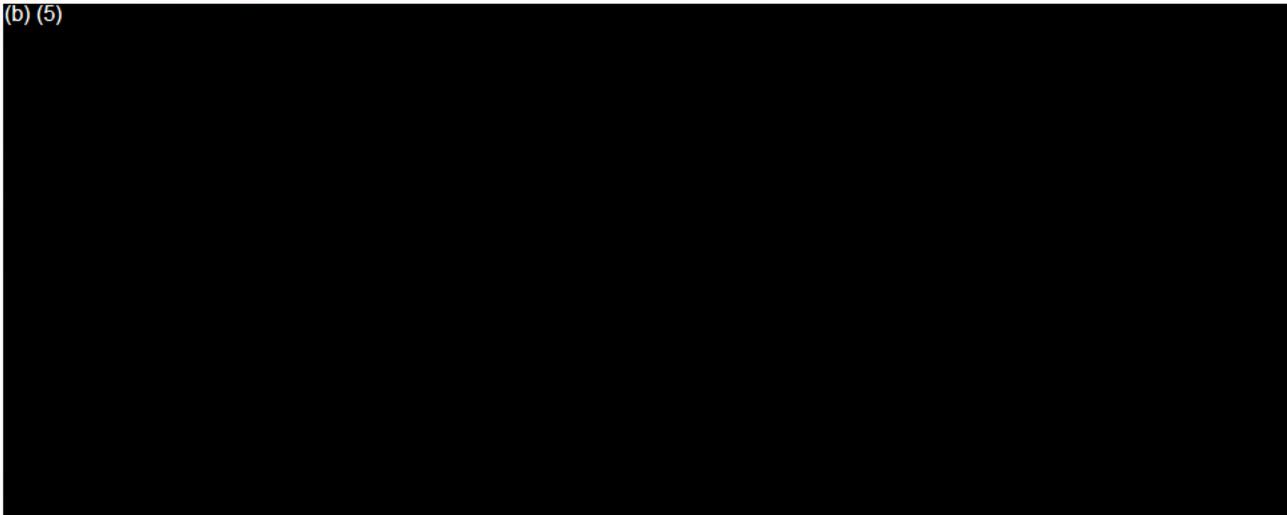
(b) (5)



2. Locations where the message on the banners did not unlawfully coerce the neutral employers.

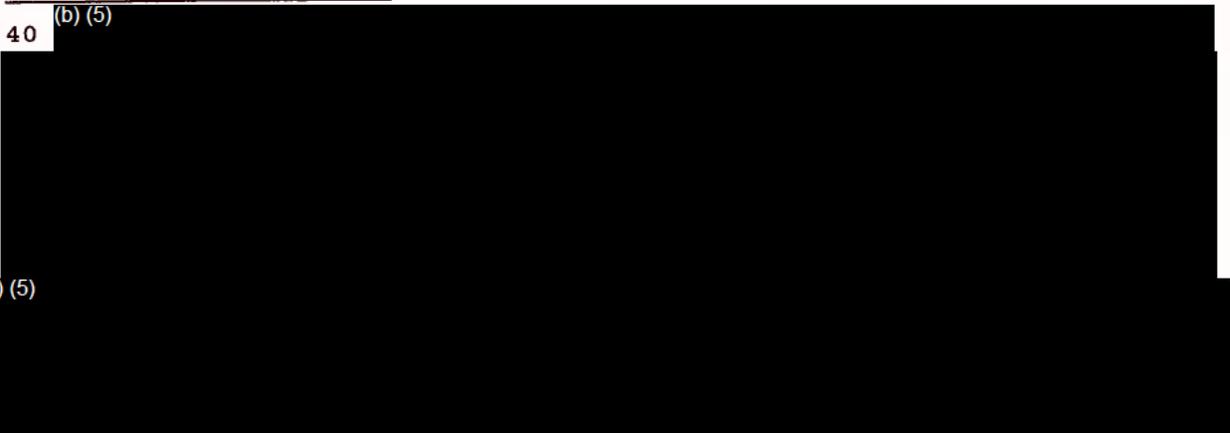
Based on the rationale set forth in Carpenters Local 1506 (Universal Technical Institute, Inc.), Case 28-CC-960, at pp. 4-6, Advice Memorandum dated May 5, 2004, we conclude that the misleading statements on the Unions' banners did not coerce the neutral employers at the following locations: (1) UTA's customer service center at ZNMI Mall; (2) the Miners Club condominiums at Canyon Ski Resort; (3) Black Diamond Condominiums; (4) Zermatt Resort (primary gate); and, (5) the private residence of Mike Malone.<sup>40</sup> Thus, due to the remote locations of the banners from the neutral sites, it could not be reasonably argued that the misleading language on the banners would cause third persons to keep away from the neutral premises. In these circumstances, the banners' message, albeit misleading, was not coercive within the meaning of Section 8(b) (4) (ii) (B).

(b) (5)



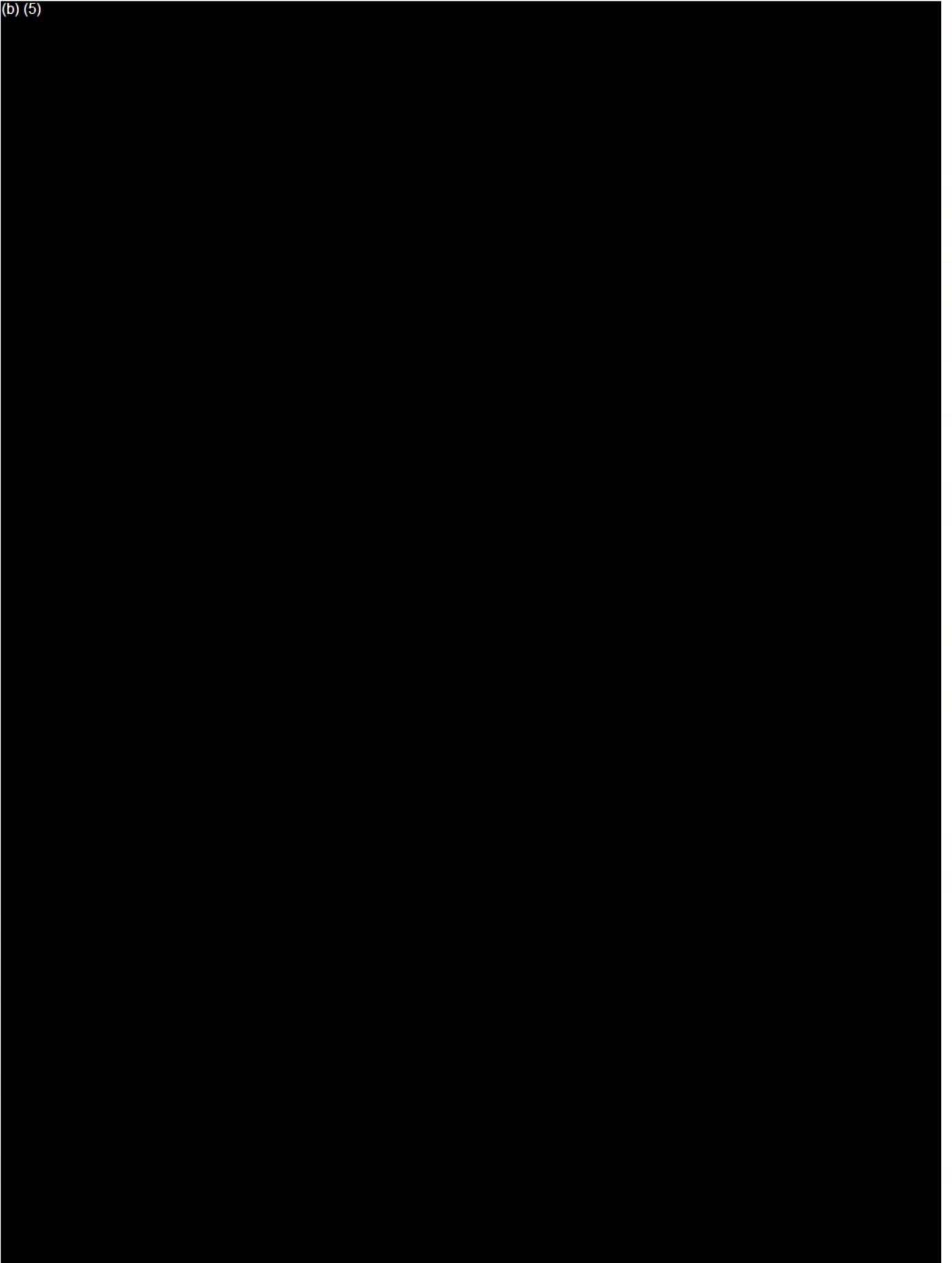
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(b) (5)

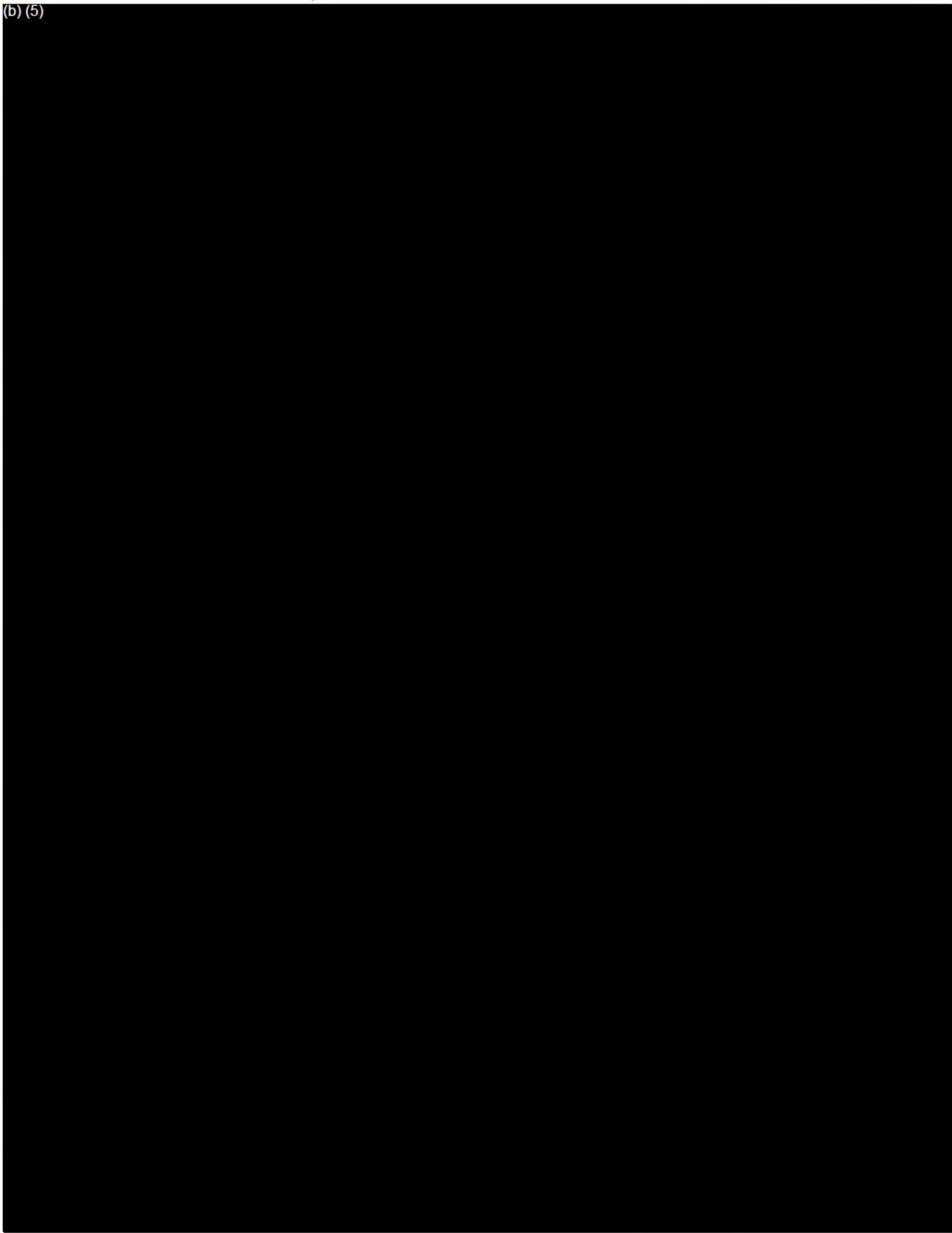


(b) (5)

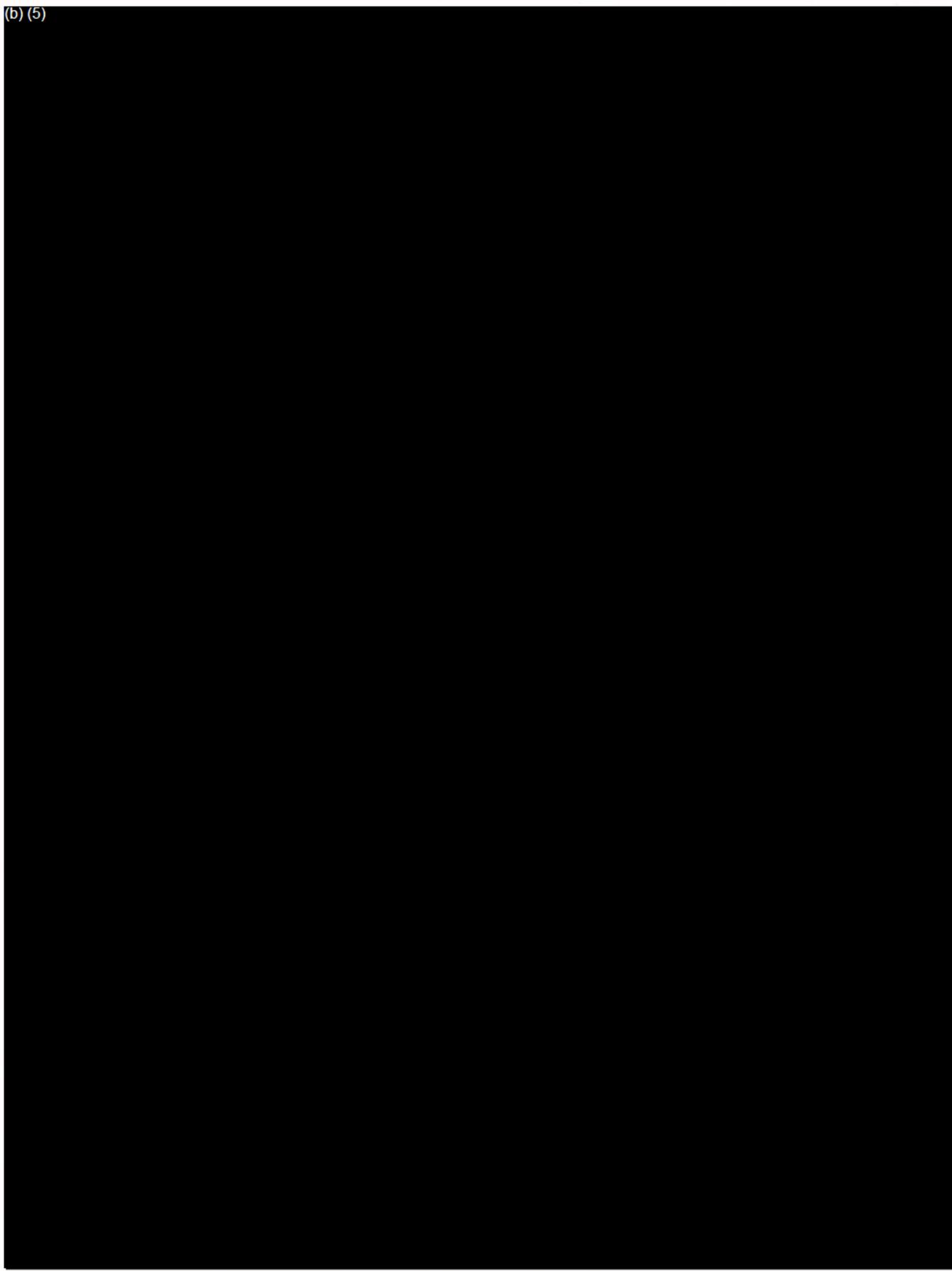
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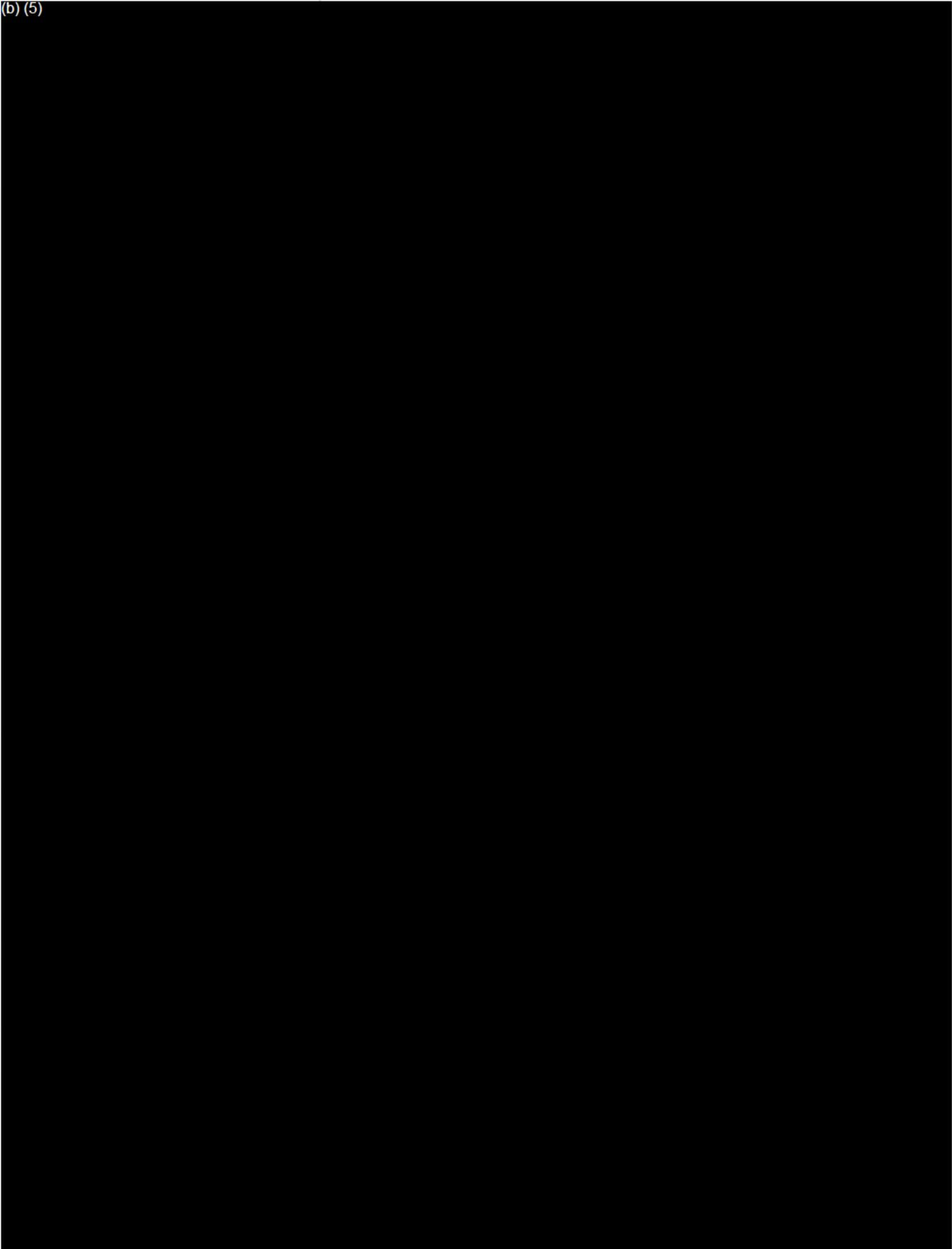
(b) (5)



(b) (5)



(b) (5)



Upon filing its Section 10(1) papers with the district court, the Region should promptly transmit copies to the ILB.<sup>56</sup>

  
B.J.K.

(b) (5)

