

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

Advice Memorandum

DATE: November 19, 2015

TO: Ronald K. Hooks, Regional Director
Region 19

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

SUBJECT: International Longshore and Warehouse Union Local 12 (Southport Lumber Co.)
Case 19-CC-156772

560-2525-5000
560-2550-3300
560-7540-2060
560-7540-8020-5050
560-7540-8040-0000
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The Region submitted this case for advice as to whether the totality of the Union's conduct while engaged in water picketing at and around the entrance to the Employer's barge slip evinced an unlawful secondary object to enmesh neutral tug boat operators in its primary labor dispute with the Employer, in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

We conclude that because the neutral tug boats contributed to the normal operations of the primary Employer with whom the Union had a dispute, the picketers' inducements that the tug boats withhold their services as they approached the entrance to the barge slip leading to the Employer's dock did not violate Section 8(b)(4)(i) and (ii)(B). We further conclude that the picketers' threats of violence and other obstructive behavior did not alter the primary character of the Union's activity and render it unlawful under this section of the Act.

FACTS

International Longshore and Warehouse Union Local 12 ("Union" or "Local 12") represents longshoremen employed by members of the Pacific Maritime Association ("PMA"), a multiemployer bargaining association, in the Coos Bay/North Bend area of the southern Oregon coast. ILWU, of which Local 12 is an affiliate, and PMA have been parties to numerous collective-bargaining agreements over many decades.

Southport Lumber Company ("Southport") and Southport Forest Products are subsidiaries of Southport Investments, which is owned by two individuals. In 2004,

as a result of its decision to invest in a new sawmill, Southport purchased from the Port of Coos Bay a 35-acre parcel of industrial property on the north spit of North Bend, Oregon. The property included the remainder of a barge slip that had been built 20 years earlier and was in a state of disrepair. In addition to building a new sawmill, Southport planned to redevelop the barge slip so that it could handle inbound barges transporting logs, and outbound barges transporting wood chips, logs, and lumber.

After purchasing the property, Southport began construction of the new sawmill, which became operational in 2005. Preliminary steps to improve the barge slip also began that year but the barge slip was not used until its redevelopment was completed in the spring of 2012. Shortly thereafter, Local 12 representatives contacted Southport and advised that they were interested in meeting to discuss having Union-represented workers staff the new barge operation. Local 12 members historically have loaded and unloaded logs from barges at a nearby dock in the Port of Coos Bay.¹ As a result of the parties' ensuing negotiations, Southport ultimately agreed that two Local 12 members, referred to as "button pushers," would be dispatched to load chip barges coming into the new barge slip.² Southport then contracted with stevedoring company Ports America, a PMA-member employer, to serve as its conduit for hiring Local 12 members.³ The parties were unable to reach agreement, however, on the use of Local 12 members for the loading and unloading of log barges. As a result, Local 12 members never performed that work for Southport.

From February 2013 until August 2014, each time a chip barge was scheduled to dock at Southport, Southport contacted Ports America and requested that Local 12 members be dispatched to its barge slip to load the barge. During this period, Local 12 members loaded more than 40 chip barges at Southport's request. On September 4, 2014, however, when the first log barge arrived at the dock, Southport elected not to use Local 12 members to unload it because no agreement had been reached with regard to loading and unloading log barges. Instead, employees of the

¹ Local 12 has been and is currently performing work for Merrill & Ring at the Ocean Terminals dock in North Bend. Merrill & Ring contracts with Jones Stevedoring to secure Local 12 longshoremen for its log loading and unloading operations. One of the owners of Southport Investments is a minority owner of the Ocean Terminals dock.

² The function of a button pusher is to operate the remote control device that directs the chip chute on a radial conveyer system as the chute directs wood chips into a barge.

³ Southport never became a PMA member or obligated under the ILWU-PMA contract beyond its relationship with Ports America.

barge company with which Southport had contracted unloaded the logs.⁴ Consequently, Local 12 began picketing Southport at the front gate of the saw mill and in small boats at the entrance to the barge slip. Southport has not used Local 12 button pushers to perform the chip-loading work since the picketing began. Local 12 asserts that it was engaged in picketing to preserve for its members the button pusher work they previously had performed for Southport, as well as the work of loading and unloading log barges that its members historically performed at the nearby dock in the Port of Coos Bay. It also asserts that it was picketing to make the public aware of Southport's substandard wages and benefits.

On May 13, 2015,⁵ a log barge towed by Brusco Tug and Barge approached Southport's barge slip at about 5:00 p.m. As it did so, Local 12 was picketing at the entrance to the barge slip in a small fiberglass boat. The three picketers in the boat held signs that read, "barge slip ILWU Local 12 jurisdiction," "Southport pays substandard wages and benefits," "ILWU Local 12 fights back," and "Shame on Southport." As the Brusco tug was in the process of disconnecting from the barge approximately 200-300 yards from the entrance to the slip, the picket boat motored out to it.⁶ After control of the barge was transferred to the "assist" tug owned by Pacific Tug, and while a Pacific Tug deckhand was working on the barge, the picket boat motored to within 10 feet of the barge and a picketer called to the deckhand, "you guys don't need to be working down here," and "can't you just tell the barge to go away?" The picketer added that "if we all just stuck together we can shut these guys down." The deckhand replied that he was just doing his job and had a family to feed. At the point, the picket boat motored away. In addition, while the picketing was ongoing, Local 12 members were intermittently making disparaging remarks over the marine radio channel such as "Southport is a scab dock" and "this is an ILWU picket line, go away tug, scab."

On May 28, another log barge towed by Brusco Tug and Barge was scheduled to arrive at the dock at approximately 8:00 p.m. As the Brusco tug approached the

⁴ Southport does not own the barges that call at its dock but instead contracts with the barge companies.

⁵ Hereinafter, all dates are in 2015.

⁶ Brusco operates oceangoing tugs. In order for oceangoing barges to access Southport's barge slip for loading and unloading, it is necessary to employ an "assist" tug in addition to the oceangoing tug towing the barge. "Assist" tugs are smaller and more maneuverable than the tugs that normally tow oceangoing barges. They are designed to help push barges into tight-quarter locations that oceangoing tugs have difficulty maneuvering in. Thus, "assist" tugs are used to bring oceangoing barges into the Southport slip and to help them exit the slip as well.

barge slip towing the barge, its captain got a radio call advising him that he was about to cross the Local 12 picket line. Thereafter, as the Pacific assist tug was in the process of hooking up to the barge, a picket boat displaying the same signs that were displayed on May 13 motored up to the starboard side of the barge. The picketers then yelled to the Brusco deckhands, who had been transferred to the bow of the barge, “come on, we are all brothers, just drop the line and stop working” and “[w]e’re all in this together, just drop the lines and don’t tie up.” When the Brusco deckhands failed to do so, the picketers continued to encourage them to drop their lines, accused them of being scabs and implored, “[y]ou guys are allowing them to tear the waterfront apart.”⁷ At some point, as the Brusco tug and the Pacific “assist” tug began maneuvering the barge into the slip, the picket boat motored to the front of the barge and one of the picketers asked the deckhand on the bow of the barge if he was going to run them over and kill them just to get the logs to the mill. After the deckhand told the picketers to get out of the way, the captain of the picket boat threatened, “[i]f you’re willing to run over us and kill us to get the wood to the mill, maybe we should just kill you too.” This was echoed by another picketer in the boat. Eventually, the picket boat motored out of the way but, as the tugs pushed the barge into the slip, the picketers continued yelling. Finally, as the tugs docked the barge, the picket boat motored away but as it did so the captain of the picket boat got on the marine radio and began broadcasting that the Brusco deckhands were scabs and that they wouldn’t work anywhere on the West coast. The picketer’s use of the radio made the docking process more dangerous because his profanity-laced remarks interfered with communications between the tug operators as they maneuvered the barge into the slip and up to the dock.

On July 12, at about 9:15 p.m., Local 12 also picketed a chip barge being towed to Southport’s dock by Dunlap Towing, an oceangoing tug. Just before arriving at the barge slip, however, the captain of the Dunlap tug was advised that he would likely encounter ILWU picketers. Consequently, he transferred control of the barge to a Pacific “assist” tug before he arrived at the barge slip because his deckhands were members of the Inland Boatman’s Union, a division of ILWU, and would not cross Local 12’s picket line. While the crew of the assist tug was preparing to have the barge handed off to them by the Dunlap tug, Local 12 picketers, this time in two boats displaying picket signs, motored out to the tugs and implored them not to cross the picket line with the barge. One of Southport’s owners recalls hearing the picketers shouting at the tugs’ crews, “[t]his is an ILWU picket line, go away tug.” Although the captain of the assist tug called the Coast Guard and reported that the picket boats were attempting to block the entrance to the slip, the Coast Guard declined to intervene. The assist tug, with the assistance of the Dunlap tug’s captain, then put

⁷ According to the deckhands on the tugs, the picketers used a lot of profanity and shouted remarks such as, “[f]uck you, you fucking scab, we’ll kick your fucking ass.”

the barge into the slip. After Southport secured the barge at the dock, both picket boats circled the entrance to the barge slip and motored off.

ACTION

We conclude that because the neutral tug boats contributed to the normal operations of Southport – the primary employer with whom the Union had a dispute – the picketers’ inducements that the tug boats withhold their services as they approached the entrance to the barge slip leading to the Southport dock did not violate Section 8(b)(4)(i) and (ii)(B). We further conclude that the picketers’ threats of violence and other obstructive behavior did not alter the primary character of the Union’s activity and render it unlawful under this section of the Act.

Section 8(b)(4)(i) and (ii)(B) makes it unlawful for a labor organization or its agents: (i) to induce or encourage employees to withhold their services from their employer or (ii) to threaten, coerce, or restrain any person engaged in commerce, where an object of the conduct is to force or require any person to cease doing business with another person.⁸ Strictly construed, these provisions would condemn most union attempts to picket an employer in furtherance of a primary strike.⁹ Therefore, Section 8(b)(4)(B) has been construed to implement “the dual Congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressures in controversies not their own.”¹⁰ “What distinguishes proscribed secondary activity from protected primary activity is the object of the picketing or, equivalently, the identity of the target of the union

⁸ *NLRB v. Retail Clerks Local 1001 (Safeco Title Ins. Co.)*, 447 U.S. 607, 611 (1980). See also *NLRB v. Operating Engineers Local 825 (Burns & Roe, Inc.)*, 400 U.S. 297, 302-303 (1971) (noting that Congress enacted Section 8(b)(4)(B) to prohibit “the secondary boycott, which was conceived of as pressure brought to bear, not upon the employer who alone is a party to a dispute, but upon some third party who has no concern in it with the objective of forcing the third party to bring pressure on the employer to agree to the union’s demands”) (citations omitted).

⁹ See *Electrical Workers IUE Local 761 v. NLRB (General Electric)*, 366 U.S. 667, 672 (1961).

¹⁰ *NLRB v. Denver Bldg. & Constr. Trades Council (Gould & Preisner)*, 341 U.S. 675, 692 (1951); *Longshoremen ILWU Local 62-B (Alaska Timber)*, 271 NLRB 1291, 1292 (1984), *enfd.* in pertinent part 781 F. 2d 919 (D.C. Cir. 1986).

activity.”¹¹ The Supreme Court has explained that the primary strike, which is protected by the proviso to Section 8(b)(4)(B), “is aimed at applying economic pressure by halting the day-to-day operations of the struck employer.”¹² It has further explained that primary picketing, which has traditionally been a major weapon to implement the goals of a strike, has characteristically been aimed at all those “approaching the situs whose mission is selling, delivering or otherwise contributing to the operations which the strike is endeavoring to halt.”¹³ In other words, “primary activity is protected even though it may seriously affect neutral third parties.”¹⁴ Thus, “[primary] picketing which induces secondary employees to respect a picket line is not the equivalent of picketing which has an object of inducing those employees to engage in concerted conduct against their employer in order to force him to refuse to deal with the struck employer.”¹⁵

Applying these principles, in *City of Juneau*,¹⁶ the Board held that the union’s picketing of a secondary, state-operated ferry in a small motorboat, in furtherance of the union’s primary dispute with the City, did not violate Section 8(b)(4)(i) or (ii)(B). There, for more than four years the City of Juneau had been employing two union members to tie-up and cast-off state-operated ferries arriving at the City dock. After the City informed the union that this work would be performed by non-union, City employees, the union picketed the dock, as well as an approaching ferry, in a small motorboat. When the ferry was one half mile from the dock and the union was 200 yards from the ferry, the union raised its picket signs in the boat and accompanied the ferry on its way to the dock. Adopting the findings of the Trial Examiner, the Board found that the union’s primary object was to regain for its members the work of tying-up and casting-off the ferries and was therefore lawful primary activity against the City.¹⁷ In doing so, the Board specifically rejected the argument that picketing

¹¹ *Anchortank, Inc. v. NLRB*, 601 F.2d 233, 237 (5th Cir. 1979), enforcing 238 NLRB 290 (1978).

¹² *United Steelworkers of America v. NLRB (Carrier)*, 376 U.S. 492, 499 (1964).

¹³ *Id.*

¹⁴ *Burns & Roe*, 400 U.S. at 303.

¹⁵ *General Electric*, 366 U.S. at 672-673 (citing *NLRB v. International Rice Milling Co.*, 341 U.S. 665, 671 (1951)).

¹⁶ *Longshoremen ILWU Local 16 (City of Juneau)*, 176 NLRB 889 (1969).

¹⁷ *Id.* at 894.

the ferry from a small boat when the ferry was in open water evidenced an unlawful object. Relying on longstanding precedent, the Board held that it was not unlawful for a union to address appeals to employees of secondary employers at points remote from a picket line so long as such appeals “invited action only at the premises of the primary employer.”¹⁸ In this case, the union picketed the neutral ferry only after it was clear that it was not proceeding to some alternate destination, but was approaching the City’s dock.¹⁹

In *Anchortank, Inc.*, the Board similarly held that the union’s picketing of neutral oceangoing tanker ships at a dock, in furtherance of its dispute with primary employer Anchortank, did not violate Section 8(b)(4)(i) and (ii)(B).²⁰ In that case, Anchortank operated a chemical storage facility on the Gulf of Mexico. Abutting its facility was a public dock that it leased to load and unload chemical cargo for oceangoing ships.²¹ In connection with an organizing dispute with Anchortank, the union picketed on the dock and on the water, appealing to the harbor pilots to refrain from handling tanker ships servicing Anchortank. On one occasion, the union picketed a tanker ship via a small boat as the ship was preparing to set sail from the dock. The union sought to interfere with the operations of the tankers only “as they approached, were berthed at, and left [the dock] for loading and unloading by Anchortank.”²² The Board held that the pilots and tankers directly contributed to Anchortank’s normal operations at the primary site, and thus inducements that they withhold their services were “designed to accomplish no more than [lawful] picketing

¹⁸ *Id.* at 895 (citing *Newspaper and Mail Delivers’ Union of New York (Interborough News)*, 90 NLRB 2135, 2135, 2149-2150 (1950)).

¹⁹ *Id.* at 895. Despite the Trial Examiner’s statement that “[t]he picketing by boat was conducted only while persons employed by the City were performing longshore tasks on the dock[.]” it is clear that his principle finding was that the union’s objective was to interfere with the primary employer’s (the City’s) operations. In any event, the City’s employees could not have performed the disputed work until the neutral ferry arrived at the dock.

²⁰ *Oil, Chemical & Atomic Workers Local 4-449 (Anchortank, Inc.)*, 238 NLRB 290, 292-293 (1978), *enfd.* 601 F.2d 233 (5th Cir. 1979).

²¹ Two other oil companies also used the dock at times when Anchortank was not performing work. The union did not attempt to involve these unrelated employers in its dispute with Anchortank. *Id.*, 238 NLRB at 292.

²² *Anchortank*, 238 NLRB at 292-293.

outside one of [Anchortank's] delivery entrances might have accomplished.”²³ In light of this objective, the union was entitled to enmesh the pilots and vessels in connection with its primary dispute with Anchortank.²⁴

In this case, we conclude that the Union's water picketing of the neutral tug boats as they approached the entrance to the barge slip leading to the Southport dock, did not violate Section 8(b)(4)(i) or (ii)(B) because the picketing was in furtherance of its primary dispute with Southport. As in *City of Juneau*, it is clear that the Union had the primary object of reclaiming for its members work that they traditionally performed. From February 2013 until August 2014, Southport used Local 12 “button pushers” to load chip barges that were berthed at its dock. Moreover, Local 12 had engaged in negotiations with Southport in an effort to have its members perform the work of loading and unloading log barges at Southport's barge slip, as they did at another nearby dock in the Port of Coos Bay. Thus, the Union picketed Southport's barge slip for the primary objectives of preserving the work of loading chip barges and having Southport use its members to load and unload log barges at the Southport dock. Further, the primary nature of the dispute is clearly evidenced by the picket signs displayed in the boats that read, *inter alia*, “barge slip ILWU Local 12 jurisdiction,” “ILWU Local 12 fights back,” and “Shame on Southport.” Accordingly, Southport, and Southport alone, was identified as the primary employer with whom the Union had a dispute.²⁵

In addition, the primary nature of the Union's water picketing is further evidenced by the fact that it occurred wholly at the approach to Southport's

²³ *Id.* at 293 (quoting *Carrier*, 376 U.S. at 499-500).

²⁴ In *Anchortank*, the Board also specifically addressed one incident where the union's picket boat placed itself between a neutral harbor tug and a neutral tanker that was departing from the dock. The Board, and reviewing court, did not find that the union sought to induce the neutral harbor tug to cease doing business with the tanker. Rather, the facts showed that the union believed it was targeting a tanker still servicing the primary employer and was not aware the tanker was departing. *Id.* at 290, n.1, enfd. 601 F.2d at 236, n.2.

²⁵ See, e.g., *City of Juneau*, 176 NLRB at 895 (noting union's water picketing was primary activity where, among other things, the picket signs only identified the primary employer); *Paperworkers Local 832 (Duro Paper Bag Mfg. Co.)*, 236 NLRB 1525, 1527 (1978) (finding union's struck-product picketing did not violate Section 8(b)(4)(ii)(B) by enmeshing the neutral grocery store where, among other things, its “picket signs adequately identif[ied] the struck product”), enf. denied on other grounds 647 F.2d 634 (6th Cir. 1980).

premises – at and around the entrance to the barge slip leading to the dock – the location where the disputed work is performed. On each of the relevant dates, the Union picketed in small boats at the entrance to the barge slip as it waited for the barges to approach. When it was clear that the barges were nearing Southport’s facility and the oceangoing tugs were disconnecting from them and the “assist” tugs were being hooked up to maneuver them into the slip, the Union motored out to the tugs and confronted their operators and crews in an effort to induce and encourage them not to tow the barges into Southport’s barge slip. During these exchanges the picketers made appeals to the deckhands such as, “come on, we are all brothers, just drop the line and stop working” and “[y]ou guys are allowing them to tear the waterfront apart.” It is clear that the object of all of these appeals was to persuade the tug boat operators and their crews to respect the Union’s primary picket line and to withhold their services from Southport. Moreover, the distance of Local 12’s picket boats from the entrance to the barge slip when making these appeals does not evince an intent to enmesh the neutral tug boats in a dispute not their own because the picketers’ appeals “invited action only at the premises of [Southport] the primary employer.”²⁶ Indeed, Local 12’s picket boats only sought to interfere with the tugboats and barges when it was clear that they were approaching Southport’s barge slip, and in no other circumstances.²⁷ Accordingly, as in *Anchortank*, because the tug boats and barges contributed to the normal operations of Southport, the primary employer with whom the Union had a dispute, the inducements that the tugs withhold their services as they approached the entrance to the barge slip were “designed to accomplish no more than [lawful] picketing outside one of [Southport’s] delivery entrances might have accomplished.”²⁸ The Union was therefore entitled to

²⁶ See *City of Juneau*, 176 NLRB at 895.

²⁷ See *Anchortank*, 238 NLRB at 292-293; *City of Juneau*, 176 NLRB at 895.

²⁸ *Anchortank*, 238 NLRB at 293. Other Board decisions finding that a union’s use of picket boats violated Section 8(b)(4)(B) are distinguishable because those cases involved the union targeting the secondary employer’s operations rather than those of the primary. See, e.g., *Longshoremen ILWU Local 4 (Tidewater Barge Lines, Inc.)*, 362 NLRB No. 40, slip op. at 1 n.2, 8-9 (2015) (union’s water picketing of spud barges that were owned and controlled by Tidewater, a neutral employer, violated Section 8(b)(4)(B) where the primary employers maintained their own grain facilities and their employees did not perform any duties related to Tidewater’s business of transporting commodities using tugs and barges); *Alaska Timber*, 271 NLRB at 1292 (union’s water picketing of neutral timber company’s docking facilities violated Section 8(b)(4)(B) where union had no relationship with neutral timber company other than representing employees of a stevedoring company that previously had been hired by the timber company’s customers to load their cargo; absent any relationship

enmesh the tug boat operators and their crews in connection with its primary dispute with Southport.²⁹

Finally, the picketers' threats of violence and other obstructive behavior did not alter the primary character of the Union's activity and render it unlawful under Section 8(b)(4)(B). In *Carrier*, the Supreme Court rejected the argument that the picketing of the neutral railroad gate leading into the primary employer's plant violated Section 8(b)(4)(B) because it was accompanied by threats and violence.³⁰ The Court explained that the distinction between primary and secondary picketing "does not rest on the peaceful or violent nature of the conduct, but upon the type of work being done by the picketed secondary employees."³¹ A union's picketing does not take on an unlawful secondary object because of the presence of threatened violence or profanity, "but only when it interferes with business intercourse not connected with the ordinary operations of the [primary] employer."³² Accordingly, because violent primary picketing is not forbidden by Section 8(b)(4)(B), the Court held that the legality of such picketing, "if 'primary,' must be determined under other sections of the statute or state law."³³ Consistent with this precedent, the Board has long held that appeals to neutrals to honor a picket line are not rendered secondary where they are accompanied by threats to coerce the neutrals' compliance.³⁴ Thus, in light of our

with the timber company, the union's picketing was not addressed to the timber company's labor relations vis-à-vis its own employees).

²⁹ To the extent the Union's May 28 appeals that urged the deckhands of the Brusco tug to "just drop the lines and don't tie up" could be construed as an attempt to influence the neutral oceangoing tug not to do business with the neutral assist tug, we conclude that they do not constitute secondary activity because both tugs were performing a service directly related to Southport's normal business operations.

³⁰ *Carrier*, 376 U.S. at 501-502 & n.8.

³¹ *Id.* at 501.

³² *Id.*

³³ *Id.* at 502. See also *International Rice Milling*, 341 U.S. at 672 ("The substitution of violent coercion in place of peaceful persuasion would not in itself bring the complained of conduct into conflict with Section 8(b)(4)").

³⁴ See, e.g., *Ironworkers Local 455 (Stokvis Multi-Ton Corp.)*, 243 NLRB 340, 340 (1979) (no Section 8(b)(4)(ii)(B) violation where picketers surrounded a neutral truck attempting to enter the primary employer's premises, shouted obscenities at the driver, and threatened "[w]e're going to rape your wife . . . I'm going to break your

finding that the Union was engaged in lawful primary activity when it picketed at and around the entrance to Southport's barge slip, we also conclude that the picketers' threats of violence, their creation of safety issues, and their interference with the radio communications of the tug boat operators did not violate Section 8(b)(4)(B).³⁵

In sum, we conclude that the Union's water picketing of the neutral tug boats as they approached the entrance to the barge slip leading to the Southport dock did not violate Section 8(b)(4)(i) or (ii)(B) because it was in furtherance of the Union's primary dispute with Southport. Thus, the Region should dismiss the charge, absent withdrawal.

/s/
B.J.K.

Puerto Rico Newspaper Guild, Local 225 (El Mundo, Inc.), 201 NLRB 423, 427-429 (1973) (no violation of Section 8(b)(4)(i) and (ii)(B) where picketers threatened to break the windshields of neutral employees, broke an employee's windshield and threatened to hurt him, and told an employee that if he entered the primary employer's premises there would be "a grave problem" for him).

³⁵ Such conduct may violate Section 8(b)(1)(A), see *Carrier*, 376 U.S. at 501, n.8., but the charge does not include such an allegation.