

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

Advice Memorandum

DATE: February 28, 2011

TO : Rochelle Kentov, Regional Director
Region 12

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

SUBJECT: Ambassador Services, Inc. 512-5062
Cases 12-CA-26752, 12-CA-26758, 512-5060-7550
12-CA-26759, 12-CA-26832 & 12-CA-26873 512-5072-3900
530-4080-5042-3300
530-4825-6700

This case was submitted for advice regarding whether (1) the Employer, a Burns¹ successor, is a "perfectly clear" successor, not privileged to set initial terms and conditions of employment without bargaining with the Union, where it announced its intent to retain all of its predecessor's employees before announcing changes in terms and conditions of employment, but did not know that the employees were represented by the Union until the Union demanded bargaining seven weeks after the Employer began operations; (2) the Employer violated the Act when a supervisor permitted an employee to solicit signatures on a decertification petition in the supervisor's presence during working time and in working areas; (3) the Employer's conduct related to the circulation of a decertification petition tainted the petition, thereby making unlawful its refusal to recognize or bargain with the Union based on that petition; and (4) the Employer unlawfully threatened that it would remove nonemployees distributing union literature from a government-owned parking lot used by its employees.

We conclude, in agreement with the Region, that the Employer did not violate Section 8(a)(5) and (1) of the Act by unilaterally setting initial terms of employment different from those maintained by its predecessor. The Employer announced to employees in a meeting that it

¹ NLRB v. Burns Int'l Security Svc., Inc., 406 U.S. 272 (1972).

intended to retain all or substantially all of them without indicating a change to their terms and conditions of employment. Therefore, the Employer ordinarily would be considered a "perfectly clear" successor not privileged to unilaterally set initial terms and conditions of employment. But, here, the Employer did not know that the predecessor's employees were represented by the Union, and the Union did not make a demand to bargain with the Employer until seven weeks after it began operations under the new employment terms. Thus, although a "perfectly clear" successor ordinarily would be required to notify the union prior to making changes in terms and conditions of employment, here the Employer did not know there was a collective bargaining representative until the Union made its bargaining demand. In these circumstances, we conclude that, regardless of its status as a "perfectly clear" successor, the Employer was not obligated to consult the Union prior to making changes to initial employment terms.¹ Therefore, the allegation that the Employer unlawfully established initial terms and conditions of employment should be dismissed, absent withdrawal.

We also agree with the Region's conclusion that the Employer violated Section 8(a)(1) of the Act by permitting an employee to solicit signatures on a decertification petition on working time in working areas in the presence of a supervisor² and by threatening to have nonemployees who

¹ Although the Board has found "perfectly clear" successorship where the union did not make a bargaining demand until shortly after the employer began operations, see, e.g., Hospital Pavia Perea, 352 NLRB 418 (2008) (union demanded bargaining five days after employer began operations with new terms and conditions of employment), we would not extend that holding to a situation where the Employer had no knowledge that there was a collective bargaining representative and had been operating under new terms for seven weeks before the Union's demand.

² Although "mere presence at or near the scene of [the] collection of decertification signatures cannot reasonably be construed as lending support for purposes of Section 8(a)(1)," Saginaw Control & Engineering, 339 NLRB 541, 566 (2003), here an employee testified that his signature was solicited, in a manner that announced the employee's

were distributing Union literature removed from a government-owned parking lot.¹ We further agree with the Region that the decertification petition was tainted by these and other unlawful Employer conduct, including interrogating an employee about his Union sentiments, soliciting signatures on the decertification petition, and telling an employee that a supervisor had assisted in the preparation of the petition. Accordingly, the Employer violated Section 8(a)(5) and (1) by refusing to recognize and bargain with the Union based on a decertification petition that was tainted by its unlawful conduct.²

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earlier refusal to sign the petition, within six feet of a supervisor. Additionally, the Employer's other unlawful activities, discussed infra., created a coercive atmosphere in which many employees felt pressure to sign the petition. Under these circumstances, the Employer's conduct went beyond the "mere presence" allowable under extant Board law.

¹ Hacienda Resort Hotel & Casino, 355 NLRB No. 170 (2010) (employer may not exclude nonemployees from engaging in Section 7 activity in areas where the employer lacks a sufficient property interest entitling it to exclude them); Bristol Farms, 311 NLRB 437, 438, fn. 6 (1993); Roger D. Hughes Drywall, 344 NLRB 413 (2005) (threats to have nonemployees engaged in Section 7 activity removed from property where employer lacks a sufficient property interest to exclude them are unlawful).

² Narricott Industries, 353 NLRB No. 82 (2009), enfd. 587 F.3d 654 (4th Cir. 2009); SFO Good-Nite Inn, LLC, 352 NLRB 268 (2008); Hearst Corp., 281 NLRB 764 (1986), affd. mem. 837 F2d 1088 (5th Cir. 1988).