

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

INTERNATIONAL BROTHERHOOD)
OF ELECTRICAL WORKERS, LOCAL)
UNION 357, AFL-CIO,)
) No. 19-70322
Petitioner/Cross-Respondent,) 19-70575
)
vs.) NLRB No. 28-CC-115255
)
NATIONAL LABOR RELATIONS)
BOARD,)
)
Respondent/Cross-Petitioner.)
)
)
_____)

ANSWERING BRIEF OF INTERVENOR

Malani L. Kotchka
HEJMANOWSKI & McCREA LLC
520 South Fourth Street, Suite 320
Las Vegas, Nevada 89101
T 702.834.8777 | F 702.834.5262

*Attorneys for Intervenor
Desert Sun Enterprises Limited
dba Convention Technical Services*

CORPORATE DISCLOSURE STATEMENT

Intervenor Desert Sun Enterprises Limited d/b/a Convention Technical Services (“CTS”) is a Nevada limited liability company. It has no parent corporation and no publicly held corporation owns any stock in it.

HEJMANOWSKI & McCREA LLC

/s/ Malani L. Kotchka

Malani L. Kotchka
520 South Fourth Street, Suite 320
Las Vegas, Nevada 89101
T 702.834.8777 | F 702.834.5262

*Attorneys for Intervenor
Desert Sun Enterprises Limited
dba Convention Technical Services*

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENTi
STATEMENT OF JURISDICTION.....1
STATEMENT OF ISSUES1
STATEMENT OF THE CASE.....1
 Facts1
SUMMARY OF THE ARGUMENT3
ARGUMENT4
 I. THE TAFT-HARTLEY ACT REVOLUTIONIZED
 LABOR RELATIONS AND PROHIBITS
 THREATS OF SECONDARY BOYCOTTS4
 II. CONDUCT DESIGNED TO COERCE IS NOT PROTECTED
 BY THE FIRST AMENDMENT.....6
 III. THE UNION’S LETTER WAS A THREAT10
 IV. THE UNION DID NOT COMPLY WITH
 MOORE DRY DOCK.....14

CONCLUSION15
CERTIFICATE OF COMPLIANCE.....v
STATEMENT OF RELATED CASESvi

TABLE OF AUTHORITIES

CASES

IBEW v. NLRB,
341 U.S. 694 (1951).....9

In the Matter of Sailors’ Union of the Pacific, AFL and Moore Dry Dock Company,
92 NLRB 547 (1950).....1,2,3,14,15,16

International Longshoremen’s Ass’n, AFL-CIO v. Allied International, Inc.,
456 U.S. 212 (1982).....7,9

Kentov v. Sheet Metal Workers’ International Association Local 15, AFL-CIO
418 F.3d 1259 (11th Cir. 2005).....8

Lightner v. Local 560, International Brotherhood of Teamsters,
2013 WL 3306433, at *7 (D. N.J. Jun. 26, 2013)13

NLRB v. Denver Bldg. & Constr. Trades Council,
341 U.S. 675 (1951).....9

NLRB v. Enterprise Ass’n of Steam, Hot Water,
429 U.S. 507 (1977).....12

NLRB v. International Brotherhood of Electrical Workers, AFL-CIO,
405 F.2d 159 (9th Cir. 1968).....11

NLRB v. Local Union No. 3, International Brotherhood of Electrical Workers,
477 F.2d 260 (2nd Cir. 1973).....14

NLRB v. Millmen & Cabinet Makers Union, Local No. 550,
367 F.2d 953 (9th Cir. 1966).....13

NLRB v. Retail Store Employees Union, Local 1001,
447 U.S. 607 (1980).....9

NLRB v. United Brotherhood of Carpenters and Jointers,
184 F.2d 60 (10th Cir. 1950).....6,7

Northshore Sheet Metal, Inc. v. Sheet Metal Workers International Association,
2018 WL 4566049 at *10 (W.D. Wash. Sept. 24, 2018).....9

Road Sprinkler Fitters Local Union No. 669 v. NLRB,
2018 WL 3040513, at *1 (D.C. Cir. Jun. 1, 2018).....10

Roywood Corp. v. Radio Broadcast Technicians Local Union No. 1264,
290 F. Supp. 1008 (S.D. Ala. 1968).....13

Soft Drink Workers Union Local 812 v. NLRB,
657 F.2d 1252 (D.C. Cir. 1980).....9

Warshawsky & Company v. NLRB,
182 F.3d 948 (D.C. Cir. 1999).....9

STATUTES AND RULES

Statutes:

29 U.S.C. §158(b)(4).....1,5,9,10,11,13,14

29 U.S.C. §158(b)(4)(ii)(B)8,17

29 U.S.C. 160(e)1

Secondary Sources:

Congressional Record, House – April 11, 1947, p. 294.....4

Congressional Record, House – June 3, 1947, p. 547.....6

Congressional Record, Senate – April 17, 1947, p. 4085

House Report No. 245 on H.R. 30204

Labor-Management Relations Act of 19473,4

Senate Report No. 105 on S. 1126.....5

STATEMENT OF JURISDICTION

The NLRB cross-petitioned for enforcement of its order against IBEW Local 357 (“the Union”). 29 U.S.C. 160(e).

STATEMENT OF ISSUES

- (1) Whether the Union’s request for a strike sanction copied only to the neutral was a threat which violated 8(b)(4)?
- (2) Whether the Union’s conduct was protected by the First Amendment?
- (3) Whether the Union’s conduct complied with *Moore Dry Dock*?

STATEMENT OF THE CASE

Facts

In its motion for summary judgment filed with the NLRB, the Union admitted that Local 501 with whom CTS had a contract was primarily a maintenance union. Local 501 was not a member of the Building Construction Trades Council. GC Exhibit 1(h), Exhibit 1-A, pp. 9-10. The Union and Teamsters Local 995 were members of the Building Construction Trades Council. GC Exhibit 1(h), Exhibit 1-A, p. 10.

Al Davis, the business manager and chief officer of Local 357, believed convention work was construction work. GC Exhibit 1(h), Exhibit 1-A, p. 5, 11. Davis testified, “Union has a right to put a strike up or do anything it wants to do.” GC Exhibit 1(h), Exhibit 1-A, p. 22. He said there was no rule that you had to put a

strike sanction forward to put a picket line up. GC Exhibit 1(h), Exhibit 1-A, p. 23. He said, “I believe that we need to get a strike sanction and decide later what we’re going to do with it” GC Exhibit 1(h), Exhibit 1-A, p. 29. Davis said he had never done any surveys and he did not know how many man hours of work CTS performed on Las Vegas tradeshows. GC Exhibit 1(h), Exhibit 1-A, pp. 31-32.

Davis knew that CTS had a union contract. GC Exhibit 1(h), Exhibit 1-A, pp. 59-60. In regard to his request for a “strike sanction,” Davis testified, “**I did not specify a place or an area. It was against area standards for CTS, and I did not specify where or when. It was a general strike sanction.**” GC Exhibit 1(h), Exhibit 1-A, pp. 61-62 (emphasis added). Davis hoped the strike sanction would be another tool in his toolbox to organize all electrical work in southern Nevada. GC Exhibit (1)(h), Exhibit 1-A, pp. 61-62. Davis equates organizing with meeting area standards. GC Exhibit 1(h), Exhibit 1-A, p. 66.

The request for the “strike sanction” was not sent to the primary employer CTS and the request did not carbon copy LVCVA Security. It carbon copied “LVCVA Board Members.” Joint Exhibit 1c. Even though Davis did not specify where or when, the Union argued to the NLRB that its strike sanction request complied with *Moore Dry Dock*. GC Exhibit 1(h), p. 9. The Union stipulated, “Respondent’s strike sanction request letter and the Trade Council’s approval of this request did not inform anyone that, if it established a picket line, it would comply

with the standards contained in *Sailors' Union of the Pacific (Moore Dry Dock)*, 92 NLRB 547 (1950).” Joint Exhibit 1b, ¶12.

SUMMARY OF THE ARGUMENT

The Taft-Hartley Act of 1947 was formulated as a bill of rights for employees and their employers. Congress said there was no justification for picketing a place of business at which no labor dispute exists. The rights of the general public were paramount.

Secondary boycott activities are not protected by the First Amendment. The Union admitted that the request for a strike sanction was designed to be another tool in “his toolbox” to organize all electrical work in southern Nevada.

The Union’s request for a strike sanction was a communicated intent to inflict harm or loss on LVCVA or LVCVA’s property. As such, it was a threat and veiled coercion of the secondary employer.

Although the Union argued to the NLRB that it had complied with *Moore Dry Dock*, it stipulated before the Board that, “Respondent’s strike sanction request letter and the Trade Council’s approval of this request did not inform anyone that, if it established a picket line, it would comply with the standards contained in *Sailors' Union of the Pacific (Moore Dry Dock)*, 92 NLRB 547 (1950).” Joint Exhibit 1b, ¶12.

ARGUMENT

I. THE TAFT-HARTLEY ACT REVOLUTIONIZED LABOR RELATIONS AND PROHIBITS THREATS OF SECONDARY BOYCOTTS

In describing the necessity for the legislation of the Labor-Management Relations Act of 1947 (otherwise known as “The Taft-Hartley Act”), House Report No. 245 on H.R. 3020 states:

The committee believes that the enactment of the bill will have the effect of bringing widespread industrial strife to an end, and that employers and employees will once again go forward together as a team united to achieve for their mutual benefit and for the welfare of the Nation the highest standard of living yet known in the history of the world.

Congressional Record, House – April 11, 1947, p. 294. The committee said, “Accordingly the bill herewith reported has been formulated as a **bill of rights** both for American working men and for their employers.” *Id.* at 295 (emphasis added). The bill “outlaws picketing of a place of business where the proprietor is not involved in a labor dispute with his employees.” *Id.* at p. 297. “There obviously is no justification for picketing a place of business at which no labor dispute exists.” *Id.* at p. 335.

The committee bill was predicated upon “our belief that a fair and equitable labor policy can best be achieved by equalizing existing laws in a manner which will encourage free collective bargaining. Government decisions should not be substituted for free agreement but both sides—management and organized labor—

must recognize that the rights of the general public are paramount.” *Congressional Record, Senate* – April 17, 1947, p. 408.

For the first time, the National Labor Relations Act was amended to grant management redress for undesirable actions on the part of labor organizations.

Senate Report No. 105 on S. 1126 states:

It gives employers and individual employees rights to invoke the processes of the Board against unions which engaged in certain enumerated unfair labor practices, including secondary boycotts and jurisdictional strikes which may result in the Board itself applying for restraining orders in certain cases.

Id. at p. 409.

The Senate Report added:

After a careful consideration of the evidence and proposals before us, the committee has concluded that five specific practices by labor organizations and their agents, affecting commerce, should be defined as unfair labor practices. Because of the nature of certain of these practices, especially jurisdictional disputes, and secondary boycotts and strikes for specifically defined objectives, the committee is convinced that additional procedures must be made available under the National Labor Relations Act in order adequately to protect the public welfare which is inextricably involved in labor disputes.

Id. at p. 414.

In discussing proposed Section 8(b)(4), the Senate Report states that paragraph B is intended to reach strikes and boycotts conducted to force another employer to recognize or bargain with a labor organization that has not been certified

as the exclusive representative. *Id.* at 428. Strikes and boycotts having as their purpose forcing any employer to disregard his obligation to recognize and bargain with a certified union and in lieu thereof to bargain with or recognize another union are made unfair labor practices by paragraph (C). *Id.* at 428. The Senate Report states that paragraph (D) deals with strikes or boycotts having as their purpose forcing any employer to assign work tasks to members of one union when he has assigned them to members of another union. *Id.* at p. 429. Here, the Union asked for a strike sanction which had as its purpose to force the assignment of work to IBEW 357 when the work had been assigned to members of Local 501.

It was made an unfair labor practice for a union to engage in a strike against employer A for the purpose of forcing that employer to cease doing business with employer B. *Congressional Record, House* – June 3, 1947, p. 547. Picketing an employer’s premises where the employer was not involved in a labor dispute with his employees was described as unlawful concerted activity. *Id.* at p. 563. This is what the Union threatened to do when it sent the request for a strike sanction to LVCVA board members.

II. CONDUCT DESIGNED TO COERCE IS NOT PROTECTED BY THE FIRST AMENDMENT

Courts have long held that: (1) the establishment of a secondary boycott as an unfair labor practice does not contravene the First Amendment; and (2) secondary boycott activities are not protected by the First Amendment. *NLRB v. United*

Brotherhood of Carpenters and Joiners, 184 F.2d 60, 62 (10th Cir. 1950); *International Longshoremen's Association, AFL-CIO v. Allied International, Inc.*, 456 U.S. 212, 225-27 (1982) (“illegal boycotts take many forms”). Here, Al Davis admitted his request for a strike sanction was not designed to communicate. It was designed to be another tool in his toolbox to organize all electrical work in southern Nevada. As the NLRB said in this case:

A union's broadly worded and unqualified notice, sent to a neutral employer, that the union intends to picket a worksite the neutral shares with the primary employer is inherently coercive. Without any details, such a notice is ambiguous about whether the threatened picketing will lawfully target only the primary employer or will unlawfully enmesh the neutral employer. The neutral would understandably question why the union is sending a strike notice to an employer with no role in the dispute, and this question would reasonably lead it to at least suspect, if not believe, that its business would be targeted by the picketing and that it would be prudent to cease doing business with the primary employer to avoid losses. It would be unrealistic to expect neutral employers, many with little experience in arcane common-situs picketing law, to assume the union would avoid enmeshing them in the picketing. Thus, an unqualified picketing threat communicated to a neutral at a common situs is an ambiguous threat, and such an ambiguous threat enables a union to achieve the proscribed objective of coercing the neutral employer to cease doing business with the primary employer—the very object a union seeks to achieve when it makes a blatantly unlawful threat to picket or unlawfully pickets a neutral. Accordingly, as our dissenting colleague refuses to acknowledge, it is reasonable to conclude that when a union sends to a neutral an unqualified and therefore ambiguous notice of its intent to picket a common situs, it does so with an object to coerce the

neutral to cease doing business with the primary employer. A union may still lawfully inform a neutral of its intent to picket as long as it qualifies the notice by clearly indicating that its picketing will comply with legal limitations on such picketing.

EOR 18.

In *Kentov v. Sheet Metal Workers' International Association Local 15, AFL-CIO*, 418 F.3d 1259, 1261 (11th Cir. 2005), the union had a labor dispute with Massey Metals, Inc. and Workers Temporary Staffing in connection with their use of non-union labor for an ongoing construction project at a hospital. For about two hours the union staged a mock funeral procession in front of the hospital. The hospital filed an unfair labor practice charge with the NLRB. The court found that a violation of Section 8(b)(4)(ii)(B) consists of two elements:

(1) a union engages in conduct that threatens, coerces or restrains an employer or other person engaged in commerce; and (2) an object of the union's conduct is to force or require an employer or person not to handle the products of, or to do business with, another person.

Id. at 1263. The union's principal defense was that the First Amendment protected its activities. The Eleventh Circuit found that the union's funeral procession was a functional equivalent of picketing and, therefore, there were no First Amendment concerns. *Id.* at 1265.

Here, asking for a strike sanction from a construction council against a convention industry employer and sending it to LVCVA board members who had

control of the common situs was inherently threatening and coercive. Davis said the Union has a right to strike or do anything it wants to do. He did not need a strike sanction. He asked for it only as an organizational tool. There are no First Amendment concerns in this case.

In *Northshore Sheet Metal, Inc. v. Sheet Metal Workers International Association*, 2018 WL 4566049 at *10 (W.D. Wash. Sept. 24, 2018), the court declined to hold that 8(b)(4) constituted an unconstitutional restriction on Local 66's free speech in light of controlling precedent. Here, controlling precedent negates any First Amendment concerns. *International Longshoremen's Association v. Allied International, Inc.*, 456 U.S. 212, 226 (1982) (conduct designed not to communicate but to coerce not protected by the First Amendment); *NLRB v. Retail Store Employees Union, Local 1001*, 447 U.S. 607, 615 (1980) (secondary pressure on a neutral is not protected by the First Amendment); *NLRB v. Denver Bldg. & Constr. Trades Council*, 341 U.S. 675, 689-91 (1951) (object to force general contractor to terminate subcontractor violates 8(b)(4) and is not protected by the First Amendment); *IBEW v. NLRB*, 341 U.S. 694, 704-06 (1951) (no First Amendment protection for speech or picketing in furtherance of 8(b)(4) unfair labor practices); *Warshawsky & Company v. NLRB*, 182 F.3d 948, 951-52 (D.C. Cir. 1999) (First Amendment not implicated in area standards handbilling of neutral employers); *Soft Drink Workers Union Local 812 v. NLRB*, 657 F.2d 1252, 1268-69 (D.C. Cir. 1980)

(NLRB's cease and desist order in secondary boycott not a violation of First Amendment rights). The Union's request for a strike sanction sent only to a neutral does not implicate any First Amendment concerns.

In *Road Sprinkler Fitters Local Union No. 669 v. NLRB*, 2018 WL 3040513, at *1 (D.C. Cir. Jun. 1, 2018), the D.C. Circuit said it owed the NLRB's judgment considerable deference. The union argued that both the grievance and lawsuit it filed were entitled to First Amendment protection. *Id.* at *4. The court said they were not and both violated 8(b)(4) because the union sought to influence neutral parties. *Id.* at 3-4. The Union's request for a strike sanction sent to the neutral LVCVA has no First Amendment protection.

III. THE UNION'S LETTER WAS A THREAT

The Union's letter meets the definition of a threat as defined on page 7 of the Union's brief. It was a communicated intent to inflict harm or loss on another (the LVCVA) or another's (LVCVA's) property. How else would a request for a strike sanction against CTS be understood? All the employers at the LVCVA had a show to put on. Putting on shows (conventions) is the lifeblood of LVCVA's business. The request for a strike sanction sent to the LVCVA was inherently coercive. Why would the Union send the letter to the neutral unless it was telling the neutral the Union was going to involve it in its dispute with CTS? How else would the

secondary interpret the letter as anything other than a threatened strike at the convention center?

In *NLRB v. International Brotherhood of Electrical Workers AFL-CIO*, 405 F.2d 159, 161 (9th Cir. 1968), the union complained to the primary contractor about a non-IBEW subcontractor Rose who was dealing with a rival union and was paying sub-minimum wages. *Id.* at 161. The union threatened to terminate its bargaining agent unless the prime contractor took Rose off the job.¹ The Ninth Circuit found that the union's **verbal warning** in the circumstances of that dispute constituted a threat prohibited by Section 8(b)(4). *Id.* at 161. The court pointed out that prime contractors whose freedom to engage subcontractors was curtailed suffered economically in much the same manner of subcontractors who are prevented from securing work. *Id.* at 162.² Here, the Union sent LVCVA a similar warning by sending it the Union's request to the Building and Trades Council for a strike sanction. The threat violated section 8(b)(4). The Act **does** prohibit a request sent to a secondary employer for a "strike sanction" of a primary employer at a common

¹ The Ninth Circuit found the termination would have set off a chain reaction. 405 F.2d at 162.

² The union argued they threatened to terminate the contracts because the general did not make the subcontractor pay Davis-Bacon wages. The Ninth Circuit concluded the NLRB had shown that "an object, if not the sole object of the threat, was for a purpose proscribed by 8(b)(4)." 405 F.2d at 164 n.1.

situs. The Union did **not** send its request for a strike sanction to CTS, the primary employer.

In *NLRB v. Enterprise Ass'n of Steam, Hot Water*, 429 U.S. 507, 523-24 (1977), the union exerted pressure on the subcontractor to influence the general contractor who had no power to award the work to the union. The Supreme Court said, “In the latter circumstances the cease-doing-business consequences are merely incidental to primary activity, but not in the former where the union, **if it is to obtain work**, must intend to exert pressure on one or more other employers.” *Id.* at 526 (emphasis added). The Union here must have intended to exert pressure over one or more other employers to obtain the work which the 501 technicians were scheduled to do. The Court in *Enterprise Ass'n* held:

The Board's reading and application of the statute involved in this case, however, are long established, have remained undisturbed by Congress, and fall well within that category of situations in which the courts should defer to the agency's understanding of the statute which it administers. See *Bayside Enterprises v. NLRB*, 429 U.S. 298, 303-304, 97 S. Ct. 576, 580-581, 50 L.Ed.2d 494 (1977); *NLRB v. Boeing Co.*, 412 U.S. 67, 75, 93 S.Ct. 1952, 1957, 36 L.Ed.2d 752 (1973); *NLRB v. United Insurance Co. of America*, 390 U.S. 254, 260, 88 S.Ct. 988, 991, 19 L.Ed.2d 1083 (1968); *Udall v. Tallman*, 380 U.S. 1, 16, 85 S.Ct. 792, 801, 13 L.Ed.2d 616 (1965); *Sand Door*, 356 U.S., at 107, 78 S.Ct., at 1020.

Id. at 527.

The request for a strike sanction letter did **not** say that the Union “may picket CTS.” It requested a “strike sanction.” It was not addressed or copied to the primary employer. It was copied only to “LVCVA Board Members.” It was directed **only** to the secondary and said, “This is for any and all jobs. . . .” Joint Exhibit 1c. The Ninth Circuit has held that “veiled coercion” of the secondary employer is not protected by adding the words “consumer directed.” *NLRB v. Millmen & Cabinet Makers Union, Local No. 550*, 367 F.2d 953, 956 (9th Cir. 1966).

A Winter 2013 Update Letter sent to neutrals by a union has been held to be secondary activity. *Lightner v. Local 560, International Brotherhood of Teamsters*, 2013 WL 3306433, at *7 (D. N.J. Jun. 26, 2013). The letter was not aimed at the primary and it was sent to other contractors. *Id.* at *8. The recipients of the letter had no direct control over how the primary paid its workers. *Id.* Here, LVCVA had no direct control over how CTS paid its electrical technicians.

In *Roywood Corp. v. Radio Broadcast Technicians Local Union No. 1264*, 290 F. Supp. 1008, 1018-19 (S.D. Ala. 1968), the court held, “Economic retaliation in the form of loss of business is the most potent form of restraint and coercion, other than actual and threatened violence.” Sending post cards to television stations’ advertisers clearly constituted threats, restraints and coercion within the meaning of 8(b)(4). *Id.* at 1019.

In *NLRB v. Local Union No. 3, International Brotherhood of Electrical Workers*, 477 F.2d 260, 264 (2d Cir. 1973), the union business manager's remarks at a union meeting constituted the inducement or encouragement prohibited by Section 8(b)(4). The court found that the inducement of a work stoppage was the material consequence of his statements. *Id.* at 265. 8(b)(4) reaches every form of influence and persuasion. *Id.* at 266.

Here, the request for the strike sanction was sent only after Davis was informed that CTS was performing work on the ABC Kids Show at the LVCVA. Joint Exhibit 1b, ¶9. The Union did not target the primary employer CTS as exclusively as possible. It targeted the LVCVA to create exactly the panic which ensued. The Union believed it had the right to put a strike up or do anything it wanted to do. Davis said he “was contemplating what my next step was.” GC Exhibit 1(h), Exhibit 1-A, p. 30. The request for a strike sanction was a threat prohibited by 8(b)(4).

IV. THE UNION DID NOT COMPLY WITH MOORE DRY DOCK

The NLRB's Moore Dry Dock decision is a restriction on when and where picketing at a common situs may occur. The Union has admitted that its request for a strike sanction sent to LVCVA Board Members did not say where or when the strike or picketing would occur. In *In the Matter of Sailors' Union of the Pacific, AFL and Moore Dry Dock Company*, 92 NLRB 547 (1950), the NLRB said it

believed that picketing of the premises of a secondary employer was primary if it met the following conditions:

- (a) The picketing is strictly limited to times when the *situs* of dispute is located on the secondary employer's premises;
- (b) at the time of the picketing the primary employer is engaged in its normal business at the *situs*;
- (c) the picketing is limited to places reasonably close to the location of the *situs*; and
- (d) the picketing discloses clearly that the dispute is with the primary employer.

Id. at 549. In *Moore Dry Dock*, the situs was ambulatory. It was not here. The premises or situs was the LVCVA.

The NLRB has enforced *Moore Dry Dock* for 69 years. The Union admits that there is nothing in the request for strike sanction which it sent to the neutral or secondary employer which describes the where or the when of striking or picketing the common situs. The Union did **not** comply with *Moore Dry Dock*.

CONCLUSION

The NLRB has placed the burden of expressing its real intent on the Union who chooses to communicate with the secondary employer. Like the rules of statutory construction, the language of the Union's letter is construed against the drafter of the language.

The Board's discretion must be exercised with consistency in order to further the purposes of the Act. The Board has consistently enforced *Moore Dry Dock* since that decision was made in 1950.

The Union's statement should be reasonably understood to be a threat of unlawful picketing (a strike) at a common situs. The LVCVA was the common situs. The letter did not say it may engage in area standards picketing of CTS. It was a request for a strike sanction which was sent to only the secondary employer, not the primary employer.

The Union never said it would lawfully picket. The Union believed it had a right to put a strike up or do anything it wants to do. The Union did not specify a place or an area. The Union did not specify where or when. The Union said it was a general strike sanction. The Board's decision that taken together, the locale of the threatened picketing, the target of the picketing threat and the threat's unqualified and therefore ambiguous nature support a finding that an object of the threat was to

///

///

///

unlawfully coerce the neutral within the meaning of Section 8(b)(4)(ii)(B) (EOR0018) should be enforced.

HEJMANOWSKI & McCREA LLC

/s/ Malani L. Kotchka

Malani L. Kotchka

520 South Fourth Street, Suite 320

Las Vegas, Nevada 89101

T 702.834.8777 | F 702.834.5262

Attorneys for Intervenor

Desert Sun Enterprises Limited

dba Convention Technical Services

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the length limits permitted by Ninth Circuit Rule 28.1-1. The brief is 3,907 words, excluding the portions exempted by Fed.R.App.P. 32(f), if applicable. The brief's type size and type face comply with Fed.R.App.P. 32(a)(5) and (6).

Dated: September 25, 2019.

HEJMANOWSKI & McCREA LLC

/s/ Malani L. Kotchka

Malani L. Kotchka
520 South Fourth Street, Suite 320
Las Vegas, Nevada 89101
T 702.834.8777 | F 702.834.5262

*Attorneys for Intervenor
Desert Sun Enterprises Limited
dba Convention Technical Services*

STATEMENT OF RELATED CASES

This case is related to Case No. 18-16244 filed by CTS against the Union. In Docket Entry 32 of that case, the Ninth Circuit ordered that that case and this case 19-70322 will be calendared before the same merits panel.

HEJMANOWSKI & McCREA LLC

/s/ Malani L. Kotchka

Malani L. Kotchka
520 South Fourth Street, Suite 320
Las Vegas, Nevada 89101
T 702.834.8777 | F 702.834.5262

*Attorneys for Intervenor
Desert Sun Enterprises Limited
dba Convention Technical Services*

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Nathan R. Ring
The Urban Law Firm
4270 S. Decatur Blvd., Suite A-9
Las Vegas, NV 89103
Telephone: 702-968-8087
E-mail: nring@theurbanlawfirm.com

*Attorneys for Petitioner/Cross-
Respondent*

Kira Dellinger Vol, Supervisory Attorney
Eric Weitz, Attorney
David Habenstreit, Assistant Gen. Counsel
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570
Telephone: 202-273-0656

Attorneys for Respondent/Cross-Petitioner

/s/ Rosalie Garcia
An Employee of Hejmanowski & McCrea LLC