

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

Advice Memorandum

S.A.M.

DATE: August 5, 2003

TO : Willie L. Clark, Jr., Regional Director
Patricia Timmins, Regional Attorney
Howard D. Neidig, Jr., Assistant to the Regional Director
Region 11

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

SUBJECT: UPS, Inc., and
Teamsters United Parcel Service National
Negotiating Committee and 518-4020-0100
Teamsters Local 391 518-4050-3300
Cases 11-CA-19825 and 11-CB-3309 518-4070

The Region submitted these cases for advice as to whether the Employer violated Section 8(a)(1) and (2) by agreeing to and maintaining a contract provision that requires the Employer to recommend to its new employees hired in right-to-work states that they join and remain members of the Union for the life of the parties' collective-bargaining agreement. If the contract provision is facially unlawful and, therefore, constitutes unlawful assistance by the Employer, the Region sought advice as to whether the Union violated Section 8(b)(1)(A) by accepting such assistance.

We conclude that the contract provision is not facially unlawful and there is insufficient evidence to establish that the Employer's compliance with the provision has been unlawful. The Region should dismiss the charges, absent withdrawal.

FACTS

United Parcel Service, Inc., ("the Employer") and Teamsters United Parcel Service National Negotiating Committee ("the Union") are parties to a collective bargaining agreement, effective by its terms from August 1, 2002, through July 31, 2008. The contract, known as the National Master United Parcel Service Agreement ("Master Agreement"), covers certain of the Employer's Union-represented employees throughout the United States.

Article 3, Section 2(a) of the Master Agreement contains a union security clause. Article 3, Section 2(b) of the contract contains the following provision:

No provision of [the union-security clause] shall apply to the extent it may be prohibited by state

law. In those states where [the union security clause] may not be validly applied, the Employer agrees to recommend to all new employees that they become members of the Union and maintain such membership during the life of this Agreement.¹

To comply with Section 3.2(b), the Employer distributes the following statement to its various facilities within right-to-work states:

The job you have been hired into is one that is covered by a collective bargaining agreement between UPS and the Teamster Union. UPS recommends that all new employees become members of the Union and maintain that membership while employed. Among other things, Union membership gives you the right to vote on issues that will impact your terms and conditions of employment. UPS has had a bargaining relationship with the Teamsters for over 80 years and it has long been a policy of the Company that you can be both a loyal and effective employee and a good union member.

According to the Employer, the statement is to be read by a supervisor at new employee orientation meetings and there is no evidence that anything embellishes or contradicts this statement. There also is no evidence regarding the circumstances under which the statement is made. For example, there is no evidence regarding the supervisors' authority (e.g., whether the statement is read by a low-level human resources person or a senior manager), or precisely when the statement is made to employees relative to the Union's presentation.

Under the Master Agreement, Union business agents or stewards may attend new employee orientation meetings conducted in "right to work" states. To that end,

the Employer agrees to provide the Local Union at least one week's notice of the date, time, and location of such orientation. The sole purpose of the business agents and/or steward attendance shall be to encourage new employees to join the Union. The steward shall remain on the clock for at least 15 minutes for that purpose if the

¹ The Employer proposed this language in response to a Union proposal that would allow Union representatives to spend 30 minutes with new employees, outside the presence of supervisors.

orientation is held during his or her normal work hours at his normal place of work.

Union agents and stewards have the right to attend orientation meetings in right-to-work states, although there is no evidence that Union agents have any right to attend all new employee meetings, regardless of the state in which they are conducted.² Assuming Union agents have attended orientation meetings, there is no evidence as to whether supervisors remained in the meeting; where the supervisors were relative to the Union agent(s) (e.g., at a Union agent's side or at the back of the room); or whether any supervisors commented on the Union's presentations. There is also no evidence as to how many new employee orientation meetings the Employer has conducted since the effective date of the current contract.

In addition to attending orientation meetings, new employees are given copies of the Employer's policy book, which includes the following provision addressing the Employer's relationship with the Union:

We Develop and Maintain Professional Relations With Labor Union Representatives. Many of our employees are represented by labor unions. We know that our people can be effective and loyal employees and, at the same time, be good union members. We consider the point of view of unions, along with the interest of our customers, our people, and our company as a whole.

We negotiate fairly with labor unions for reasonable wage rates and working conditions. These negotiations should give due consideration on our unique operations and enable us to maintain the operating flexibility and efficiency needed to remain competitive.

We respect and fulfill the terms of our labor agreements. We also expect union leaders and members to cooperate in fulfilling the terms of such agreements. (Emphasis in original.)

There is no evidence that the Employer reads or refers to this provision when addressing employees at orientation meetings; whether employees are required to read the Employer's policy book during orientation meetings; or

² The Charging Party is a 17-year employee and has not attended an orientation meeting under the conditions provided for in the Master Agreement.

whether the Union refers to the language of this provision when soliciting employees at orientation meetings to join the Union.

ACTION

We conclude that the contract provision is not facially invalid since it does not require the Employer to induce or coerce employees to join the Union, but only to "recommend" that employees do so. Assuming that the Employer has recommended to new employees that they join the Union as described above, there is no evidence that the Employer couched any such recommendations with promises of benefits, or threats of reprisal. Moreover, the evidence regarding the Employer's compliance with the contract suggests that the Employer has lawfully expressed its opinion regarding the benefits of Union membership, and its satisfaction with its long collective bargaining relationship with the Union in general. The Region therefore should dismiss the charges against both the Employer and Union, absent withdrawal.

Section 8(a)(2) prohibits an employer from providing support to a labor organization; however, a certain amount of employer cooperation with a union's efforts to organize will not constitute unlawful assistance.³ Lawful cooperation has been described as activity that does not inhibit self-organization or free collective bargaining.⁴ Because the "quantum of employer cooperation that surpasses the line and becomes unlawful support is not susceptible to precise measurement[,] . . . [e]ach case must stand or fall on its own particular facts."⁵

An employer does not violate Section 8(a)(2) by merely granting a union access to employees, or making benign statements to its employees about unionization. For example, an employer may lawfully allow a union to address employees on company time and property without running afoul of Section 8(a)(2).⁶ And, as long as its comments regarding

³ New England Motor Freight, 297 NLRB 848, 851 (1990), quoting Longchamps, Inc., 205 NLRB 1025, 1031 (1973); Anaheim Town & Country Inn, 282 NLRB 224, 229 (1986) (same). See also, Mar-Jam Supply Co., 337 NLRB No. 46, slip op. at 16 (2001).

⁴ Mar-Jam, 337 NLRB No. 46, slip op. at 16.

⁵ Longchamps, 205 NLRB at 1031.

⁶ Tecumseh Corrugated Box Co., 333 NLRB 1, 6 (2001) (citing Jolog Sportswear, Inc., 128 NLRB 886, 888-889 (1960)), affd.

unionization are unaccompanied by threats of reprisal, promise of benefit, or other coercion, employers are free under Section 8(c) of the Act to express their views on whether employees should choose a labor organization to represent them, or to express their preference for one union over another or whether employees should choose any labor organization to represent them.⁷ However, in granting unions access to employees, or communicating with employees about unionization, an employer may not create the impression that union membership is a condition of employment.⁸

sub nom. Kimbrell v. NLRB, 290 F.2d 799 (4th Cir. 1961); Longchamps, Inc., 205 NLRB at 1025; Coamo Knitting Mills, 150 NLRB 579 (1964).

⁷ Tecumseh Box, above, 333 NLRB at 7, citing Bernhardt Bros. Tugboat Service, 142 NLRB 851, 862 (1963) and Electromation, Inc., 309 NLRB 990, 1013 (1992). See, e.g., Coamo Knitting Mills, Inc., 150 NLRB 579, 582 (1964) (Board held that employer lawfully read speeches to employees that "praised the [union] and its past relationship with [the employer's] the parent corporation," and urged employees to join the union); Haynes Motor Lines, 273 NLRB 1851, 1851 (1985) (employer representative lawfully told employees that he was a company man and did not want the union, but that "it would be fine if the employees wanted [it]," where statements did not involve explicit or implicit threats of reprisal or force). Cf. Vincent et Vincent of Allentown Mall, Inc., 259 NLRB 1025, 1026 (1981) (employer's statements to employees that he did not want a union and that, in his opinion, a union brought trouble was not lawful under Section 8(c) but constituted conveyance of impression that management considered continued employment incompatible with union activity); Baron Honda-Pontiac, 316 NLRB 611, 614 (1995) (employer unlawfully directed employees to sign authorization cards for, and urged employees to join a rival union, and unlawfully told employees to refrain from joining or supporting the incumbent union); Child Day Care Center, 252 NLRB 1177, 1177 (1980) (employer unlawfully established union at its facility, told employees that there would be a union at its facility and strongly urged employees to join in violation of Section 8(a)(2)).

⁸ Fountainview Care Center, 317 NLRB 1286, 1289 (1995) (employer violated Section 8(a)(2) by issuing union authorization cards during the hiring process, giving applicants the impression that union membership was a condition of employment). See also, Duane Reade, Inc., 338 NLRB No. 140, slip op. at 1-2 (2003) (employer violated Section 8(a)(2) by inviting union into the employer's newly acquired stores to meet with employees, directing employees

Section 3.2(b) of the Master Agreement, freely proposed by the Employer, is not facially invalid. The Employer is only required to take lawful action: allow Union representatives access to employees, and express its opinion regarding Union membership. There is nothing in the language of the agreement that requires the Employer to unlawfully deny another union access to employees under similar circumstances, nor is the Employer required to unlawfully induce or coerce employees to join the Union. On the contrary, the broad wording of the provision allows the Employer great latitude to meet its contractual obligation without impinging upon its employees' Section 7 rights.

Further, there is no evidence to suggest that the Employer has acted unlawfully here. The scant evidence regarding the Employer's compliance with the relevant portions of the Master Agreement is insufficient to establish a violation of Section 8(a)(2). The Employer provided a copy of a statement it has sent to appropriate facilities, to be read by a supervisor at orientation meetings. The statement, presumably read to new employees without comment or embellishment, does not contain any promise of benefit or threat of reprisal to employees. The only benefit mentioned, members' rights to have a say in matters that directly impact their terms and conditions of employment, is neither bestowed upon employees nor controlled by the Employer. Thus, the Employer's statements to new employees are mere expressions of its institutional opinion regarding Union membership, which are protected under Section 8(c).

In addition to the lack of evidence regarding what Employer representatives may have said to new employees, there is also a dearth of evidence regarding what Employer representatives may have done at orientation meetings. For example, assuming Union representatives attended orientation meetings, there is no evidence that Employer representatives were present when Union agents addressed employees, or that they witnessed or assisted Union agents when soliciting membership. This lack of evidence precludes any conclusion that the Employer has conveyed an explicit or implied promises of benefits or threats of reprisal, or suggested that Union membership was a condition of employment.

The only other evidence related to Section 3.2(b), which was submitted by each of the charged parties, is an

to meet with union representatives, telling employees they had to sign authorization cards, and handing out applications as employees met with union representatives).

excerpt from the Employer's policy book regarding the parties' collective bargaining relationship. This excerpt from the Policy Book addresses the Employer's satisfaction with that relationship, and its policy that Union membership and employee loyalty are not mutually exclusive. The policy also summarizes the Employer's position that collective bargaining requires all parties in the relationship to fulfill their obligations. The policy does not contain any Employer recommendation that employees join and remain members of the Union, nor does it imply that joining or refraining from joining the Union will affect their employment. Thus, the language of the policy tends to undermine any suggestion that the Employer, by recommending at orientation meetings that new employees join the Union, unlawfully assisted the Union by inducing or coercing employees to join.

Our decision here is based on the language of the Master Agreement, and the specific facts presented here regarding the Employer's implementation of section 3.2(b).
[FOIA Exemption 5

.]

In sum, the Employer has not provided the Union with any unlawful assistance or support; thus, the Union has not received any unlawful assistance from the Employer. Accordingly, the Region should dismiss the charges, absent withdrawal.

B.J.K.

CC: Region 10