

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

Advice Memorandum

DATE: June 11, 2003

TO : Charles Donner, Acting Regional Director
Rhonda Aliouat, Regional Attorney
Region 3

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

SUBJECT: International Union of Operating
Engineers, Local 17 578-6046
(Zoladz Construction Company, Inc.) 578-8075-2050
Case 3-CP-398

This case was submitted for advice as to whether the Union violated Section 8(b)(7)(C) of the Act by picketing for an excess of 30 days with an object of obtaining a signed neutrality/card check agreement from the Employer.

We conclude that the Union's picketing was unlawful because it encompassed both an organizational and recognitional object. These objectives are apparent from the terms of the neutrality agreement that clearly has, as its ultimate goal, the object of organizing the employees, obtaining a card majority, and requiring the Employer to recognize the Union upon a showing of majority status. Given that the Union has maintained this picketing for these objects for more than 30 days without filing an election petition, complaint should issue, absent settlement, alleging that the recent picketing violated Section 8(b)(7)(C).

FACTS

Zoladz Construction Company, Inc. (the Employer) is a construction contractor specializing in demolition in the Buffalo, NY area. On Friday, January 24, 2003,¹ the International Union of Operating Engineers, Local 17 (the Union) informed the Employer that it would begin picketing on Monday, January 27, unless the Employer signed a neutrality/card check agreement (the Agreement). The Employer received a copy of the Agreement in the mail on January 27. The Agreement contains the following relevant provisions:

- the Employer will not state or imply its opposition to the Union;

¹ All dates are 2003.

- the Employer will take a positive approach to unionization, and will advise employees it welcomes their selection of a collective bargaining agent should they choose one;
- the Employer will grant the Union access to its employees on its premises;
- the Employer will furnish the Union with a complete list of employees and their names and addresses, with monthly updates;
- the Employer will recognize the Union if the Union submits authorization cards from a majority of employees as verified by a disinterested third party agreeable to both parties; and
- the Employer will not file a petition with the Board in connection with any Union demands for recognition made under the Agreement.

The Union began picketing on January 27 and continued on January 28, 29, 31, February 4, March 10, 11, 13, and 14. Pickets wore signs stating, "International Union of Operating Engineers, Local 17, Unfair Labor Practice STRIKE Zoladz."² On February 4 and again on March 10, the Union informed the Employer that it would stop picketing if the Employer signed the Agreement.

ACTION

We conclude that the Union's picketing for a signed neutrality/card check agreement had both an organizational and recognitional object. Because this picketing occurred for over a 30-day period without an election petition being filed, the Region should issue complaint, absent settlement.

Union picketing of an unorganized employer, which has as its goal either the organization of the employer's employees,³ or voluntary recognition by the employer,⁴

² The Union explained that the signs referred to an unfair labor practice strike because one of its agents believed that the Employer had committed an unfair labor practice by refusing to sign the neutrality/card check agreement.

³ See e.g., New Otani Hotel and Garden, 331 NLRB 1078, 1080 n.6 (2000); Chefs, Cooks Local 89 (Cafe Renaissance), 154 NLRB 192 (1965); Int'l Typographers (Greenfield Printing),

violates Section 8(b)(7)(C) when from its commencement it is conducted without an election petition being filed within a reasonable period of time not to exceed 30 days. In determining whether union picketing is for an object proscribed by Section 8(b)(7)(C), the Board considers the totality of the circumstances.⁵ Recognition or organization need not be the sole object of picketing for a violation of Section 8(b)(7)(C) to arise; rather it is sufficient if it is one of the reasons for the picketing.⁶

Here, the Union essentially conceded its organizational object when on January 24 it threatened to picket unless the Employer agreed to sign the Agreement, and then reaffirmed that position on February 4, and March 10 by telling the Employer it would stop the picketing if the Employer signed the Agreement. Thus, it is clear that the Union picketed the Employer for the sole purpose of obtaining a signed neutrality/card check agreement. And, it is clear that the sole purpose of the Agreement is to assist the Union in its effort to organize the Employer's employees.⁷ The provisions requiring the Employer to grant the Union access to its facility for the express purpose of organizing its employees, and to provide employees' names and addresses, all evince an organizational object. This object is underscored by the Agreement's requirement that the Employer not only remain neutral, but also affirmatively advise its employees that it "welcomes their selection of a collective bargaining agent." Since the Union has not filed an election petition and since its overall course of picketing, covered by a continuing demand that the Employer sign the Agreement, extended over more than a 30-day period, from

137 NLRB 363, 372-374 (1962), enfd. 326 F.2d 634 (D.C. Cir. 1963).

⁴ See e.g., Building Service Employees Union, Local 87 (Liberty House/Rhodes), 223 NLRB 30, 36 (1976).

⁵ See, e.g., Iron Workers Local 10 (R & T Steel Constructors, Inc.), 194 NLRB 971, 973 (1972).

⁶ St. Helens Shop 'N Kart, 311 NLRB 1281, 1286 (1993), citing to Stage Employees IATSE Local 15 (Albatross Productions), 275 NLRB 744-745 (1985), and the cases cited there at n.4.

⁷ See New Otani Hotel and Garden, 331 NLRB at 1080 ("undisputed" that union's campaign, which primarily relied upon picketing for a neutrality/card check agreement, had "an overall organizational objective").

January 27 until March 10, we conclude that the Union thereby violated Section 8(b)(7)(C) of the Act.⁸

We further conclude that the organizational picketing also had a recognitional object. While the Agreement does not require immediate recognition, it does require that the Employer give up its right to an election⁹ and recognize the Union once it is presented with a verified card majority.

An immediate recognitional demand is not necessary for a violation of Section 8(b)(7)(C). For instance, when a non-certified union pickets in excess of thirty days without filing an election petition, and that picketing is in support of interim objectives such as requiring that the Employer make offers of reinstatement to employees, which offers, if accepted, would result in a bargaining obligation, the Board may consider that picketing recognitional in violation of Section 8(b)(7)(C).¹⁰ Moreover, in New Otani Hotel, the Board left open the issue of whether picketing for a neutrality/card check agreement,

⁸ See Meat Cutters Local 120 (M. Moniz Portuguese Sausage Factory), 160 NLRB 1465, 1469 (1966) enfd. 67 LRRM 2768 (9th Cir. 1968) (ten days of intermittent picketing during a 36-day period).

⁹ Linden Lumber Div. v. NLRB, 419 U.S. 301 (1974) (employer not required to recognize union based on card majority). Notwithstanding the Union's explanation for the legends on the picket signs noted above, there can be no serious claim that the Union was engaged in unfair labor practice picketing to protest the Employer's failure to sign the neutrality/card check agreement. Under Linden Lumber, supra, the Employer was absolutely privileged to demand that the Union go to an election. In any event, the Union had not filed any unfair labor practice charges relating to any alleged Employer misconduct occurring before the Union began picketing.

¹⁰ See HERE Local 737 (Jets Services), 231 NLRB 1049, 1053 (1977) (picketing violated Section 8(b)(7)(C) in large part because the picketing for mass reinstatement, if successful, would have reestablished the prior majority status of the union thereby creating a bargaining obligation); Retail Clerks Local 1557 (Giant Foods of Chattanooga), 217 NLRB 4, 10 (1975) (8(b)(7)(C) violation found where union's protest of successor's alleged discriminatory refusal to hire certain employees was inseparable from enforcing successor's alleged bargaining violation).

where the object is ultimately recognitional, would violate Section 8(b)(7).¹¹

Here, if the Union were ultimately successful in its organizing drive, the Employer would be required, by the Agreement, to recognize the Union. In these circumstances we conclude that the Union has picketed the Employer with the objective of requiring the Employer to recognize it in violation of Section 8(b)(7)(C).

The Region therefore should issue complaint, absent settlement, alleging that the Respondent has violated Section 8(b)(7)(C) by its entire course of intermittent picketing commencing on January 27 and continuing through March 14.

B.J.K.

¹¹ 331 NLRB at 1081 (the union's requests that the employer sign a neutrality/card check agreement "do not constitute a *present* demand for recognition" under Section 9(c)(1)(B)) and at 1080, n.6 (but picketing with an *ultimate* recognitional objective may, in some circumstances, violate Section 8(b)(7) even though it does not seek immediate recognition and therefore would not provide a basis for processing an employer petition under Section 9(c)(1)(B)) (emphases in original). See also Brylane, L.P., 338 NLRB No. 65 (November 20, 2002).