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

Advice Memorandum

DATE: October 21, 2004

TO : Alan B. Reichard, Regional Director
Region 32

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

SUBJECT: Communications Workers of America, Local 9423
(SBC) 536-2501-2000
Case 32-CB-5820 536-2506

This case was submitted for advice as to whether Union picketing and other conduct at a non-striking employee's home violated Section 8(b)(1)(A). We agree with the Region that in the circumstances of this case it did; accordingly, complaint should issue, absent settlement.

Briefly, the Union conducted a four-day strike against the Employer in May 2004. Charging Party Lee crossed a picket line to work on Friday May 21, the first day of the strike. Lee was a Union member and had been appointed as a steward in late 2003, but apparently only in order to serve on a Union-Employer safety committee. He undertook no other Union activities as steward.

On Sunday May 23, Lee was at home with his wife and young daughter on his scheduled day off when Union vice-president Cunningham knocked on Lee's front door. Lee states that Cunningham asked him if he had worked on Friday, to which Lee responded yes. Cunningham became agitated and stated that "it" was "bullsh**," called Lee a "f***ing idiot," and informed Lee that he would be losing his Union card. Cunningham then walked down Lee's walkway to the sidewalk. Lee then heard Cunningham yell "We have a f***ing scab here," and watched five men emerge from a minivan parked along the street with picket signs referring to the Union's strike against the Employer. The group picketed in front of Lee's house for 5-10 minutes, yelling and chanting "We have a f***ing scab here" and other profanity. Lee closed the door and tried to keep his family from hearing the chants. The group then left.

The strike ended on May 25 after the parties reached a new collective-bargaining agreement. The Employer suspended two unit employees for painting graffiti at the Employer's facility that referred to Lee as a scab. Lee was later expelled from Union membership and fined for working during the May strike. Lee does not allege any of these later events as unlawful.

We agree that a complaint should issue, absent settlement, alleging that the Union's conduct on May 23 violated Section 8(b)(1)(A). In Communications Workers Local 1118 (New York Telephone), the Board found that union picketing at the home of a nonstriking employee was unlawfully coercive when, on two occasions of about 30 minutes each, 12-15 people once and 5-6 people the other time picketed with signs referring to the employee as a "scab."[1] When the nonstriking employee's wife went out to record the license plate numbers of the picketers' cars, picketers stated to her, "we don't want you, we want your husband back, not at work." As the employee and his daughter were walking from his car to his house, a picket told the daughter, "You must have been a brave girl because your father went back to work." The Board found that "under these circumstances" the conduct constituted unlawful coercion.[2] The pickets did not shout or chant,[3] or approach the employee or his family when they were inside their home.

In all of the circumstances of the instant case, we conclude that, under New York Telephone, the Union's conduct was unlawfully coercive. Thus, Union agents did not merely show up and peacefully picket outside Lee's home, or only talk to Lee when he happened to be outside his home as did the pickets in New York Telephone; on a Sunday the Union's vice-president purposely and angrily confronted Lee at his door after knocking, swearing at and insulting Lee. The vice-president then led five other people in a loud demonstration in front of Lee's home, chanting and obscenely characterizing Lee as a scab, thus creating a threatening atmosphere. In all these circumstances, the Union's conduct constituted more than just peaceful picketing, and unlawfully coerced Lee.

B.J.K.

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[1] 305 NLRB 770, n. 1 (1991).

[2] Ibid.

[3] Id. at 772.