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The 800 Building
Case 9-CA-28529

This case was submitted for advice as to whether the Employer violated Section 8(a)(1) by terminating the Union's lease and by evicting the Union from the Employer's residential apartment building because the Union sought to organize the Employer's employees.

FACTS

The Employer owns and manages a combination office/apartment building. In March 1990, the Union, which had been placed under trusteeship, signed a 6-month lease with the Employer for an apartment where its trustees could stay while administering its affairs. In October 1990, the Union began to occupy the apartment on the basis of a month-to-month lease.

Around March 1991, several of the Employer's employees who work in the building spoke to one of the trustees about the possibility of representation by the Union. In late March, the Union requested recognition from the Employer, but the Employer refused. On April 23, the Union filed a petition with the Board in Case 9-RC-15882 seeking to represent the employees.

On April 30, the Union received a 30-day eviction notice ordering that the apartment be vacated by May 31. When questioned about the eviction notice, the building manager told Union officials that a guest in the apartment had submitted an excessive claim for damage to his automobile, which had occurred while it was parked in the garage, and that "No Smoking" signs which had been removed from the elevators were allegedly found in the Union's apartment.¹

ACTION

We conclude that the Employer violated Section 8(a)(1) of the Act by evicting the Union from its apartment, since the Employer thereby interfered with the employees' Section

¹ The Region has determined that the Employer's reasons for the eviction were pretextual and that the Union was evicted because it sought to represent the Employer's employees who worked in the building.

7 right to meet with Union representatives at the apartment building.

Employees have a Section 7 right to meet with union representatives during non-work time on their employer's property when such meetings are consistent with the use for which the property is intended.² In Brunswick, off-duty employees met with their union representatives in the employer's public dining area. The union representatives purchased food and sat down with the employees to eat. The employer asked the representatives to leave and, when they refused, had them evicted by the police. The Board found that the union representatives were using the employer's property for the purpose for which it was intended, and that their discussions were "routine and unobtrusive."³ Accordingly, the Board held that the employer violated Section 8(a)(1) because the eviction interfered with the employees' Section 7 right to converse with the union representatives. Moreover, the Board noted that, "[c]learly, the eviction of the union representatives...also sent a message to the employees that the Respondent was going to continue to fight the Union even though the Union had recently been elected as the employees' collective-bargaining representative." 284 NLRB at 684.⁴

In Brunswick and similar cases, the union representatives were on employer property pursuant to a business relationship, i.e., they paid for food and the privilege to sit down, eat, and converse with other individuals, including off-duty employees. In the instant case, the Union also occupied space on the Employer's property pursuant to a business relationship, i.e., the Union paid rent for the right to occupy an apartment and to entertain visitors there, including employees who worked in the building. Additionally, in Brunswick, neither the union nor the employees engaged in unprotected activities: they used the employer's property as it was intended to be used by the public, and their discussions were "unobtrusive". In the instant case, the Region has determined that neither the Union nor the employees were engaged in unprotected activity, including the Employer's asserted reasons for the eviction. Rather, the Union used the apartment in a manner similar to other tenants. Therefore, just as the employer in Brunswick violated Section 8(a)(1) by evicting, and effectively terminating its business relationship with, the union representatives, the Employer here violated Section

² See Brunswick Food & Drug, 284 NLRB 663 (1989); Albertson's, Inc., 289 NLRB 177 (1989); Montgomery Ward & Co., 263 NLRB 233 (1982).

³ 284 NLRB at 664.

⁴ These principles apply regardless of whether a union is the Section 9(a) representative of the employees. See Albertson's; Montgomery Ward, above.

8(a)(1) by terminating its business relationship (the lease) with, and evicting, the Union.

Further, this case is distinguishable from cases involving the principle that one employer ordinarily can terminate its business relationship with another employer, even if it does so for discriminatory reasons, without violating Section 8(a)(1) and (3).⁵ In this regard, the Malbaff rationale is based on the lack of justification in the Act or in its legislative history for concluding that Section 8(a)(3) was meant to protect employers as well as employees from employer discrimination. The Board specifically held that no employee discrimination resulted from one employer ceasing to do business with another employer.⁶ As noted above, interference with employee Section 7 rights did result here from the Employer's termination of its business relationship with the Union.

Finally, to remedy the violation, the Region should seek restoration of the status quo, i.e., that the Employer re-establish the terms of the Union's lease agreement. If there are no current vacancies in the building, the Employer must provide the Union with a lease for an apartment substantially similar to the one from which the Union was evicted as soon as one becomes available. Thus, we would not seek the displacement of another tenant as a remedy.

R.E.A.

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⁵ Cf. Local 447, Plumbers (Malbaff Landscape Construction), 172 NLRB 128, 129 and n. 5 (1968), citing NLRB v. Denver Building and Construction Trades Council, 341 U.S. 675, 689-690.

⁶ Id. at 129.