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Memorandum

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Division of Advice

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UBJECT International Brotherhood of Electrical Workers Local Union No. 577, AFL-CIO
(Town & Country Electric, Inc.)
Case No. 30-CC-381

RELEASE

This case was submitted for advice as to whether the Union violated Section 8(b)(4)(i)(ii)(B) by maintaining an observer at the neutral gates of a construction project.

FACTS

The Charging Party, Town & Country Electric, Inc., was the electrical contractor at a convention center project in Appleton, Wisconsin. Town & Country was the only nonunion contractor at the project. On Friday, October 23, 1981, before separate gates were established, the Union, IBEW, Local 577, picketed the site with signs stating that its only dispute was with Town & Country and that Town & Country's electricians receive substandard wages and benefits. All employees, except those of Town & Country, honored the picketline. At the end of the workday, the general contractor established a reserved gate system setting aside the southeast gate for Town & Country employees and suppliers. The northeast, northwest and southwest gates were established for the employees and suppliers of the neutral contractors.

Starting the next workday and continuing through completion of Town & Country's work on the project in June 1982, the Union picketed the gate reserved for Town & Country, and the Union placed at each neutral gate observers, who were not officials of the Union, wearing sandwich boards reading, "Official Gate Observer, Local 577 I.B.E.W." These gate observers took pictures and recorded license numbers of all persons or vehicles using those gates. The employees of the neutral employers did not work on October 26 and 27, but continuously worked thereafter until the project was completed.

There is no evidence that the neutral gate observers engaged in patrolling or walked to the primary gate. However, on one occasion, on October 29, the person picketing at the primary gate walked to one of the neutral gates and spoke with the observer at the gate for about five minutes. There is no contention that such conversation inhibited any employee or supplier from entering the project.

On October 26, 27 and at various times thereafter, business agents from building trades unions other than the Union herein congregated on public property near the neutral gates and spoke with the employees of the neutral employers.

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ACTION

It was concluded that the Union did not violate Section 8(b)(4) in the circumstances of this case by maintaining an observer at the neutral gates.

The Union has the right merely to observe or monitor neutral gates to determine whether their integrity is being violated, i.e., whether the gates are being used by primary contractors or primary suppliers. 1/ Thus, the stationing of an observer to monitor neutral gates does not violate Section 8(b)(4)(i)(ii)(B) unless the totality of the Union's conduct, including acts of patrolling, communications with neutral employees and the use of signs either on, or near, the Union observer, is intended to have, or has the forseeable consequence of having, the effect of signalling neutral employers or their employees to engage in a work stoppage or to refrain from entering the site. 2/ In addition, the act of photographing neutrals can be viewed as consistent with the observation of neutrals, and the monitoring of gates. 3/

In the instant case, there is no evidence that the observers were patrolling in front of the neutral gates or that the observers initiated any conversations with neutral employees that could have had the effect of inducing them to refuse to enter the gates. 4/ It was further concluded that a sign merely identifying the Union agent as a reserved gate observer would not, without more, be sufficient to constitute a signal to engage in a work

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1/ Local Union 400, IBEW (Jaden Electric), Cases 4-CC-1261 et al. Advice Memorandum dated May 19, 1980.

2/ See United Brotherhood of Carpenters, Local No. 1245 (New Mexico Properties, Inc.), 229 NLRB 236, 242 (1977); International Association of Bridge, Structural and Ornamental Iron Workers (Robert E. McKee), 233 NLRB 283, 287 (1977), enf. in pert. part, 598 F.2d 1154 (9th Cir. 1979); Miami Valley Carpenters District Council (Brell Corp.), Case 9-CC-1178, Advice Memorandum dated September 29, 1982 (Brell Corp. I).

3/ Compare Brell Corp. I, supra at p. 5, with Plumbing and Pipefitting Local No. 145 (Lunsford Brothers Mechanical Contractors, Inc.), Cases 27-CC-698, 1-3, Advice Memorandum dated June 20, 1979 at p. 2.

4/ See Miami Valley Carpenters District Council (Brell Corp.), Case 9-CC-1178, Advice Memorandum dated October 8, 1982. The fact that business agents from other unions congregated on public property near the neutral gates and spoke to neutral employees would not constitute a violation, absent evidence that their conversations constituted inducement and evidence that the neutral observer and the business agents were acting in concert. Further, there is no evidence to indicate that the picketer who joined the observer at the neutral gate on one occasion for five minutes engaged in any patrolling of that gate or other inducements to neutral employees. Cf. Brell I, supra. The short duration of his presence at the gate and the fact that this conduct was not repeated also was considered significant.

stoppage. 5/ Since the act of photographing neutrals can be consistent with observing neutrals, the observers' notation of license plates, by extension, would also be viewed as being consistent with observation, in the absence of open exhortation to the neutrals not to enter the jobsite. 6/ Accordingly, absent additional evidence that would be inconsistent with the Union's mere observation of the neutral gate, such as actual patrolling by the observer, or the use of the sandwich board signs by themselves as signals, or statements to neutrals by the observer or nearby business agents that could constitute express inducement, the instant charge should be dismissed, absent withdrawal.

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5/ Compare Carpenters Local No. 625 (Gerard Construction Co., Inc.), Case 1-CC-1798, Advice Memorandum dated October 23, 1980, with District Council of Carpenters (Compositor Construction), Case 31-CC-1495, Advice Memorandum dated April 14, 1981 and Steamfitters Local Union No. 614 (W. R. Naylor & Son), Case 26-CC-401, Advice Memorandum dated February 27, 1980. In W. R. Naylor, the "observer's" sign was an apron that was placed on a truck near the neutral gate when the "observer" left the gate. If there is evidence that the sandwich boards in the instant case were used in a similar manner and, thus, were used in a manner inconsistent with mere observation of the gates, i.e., as a signal, 8(b)(4)(i)(ii)(B) complaint should issue.

6/ Cf. Lunsford Brothers Mechanical Contractors, Inc., supra, p. 2.