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UNITED STATES GOVERNMENT
National Labor Relations Board

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Memorandum A.D. 01999

TO : Roy H. Garner, Regional Director
Region 28

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FROM Harold J. Datz, Associate General Counsel
Division of Advice

SUBJECT: Operating Engineers Local 428, Laborers' International Union, Laborers' Local 383, and Laborers' Local 479
(Enserch Alaska Construction, Inc.)
Case 28-CP-216

This Section 8(b)(7)(C) case was submitted for advice as to whether statements, threats to picket and relay picketing by the Unions establish that the Unions were engaged in an unlawful joint venture, whether those Unions engaged in unlawful picketing, and whether threats to picket, extant for more than 30 days, were also unlawful.

FACTS

The Employer commenced construction of a canal in Arizona on September 10, 1986. 1/ No union is the bargaining representative of the Employer's employees in Arizona, no Arizona union has a contract with the Employer, and no representation petition has been filed.

In early October, IUOE Local 428 business manager Featherston informed the Employer that he was going to put up pickets if a meeting to discuss a contract was not arranged in the near future. On October 11, such a meeting was held between IUOE Local 428 and the Employer. Featherston stated that he was acting as the "spokesman" and was the "contact person" for Local 428 as well as Laborers Local 479, Carpenters Local 857, Iron Workers Local 75, and Teamsters Local 83. On November 11, a meeting was held between Employer officials, Featherston, and representatives from the Unions listed above. Featherston again stated that he was the spokesman for the Unions there, and officials from the other Unions neither said nor did anything to contradict that statement. Featherston also said that it was best for the Employer to reach an agreement or the Employer would have pickets all over, and that the Employer should sign the five Arizona AGC contracts with the five Unions listed above. The Employer stated that it would study those contracts, but that it

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1/ All dated hereinafter are in 1986 unless otherwise indicated

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was not now recognizing any of the Unions as the representative of its employees. At a November 21 meeting, attended by the same individuals present on November 11, Featherston again stated without contradiction that he was acting as spokesman for all the Unions. Featherston said that if the Employer would not agree to the proposals from the Unions he would picket the Employer for as long as he could, at which time someone else would take over the picketing, that he would run the Seattle-based employees from IUOE Local 302 off the job, and that he would pull IUOE Local 428 members off the job. Featherston added that the Employer might as well sign with "us" because "we" are going to be on the job the entire time (i.e. about 2 years) if the Employer did not sign contracts with the Unions. On December 2, the Employer notified Featherson that it would not agree to the Unions' proposals, and Featherston replied that pickets were going up.

On December 3, IUOE Local 428 commenced picketing at the job site and picketed for 30 days with signs stating "Operating Engineers Local 428 . . . On Strike against [the Employer], no contract." On January 2, 1987, Laborers Local 479 began a 30-day period of picketing at the same locations and with the same picket signs as IUOE Local 428, except that the name of the Union was changed. At least two IUOE Local 428 representatives and two Laborers Local 479 representatives were observed picketing during both 30-day periods, at least one Teamsters Local 83 representative was on the IUOE Local 428 picket line, and IUOE Local 428 members were observed on the Laborers' picket line.

On January 13, 1987, a Carpenters Local 857 official informed the Employer's attorney that on February 3 the Carpenters would commence its turn at picketing, that the Teamsters would be the fourth Union to picket, and that Featherston had all this arranged. However, after Laborers Local 479 ceased its 30-day period of picketing, no other Union commenced or has resumed picketing.

On December 23, IUOE Local 302 representatives read a letter from Featherston stating that Local 428 would bring intra-Union charges against any employees who did not resign their union membership but continued to cross the picket line. All but two Local 302 members refrained from crossing the picket line.

The Employer asserts that from December 3 to 10, the picketing resulted in costs of $300,000 to the Employer. Additionally, the Region has found that no Union involved herein has ever informed the Employer that it represents or claims to

represent a majority of employees in any unit. The Employer filed the instant Section 8(b)(7)(C) charge on January 27, 1987.

ACTION

We conclude that a Section 8(b)(7)(C) complaint should issue, absent settlement, alleging that IUOE Local 428 and Laborers Local 479 engaged in a joint campaign to picket for recognition for more than 30 days, and that Featherston's unretracted threats, at least on behalf of IUOE Local 428 and Laborers Local 479, to picket for recognition were unlawful. [2]

The test for establishing a joint-venture theory of responsibility for actions taken by one or more labor organizations is that it must be demonstrated that the venturers jointly conceived and coordinated a planned course of action which was adopted to attain a mutually agreed-upon objective. General Teamsters Local 126 (Ready Mixed Concrete), 200 NLRB 253, 272 (1972). Thus, in Construction, Shipyard and Laborers Local 1207 (Alfred S. Austin Construction Co.), 141 NLRB 283, 284-286 (1963), a trades council was found to be a joint venturer with a constituent local union and responsible for the latter's unlawful picketing under Section 8(b)(7)(C). The trades council president made the initial contact with Austin and indicated to Austin that, by meeting with the local business agents, Austin might avoid the picketing. The president also admitted that his purpose in arranging meetings with the employer was to persuade Austin to employ all union help from the various building trades. The Board found that the trades council and the Laborers' efforts were coordinated and were aimed at compelling Austin to employ union members and recognize the local as the representative of the laborers. In Bricklayers, Masons and Tilesetters Local 20

J.C. Minium), 174 NLRB 1261, 1261-1262 (1969), a trades council and a number of affiliated locals were found to be engaged in a joint venture to picket two construction projects of Minium, a shopping center project which was picketed by the trades council, and a winery project which was picketed by a Carpenters local. The common purpose of the picketing, found to be unlawful under Sections 8(b)(4)(i)(ii)(B) and 8(b)(7)(C), was to obtain recognition from Minium. The ALJ found the winery picketing to be a continuation of the picketing 6 weeks earlier at the shopping center, and the failure of the trades council to disavow or disassociate itself from the local's unlawful winery picketing was one of the factors relied upon in finding the trades council to be part of the unlawful joint venture. The Board affirmed.

In the instant case, we conclude that IUOE Local 428 and Laborers Local 479 were engaged in a joint venture with the common objective of forcing the Employer to sign contracts with and recognize those Unions by engaging in relay picketing for more than 30 days. Thus, Featherston repeatedly informed the Employer, in the presence of other Union officials, that he was the spokesman for all the Unions. Those other Union officials never disavowed Featherston's assertions and, in effect, ratified Featherston's actions as the spokesman for the other Unions. Featherston's November 21 statement to the effect that the Employer should recognize the Unions or "we" are going to be on the job the entire time (2 years) indicates a joint campaign to achieve the common objective of recognition. Featherston also demonstrated the ability to convert statements into action. Thus, he stated that he would picket for as long as he could and then another union would take over. Consistent with this statement, as soon as IUOE Local 428 ceased its 30-day period of picketing, Laborers Local 479 commenced picketing for 30 days. Moreover, as noted above, when a particular Union picketed, officials and members of other Unions participated. Finally, the Carpenters Union official's January 13, 1987 statement that Featherston had arranged for the Carpenters, and then the Teamsters, to picket after the Laborers' 30-day period had ended is further evidence of a joint coordinated campaign to engage in relay recognitional picketing which violated Section 8(b)(7)(C) on the first day of the Laborers' picketing.

The above factors also distinguish the instant case from cases in which the Board found no joint venture because the evidence indicated only that each union was pursuing similar but separate objectives and merely cooperated in arranging or coordinating picketing activities. For example, in IUOE Local 4,

et al. (Seaward Construction Company), 193 NLRB 632, 636 (1971), the Board affirmed the ALJ's finding that while the unions arranged to engage in successive picketing at the employer's projects, there was insufficient evidence of a joint venture. Thus, the coordination of the unions' picketing "was minimal consisting of travel to the project by union officials in one automobile . . .", there was no joint use of individuals on each union's picket line, and no union official spoke for or had the authority to speak for any other respondent union. Moreover, in Seaward, there was evidence of separate objectives in that when several unions' officials drove together to a picketed job site and spoke with an employer representative, two officials agreed to supply workers while another union's official indicated his union would continue picketing. By contrast, in the instant case, "joint pickets" were used, Featherston clearly was the spokesman for all five Unions which attended meetings with the Employer, and Featherston's threat to picket if contracts with all Unions were not signed, as well as the joint nature of the picketing, show that "the picketing itself was joint, and the result of a joint campaign." 3/ Since the joint picketing lasted for more than 30 days, it was unlawful.

In addition we conclude that Featherston's threats to picket in the instant case, which remained unretracted in excess of 30 days from the date the threats were made, constitute an additional violation of Section 8(b)(7)(C), at least to the extent they were made on behalf of IUOE Local 428 and Laborers Local 479 which actually picketed for recognition. In the past, the General Counsel has argued that a "certifiable" union's threat to picket for recognition, unretracted for a period in excess of 30 days, is unlawful. 4/ This argument is based on the language of Section 8(b)(7))C) itself, which specifically

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3/ Construction Laborers Union, Local 383 v. NLRB (Colson & Stevens), 323 F.2d 422, 427 (9th Cir. 1963), aff'g. in rel. part 137 NLRB 1650 (1962).

4/ See, Richard Sewell, Inc., 238 NLRB 986 (1978), relying on A-1 Security Service Co., 224 NLRZB 434 (1976)(violation affirmed, pro forma, in the absence of exceptions); Adams Insulation Co., 248 NLRB 313 (1980)(Board specifically declared it would not resolve the issue since it found that no threat to picket for recognition occurred, and noted that it had not been called upon to address the General Counsel's argument in prior cases). Accord: M.H. Golden Co., 271 NLRB 1401, 1405 (1984,

demonstrates the Congressional intent to restrict the right of unions not only to picket for recognition but also to threaten to picket for recognition without filing an election petition under Section 9(c) of the Act within 30 days. See, e.g., Richard Sewell, supra, 238 NLRB at 989-990. Since the Board has not passed on this argument, we believe that the instant case constitues a good vehicle in which to allege that threats to engage in recognitional picketing, which remain unretracted for more than 30 days, independently violate Section 8(b)(7)(C). Thus, Featherston's November 21 threats to picket for as long as the Employer was on the project (i.e., 3 years) and his statement that each union would picket consecutively "for as long as [it] could" demonstrate a clear intent to picket for more than 30 days. Since this threat was outstanding for more than 30 days, it was unlawful. Moreover, Featherston's November 11 and November 21 threats to picket were not only unretracted for more than 30 days, but in fact were effectuated by recognitional picketing by IUOE Local 428 and Laborers Local 479. Therefore, the complaint should also allege that the unretracted threats to picket made on behalf of those two Unions are violative of Section 8(b)(7)(C).

H.J.D.