

**United Association of Journeymen and Apprentices  
of the Plumbing and Pipe Fitting Industry of  
the United States and Canada, Local 32, AFL-  
CIO and Ramada, Inc. Case 28-CC-784-1**

May 13, 1991

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
CRACRAFT AND OVIATT

On May 31, 1989, the National Labor Relations Board issued a Decision and Order in this proceeding.<sup>1</sup> The Board found, in agreement with the administrative law judge, that the Respondent's July 31, 1987 letter to Ramada, Inc. (Ramada) contained an unqualified threat to engage in secondary picketing and therefore constituted an unlawful threat in violation of Section 8(b)(4)(ii)(B) of the Act. In reaching this decision, the Board declined to pass on the judge's findings that the threats to handbill and organize a boycott also contained in the letter violated the Act.

In an opinion dated August 30, 1990, the United States Court of Appeals for the Ninth Circuit<sup>2</sup> reversed the Board's finding that the Respondent's threat to picket violated the Act and remanded the case for a decision concerning the threats to organize a union boycott of Ramada and to establish a handbilling program.

On November 8, 1990, the Board advised the parties that they could file statements of position regarding the issues under consideration. Thereafter, the General Counsel, Ramada, and the Respondent filed statements of position.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The facts of this case are not in dispute. Briefly, in May 1987, Ramada hired Baugh Construction Company (Baugh) as general contractor on its Ramada Inn hotel project at the Sea-Tac airport, located between Seattle and Tacoma, Washington. Baugh chose Chapman Mechanical, Inc. (Chapman), a nonunion firm, as subcontractor for the plumbing and mechanical work on the project. When the Respondent's business manager, Floyd Sexton, learned that Chapman had been chosen, he wrote to Baugh concerning the Respondent's disappointment over the choice. Subsequently, on July 31, 1987, Sexton wrote the following letter to Richard Snell, Ramada's president and chairman of the board, with copies to Baugh officials:

It is my understanding that Baugh Construction Company, your general contractor for the Sea-Tac Airport Ramada Inn scheduled to begin soon in

Seattle, Washington, will be subcontracting the plumbing work to Chapman Plumbing Company from Tacoma, Washington.

This is to advise you that Chapman Plumbing is a nonunion contractor. The wages paid by Chapman to his nonunion workers constitute a serious threat to the standard of living enjoyed by our members.

I will establish an aggressive and continuing picketing program for the job site and will do everything necessary to organize the Seattle building trades' support for our picketing program. We will also ask our affiliate groups to join with us in not patronizing the Ramada Inns.

We will establish a handbilling program to notify prospective customers of problems with the Ramada Inn.

Chapman Plumbing has just started doing business in King County. This will be their first major job that we know about.

We would prefer to work with you and with Baugh Construction but so far all of our requests to meet with Baugh have been turned down. We will not sit by and let Chapman Plumbing steal work in King County with substandard rates and poor workmanship. It looks like the beginning of a full scale war with the Ramada Inn as the battlefield.

We accept as the law of the case the Ninth Circuit's determination that the threat to picket contained in Sexton's letter did not violate the Act. We shall therefore consider only the lawfulness of the threats to handbill and organize a boycott.

The judge found that the threatened boycott of Ramada Inns by the Respondent's affiliated labor groups would serve to pressure Ramada into reversing the contractual commitments that led to Chapman's presence on the jobsite. He found that threatening to handbill prospective Ramada customers went beyond permissible conduct because there was no labor dispute between the Respondent and Ramada. Finally, the judge, noting that *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building Trades Council*, 485 U.S. 568 (1988), involved only "peaceful handbilling," reasoned that *DeBartolo* did not legitimize the Respondent's conduct because of "the unqualified pugnaciousness of Sexton's communication . . . ." We disagree with the judge.

In *DeBartolo*, supra, the Supreme Court held that Section 8(b)(4)(ii)(B) does not proscribe peaceful handbilling and other nonpicketing publicity urging a consumer boycott of neutral employers. The Board, applying *DeBartolo*, has found that a union's handbilling of a neutral employer's potential customers to encourage a consumer boycott in furtherance of its primary labor dispute did not violate the Act. *Service Employ-*

<sup>1</sup>294 NLRB 501. Members Cracraft and Oviatt did not participate in the decision.

<sup>2</sup>912 F.2d 1108, 1111.

*ees Local 399 (Delta Air Lines)*, 293 NLRB 602 (1989). Similarly, in *Steelworkers (Pet, Inc.)*, 288 NLRB 1190 (1988), the Board found lawful a union's consumer boycott of a neutral employer by means of newspaper advertisements, leafletting, and other media. In both *Pet* and *Delta*, the Board emphasized, as the Supreme Court had in *DeBartolo*, the absence of violence, picketing,<sup>3</sup> and patrolling attendant to the handbilling and other publicity, and found instead that the unions merely had attempted to persuade customers not to patronize the neutral employers. That persuasion was found not to be coercive.

It is clear that by the boycott and handbilling threatened in Sexton's letter, the Respondent would attempt

<sup>3</sup> We reject the General Counsel's and Ramada's arguments that the instant case is distinguishable because Sexton's letter, containing the threats to handbill and organize a boycott, also included a threat to picket. As stated above, the Ninth Circuit found the letter's threat to picket to be lawful. Further, the picketing threat was specifically limited to the "job site"; no other picketing location can be inferred. Because we do not know the proximity of the jobsite to areas where potential Ramada customers could be targeted for handbilling and because no picketing, handbilling, or boycotting actually occurred, we cannot conclude that the threatened picketing would necessarily coincide with the threatened handbilling or boycott, so as to make the handbilling or boycotting coercive.

to persuade Ramada's customers not to patronize Ramada. These are activities which, under *DeBartolo* and its progeny, are not themselves coercive. Therefore, the mere threat to engage in such activity cannot be found coercive. As the Supreme Court held in *NLRB v. Servette*, 377 U.S. 46, 57 (1964), "The statutory protection for the distribution of handbills would be undermined if a threat to engage in protected conduct were not itself protected."<sup>4</sup>

Accordingly, we find that the Respondent's threats to handbill and organize a boycott did not violate Section 8(b)(4). We shall therefore dismiss the complaint.

#### ORDER

The complaint is dismissed.

<sup>4</sup>The General Counsel and Ramada assert that in *Food & Commercial Workers Local 506 (Coors Distributing)*, 268 NLRB 475 (1983), and *Plumbers Local 114 (M & S Pipe)*, 277 NLRB 10 (1985), the Board found similar threats to be unlawful. We note, however, that *Coors Distributing* predates *DeBartolo* and has been superseded by *DeBartolo*. In *M & S Pipe*, the judge's finding of an 8(b)(4)(ii)(B) violation was not before the Board because only the General Counsel filed exceptions.