

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

DATE: December 21, 2015

TO: Nancy Wilson, Regional Director
Region 6

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

SUBJECT: United Electrical, Radio, and Machine Workers
of America (Various Employers)
Case 06-CC-162236

560-2550
560-2550-8300-0000
560-2550-8301-0000
560-2550-8384-0000

The Region submitted this case for advice as to whether the Union violated Section 8(b)(4)(i)(B) of the Act when it passed a resolution at its convention endorsing the Boycott, Divestment, and Sanctions (BDS) Movement. We conclude that employees would not reasonably understand the Union's resolution as a signal or request to engage in a work stoppage against their own employer. Accordingly, the charge should be dismissed, absent withdrawal.

FACTS

The United Electrical, Radio, and Machine Workers of America (Union) passed a resolution at its seventy-fourth annual convention in August 2015¹ endorsing the Boycott, Divestment, and Sanctions (BDS) Movement.² The resolution “[c]all[ed] on Congress and the Administration to end all U.S. military aid to Israel” and to “pressure Israel to end the occupation of the West Bank and East Jerusalem and the siege of Gaza and negotiate a peace agreement on the basis of equality, democracy, and human rights for the Palestinian and Israeli people, including Palestinian self determination and the right of return for refugees.” It also “endors[ed] the BDS movement and urg[ed] the union at all levels to become engaged in BDS and the

¹ All dates are in 2015 unless otherwise indicated.

² The BDS Movement website describes the BDS Movement as “a campaign of boycotts, divestment and sanctions against Israel until it complies with international law and Palestinian rights.” *What is BDS?* BDSMovement.net, <http://www.bdsmovement.net> (last visited Dec. 10, 2015).

movement for peace, justice and equality between Palestinians and Israelis.” The resolution, in its preamble, stated that UE Local 150 endorsed BDS. UE Local 150 is a public service workers local in North Carolina that is affiliated with the Union.

The Union asserts that when it referenced UE Local 150’s endorsement of BDS, the Union was referring to a resolution that UE Local 150 had passed at its statewide convention in July 2014. The UE Local 150 resolution stated, among other things, that “[w]e join and support efforts to boycott, divest and for sanctions against Israeli-owned companies that contribute to oppression of the Palestinian people, such as G4S, which operates security services to Durham County libraries, and Veolia Corp. which operates city buses under CATS in Raleigh and is known for union-busting across the US.”

On September 1, the Union posted its August resolution on its website.³ Below the text of the resolution, the Union posted: “For more information on why BDS, please visit the links below.” Three of the links are to articles relating to labor issues in the West Bank.⁴ The fourth link is a “boycott list” from an organization called Partners for Progressive Israel.⁵ The list includes items produced in Israeli settlements and is described as “a resource for those wishing to prevent their shekels⁶ and dollars from bolstering the settlements.”⁷ The fifth link is an explanation of divestment from the BDS Movement website.⁸ The explanation states in part that “[d]ivestment calls for the withdrawal of stocks and funds from corporations complicit in the violation of international law and Palestinian rights and ensures that investment portfolios and public funds are not used to finance or purchase products and services from such companies.”⁹ The sixth link is to a campaign on the BDS Movement website called “Stop G4S,” which details a campaign against the security

³ *UE Endorses BDS Movement for Peace and Justice in Israel and Palestine*, UE Union, <http://www.ueunion.org/political-action/2015/BDS> (last visited Dec. 10, 2015).

⁴ *Id.*

⁵ *List of Settlement Products* (Feb. 24, 2014), Partners for Progressive Israel, <http://progressiveisrael.org/list-of-settlement-products> (last visited Dec. 10, 2015).

⁶ The shekel is the Israeli currency.

⁷ *List of Settlement Products* (Feb. 24, 2014), Partners for Progressive Israel, <http://progressiveisrael.org/list-of-settlement-products> (last visited Dec. 10, 2015).

⁸ *Divestment*, BDSMovement.net, <http://www.bdsmovement.net/activecamps/divestment> (last visited Dec. 10, 2015).

⁹ *Id.*

company G4S.¹⁰ The website provides examples of institutions divesting their holdings in G4S or ending their contracts with the company.¹¹

On October 23, the Charging Party filed the charge in the instant case alleging that the Union violated Section 8(b)(4)(i)(B) by advocating an illegal secondary boycott against Israel and Israeli concerns.¹² The Charging Party presented a number of online articles and links to support its allegation. These include: (1) a letter from the World Federation of Trade Unions¹³ from 2010 announcing a three-day strike at all ports of the world against commercial vessels going to or coming from Israel, which was posted on the BDS Movement website;¹⁴ (2) a salute from the BDS National Committee,¹⁵ published on the BDS Movement website in October 2014, to Oakland community activists who set up a picket line at the Oakland port and dockworkers in Oakland who refused to unload an Israeli container ship in response to the picket line;¹⁶ (3) the “Academic Boycott,” which is listed as a campaign on the BDS

¹⁰ *Stop G4S*, BDSMovement.net, <http://bdsmovement.net/activecamps/g4s> (last visited Dec. 10, 2015).

¹¹ *Id.*

¹² The charge was filed by an attorney on behalf of himself and Shurat HaDin, an Israel-based legal organization. Shurat HaDin Israel Law Center, <http://israellawcenter.org> (last visited Dec. 11, 2015). The website describes Shurat HaDin as an organization that, among other things, works with “a network of volunteer lawyers across the globe” to “defend[] against lawfare suits,” “fight[] academic and economic boycotts,” and “challeng[e] those who seek to delegitimize” the State of Israel. *Overview*, Shurat HaDin Israel Law Center, <http://israellawcenter.org/about/overview> (last visited Dec. 11, 2015).

¹³ The Union is not affiliated with the World Federation of Trade Unions.

¹⁴ *In Solidarity with Palestine, WFTU Calls for Three-Day Strike for Israeli Vessels* (June 8, 2010), BDSMovement.net, <http://www.bdsmovement.net/2010/in-solidarity-with-palestine-wftu-calls-for-three-day-strike-for-israeli-vessels-718> (last visited Dec. 10, 2015).

¹⁵ The BDS National Committee is a “Palestinian coordinating body for the BDS campaign worldwide.” *Palestinian BDS National Committee*, BDSMovement.net, <http://www.bdsmovement.net/bnc> (last visited Dec. 10, 2015).

¹⁶ *Palestinian Civil Society Salutes California Dockworkers and Endorses their “Block-the-Boat” BDS Action* (Oct. 11, 2014), BDSMovement.net, <http://www.bdsmovement.net/2014/palestinian-civil-society-salutes-california-dockworkers-and-endorses-their-block-the-boat-bds-action-12730> (last visited Dec. 10,

Movement website, and which calls on academics and intellectuals to “refrain from participation in any form of academic and cultural cooperation, collaboration or joint projects with Israeli institutions,” among other things;¹⁷ and (4) an online petition from an organization called Labor for Palestine from July 28, 2014 that calls on workers to “emulate dockers in South Africa, India, Sweden, Norway, Turkey, the US west coast, and elsewhere, by refusing to handle military or other cargo destined for Israel,” which was signed by UE Local 150.¹⁸

ACTION

We conclude that the Union did not violate Section 8(b)(4)(i)(B) of the Act when it passed a resolution at its convention endorsing the Boycott, Divestment, and Sanctions (BDS) movement because employees would not reasonably understand the Union’s resolution as a signal or request to engage in a work stoppage against their own employer. Accordingly, the charge should be dismissed, absent withdrawal.

Section 8(b)(4)(i)(B) of the Act makes it unlawful under certain circumstances for a labor organization or its agents to engage in, or induce or encourage employees to engage in, a strike or other work stoppage against their own employer.¹⁹ There are two elements to any violation of this provision.²⁰ First, the labor organization must “engage in [a work stoppage] or induce or encourage” the employees of a neutral employer to engage in a work stoppage, i.e., refuse in the course of employment to “use, manufacture, process, transport, or otherwise handle or work on any goods,

2015). The salute, and an article linked in the salute, indicate that the dockworkers cited safety concerns regarding a 200-person picket line in their refusal to cross the picket line and unload the ship. The dockworkers are not affiliated with the Union.

¹⁷ *Academic Boycott*, BDSMovement.net, <http://www.bdsmovement.net/activecamps/academic-boycott> (last visited Dec. 10, 2015).

¹⁸ *Labor for Palestine Stop the War on Gaza: No Arms for Apartheid Israel — Boycott, Divestment and Sanctions!* (July 28, 2014), Labor for Palestine, <http://laborforpalestine.net/2014/07/28/labor-for-palestine-stop-the-war-on-gaza-no-arms-for-apartheid-israel-boycott-divestment-and-sanctions/> (last visited Dec. 10, 2015). The Union asserts that it had no knowledge of this petition.

¹⁹ 29 U.S.C. § 158(b)(4)(i)(B).

²⁰ *San Francisco Bldg. Trades Council (Goold Elec.)*, 297 NLRB 1050, 1055 (1990).

articles, materials, or commodities, or to perform any services.”²¹ Second, the objective of the proscribed conduct must be to “force or require any person to cease doing business with any other person.”²² This objective, often referred to as a secondary objective, has been interpreted to mean having the purpose of pressuring a neutral party to intercede in a union’s dispute with its more direct target.²³ The Supreme Court in *ILA v. Allied International, Inc.*, held that secondary activity arising from a union’s political protest, as opposed to a labor dispute with an employer, is within the scope of Section 8(b)(4)(i)(B)’s prohibition.²⁴ Thus, even without a primary labor dispute, a union can engage in unlawful secondary conduct under Section 8(b)(4)(i)(B).²⁵

The words “induce or encourage” are broad enough to include “every form of influence and persuasion.”²⁶ The question of whether statements by a labor organization or its agents violated the Act under Section 8(b)(4)(i)(B) turns on whether “such statements would reasonably be understood by the employees as a signal or request to engage in a work stoppage against their own employer.”²⁷ Activity intended only to educate consumers, secondary employers, or secondary employees, and even prompt them to action—so long as the action is not a cessation of work by the secondary employees—is lawful.²⁸

²¹ *Teamsters Local 122*, 334 NLRB 1190, 1191 n.7 (2001), *enforced*, No. 01-1513, 2003 WL 880990 (D.C. Cir. 2003).

²² *Id.*

²³ See Richard A. Bock, *Secondary Boycotts: Understanding NLRB Interpretation of Section 8(b)(4)(B) of the National Labor Relations Act*, 7 U. PA. J. LAB. & EMP. L. 905, 936 (2005).

²⁴ 456 U.S. 212, 224-26 (1982) (finding that union violated Section 8(b)(4)(B) by ordering members to stop handling cargo arriving from or destined for the Soviet Union in protest of the Soviet invasion of Afghanistan).

²⁵ *Id.* at 224-25.

²⁶ *International Brotherhood of Electrical Workers, Local 501 v. NLRB (Samuel Langer)*, 341 U.S. 694, 701 (1951).

²⁷ *Teamsters Local 122 (August A. Busch & Co. of Massachusetts)*, 334 NLRB at 1191 & n.8 (citing *Los Angeles Building & Construction Trades Council*, 215 NLRB 288, 290 (1974)).

²⁸ *Carpenters Southwest Regional Council Locals 184 & 1498 (New Star)*, 356 NLRB No. 88, slip op. at 3 (Feb. 3, 2011).

Here, we conclude that the Union did not violate Section 8(b)(4)(i)(B) because its resolution would not reasonably be understood by employees as a signal or request to engage in a work stoppage against their own employer. First, there is no express statement to that effect in the Union's resolution.²⁹ The text of the resolution urges the "union at all levels to become engaged in BDS" but does not call on any individuals to engage in a work stoppage against their own employer.³⁰

Second, neither the text of the resolution nor any of the text in the Union's announcement directly reference or link to any request that employees engage in a work stoppage against their own employer. The links that appear in the Union's announcement indicate that the resolution was targeted towards readers as consumers or investors, as they reference the use of "shekels and dollars" with respect to products, institutional contracting decisions, and divestment.³¹ Moreover, the evidence supports the Union's assertion that its reference to UE Local 150's endorsement of BDS in the preamble to its resolution was to the resolution passed by UE Local 150 at its statewide convention in the summer of 2014, rather than the

²⁹ *Service Employees Local 254 (Womens & Infants Hospital)*, 324 NLRB 743, 743 (1997) (finding no 8(b)(4)(i)(B) violation in absence of evidence that conduct was designed to induce or encourage any neutral employer's employees to refuse to work); *Plumbers & Steamfitters, Local 60 (Albach Co.)*, 181 NLRB 1095, 1097 (1970) (finding no 8(b)(4)(i)(B) violation when no one representing the union was known to have urged, suggested, or instructed any employee not to work).

³⁰ *Compare Mine Workers (New Beckley Mining)*, 304 NLRB 71, 73-74 (1991) (evidence was ambiguous as to whether activity was directed at any individual employed by the neutral employer), *enforced*, 977 F.2d 1470 (D.C. Cir. 1992), *with ILA v. Allied International, Inc.*, 456 U.S. at 214 n.1 (the directive to members provided that "[i]n response to overwhelming demands by the rank and file members of the union, the leadership of the ILA today ordered immediate suspension in handling all Russian ships and all Russian cargoes in ports from Maine to Texas and Puerto Rico where ILA workers are employed").

³¹ *See, e.g., Teamsters Local 122 (August A. Busch & Co. of Massachusetts)*, 334 NLRB at 1191-92 (calls to employees to boycott one neutral employer and not patronize another could not be said to be designed to induce or encourage employees to withhold services in their status as employees rather than consumers); *Food & Commercial Workers Local 1776 (Carpenters Health Fund)*, 334 NLRB 507, 508 (2001) (no evidence that the picketing and handbilling was designed to induce or encourage any neutral employer's employees to refuse to work where purpose of picketing was to influence individuals in capacity as delegates to a union council rather than employees of a neutral employer).

online petition signed by UE Local 150 that same summer, and that the reference would reasonably be read this way by employees. In particular, the resolution passed by UE Local 150 in the summer of 2014 resulted from its formal adoption of the BDS movement at its statewide convention. Considering the formal adoption by UE Local 150 of this position at its convention, the Union's assertion that the reference was to the convention resolution, and the lack of any evidence to the contrary, we conclude that employees would reasonably read the Union's reference to UE Local 150's endorsement of BDS as referring to the convention resolution rather than the online petition.

Having concluded that the Union's resolution referenced UE Local 150's resolution, we further conclude that the UE Local 150 resolution does not call on employees to engage in a work stoppage against their own employer. Specifically, the UE Local 150 resolution states that the union "join[s] and support[s] efforts to boycott, divest, and for sanctions against Israel-owned companies that contribute to the oppression of the Palestinian people." That statement is very similar to the language in the Union's resolution, and we conclude, as with the text of the Union's resolution, that employees would reasonably read it as a call to engage in a consumer boycott or to withdraw investments rather than a work stoppage against their own employer.

Finally, we conclude that the online articles and posts that the Charging Party provided to the Region, but which were not mentioned or linked to in the Union's resolution, would not cause employees to interpret the resolution as requesting that they engage in a work stoppage against their own employer. First, considering that the Union did not link to or mention any of these online sources, there is no evidence that any employees were aware of them. Second, even if employees were aware of these online sources, they lack a sufficient connection to the Union's resolution to cause employees to read the Union's resolution as incorporating them. We acknowledge that the 2014 online petition signed by UE Local 150 and the 2010 communication from the World Federation of Trade Unions call on employees to engage in a work stoppage.³² However, as explained above, employees would reasonably interpret the Union's reference to UE Local 150 endorsing BDS as a reference to the local's summer 2014 resolution, not the online petition. And there is no evidence that UE Local 150 was acting as the Union's agent in signing the petition.³³ Also, the Union is not affiliated with the World Federation of Trade

³² We note that the charge in the instant case is not against UE Local 150 and that UE Local 150 appears to have signed the online petition outside of the Board's six-month statute of limitations contained in Section 10(b) of the Act, 29 U.S.C. § 160(b).

³³ In this regard, the Union asserts that it had no knowledge of the Labor for Palestine petition.

Unions, and the Union's resolution does not even arguably reference that organization's 2010 communication regarding BDS. Therefore, as stated above, there is an insufficient link between these documents and the Union's resolution to conclude that the Union's resolution incorporated these documents.

For the foregoing reasons, the Region should dismiss the charge, absent withdrawal.³⁴

/s/
B.J.K.

³⁴ The Union also raised a number of defenses to the charge under the First Amendment, recent Supreme Court case law, and Section 8(c) of the Act. We do not reach these arguments, as they are unnecessary to the disposition of the instant case.