



NATIONAL LABOR RELATIONS BOARD

Region 20

901 Market Street, Suite 400

San Francisco, California 94103-1735

Telephone 415/356-5130

Fax 415/356-5156

TDD 415/356-5213

Website: www.nlr.gov

January 29, 2009

Matthew J. Gauger, Esquire
Weinberg, Roger & Rosenfeld
428 J Street, Suite 520
Sacramento, California 95814-2341

Re: *Pacific Construction & Manufacturing, Inc.*
Case 20-CA-34173

Dear Mr. Gauger:

The Region has carefully investigated and considered your charge against Pacific Construction & Manufacturing, Inc., alleging violations under Section 8 of the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted, and I am dismissing your charge for the following reasons:

Your charge alleges that, on or about November 3, 2008 (all dates are 2008), Pacific Construction (Employer) violated Section 8(a)(1) of the Act by assaulting a union agent in retaliation for his protected concerted activity.

The investigation disclosed that the Union is signatory to collective-bargaining agreements with two subcontractors who, at the time of the instant dispute, were performing work at the Employer's Ferrari jobsite in San Francisco. Those agreements contain a broad visitation clause that permits union access and extends to all jobsites on which these subcontractors perform work, including the Employer's Ferrari job site.

The evidence shows that, after a number of visits and the Union's vocal objection to non-signatory subcontractors performing carpentry work on the project, the Employer exercised its right under the visitation clause to place reasonable restrictions on union access. By letter, dated October 31, 2008, the Employer notified the Union that its representatives could visit the site only between 6:00 a.m. and 7:00 p.m., the hours worked by employees represented by the Union.

Notwithstanding this reasonable restriction, on November 3, two union representatives visited the jobsite minutes before 7:00 p.m., when union-represented employees were not present. Upon their arrival, the representatives stated their intention to, among other things, speak with the non-signatory subcontractor's employees. The investigation revealed that, as the two representatives descended the stairs leading to the work area, they encountered the job superintendent ascending the stairs. When the union representatives reiterated their purpose for the visit, the superintendent instructed them to leave. The superintendent repeated these instructions as he ushered the representatives up the stairs and toward the exit. Ultimately, the superintendent relented and instructed the security guard to call the police. Meanwhile, the union representatives went back down the stairs and conversed with the unrepresented employees.

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Pacific Const. Mfg., Inc.

Non-employee union representatives are not protected by the Act and, consequently, a violation of the Act will not be found unless an assault occurs in the presence of employees and in a context where the employees reasonably could believe that the attack was motivated by union animus and that a similar fate might befall them if they engage in Section 7 activity. See *Grass Valley Grocery Outlet*, 332 NLRB 1449 (2000).

Here, it is not clear that any employees witnessed or overheard the exchange between the Employer's job superintendent and the two union representatives. Further, although the superintendent is alleged to have been rough with one of the union representatives as he escorted him toward the exit, his conduct did not rise to the level of physical violence. Even assuming it did, any employee witness to the event could not have reasonably believed that a similar fate might befall them if they were to engage in Section 7 conduct. There is no evidence that the superintendent mentioned, much less denigrated, the Union, and the union representatives' eventual ability to address employees countervailed any perceived hostility toward the Union. In these circumstances, the superintendent's conduct would not reasonably tend to interfere with, coerce, or restrain the employees in their exercise of Section 7 rights.

Your Right to Appeal: The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing an appeal with the General Counsel of the National Labor Relations Board. Use of Form NLRB-4767, Appeal Form, will satisfy this requirement. However, you are encouraged to submit a complete statement setting forth the facts and reasons why you believe that the decision to dismiss your charge was incorrect.

The appeal may be filed by regular mail addressed to the General Counsel at the National Labor Relations Board, Attention: Office of Appeals, 1099 14th Street, NW, Washington, DC 20570-0001. A copy of the appeal should also be mailed to me.

An appeal may also be filed electronically by using the e-filing system on the Agency's website. In order to file an appeal electronically, please go to the Agency's website at www.nlr.gov, and select the *E-Gov* tab and click on *E-Filing*. Scroll to the *General Counsel's Office of Appeals*. Select the type of document you wish to file electronically and you navigate to detailed instructions on how to file an appeal electronically.

The appeal MAY NOT be filed by facsimile transmission.

Appeal Due Date: The appeal must be received by the General Counsel in Washington DC by the close of business at 5:00 p.m. (ET) on Thursday, February 12, 2009. If you mail the appeal, it will be considered timely if it is postmarked no later than one day before the due date set forth above. If you file the appeal electronically, it also must be received by the General Counsel by the close of business at 5:00 p.m. (ET) on **Thursday, February 12, 2009**. A failure to timely file an appeal electronically will not be excused on the basis of a claim that transmission could not be accomplished because the receiving machine was off-line or unavailable, the sending machine malfunctioned, or for any other electronic-related reason.

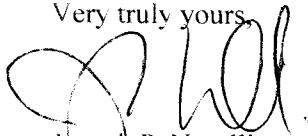
Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. You may file a request for an extension of time to file by mail, facsimile transmission, or through the Internet. The fax number is (202) 273-4283. Special instructions for requesting an extension of time over the Internet are set forth in the attached Form NLRB-5503, Access Code Certificate. While an appeal will be accepted as timely filed if it is postmarked no later than one day prior to the appeal due date, this rule does not apply to requests for extension of time. A request for an extension of time to file an appeal **must be received** on or before the original Appeal due date. A

request that is postmarked prior to the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed through the Internet, a copy of any request for extension of time should be sent to me.

Confidentiality/Privilege: Please be advised that we cannot accept any limitations on the use of any appeal statement or evidence in support thereof provided to the Agency. Thus, any claim of confidentiality or privilege cannot be honored, except as provided by the FOIA, 5 U.S.C. 552, and any appeal statement may be subject to discretionary disclosure to a party upon request during the processing of the appeal. In the event the appeal is sustained, any statement or material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge. Further, we are required by the Federal Records Act to keep copies of documents used in our casehandling for some period of years after a case closes. Accordingly, we may be required by the FOIA to disclose such records upon request, absent some applicable exemption such as those that protect confidential source, commercial/financial information or personal privacy interests [e.g., FOIA Exemptions 4, 6, 7(C) and 7(D), 5 U.S.C. § 552(b)(4), (6), (7)(C), and 7(D)]. Accordingly, we will not honor any requests to place limitations on our use of appeal statements or supporting evidence beyond those prescribed by the foregoing laws, regulations, and policies.

Notice to Other Parties of Appeal: You should notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is mailed to the General Counsel, please complete the enclosed Form NLRB-4767, Appeal Form, and send one copy of the form to all parties whose names and addresses are set forth in this letter.

Very truly yours,



Joseph P. Norelli
Regional Director

JPN:mrb

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Enclosures: Form NLRB-4767, Appeal form
Form NLRB-5503, Access Code Certificate

cc: General Counsel
Attention: Office of Appeals
National Labor Relations Board
Room 8820, 1099 14th Street, NW
Washington, DC 20570

Mr. Adrian Simi
Carpenters Union Local 22
2085 3rd Street
San Francisco, California 94107

Lisa Ryan, Esquire
Cook Brown, LLP
555 Capitol Mall, Suite 425
Sacramento, California 95814-4503

Mr. Tim Eastman
Pacific Construction & Manufacturing, Inc.
1525 Rollins Road
Burlingame, California 94010



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January 30, 2009

Lisa Ryan, Esquire
Cook Brown, LLP
555 Capitol Mall, Suite 425
Sacramento, California 95814-4503

Re: *United Brotherhood of Carpenters and Joiners of
America Local Union No. 22 (Pacific Construction
& Manufacturing, Inc.)
Case 20-CB-13184*

CORRECTED LETTER.

(Changes are in **Bold Arial** font.

Note new appeal due date.)

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FEB 02 2009

Pacific Const. Mfg., Inc.

Dear Ms. Ryan:

The Region has carefully investigated and considered your charge against United Brotherhood of Carpenters and Joiners of America Local Union No. 22 alleging violations under Section 8 of the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted, and I am dismissing your charge for the following reasons:

Your charge alleges that **representatives of the Carpenters Union (Union)** unlawfully threatened employees through the use of intimidating and violent tactics. The investigation disclosed that the Union is signatory to collective-bargaining agreements with two subcontractors who, at the time of the instant dispute, were performing work at the Employer's Ferrari jobsite in San Francisco. Those agreements contain a broad visitation clause that permits union access and extends to all jobsites on which these subcontractors perform work, including the Employer's Ferrari job site.

The evidence shows that, after a number of visits and the Union's vocal objection to non-signatory subcontractors performing carpentry work on the project, the Employer exercised its right under the visitation clause to place reasonable restrictions on union access. By letter, dated October 31, 2008, the Employer notified the Union that its representatives could visit the site only between 6:00 a.m. and 7:00 p.m., the hours worked by employees represented by the Union.

Notwithstanding this reasonable restriction, on November 3, two union representatives visited the jobsite minutes before 7:00 p.m., when union-represented employees were not present. Upon their arrival, the representatives stated their intention to, among other things, speak with the non-signatory subcontractor's employees. The investigation revealed that, as the two representatives descended the stairs leading to the work area, they encountered the job superintendent ascending the stairs. When the union representatives reiterated their purpose for the visit, the superintendent instructed them to leave. The superintendent repeated these instructions as he ushered the representatives up the stairs and toward the exit. Ultimately, the superintendent relented and instructed the security guard to call the police. Meanwhile, the union representatives went back down the stairs and conversed with the unrepresented employees.

The confrontation between the superintendent and the union representatives did not rise to the level of violence and the context in which it occurred would not reasonably tend to coerce employees in their exercise of Section 7 rights. The disagreement over access was not accompanied by threats of violence by either party, and the investigation did not reveal any evidence that the Union unlawfully addressed employees or otherwise interfered with or coerced employees.

Your Right to Appeal: The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing an appeal with the General Counsel of the National Labor Relations Board. Use of Form NLRB-4767, Appeal Form, will satisfy this requirement. However, you are encouraged to submit a complete statement setting forth the facts and reasons why you believe that the decision to dismiss your charge was incorrect.

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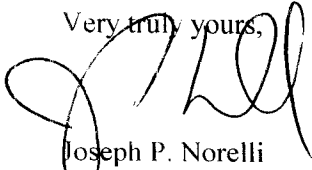
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commercial/financial information or personal privacy interests [e.g., FOIA Exemptions 4, 6, 7(C) and 7(D), 5 U.S.C. § 552(b)(4), (6), (7)(C), and 7(D)]. Accordingly, we will not honor any requests to place limitations on our use of appeal statements or supporting evidence beyond those prescribed by the foregoing laws, regulations, and policies.

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Very truly yours,



Joseph P. Norelli
Regional Director

JPN:mrb

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Enclosures: Form NLRB-4767, Appeal form
Form NLRB-5503, Access Code Certificate

cc: General Counsel
Attention: Office of Appeals
National Labor Relations Board
Room 8820, 1099 14th Street, NW
Washington, DC 20570

Mr. Tim Eastman
Pacific Construction & Manufacturing, Inc.
1525 Rollins Road
Burlingame, California 94010

Matthew J. Gauger, Esquire
Weinberg, Roger & Rosenfeld
428 J Street, Suite 520
Sacramento, California 95814-2341

Mr. Adrian Simi
Carpenters Union Local 22
2085 3rd Street
San Francisco, California 94107

Form NLRB-5503
(05-02)

ACCESS CODE CERTIFICATE

Charging Parties are permitted (but not required) to request an extension of time to file an appeal over the Internet.

So that you may participate in this program, you are being given an **ACCESS CODE**. This Access Code has been randomly generated and is being given only to you. **PLEASE DO NOT SHARE THIS CODE WITH ANYONE OTHER THAN SOMEONE AUTHORIZED TO ACT FOR YOU**, as the Agency will assume that anyone using it has your permission to do so.

Your appeal is now due on **February 13, 2009**. If you wish to request an extension of time over the Internet, go to www.nlr.gov, select the **E-Gov** tab and click on **E-Filing**. On the next page, under **General Counsel's Office of Appeals**, select **File an Extension of Time Request**. You must do this before 5:00 p.m. EST (EDT) on the due date.

On that page, you will be asked to fill in certain information about your case, along with contact information. Fields which are marked with an * must be filled in. You should fill in the following **CASE NUMBER**, even if your letter references more than one case number:

Region	Type	Docket	Suffix
20	CB	13184	001

Your **ACCESS CODE** is: **WR4817**

A decision on your request should be made within **two (2)** working days. You may check on the status of your request by returning to www.nlr.gov and again clicking on the link **E-Gov** and then click on the link for **General Counsel: Request for Extension of Time**. Then enter the case number and access code. Thereafter, if you need to request an additional extension of time, follow the original instructions.