LOS ANGELES COUNTY

EMPLOYEE RELATIONS COMMISSION

In the Matter of LOS ANGELES COUNTY EMPLOYEES ASSOCIATION (LACEA), LOCAL 660, SEIU Charging Party v. DEPARTMENT OF COUNTY ENGINEER-FACILITIES Respondent	UFC 6.104

DECISION AND ORDER

The charge in this case was filed by the Los Angeles County Employees Association (LACEA), Local 660, SEIU (Union or Charging Party) against the Los Angeles County Department of County Engineer-Facilities (County or Respondent) alleging the County violated Section 12(a)(1) of the Employee Relations Ordinance (Ordinance) by interfering with the access, posting, and distribution rights of the Union.

The matter was duly referred to Hearing Officer George E. Marshall, Jr., who held hearings on July 23, 1982, and October 13, 1982. Both parties were present at the hearings and were afforded full opportunity to offer argument and

evidence and to examine and cross-examine witnesses. Post-hearing briefs were filed. Hearing Officer Marshall submitted his Report to the Commission on May 11, 1983. Exceptions to this Report were filed by the County with the Commission on May 25, 1983. The Charging Party did not file a statement in opposition to these Exceptions.

The Charging Party raised three separate but inter-related allegations with respect to the County. These allegations were to the effect that (1) the County's denial of the use of the County Engineer-Facilities building lobby interfered with the Union's right of access; (2) the County's method of reviewing material for posting on the Union's bulletin boards contravened the Union's rights under both the Memorandum of Understanding (MOU) and the Ordinance, and (3) the County's pre-screening of Union literature for distribution in the Engineer-Facilities building constituted interference with the Union's right to disseminate information. We shall first address the access dispute and then consider the other allegations in turn.

We are in agreement with the Hearing Officer's conclusions that the County has the right to promulgate reasonable rules governing the use of the Engineer-Facilities building lobby by employee organizations, but that County Rule 693 did not govern the instant dispute because the Union had intended to use the lobby to distribute literature rather than conduct a

meeting. However, we are unable to adopt his other conclusions concerning the Union's access rights.

We find the Hearing Officer's conclusions that charitable organizations have used the lobby for solicitation and distribution purposes to be unsupported by the record. Our review of the record compels the contrary conclusion--that such organizations have been prohibited from using the lobby except for an isolated incident when a charitable organization was allowed to erect an informational placard.

The record before us requires that we resolve the narrowly circumscribed issue of the access rights of non-employee union representatives to County property for the primary purpose of distributing union literature. Following the suggestion of the Court in Fire Fighters Union, Local 1186 v. City of Vallejo, 87 LRRM 2453 (1974), we shall look to the federal courts and the National Labor Relations Board for any enlightenment their decisions may provide on this issue.[1/]

The Supreme Court in NLRB v. Babcock and Wilcox, 351 U.S. 105 (1956), set forth the principles governing access and distribution rights of nonemployee union representatives and in so doing drew a distinction between rules of law applicable to employees and those applicable to nonemployees. The

---

[1]We shall also consider federal court and Board decisions in addressing the other two allegations raised by the Union in its charge.

Court concluded that an employer may prohibit nonemployee distribution of union literature on its property if reasonable efforts by the union through other available channels of communication will enable it to reach employees with its message and if the employer does not discriminate against the union by allowing other distribution. These principles were reaffirmed in Central Hardware Co. v. NLRB, 407 U.S. 539 (1972). The Sixth Circuit has recently opined that a rigid mechanical application of the Babcock and Wilcox standard is inappropriate and that its application must involve a process of balancing or accommodating the property interests of the employer with the organizing interests of the union.[2/]

The Babcock and Wilcox standard as well as the balancing test developed in Montgomery Ward are pertinent to the issue at hand. Hence, we shall proceed to apply these principles to the facts before us.

The record discloses that the Union representative was neither barred from distributing literature on the sidewalk adjacent to the entrance to the Engineer-Facilities building nor did the County attempt to confiscate any Union literature

---

[2] Montgomery Ward and Company, Inc. v. NLRB, 111 LRRM 3021 (1982).

from its employees. As indicated above, we have determined that other organizations were prohibited from using the lobby for distribution purposes. We find that the County's offer to the Union representative of an alternate room in which to distribute literature constituted a reasonable attempt by the County to balance the County's need to exercise control over its property with that of the Union's organizing interests. We are therefore compelled to conclude that under the federal principles we have elected to adopt and apply in this case, the County did not violate Section 12(a)(1) of the Ordinance when it denied the Union access to the Engineer-Facilities building lobby on February 4, 1982.

We next consider the Union's allegation with respect to the posting of information on the Union's bulletin boards. Hearing Officer Marshall concluded that the County committed an unfair employee relations practice by ". . . requesting or demanding that the Union submit all material to be posted on bulletin boards within its offices [County Engineer-Facilities building] for prescreening and approval without regard to the provisions of Article 11 A-D of the Memorandum of Understanding between the parties. . . ." (HO Report, p. 22.)

The National Labor Relations Board in Container Corporation of America, 102 LRRM 1162 (1979), concluded that a union has no statutory right to post information on bulletin boards, but if an employer permits such posting either by

formal rule or practice, the employer cannot remove notices posted in accordance with the rule or practice which the employer finds distasteful. On review, the Sixth Circuit did not disturb the Board's conclusions in this regard.[3/] Inasmuch as the parties have negotiated a provision in the MOU governing posting of material on Union bulletin boards, it follows, applying the rationale of Container Corporation, that any deviation from the MOU's provisions by the County without the Union's concurrence constitutes a violation of the Ordinance. Since we find on the record before us that the County's method of reviewing material for posting neither comports with the pertinent provisions of the MOU nor has the Union's concurrence, we conclude that the County's practice violates Section 12(a)(1) of the Ordinance.

We turn to the issue of the County's screening of Union literature prior to distribution within the Engineer-Facilities building. Hearing Officer Marshall concluded that the County could review such material to determine if it is inflammatory, not related to Union business, or calls for illegal action on the part of employees.

Since under Babcock and Wilcox the employer may, except under limited circumstances, prohibit the distribution by nonemployees of union literature on its premises, it is

---

[3]NLRB v. Container Corporation of America, 107 LRRM 2545 (1981).

not unreasonable to conclude that an employer who elects to permit such distribution may review any material prior to its distribution. In view of this conclusion, we find that the County's demand to review and approve the Union's literature prior to its distribution by a nonemployee Union representative was not conduct proscribed by the Ordinance. This conclusion is limited solely to the distribution rights of nonemployees; it is not intended to be dispositive of employee distribution rights as that issue is not presently before us.

O R D E R

IT IS HEREBY ORDERED that charge UFC 6.104 be sustained in part and dismissed in part as follows:

1. The County violated Section 12(a)(1) of the Ordinance by requesting or demanding that the Union submit all material to be posted on its bulletin boards within the Engineer-Facilities building

/

/

/

for pre-secreening and approval without regard to the provisions of Article 11 A-D of the Memorandum of Understanding and is hereby ordered to cease and desist from making such request or demand without regard to category;

2. All other aspects of the charge are dismissed.

DATED at Los Angeles, California, this 28th day of June, 1983.

Lloyd H. Bailes
LLOYD H. BAILER, Chairman

JOSEPH F. GENTILE, Commissioner