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May 12, 2005

Scott Caswell
Chief Communications Officer
America's Blood Centers
725 15th St. N.W., Suite 700
Washington, DC 20005

RE: Blood Drives and No-Solicitation Rules

Dear Scott:

The purpose of this letter is to update and re-confirm my advice to America's Blood Centers that the October 22, 1985 position statement of the General Counsel of the National Labor Relations Board (attached) remains good law. In other words, employers can hold blood drives several times a year on their property while also maintaining general no-solicitation rules that have the effect of keeping union organizing activities off of their property.

To give you some background, under the National Labor Relations Act, employers are allowed to have blanket no-solicitation rules that have the effect of keeping union organizing activities off of their property. However, it is an unfair labor practice for an employer to apply such a no-solicitation rule in a discriminatory fashion against unions but not against other parties seeking to conduct solicitations. Thus, nonunionized companies sometimes have concerns about permitting outside solicitations on their property, because this could give rise to a discriminatory enforcement claim.

The NLRB has recognized, however, an "isolated beneficent" activity exception. This exception holds that an employer may allow a limited number of charitable solicitations, such as blood drives, while continuing to enforce a general no-solicitation rule that bars solicitations on behalf of unions and other causes. *See, e.g., Lucile Salter Packard Children's Hosp. v. NLRB*, 97 F.3d 583, 589 (DC Cir 1996).

For example, in 2001, the NLRB issued an advisory opinion letter to Yale University (copy attached) that it did not violate the NLRA by prohibiting teaching assistants from soliciting

support for their union organizing activities in the common room at Yale's Hall of Graduate Studies. (I think I actually spent time in that room during my law school days.) The letter noted that the American Red Cross runs blood drives in that common room three to four times a year, but opined that they likely constitute "isolated beneficent" acts.

Employers typically get in trouble when they allow commercial solicitations, in addition to charitable ones, and then try to prohibit union activities. *See Lucile Salter Packard Children's Hosp.*, 97 F.3d at 589. A company that merely allows blood drives several times a year (such as in the Yale University example) should not be at any risk.

Yours truly,

Edward M. Mansfield
For the Firm

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NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

22 October 1985

RECEIVED

OCT 29 1985

EXECUTIVE OFFICE

Mr. Richard F. Schubert
American Red Cross
National Headquarters
Washington, D.C. 20006

Dear Mr. Schubert:

This is in response to your letter of 26 June, 1985, requesting an opinion from the Office of the General Counsel concerning whether an employer would be guilty of an unfair labor practice if it enforced an otherwise valid no-solicitation rule while permitting certain beneficent solicitations during worktime at the place of employment.

Although I shall address myself to the issue raised, you should understand that my views are not necessarily those of the Board. Nor do they represent the final and formal views of the Office of the General Counsel. Such definitive positions can be taken only in actual unfair labor practice cases presented for resolution after the parties thereto have had the opportunity to present evidence and argument. Finally, the informal opinion expressed herein assumes that the no-solicitation rule itself is not unlawful on its face and that it was not adopted or enforced for discriminatory motives.

In general, the Board has held that permitting some isolated solicitations for beneficent causes does not, per se, establish an unlawfully discriminatory application of an otherwise valid no-solicitation rule. 1/ The question of whether such beneficent solicitations exceed permissible levels depends upon the quantum of

1/ Hammary Mfg. Corp., 265 NLRB 57, n. 4 (1982); Saint Vincent's Hospital, 265 NLRB 38, 40 (1983), enfd. in relevant part 729 F.2d 730 (11th Cir. 1984); Rochester General Hospital, 234 NLRB 253 (1978); Montgomery Ward & Co., 227 NLRB 1170 (1977); Lutheran Hospital, 224 NLRB 176 (1976), mod. 465 F.2d 208 (7th Cir. 1977); Booth, Inc., 1190 NLRB 675 (1971), enfd. 80 LRRM 2097 (5th Cir. 1972); Emerson Electric Co., 187 NLRB 24, 295, n. 2 (1970); Serv-Air, Inc., 175 NLRB 801, 802, n. 3 (1969); May Dept. Store, 174 NLRB 770 (1964); Astronautics Corp. of America, 164 NLRB 623, 625-27 (1967). But see Paceco, 237 NLRB 399, 401 (1978), mod. 601 F.2d 180 (5th Cir. 1979); Lenox Hill Hospital, 225 NLRB 237 (1976); Imco Container Co., 208 NLRB 874, 878-79 (1974).

incidents involved. 2/ Thus, for example, in Emerson Electric, supra, the employer permitted solicitations for blood, and allowed fund-raising to aid financially disadvantaged persons. The Board found that this "isolated" conduct was solely for "beneficent causes." Accordingly, such conduct did not establish discriminatory enforcement of an otherwise lawful rule. Similarly, in May Dept. Stores, supra, the employer permitted monetary collections for funeral flowers and for "charitable and religious organizations." Again, the Board found that this conduct did not establish discriminatory enforcement.

In view of the foregoing, I do not believe that an employer would be guilty of a discriminatory enforcement of an otherwise valid no-solicitation rule if it permitted an organization to solicit for and collect blood donations. 3/ Moreover, I do not believe that discriminatory enforcement would be established, even if the employer also permitted an annual United Way campaign.

In reaching these conclusions, I am particularly mindful of the fact that the spread of AIDS, and the consequent need to test for and eliminate blood units that are HTLV-III positive, has resulted in a critical need for blood donations. I also note that the Board speaks of "beneficent causes" in permitting some exceptions to a no-solicitation rule. In my view, the Board is thereby impliedly recognizing the fact that the NLRA is not to be enforced in a vacuum, and that societal needs must be taken into account. Accordingly, I consider it fully consistent with the NLRA to permit the "beneficent" activities discussed herein.

2/ Hammary Mfg. Corp., supra; Saint Vincent's Hospital, supra; Honeywell, Inc., 262 NLRB 1402 (1982); Lance, Inc., 241 NLRB 655 (1979); Westinghouse Electric Corp., 240 NLRB 905 (1979), enfd. in relevant part 612 F.2d 1072 (8th Cir. 1979); Inland Shoe Mfg. Co., 211 NLRB 843, 852 (1974); Montgomery Ward & Co., 202 NLRB 978 (1973); Daylin, Inc., 190 NLRB 281 (1972), enfd. 496 F.2d 484 (6th Cir. 1974); Talon, Inc., 170 NLRB 355 (1968).

3/ As I understand it, it is not unusual for an organization to conduct two or three campaigns per year at a private-employer facility. In my view, such campaigns would be lawful. I do not pass on the issue of whether such campaigns would be lawful if they exceeded three per year.

I trust that this letter is responsive to your concerns. Please let me know if I can be of any further assistance to you.

Sincerely,

Rosemary M. Collyer
General Counsel

2001 WL 1782912 (N.L.R.B.G.C.)

Peter B. Hoffman, Regional Director Jonathan B. Kreisberg, Regional Attorney
John S. Cotter, Assistant to Regional Director Region 34

*1 SUBJECT: Yale University
Case 34-CA-9512
October 25, 2001

DIGEST NO.S:
512-5006-5057, 512-6767-6700, 512-5012-1725-8800, 512-5012-2500
This case was submitted for advice on whether Yale (the Employer) violated Section 8(a)(1) in two situations: (1) where it prohibited TAs from soliciting and distributing materials while displaying posters in a graduate center common room; and (2) where a professor, through comments made in e-mails and in a newspaper article, conditioned offering his class upon a promise by potential teaching assistants (TAs) not to engage in activity similar to a 1996 unprotected grade strike and hypothesized about the consequences of unionization.

FACTS

The Graduate Employees and Students Organization (GESO) has been attempting to organize the Employer's TAs for the last several years. [FN1] To date, GESO has not filed a representation petition.

A. Use of the Common Room

The McDougal Graduate Student Center is located on Yale's campus in the Hall of Graduate Studies, and a "Common Room" is located within the McDougal Center. The Employer's website contains McDougal Center "Policies and Guidelines for Use of Rooms," which provides that the Center is "to foster social, cultural, and intellectual life and professional development among graduate students." The Center is open to Yale graduate and professional students, faculty, staff, and other interested members of the Yale community.
The Common Room is a large room containing tables, chairs, couches, a television, a piano, newspapers, scholarly journals, and a small cafe/snack bar. According to the webite's policies:
[t]he Common Room . . . may not be reserved for any function or event organized by a graduate student group or university department. As its name implies, it is a Common Room for informal use by all members of the graduate student community whenever the Center is open. . . . Small informal groups, such as study groups, [TA] office hours, game tables, or language tables may gather in the Common Room providing there is space available and that their activities do not disrupt the other patrons of the Center.
There are no other written rules governing the Common Room's use.
Groups using the room have included: (1) the "Western Historians;" (2) TAs holding office hours with undergraduates or small group writing conferences; (3) graduate students holding committee meetings for the "Teaching American Studies" seminar series; (4) 10 to 15 students from a particular department holding a meeting; (5) graduate students tutoring undergraduates and non-Yale students; and (6) graduate students holding board meetings of an independently incorporated organization that advocates prison reform. GESO has also used the Common Room to hold departmental committee meetings and, for the last two years, two GESO organizers have sat daily in the Common Room talking to graduate students about GESO. None of the groups, including GESO, requested permission before using the Common Room.
*2 The Employer asserts that McDougal Center Director Brandes, pursuant to the Common Room rules, has prohibited groups from holding unauthorized "events" in the room. Brandes allegedly has denied requests from undergraduate singing groups wishing to hold practices, a sorority seeking to hold a rush function, and a Chinese students' association seeking to hold an alumni function. Groups using the room are not allowed to display posters, and Brandes has removed unauthorized signs from the Common Room.

B. GESO Solicits and Distributes Literature in the Common Room

1. December 5

On December 5, 2000, two graduate student GESO organizers occupied a table in the Common Room around noon. They placed authorization cards, a petition in support of masters' degree students, and two 11 by 17-inch signs on the table, one stating "JOIN GESO" and the other stating "SIGN A CARD." GESO had never before placed signs on the tables while soliciting in the Common Room. The two GESO organizers sat at the table, speaking quietly to students who approached.
At about 1:15 p.m., Brandes told the two GESO organizers that the Common Room was only to be used for graduate student activities and studying, not for student groups. Brandes stated that only McDougal Center and Graduate School events open to everyone could be held there and told the organizers that they should have asked permission to use the room. She told them that they could stay a little while longer, but that they had to leave and could not conduct this activity in the Common Room in the future. The organizers soon left.

2. December 6

On December 6, three graduate student GESO organizers occupied a table in the Common Room between 10 a.m. and Noon. One of the students was wearing a GESO button, but there were no signs or authorization cards on the table at the time. Brandes walked by the table twice and said nothing.
At about 11:45 a.m., two other graduate student GESO organizers occupied a table in the Common Room. The two organizers attached a small sign to the table and placed GESO authorization cards, a petition, and copies of the GESO newsletter entitled "The GESO Voice" on the table.
At about 12:45 p.m., Chelsea Boyton, Brandes' assistant, told the organizers that they would have to leave and that the Center's policy prohibited solicitation. Boyton explained that the big sign in front encouraging people to sign a card made it seem like the organizers were soliciting. The organizers soon left.

3. December 7

On December 7, two graduate student GESO organizers began setting up a GESO table in the Common Room. One of the organizers walked over to Brandes to inquire about the policy on using the room. Brandes told him that GESO was not allowed to occupy a table. She explained that they could talk informally to other students but that the policy prohibited any organization from using part of the Common Room for its own purposes. The organizer told her that he had previously seen other groups use the room in various ways. Brandes said that the room was common space and that the Employer had never allowed groups to come and set up tables. The organizers did not solicit membership that day. GESO organizers have not returned to the Common Room to solicit or distribute GESO materials since then.

C. Professor Kennedy's December 2000 E-mails

3 Between December 5 and 8, Professor Paul Kennedy, a world-renowned professor in Yale's History Department who is also the Director of the International Security Studies Program (ISS), sent three union-related e-mail messages to the 45 ISS graduate students.

1. December 5 E-mail

On December 5, Kennedy had an e-mail sent to ISS students concerning two issues. The first paragraph of the e-mail informed students that Kennedy would be on sabbatical from January 1 to July 1, 2002, and thus not available for his normal advising duties. The second paragraph addressed the possibility of serving as TAs for Kennedy's lecture classes:
Some of you have wondered if/when you might have the chance to TA for Professor Kennedy's lecture class THE STRATEGY AND DIPLOMACY OF THE GREAT POWERS SINCE 1860. Prof. Kennedy will not offer that class if any of the TAs were GESO members who might take industrial action against grading undergrads during some future dispute between the university and GESO [like the withholding of grades action they took a few years ago]. Until that assurance is received, he will not offer his class.

2. December 6, 2000 E-mail

The next day, Marco Simons, a Yale law student, sent an e-mail to Kennedy asking whether he meant to say that he would not offer his course unless the prospective TAs were not GESO members or unless they promised not to engage in a grade strike.
Professor Kennedy replied by e-mail to Simons later that day, copying all ISS students, and clarified:
. . . I don't really care whether my TAs in a big lecture course are for or against GESO, or for or against Bush/Gore, or for or against global warming. . . .
I do care that my TAs [to whom I offer a lot of support, always] will not ever ABANDON my undergrads in their section/advising/grading responsibilities because they are "called out" by a union leadership during some critical negotiation, e.g., to put pressure upon Yale. Actually, it is good to have GESO-folks among the TAs. . . . All I'm asking is that my TAs commit not to screw up the grading/advising on a strike call, as happened in Dec. 1996. Is that too much to ask?
. . . this is not really an ISS matter; it is me, as Dilworth Professor in the History Dept. and someone keen to return to my lecture class, wanting a reassurance that my undergrads will never be disrupted by industrial action of the sort that so often accompanies wage/benefits negotiations. If that cannot be given, I will happily teach at Yale at all other levels. But I bear malice to none.

3. December 8 E-mail

The next day, Kennedy sent another e-mail to Simons, copying ISS students and Yale's top administrators, including the President, the Provost, and several Deans and History Professors. The e-mail stated:
I return to our discourse about GESO in the same spirit of cautious enquiry as yours . . . So bear in mind that what follows is a kind of pondering, not a policy recommendation, or firm opinion, or prejudice. . .
4 Here is my question. Has it ever occurred to the GESO folks pushing for unionization, with all that that implies [freedom to withdraw from teaching/grading undergrads], that the result upon the Yale faculty might be, not so much as to cause them to leave for Harvard or Oxford, but steadily to move to a position where no TAs are required at all? I should say that I've not heard anyone at Yale articulate this argument, so this is a mere ballon d'essai and to be treated as such. But there seems a certain logic, and telos, to it.
. . . Yale seems to have the resources to teach in a liberal-arts college fashion. . . .
In a full teaching year, someone like myself, for example, could offer my u/g lecture/discussion course on THE STRATEGY AND DIPLOMACY OF THE GREAT POWERS to a maximum of 25 students [say] in the Fall term, and perhaps repeat in the Spring. I would also offer my junior seminar to 15 students on THE ORIGINS OF WW2, and my grad seminar to up to 20 students on RELATIONS OF THE GREAT POWERS SINCE 1890. None of these, by Yale College's present criteria, would require a TA. It's quite a heavy teaching load, relatively, but not heavier than I've been doing of late [last year I did the equivalent of 3:3]. Let us suppose that Prof. Spence does something similar, and Prof. Gaddis, and Prof. Cott. Let us sizes [sic]. . . . Again, this is all conjectural.
Would this happen at once, by Yale fiat? I doubt it. It could be a gradual thing. . . . True, some of my colleagues might find the idea strange, at first. They might like to continue lecturing to 150 undergrads, and to have 3 TAs. But if a sympathy strike by their TAs with Unions 34 and 35 came around, or grade withholding occurred, it is possible that they could realize that the problems they faced in completing their grading and teaching were not being faced by colleagues who had moved, voluntarily and without rancor, to a non-TA system.
Some other implications follow. Yale might enroll fewer grad students, based upon a rough calculation of the market for their later employment in academe. All grad students would probably continue to get full tuition-waiver and a 5- year stipend. To give senior grad students teaching experience, they could be invited to offer a couple of junior seminars or equivalents by their 4th or 5th years; but not required to do so. It would be their choice. They would never, by any definition, be employees. They would finish their Ph.D.s faster.
Is this the ideal GESO strives towards? Marx always envisaged the gradual withering away of the State. Perhaps GESO's architects envisage the withering away of GESO?
All this is mere fancy, not a policy proposal or anti-union fodder. But in the spirit of our discourse, it could be food for thought, I believe. Please regard as a simple speculation.

4. January 19, 2001 Yale Daily Herald Article

On January 19, 2001, an article appeared in the student newspaper, The Yale Daily Herald, concerning Kennedy's e-mails. The article states in pertinent part:
***5** . . . Kennedy said his fear of a graduate student strike comes from the grade strike of 1996, when graduate students administered final exams but withheld the grades from students and professors. ". . . I didn't want to have to deal with that situation, so I opted not to teach a large lecture class with TAs."
. . . "Since GESO believes that it is one of their rights to strike, I stated my right not to teach my big lecture course until I knew that it would not be disrupted," he said. "I have a choice of which courses to teach, and I'm just indicating to my graduate students that I'll wait to teach my lecture course until I'm pretty sure that it won't be interrupted."
. . . .
"If I say that I'm not going to teach a certain one of my courses because I'm worried about strike circumstances, they can't really throw a legal book at me or at Yale, I imagine."
. . . "GESO sees this as a threat to them and their right to strike, and I see it as a polite notice indicating my personal preference of which courses I teach."
. . . "GESO is organizing the students for a particular vote on unionization," Kennedy commented. "But I think it got them worried that if more and more senior professors like myself said we were worried about unionization and striking, then a lot of the new graduate students would vote against membership in GESO."

ACTION

We conclude that the charge should be dismissed absent withdrawal.

A. Prohibiting Solicitation and Distribution in the Common Room

Rules prohibiting union solicitation on employer property during nonworking time or the distribution of literature during nonworking time in nonworking areas are presumed unlawful absent "special circumstances." [FN2] In determining whether "special circumstances" exist to justify limiting union activity in a non-work area that is also used by non-employees, the Board considers whether the soliciting employees' use of the area is consistent with the area's customary use, whether it creates a traffic or safety hazard, and whether it interferes with other patrons' use of the area. [FN3]
Here, the GESO organizers were on nonworking time and in a nonworking area. Accordingly, they had a right to solicit and distribute materials in the Common Room, regardless of any rules to the contrary, unless the Employer can show special circumstances justifying a limitation on that right. We conclude that special circumstances justify the prohibition on GESO's display of posters in the Common Room. Yale claims that it has removed posters in the past, and no evidence indicates that other groups were allowed to display posters. The Common Room is utilized by various student groups for academic discourse and extracurricular studies and meetings. In this academic environment, it would be anomalous to treat GESO differently than other student groups by permitting GESO, and not others, to display posters. And, if all room users were permitted to display posters, Yale has a strong argument that the character of the room, as an informal place of study and student congregation, would be altered, transforming the room into a student union rather than a center for informal social activity and group study and discourse. Because special circumstances exist for prohibiting groups from displaying posters, the Employer did not violate the Act by prohibiting GESO from displaying posters.
***6** In concluding that there was no violation here, we note that GESO organizers were allowed to occupy tables in the Common Room for organizational purposes on all occasions when they did not display posters. While some of the Employer's statements to the organizers were ambiguous as to why it thought the organizers were "commandeering" the tables, in each case in which the organizers were asked to cease their activity, they were displaying posters. The Employer has defended its position here by claiming that the display of posters is what rendered GESO's use of the room inappropriate. We note that the Employer never explicitly prohibited the GESO organizers from distributing materials from a table. Indeed, it would appear that activity alone would be consistent with the Common Room's use. Other users, including study groups, student organizations, and TAs holding office hours, surely review, distribute, and study various materials at the tables. That issue

was, however, not presented by this case and is not decided herein.
In addition to finding no violation under Republic Aviation, we conclude that there is insufficient evidence of disparate treatment in that GESO cannot demonstrate that other student groups "solicited" or distributed materials in the Common Room. While the American Red Cross runs **blood drives** in the McDougal Center three to four times per year, the **blood drives** likely constitute ""isolated beneficent acts." [FN4]

B. Threatening Job Loss

An employer cannot condition an offer of employment upon a potential employee's promise not to join a union or not to engage in other protected concerted activity. [FN5] An employer can, however, predict the consequences it foresees from unionization so long as the prediction is "carefully phrased on the basis of objective fact to convey [its] belief as to demonstrably probably consequences beyond [its] control." [FN6] Further, an employer that warns employees about adverse job consequences for engaging in unprotected activity does not violate the act. [FN7] In Yale University, for instance, the Board held that the 1996 grade strike was not protected because it was a partial strike, in that the TAs continued to perform some of their responsibilities, and because the TAs misappropriated school property by refusing to turn over the ungraded papers. [FN8] Because it was unprotected, the Board held that the Employer's threat to give poor evaluations to TAs who failed to report grades on time did not violate the Act. [FN9]
In his December 5 and 6 e-mails and in the newspaper article, Kennedy referred to the 1996 unprotected grade strike. In the December 5 e-mail, he stated that he would not offer the class if students might take industrial action "like the withholding of grades action they took a few years ago." In the December 6 e-mail, he stated, "[a]ll I'm asking is that my TAs commit not to screw up the grading/advising on a strike call, as happened in Dec. 1996." And in the newspaper article, he stated that his fear of a graduate student strike derived from the 1996 strike, "when graduate students administered final exams but withheld the grades from students and professors." In light of the repeated references to the unprotected 1996 grade strike, Kennedy's comments would reasonably be interpreted to threaten adverse job consequences for engaging in unprotected conduct similar to the grade strike and would not restrain or coerce employees from engaging in protected Section 7 activities.
7 In his December 8 e-mail, Kennedy pondered the hypothetical ramifications of the unionization of TAs. He speculated that professors, fearing strikes and grade withholding, would use TAs less, that the Employer would need fewer TAs, and that TAs would eventually no longer be considered employees with Section 7 rights. While these statements were not based solely on objective facts outside of the Employer's control, we find that, in light of their context, they were not sufficiently coercive to constitute Section 8(a)(1) violations.
Thus, Kennedy repeatedly emphasized the hypothetical nature of the statements. He began, "what follows is a kind of pondering, not a policy recommendation, or firm opinion, or prejudice." And he ended, "all this is mere fancy, not a policy proposal or anti-union fodder. But in the spirit of our discourse, it could be food for thought, I believe. Please regard as a simple speculation." Kennedy also explicitly stated that he had not "heard anyone at Yale articulate this argument." While it is well established that portraying a threat as a personal opinion does not eliminate the coercive impact of that threat, [FN10] given the academic context and Kennedy's disclaimers, his speculations likely would have little impact on employees' willingness to engage in Section 7 activity. In the academic context, the posing of hypotheticals and the discussion of the merits of movements such as unionization are more likely interpreted as ordinary academic discourse and not as threats to take adverse action. Since Kennedy repeatedly emphasized the hypothetical and theoretical nature of his comments made in the spirit of "discourse," and since he explicitly pointed out that his views were not those of Yale, we find no violation of Section 8(a)(1). [FN11]
Accordingly, absent withdrawal, the charges should be dismissed.

Barry J. Kearney
Associate General Counsel
Division of Advice

FN1. In 1996, a complaint issued against Yale pursuant to an Advice Memorandum dated November 12, 1996, alleging that Yale's TAs were employees under the Act and that they had engaged in a

protected "grade strike." The Board upheld the ALJ's finding that the grade strike was unprotected, but the TA's employee status was never decided. Yale University, 330 NLRB No. 28, slip op. at 2, 5 (1999). Here, Yale again argues that its TAs are not employees. The Region, after reviewing the Board's decision in New York University, 332 NLRB No. 111 (2000), and the changes in the TAs' terms and conditions of employment since 1995, has determined the TAs remain Section 2(3) employees.

FN2. Sprint/United Management Co., 326 NLRB 397, 398 (1998). See Republic Aviation Corp. v. NLRB, 324 U.S. 793, 803-804, fn. 10 (1945) (right to engage in union solicitation during nonworking time); Eagle-Picher Industries, 331 NLRB No. 14, slip op. at 6 (2000) (right to distribute literature during nonworking time in nonworking areas).

FN3. See Hughes Properties, 267 NLRB 1167, 1167 (1983) (holding that hotel/casino could not prohibit an off-duty employee from soliciting and distributing materials to other off-duty employees in a hotel bar because employee's use of the facility was not "in any significantly discernible way distinguishable from the customary use of the facility," the employee was not ""disruptive in any way," and "he did not move from table to table or interfere with on-duty employees in the vicinity"), enfd. 758 F.2d 1320 (9th Cir. 1985).

FN4. See Hammary Mfg. Corp., 265 NLRB 57, 57 (1982).

FN5. Culley Mechanical Co., 316 NLRB 26, 27, fn. 8 (1995) (employer's telephone call to prior employees who had the potential of being rehired requesting them to withdraw their unfair labor practice charges constituted unlawful threat to potential employees because it implied that they had to forego Section 7 rights to obtain employment).

FN6. NLRB v. Gissel Packing Co., 395 U.S. 575, 618 (1969). See Eldorado Tool, 325 NLRB 222, 222-23 (1997) (employer display of tombstones of UAW plants that had closed, with question mark next to employer name, constituted unlawful threat because no objective facts indicating why plant would close); Schaumburg Hyundai, Inc., 318 NLRB 449, 450 (1995) (employer's statement that if union came in, shop would be run strictly and not all mechanics would be considered journeyman constituted unlawful prediction because not based on objective facts beyond employer's control).

FN7. See Yale University, 330 NLRB No. 28, slip op. at 2, 5.

FN8. Ibid.

FN9. Ibid.

FN10. See Intercon I (Zercom), 333 NLRB No. 30, slip op. at 14 (2001) (warnings of job loss upon unionization cast as "friendly advice" might be more credible and hence more, not less, offensive to Section 8(a)(1) than generalized utterances by distant company officials); Clinton Electronics Corp., 332 NLRB No. 47, slip op. at 1 (2000) (supervisor's statement that "off the record, it's my opinion that we could all be looking for a job" was unlawful threat of job loss).

FN11. We have assumed, arguendo, that Kennedy is a supervisor within the meaning of the Act or an agent of the University. We note, however, that in some cases the Board has found professors to be unit employees. Because we are dismissing the charge, we do not need to reach that issue here. We also emphasize the limited nature of our decision here. We are not creating special rules for academic institutions, whereby supervisors are permitted to impliedly threaten employees regarding employee unionization or Section 7 activity. Thus, if a professor with Section 2(11) authority threatened or impliedly threatened statutory employees in a manner that would reasonably restrain or coerce employees from engaging in union activity, such conduct would violate Section 8(a)(1).

OFFICE OF GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD (N.L.R.B.)
2001 WL 1782912 (N.L.R.B.G.C.)
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