

ALERT

LABOR & EMPLOYMENT LAW

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NLRB: “Shame, Shame, Shame” Banners are Not Secondary Boycotts

The new majority of the National Labor Relations Board (NLRB) has decided one of the oldest cases pending before the Board, ruling in favor of unions that banner activities at construction sites do not constitute secondary boycott activity under the National Labor Relations Act (NLRA) (United Brotherhood of Carpenters and Joiners of America, Local Union No. 1506 *and* Eliason & Knuth of Arizona, Inc.). Employers should be aware that this decision has the potential to dramatically increase the amount of secondary boycott activity at construction work sites where non-union labor is working.

In a 3-2 decision, NLRB members Liebman, Becker and Pearce upheld the Carpenters’ Union’s use of the “shame, shame, shame” banners at construction sites where non-union contractors were working. The Board majority found that the Carpenters Union did not engage in secondary boycott activity when they held 16-foot long banners near three construction sites in Arizona. Though the banners (and accompanying handbills) declared that specific named construction contractors at those sites paid substandard wages and benefits, they also stated that the owners of the businesses where the non-union contractors were working were contributing to undermining wages and benefits paid to area workers by using the non-union contractors.

The business owners filed unfair labor practices charges against the Union (in 2003) on the ground that the banners sought to involve them in the Union’s dispute with the contractors thus resulting in a secondary boycott in violation of the NLRA. However, the new NLRB majority found that the language of the NLRA does not suggest that Congress intended the secondary boycott language of the NLRA to prohibit “the peaceful stationary display of a banner.”

The Board minority in dissent said that the majority went too far, claiming that in so ruling, they have established a new standard that secondary boycotts only occurred if the union’s conduct “caused or could be expected to cause disruption to the secondary

employer's operations." The dissenters argued that this new standard upset the balance that Congress sought to achieve in the NLRA and they predicted the decision will dramatically increase the amount of secondary boycott activity.

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