

11TH Circuit Upholds \$1.7 Million Jury Verdict Against Carpenters Union for Illegal Secondary Boycott Campaign Against Non-Union Contractor

The Southeastern Carpenters Regional Council mounted a campaign against Fidelity Interior in Atlanta, GA. The union sent letters to owners and general contractors warning them of adverse consequences if they used Fidelity, a non-union contractor that the union deemed to be “unfair.” When the owners and general contractors ignored the union’s request to use union-approved contractors and let work to Fidelity, the union engaged in an aggressive campaign designed to force owners and general contractors to cease doing business with Fidelity.

The campaign took many forms. The union picketers, mostly homeless people paid by the union, were transported in the union’s Big Red Bus to march, picket and chant in front of construction projects where Fidelity was working, pass out handbills asking the public to support its cause, and handbilling and erecting large banners claiming that people doing business with Fidelity were to be “shamed.” The demonstrations included upwards of 100 people who would march around the site chanting slogans and calling people who crossed the picket line “rats” or worse. The demonstrations were so loud that workers in office buildings could not conduct meetings.

Fidelity suffered economic harm because of the activity. It was kicked off of projects it was working on and lost future opportunities because owners and general contractors did not want to hire it to work on projects. The union defended against the lawsuit by alleging that all of its actions were legal tactics. Under the National Labor Relations Act (NLRA), area standards picketing (picketing against an employer who does not pay area standard wages and benefits) is protected when conducted in accordance with certain rules. Displaying large stationary banners advising the public that an employer is using an “unfair” contractor is an approved form of communication under NLRB decisions. A union can display such a banner wherever it wishes, including the neutral employer’s other properties not involved in the underlying dispute. Handing out handbills describing the labor dispute is protected. So, too, is writing letters to owners and general contractors asking them not to use a particular contractor on a project.

So why did the union lose? Even though many of the tactics, by themselves were legal, the totality of the circumstances combined with the union’s failure to follow the rules in all situations allowed the court and jury to find that the overriding purpose of all the activities was to force, through threats and coercion, one employer from doing business with another employer, Fidelity. That is a classic secondary boycott and is prohibited by Section 8(b)(4) of the NLRA.

Fidelity prevailed at trial and the jury awarded it \$1.7 million in damages for lost profits and lost business opportunities. The union is continuing its “Shame On You” campaign, but, at least in our geographic area, it has modified its tactics to avoid getting hit in the pocketbook again. With the current composition of the NLRB favoring labor, a union engaging in such a campaign will have to make a mistake to get the Board to act. If you receive a “Shame On You” campaign letter from a union, it would be advisable to seek out legal advice on what you may be able to do to protect your interests. The rules of engagement are technical.

The case is Fidelity Interior Construction, Inc. v. Southeastern Carpenters Regional Council, No-09-14573 (11th Cir. March 29, 2012).

If you would like more information concerning these proactive measures, please contact [Bill Trumpeter](#) at

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The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance.

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