

Union Corporate Campaign May be Protected Activity Under NLRA

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Followers of labor and employment law have seen some epic corporate campaigns between large national employers and unions. In the wage and hour arena, union efforts to organize industry giant Wal-Mart have included wage and hour class actions, as well as proposals for health care legislation in various states. A similar battle has been brewing between UNITE HERE and Cintas Corporation.

Cintas recently attempted to bring UNITE HERE's corporate campaign to the light of day in response to unfair labor practice charges involving Cintas' operations in North Carolina and Connecticut. The charges alleged that Cintas violated the National Labor Relations Act by disciplining employees for wearing stickers that said "Uniform Justice," the name of the union's organizing campaign. They also alleged that Cintas confiscated pro-union flyers. Other charges alleged improper actions against employees who sent letters to Cintas customers and state environmental protection officials regarding alleged concerns about toxic chemicals.

In response to the charges, Cintas alleged that the conduct at issue was not protected by the National Labor Relations Act, since it was part of a national campaign by the union aimed at forcing Cintas to agree to a card check. Cintas argued that the Act does not protect "economic coercion" aimed at forcing employer acceptance of a card check agreement or a neutrality agreement, since neither is a mandatory subject of bargaining under the Act. The administrative law judge disagreed and Cintas appealed.

On appeal, both the Board and the Eighth Circuit Court of Appeals agreed with the ruling below and determined that the national campaign was of limited relevance since the allegations involved local employees. According to the Court, Cintas had every opportunity to establish a link between the two by cross-examining the employees and determining whether their motivation was truly based on economic needs and health concerns, or whether the motivation was simply to bring Cintas to its knees as part of the national effort to obtain a neutrality agreement. To the extent Cintas had legal concerns with the Union's national campaign, the Court concluded that Cintas could have filed unfair labor practice charges to explore the Union's liability, if any, for this corporate campaign under federal labor law.