National Labor Relations Board Once Again Rules that Bannering is Lawful

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Now that the National Labor Relations Board is at full strength, it is finally addressing many important cases which have been pending for some time. In the recently announced decision of Southwest Regional Council of Carpenters (New Star General Constructors, Inc.), the Board ruled that bannering by the Carpenters Union did not violate the secondary boycott provisions of the Act, which proscribes threats of coercion against neutral employers in an effort to get them to cease doing business with a target company.

In 2004, the Southwest Regional Council of Carpenters placed large 4 ft. x 20 ft. banners on various job locations proclaiming a "labor dispute" with owners and contractors doing business with two Utah companies. In addition, the Union sent letters to secondary employers asking them not to do business with either firm. Handbills were also distributed at various job sites advising the public of the connection between the secondary or neutral employers and the targeted companies. This occurred even though, at many of the jobsites, the targeted companies were not present. At the jobsites where they were present, the targeted companies also set up a dual gate system which the carpenters' banners refused to comply with.

The targeted companies filed unfair labor charges alleging unlawful coercion of neutrals and unlawful inducement of employees to stop doing business with the targeted companies. The Board's General Counsel proceeded with the complaints, but the Board disagreed that the banners were "signal pickets" in violation of the Act. The Board distinguished banners from pickets and held that, absent confrontational activity by the bannerers, as well as a direct request that neutral employees not work at the jobsites, the activity was not in violation of the secondary boycott provisions and was protected under the Act. In a dissent, Board member Brian Hayes noted that bannering was the equivalent of picketing and was located at entrances used by employees of neutral companies.

It would therefore appear that absent additional evidence of a union request for a work stoppage, bannering will not be found to violate the secondary provisions of the Act. Owners, neutral companies, as well as the target companies, should therefore establish at the outset of bannering that no work stoppage is sought by the union. If the union fails to provide this assurance, an unfair labor practice charge may be successful. The Board's position may provide little comfort to the owner who may be subject to bannering for months, but at least may allow bona fide assurances that no work stoppages will result.