Law of the Workplace CLIENT ALERT

PREPARED BY SIEGEL, O'CONNOR, O'DONNELL & BECK, P.C.

Narrow NLRB Decision Overturns Historical Standard That "Bannering" Neutral Employers Violates NRLA

On August 27th, in a 3-2 decision, the NLRB held that the union practice of displaying large stationary banners in front of secondary or neutral employers' businesses did not amount to coercive conduct and did not violate the secondary boycott provisions of the NRLA. *Carpenters & Joiners of Am. 355 N.L.R.B. No. 159.*

The decision, split along party lines, covered three Arizona cases in which union carpenters displayed very large banners near three separate establishments to protest contract work performed for the owners of these establishments by non-union construction contractors. In each instance, the union set up a large stationary banner at a location operated by a neutral employer that had a business relationship with the targeted construction employer. The union-erected banners ranged in size from 15 feet by 3 three to 20 feet by 3 feet and displayed the words "SHAME ON [SECONDARY EMPLOYER]" and the words "LABOR DISPUTE" flanked all the messages on either side of the banners. The union placed the banners from a few hundred feet to as little as 15 feet from the relevant business. At no time did the union have any dispute with the bannered employers' labor practices with their own employees and none of the non-union contractors performed any work at the relevant locations.

The Democratic majority (Chairman Liebman and Members Becker and Pearce) found that the labor union's displays outside the neutral employers' respective businesses did not violate Section 8(b)(4)(ii)(B) of the NLRA. The relevant section states, in pertinent part, that it shall be an unfair labor practice for a labor organization or its agents, "to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where an object thereof is…forcing or requiring any person to cease doing business with any other person…." This section, according to the majority, requires a showing of actual or threatened disruption upon a neutral employer's operations by the bannering. The majority agreed with the union that "bannering" a neutral employer differs from unlawfully picketing that same target. In so holding, the majority declared that "[b]anners are not picket signs" and that bannering, like handbilling, is noncoercive conduct that does not violate the NRLA.

In a scathing dissent, the minority members explained that the majority's decision "substantially augments union power, upsets the balance Congress sought to achieve, and, at a time of enormous economic distress and uncertainty, invites a dramatic increase in secondary boycott activity."

This decision fundamentally changes the balance of power in labor relations in favor of unions. Ultimately, the Board has given unions a new organizing weapon which will most certainly increase the frequency of secondary boycott activity and entangle neutral employers in labor disputes not of their own making.

SIEGEL, O'CONNOR, O'DONNELL & BECK, P.C.

Hartford · New London

(860) 727-8900 www.siegeloconnor.com