Union Corporate Campaigns Hit A Snag

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In an effort to increase union membership, some unions have directed their attention to business owners and those doing business with non-union firms. Under the guise of protesting the failure of non-union contractors to meet "area standards" (ostensibly only possible if the targeted contractors agree to union contracts), the unions contact business owners via office visits, letters, and telephone calls to advise them that the owners will be subject to a very visible campaign protesting the owners' use of "substandard" non-union contractors. In some cases that campaign includes 4 ft. x 20 ft. banners advising the public that the business owner is "undermining area standards."

These corporate campaigns recently received a blow when a federal court affirmed an order from the National Labor Relations Board that the Carpenters Regional Council in Pennsylvania, Delaware, and Maryland cease pressuring neutral parties to stop doing business with certain non-union contractors. In NLRB v. Metropolitan Regional Council of Carpenters, the Court reviewed two cases involving statements by union officials to condominium project developers and general contractors, that the project "is going to have problems," including protests, work stoppages, and delivery stoppages, unless the neutral parties used signatory contractors for the work. The targeted non-union contractors filed unfair labor practice charges under federal labor laws against the Union alleging that the threats violated the so-called secondary boycott proscriptions in the Act protecting neutral parties from being enmeshed in labor disputes. The Union argued that its statements were mere "predictions" protected under the Act. Based upon the number of violations, including 11 unfair labor practice complaints over an 8-year period, both the administrative law judge hearing the case, and the Board, had issued a broad cease and desist order against the Union.

On appeal, the federal court affirmed both the findings as well as the entry of the cease and desist order based on the Union's "long history of violating" the NLRA. The decision may provide some much-needed protection against union attempts to place neutral owners in the middle of a labor dispute with non-signatory employers. As an aside, the Board has not issued clear guidelines regarding whether bannering is "picketing" subject to secondary boycott provisions or "pure speech," which is not. We will update you should there be any rulings or clarifications in the future.

In another decision pertaining to union corporate campaigns, a federal judge in New York dismissed racketeering and trademark infringement claims against UNITE HERE, the Teamsters and the labor federation Change to Win. In Cintas Corp. v. UNITE HERE, the judge held that a union campaign which had been conducted since 2003 to obtain a neutrality/card-check agreement, was neither a violation of trademark laws nor unlawful extortion. Cintas had alleged that the Union's vow to continue its disparagement campaign unless and until the Company signed a neutrality/card-check agreement, constituted unlawful extortion. With regard to the trademark claims, the Court found that the unions were not a competitor and their use of the Cintas logo as part of their campaign would not confuse the public into thinking the unions were offering Cintas products. Regarding the same campaign, on March 23, 2009, the U.S. Supreme Court declined to review a federal

appeals court decision that UNITE HERE violated the federal Driver's Privacy Protection Act by accessing motor vehicle records of of Cintas workers during this organizing effort.