

Winston Defeats NLRB on Behalf of Arlington Metals Corporation

DECEMBER 1, 2015

On December 1, 2015, Winston & Strawn attorneys secured a key win on behalf of client Arlington Metals Corporation, defeating the National Labor Relations Board's (NLRB) efforts to secure a Section 10(j) injunction. The injunction would have required mandatory recognition and bargaining with the United Steelworkers Union (USW) and disclosure of confidential company financial records.

The denial of the injunction represents a blow to the NLRB's ongoing and highly publicized agenda to limit employer rights to withdraw from certain union bargaining relationships and require disclosure of financial records in bargaining. The denial also represents a victory for the majority of employees at Arlington Metals Corporation, who had said they no longer wanted to be represented by the USW.

The case emanates from Arlington Metals' July 2014 withdrawal of recognition of the USW as the bargaining representative of production employees at the company's steel processing plant in Illinois. The company withdrew recognition after receiving a petition signed by a majority of employees stating they no longer wanted to be represented by the union.

The union challenged the withdrawal, and the NLRB's general counsel took up the union's cause, asserting in litigation before one of the Board's administrative law judges (ALJ) that the employees' choice to reject continued USW representation should be ignored. The union argued that the employee petition was allegedly "tainted" by Arlington Metals' alleged bad faith bargaining, including its refusal to turn over detailed confidential financial records during the negotiations.

Following a trial, the ALJ dutifully concluded the company violated the Act as alleged and recommended that the Board order the company to recognize the union, produce the requested financial records, and recommence bargaining. Arlington Metals appealed the ALJ's adverse decision to the Board. Before the Board could rule, the Board's general counsel petitioned the district court for immediate enforcement of the ALJ's decision via an extraordinary injunction. In addition to its petition for injunction, the general counsel also filed motions urging the court to decide the matter solely based on the administrative record before the ALJ and pursuant to an exceedingly deferential standard—effectively seeking a "rubber stamp" of the ALJ's decision.

Judge St. Eve of the Northern District of Illinois denied the Board's efforts for abbreviated review and enforcement of the ALJ's contested ruling, granting Arlington Metals' request to present additional evidence in opposition to the

petition. During a two-day evidentiary hearing, the court heard testimony from 22 witnesses, including a majority of the employees who signed the petition in July 2014. Based on the entire record, the district court's 30-page memorandum opinion concludes that the general counsel failed to establish any of the required elements for an injunction. In particular, the court concluded the general counsel's delay in seeking to overturn the company's withdrawal of recognition in July 2014 rendered untenable its position that injunctive relief was necessary to prevent immediate irreparable harm. In addition, the court took the unusual step of scrutinizing the merits of the general counsel's claims against Arlington Metals and concluded the general counsel is "unlikely to succeed" on its claims notwithstanding the ALJ's decision. Judge St. Eve found the ALJ committed multiple errors in the factual and legal analyses, consistent with Arlington Metals' appeal of that decision to the Board.

Winston attorney Ben Ostrander represented Arlington Metals.

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