

BUSINESS CONNECTIONS

**Unions Allowed to Pressure Investors to Assist
Unionization of Investments' Employees**

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A Business Law Update

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A recent decision by the federal National Labor Relations Board (“NLRB”) portends the potential – likely a probability – for labor unions to pressure investors to require businesses in which they invest to not resist union efforts to organize the businesses’ employees. In *Heartland Industrial Partners, LLC*, the NLRB ruled that Heartland, a private equity firm that invests in manufacturing companies, and the United Steelworkers of America (the “Union”) did not violate federal labor law by entering into an agreement requiring companies Heartland controls to sign agreements with the Union that would (1) grant the Union access to the worksite to meet with the employees and distribute its information; (2) provide the Union with the names and home addresses of the employees; and (3) commit the company to recognize the Union, without need for an NLRB-conducted secret ballot election, if Union obtains and produces authorizations signed by a majority of the employees stating they wish to be represented by the Union.

Federal labor laws are based on the concept that employees are allowed, as a group, to choose to be represented by a union, and that their choice is to be recognized by their employer. Traditionally, unions have been required to convince employees of the benefits of unionization, a process often referred to as “bottom-up” unionization, with the union having to win the “hearts and minds” of the employees it seeks to represent. Employers are allowed to exercise their free speech rights to inform employees of the drawbacks to unionization, and the employees’ choice is determined in a secret-ballot election conducted by the NLRB, an agency of the federal government. Under the *Heartland* decision, an investor can require that a business in which it invests forego both the right to oppose unionization and the right to have its employees’ choice determined by an NLRB-conducted election.

Exercising their rights of free speech, unions have long pressured consumers not to purchase products of or from businesses with which it has disputes, including those whose employees are not unionized. Picketing, leafleting and advertising have all been used by unions to convince the public not to patronize businesses with which the unions are unhappy. Pressure put on a business to cause its employees to become unionized, or to make unionization easier for the union, is known as “top-down” organization. A recent example of “top-down” organizing is the December 18, 2006, announcement by the Service Employees International

Union – formerly the janitors’ union – that it has reached a national agreement with two major property owners of 373 shopping malls, which requires the owners to select cleaning contractor firms that would allow their employees to become unionized without the contractor exercising the full range of its lawful rights to oppose unionization.

Watch for unions to put more pressure on investors in and owners of facilities used by businesses whose employees are not unionized. What pressure a union may use to effect “top-down” organizing varies. Often it is linked to investment of union or pension funds, or is a threat of union activity against a susceptible business. The immediate goal is to have the investor or facility owner require the business not to oppose unionization and often, not to require that employee sentiment be determined by an NLRB-conducted secret ballot election, but rather by production of authorization cards signed by employees. Authorization cards are often signed under peer-group pressure, such as meetings conducted by the union and its supporters, or in other circumstances that make the cards less reliable than a ballot case in secrecy at an NLRB-conducted election.

When a prospective investor, landlord or customer requires that, as a condition of doing business with it, a party (business owner) must commit to waive its legal rights to oppose unionization of its employees, the business owner must make the same analysis that is made in its other business decisions: is the benefit worth the cost? Does the financing, lease or customer justify the increased potential of having to deal with a union? When the union is known, such as in the shopping mall case or in *Heartland*, the business should investigate the union’s reputation to determine its willingness to work with management in fashioning a relationship that will allow the business to succeed.

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