

## Eighth Circuit Upholds NLRB Decision Finding Union To Have Unlawfully Targeted Neutral Employer

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On August 7, 2012, the Eighth Circuit, in a decision written by the Honorable James Loken, denied the Laborers District Council of Minnesota and North Dakota (the "Union")'s petition for review of a National Labor Relations Board (the "NLRB") decision that found that they had violated Section 8(b)(4)(ii)(B) of the National Labor Relations Act (the "NLRA") and granted the Board's cross-petition to enforce its Decision and Order. That section of the NLRA prohibits unions from targeting (by "threaten[ing], coerc[ing], or restrain[ing]") secondary or neutral parties, parties that do not have a labor dispute with the union, to force those parties from doing business with the primary party, i.e. the party with which the union has a labor dispute. By that section, the NLRA seeks to prevent unions from disrupting the business of parties with which they do not have a labor dispute, while preserving the union's right to pressure those employers with which they may have labor disputes.

In *Laborers District Council of Minnesota and North Dakota v. National Labor Relations Board*, the Union had refused to sign an 8(f) agreement (also known as a "pre-hire agreement," a type of agreement permitted only in the construction industry) with an employer, Lake Area, only after the Union was informed that Lake Area intended to work with Century, a non-union contractor (which employed no laborers whatsoever) with which the Union had a long-standing labor dispute. In fact, the Union had previously run afoul of the NLRA's prohibitions on targeting of third parties when it had refused to renew 8(f) agreements with employers that worked with Century and had entered a settlement agreement, administered by the NLRB, where it agreed that it would not threaten or coerce any person to stop doing business with Century.

At the NLRB hearing before an Administrative Law Judge ("ALJ") in the instant case, the ALJ found that the Union's stated reason for not entering into the agreement with Lake Area, that Lake Area had submitted incomplete information, was pretextual. While not challenging the ALJ's credibility finding, the Union argued on appeal that it was perfectly lawful for the Union to refuse to enter into an agreement with an employer, as 8(f) agreements are voluntary. The Eighth Circuit, however, found that even though the Union was correct that entering an agreement was voluntary, it was wrong in believing that it could refuse to enter into an agreement with Lake Area, as its only reason to do so was the unlawful attempt to enmesh a neutral in its labor dispute with Century.

Thus, while the Union's freedom of contract is important, and the Union could not be forced to enter an agreement that is otherwise voluntary, "the Board's remedy gives Lake Area a fresh opportunity to become a signatory subcontractor, while recognizing the Union's right to reject a § 8(f) agreement with Lake Area for any lawful reason." Further, Judge Loken pointed to the Union's own unlawful conduct as the reason for it possibly having to enter into an agreement with Lake Area: "[g]iven its repeated practice of coercing Century subcontractors, Union officials may find it difficult to refuse to enter

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into or to renew § 8(f) agreements with fencing subcontractors who meet objective standards of acceptable contracting parties."

A full copy of the decision can be [found here](#).