

Client Alert

From the
Labor and Employment
Group

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 MERITAS LAW FIRMS WORLDWIDE

Non-Union Employers Beware: Do Not “Accidentally” Recognize a Union

Non-union companies should take note of a recent Seventh Circuit case that provides insight into a union organizing tactic being employed by certain unions. The opinion is very short and is an interesting read—especially if you or your clients are likely to be approached by a union. Although the employer narrowly escaped in this case, you may find it remarkable how little it takes before a union can argue—all the way to the United States Court of Appeals for the Seventh Circuit—that it is the exclusive bargaining agent of the employer.

In this case, union organizers, one of whom was also an attorney for the union, visited a non-union company without invitation. At the meeting, the union agents presented union cards to the employer and attempted to start discussing issues about employees’ terms and conditions of employment. If the employees have signed authorization cards and a polite company representative is not careful, such a discussion can lead to “voluntary recognition” of the union under the National Labor Relations Act. The union in the attached case ultimately failed in its attempt to become the employees’ exclusive bargaining agent under a similar technique. But at what cost to the employer? The two short conversations the employer had with the union agents resulted in the employer having to defend itself in an unfair labor practice proceeding before the National Labor Relations Board and subsequently in an appeal before the Seventh Circuit. A company’s cost of proving that its managers did not recognize the union, even if ultimately successful as it was in the attached case, can be devastating. Moreover, if a union is inadvertently recognized by an employer, a statutory duty to bargain kicks in that requires good faith negotiations for a collective bargaining agreement.

If you or one of your clients is approached by a union, you should call counsel to determine your rights, including whether the union has a right to be on your property in the first place. Train your managers to know what to do if this situation or one like it arises. Ask yourself whether your managers know the DOs and DON’Ts of union organizing law. They are not always intuitive.

If you have any questions about these issues, please do not hesitate to contact us.

Michael L. Sullivan is a principal in Goldberg Kohn’s Labor and Employment Group. If you would like to discuss these or other traditional labor law issues with Mike, please contact him at 312.201.3963 or michael.sullivan@goldbergkohn.com.

