

## **Arizona District Court Orders NLRB Regional Director to Pay Over \$55,000 in Attorneys' Fees to Employer in 10(j) Fight**

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A U.S. District Court Judge in Arizona has ordered the National Labor Relations Board's Regional Director in Phoenix, acting on behalf of the Board, to pay \$55,000 in attorneys' fees to an employer sued for a temporary injunction over the firing of four recently hired employees, despite awarding the Regional Director much of the relief he sought in his application for relief under Section 10(j) of the National Labor Relations Act.

The case involved a union organizing campaign at a recently acquired company. After purchasing the company, the new owner contacted the Department of Homeland Security and was informed that he could treat all employees as new hires and, therefore, use E-Verify to verify their legal authorization to work in the U.S., as is required by Arizona law. When he fired four of his "new hires," the General Counsel alleged that the terminations were unlawful because they were motivated by the employees' support for the union. The Regional Director also filed an action under Section 10(j) of Labor-Management Relations Act in federal district court in Arizona against the employer seeking , among other things, the immediate reinstatement of the four terminated employees pending a final determination by the NLRB in the underlying unfair labor practice proceeding.

The Court granted the Regional Director's application, in part, noting that, "Employees get the message when their employer fires the union sympathizers among them." However, the Court would not agree to the Regional Director's demand that the discharged employees be reinstated and be exempt from the employer's lawful and non-discriminatory use of the federal E-Verify system. Significantly, the employer had offered to reinstate the four employees conditioned upon their successful completion of the E-Verify. The Court found the Regional Director's insistence that the employees be retained even if they could not be confirmed as legally authorized to work under E-Verify was contrary to the law.

After receiving the Court's ruling, the employer filed a motion for an award of attorneys' fees based on legal costs the employer had incurred in resisting the Regional Director's insistence on the

employees' unconditional rehire. The Court granted the employer's request and awarded it attorneys' fees in the amount of \$55,739.

This case should serve as a reminder to Regional Directors and the NLRB's General Counsel that despite broad prosecutorial discretion, they cannot overreach during unfair labor practice charge administrative proceedings, related court proceedings and settlement negotiations. Although it is rare for a court to award attorneys' fees as happened in this case, employers should be aware that they have the option to request them in egregious cases and, perhaps, to remind Board officials of that in appropriate circumstances.

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