

**Local 702, International Brotherhood of Electrical Workers,  
AFL-CIO v. National Labor Relations Board, et al.**

Recently, the United States Court of Appeals for the Seventh Circuit upheld the discharge of a thirty-nine-year employee ("Employee") in connection with her strike-related conduct. In this case, Employee was driving to participate in the strike when she saw a company truck on a public highway. Employee followed the truck to establish an ambulatory picket at the job site, which was encouraged by the Union. At highway speeds, Employee pulled in front of the truck to impede its progress, and intentionally prevented the truck from passing. Shortly thereafter, the truck exited the highway and Employee's conduct ceased.

After the strike ended, Employee was terminated for her dangerous activity in connection with the strike. The Union filed an unfair labor practice charge with the National Labor Relations Board ("Board") alleging that the Employer terminated employee for engaging in protected conduct. The Board agreed and found that Employee's conduct was not egregious enough to warrant termination. The Employer petitioned the U.S. Court of Appeals for the D.C. Circuit Court for a review of the decision. Although the D.C. Circuit largely agreed with the Board, it disagreed with the Board's analysis of the high-speed driving incident, remanded the matter back to the Board, and ordered the Board to consider all circumstances surrounding the incident, including the objective impact on a reasonable non-striker.

On remand, the Board found that Employee's conduct was intended to intimidate striking employees, and was inherently dangerous. Thus, despite the absence of violence, the Board found that Employee's actions were fell outside the protection of the National Labor Relations Act ("Act"). The Union appealed and argued that the Board decision creates a *per se* rule that highway driving is inherently dangerous, and that any strike-related conduct at highway speeds necessarily results in the loss of protection under the Act. The Seventh Circuit Court of Appeals did not agree with this characterization of the Board's decision, but found the Union waived that argument.

Ultimately, the Seventh Circuit found that the Board analyzed Employee's conduct as instructed by the D.C. Circuit, and evaluated the relevant circumstances based upon conduct that was committed on a high-speed public roadway with third-party vehicles present. In reaching its conclusion, the Seventh Circuit emphasized that Employee was driving on a major road at a high rate of speed, pulled in front of the truck, and purposefully impeded its progress. The Seventh Circuit concluded that, because Employee planned to do more than follow the truck, her conduct was not protected under the Act.

The takeaway from this case is that Unions should exercise caution when encouraging employees to establish ambulatory pickets, or otherwise engage in strike-related activity while driving. While this case does not create a *per se* rule that strike-related conduct on highways results in the loss of protection under the Act, it represents an expansion of circumstances under which striking employees lose the protection of the Act. Thus, if employees engage in strike-related activity while driving, they should avoid conduct that would reasonably intimidate a non-striker, such as impeding company vehicles on public roadways at high rates of speed - especially where third-party drivers are present.

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