

Union Access to Work Sites

Union Access When CBA Exists

Where a CBA allows union access to an employer's premises, an employer may not lawfully restrict or interfere with those rights. For many years now, the N.L.R.B. has consistently held that a union's "access is necessary in order to investigate and to resolve compliance [with the CBA] when the contract grants the Union such access." *Majestic Towers*, 353 NLRB 304 (2008). In one of the more recent cases to reaffirm this principle, the Board held that an employer's expulsion of a union representative lawfully present on an employer's premises pursuant to a union access clause in the collective bargaining agreement constituted an unfair labor practice. Specifically, the access clause stated that:

"[A] [p]roperly authorized representative of the Union shall be permitted to investigate the standing of all employees and to investigate conditions and to see that the terms of the agreement are being observed. Said representatives shall be permitted to conduct such investigations within the premises of the [Employer].... The Union representative shall advise the personnel office when they come on [the Employer's] property. . . ."

Majestic Towers involved a Union representative who routinely visited represented employees in the cafeteria of the employer's hotel without incident. He always notified the employer beforehand of his scheduled arrivals. On one occasion, he was accosted in the cafeteria by Management and told to vacate the premises. When he refused, the Employer called the police. Upon the policemen's arrival, the Union representative informed them of his contractual right to be present on the Employer's property. The police subsequently refused to remove him from the property, and the Union representative left on his own accord. The Union filed an unfair labor practice charge thereafter, and the Board held that the Employer acted unlawfully in "revoking" the union's access to the premises in violation of the terms of the collective agreement.

Recently, in *Caterpillar, Inc. v. N.L.R.B.*, 803 F.3d 360 (7th Cir. 2015), the Seventh Circuit affirmed a Board order requiring the company to grant worksite access to Union investigators seeking to ascertain the causes of a worker's death. Here, a weld shop worker at a Caterpillar factory in Milwaukee, WI was crushed to death by a Caterpillar vehicle. Following the incident, Caterpillar cooperated with police and OSHA investigations, but refused to allow Union emergency investigators to carry out an inspection of the accident-site. Rebuking the company's analogy of the workers' death to a "leaky faucet", the court found in favor of the Union. The Court held that the balance between the union's and company's interests favored permitting the Union access to conduct an on-site investigation, even though years had passed since the accident.

Union Access When No CBA Exists

Even in the absence of a collective bargaining agreement, Union representatives have the right to monitor the safety of a construction site under certain circumstances. Recently, an NLRB administrative law judge held that a non-employee Union representative, positioned off-premises, had a protected statutory right to video-record a non-union construction site for potential safety violations. *Mazzara Trucking*, 362 NLRB No. 79 (2015). In that case, a New Jersey contractor employed non-union labor at a construction site. A union representative had on multiple occasions filmed potential safety violations while present on the job site without permission, and also while situated on an adjacent house's porch with consent from the homeowner. In both situations, the employer called upon the police to arrest the union representative. The union filed unfair labor practice charges. The Judge held that while the employer had a right to exclude the non-employee union representative from his property, the employer committed an unfair labor practice in summoning the police to restrain the union representative from filming the jobsite from an off-premises vantage point.

In addition, the OSHA Deputy Assistant Secretary has recently issued a letter interpreting the Act to allow for Union representatives to act as "walkaround" representatives on behalf of employees during OSHA inspections, even in the absence of a CBA. In other words, a non-union employee has the right to have a union representative present at an OSHA officer's inspection of the Employer's premises, so long as the inspecting officer so approves.

Conclusion

Where a contractual provision expressly grants a union access to the Employer's facilities for contract administration or other representational functions, an Employer may not unilaterally restrict access for such purposes. Moreover, an employer must grant access to Union investigators after workplace injuries. In order to ensure full enforceability of a union access clause, a union should seek to incorporate broad language in the agreement specifying union access to an employer's premises and job sites for contract administration, representational and organizational purposes. Even with no CBA in place, Union representatives are not barred from monitoring worksite safety conditions from off-site positions, and may in certain circumstances be present for OSHA safety inspections at non-union worksites.

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