

## REPRESENTATIVE ENGAGEMENTS - *TRADITIONAL LABOR LAW*

### Union Avoidance and Election Campaigns

- Successfully represented national mechanical contractor in NLRB representation case hearing involving efforts by International Union of Operating Engineers to organize the company's equipment operators on a state-wide basis; after a two-day hearing, Regional Director dismissed the union's election petition under the NLRB's "contracting unit" rules based on the employer's evidence that the cessation of work by the petitioned-for equipment operators was definite and imminent and that the prospect of future work to be performed by equipment operators in the area was too speculative to conclude that there was an appropriate unit in which to conduct an election
- Helped nationwide wholesale printing company retain non-union status by defeating organizing campaign by lithographers' union at the company's printing facility in New Jersey; worked closely with company's General Counsel and executive team to develop overall campaign strategy, train local management on how to respond to union's effort, and lawfully and effectively implement company's strategy
- Represented regional EPA recycler of spent oils in defeating organizing effort by Teamsters Local 710; counseled company regarding response to union election petition and related unit issues, development and implementation of company's campaign strategy, and related management training; campaign concluded with drivers voting against union representation by a 2-to-1 margin in an NLRB-conducted secret ballot election
- Represented commercial printing company in successful campaign against Graphic Communications Union's efforts to organize unit comprised of approximately 280 bindery, pre-press, pressroom, maintenance, shipping and warehouse employees at production facility in Itasca, Illinois; company soundly defeated Union in NLRB-conducted secret ballot election
- Helped nationwide transportation and logistics provider retain its non-union status by defeating organizing effort by Teamsters Union at local operation in Wilkes-Barre, Pennsylvania; counseled company regarding development and implementation of overall strategy and resolution of multiple legal issues arising during the course of the campaign; company won the NLRB election by a 2-to-1 margin
- Helped Michigan-based trailer repair and inter-modal company secure withdrawal of election petition filed by International Association of Machinists by presenting evidence showing that supervisory employees improperly participated in organizing effort and tainted union's petition
- Represented Chicago-area provider of residential, day training and vocational services in defeating union organizing campaign by Local 4, Service Employees International Union; assisted client in developing and implementing campaign strategy which resulted in union's withdrawal of election petition shortly before the scheduled NLRB election
- Helped national electrical parts manufacturer develop and implement campaign strategy that resulted in defeat of International Brotherhood of Electrical Workers' efforts to represent a unit of approximately 425 production and maintenance employees at company's facility in Jonesboro, Arkansas
- Helped regional trucking company defeat Teamsters' efforts to oust and replace Production Workers Union as collective bargaining representative of units comprised of local and long-haul truck drivers; assisted company with development and implementation of campaign strategy that resulted in solid victory for incumbent union in NLRB-conducted election
- Assisted regional baking company in defeating efforts by International Brotherhood of Teamsters to organize unit comprised of drivers and warehouse employees

- Conducted management training on union avoidance and responding to union organizing campaigns for employers in various industries, including healthcare, manufacturing, construction, commercial printing, and social services
- Assisted regional and Chicago-area nursing homes in developing and implementing union-free workplace programs, including employee attitude surveys, compensation programs, organizational restructuring, and policies regarding solicitation, distribution and access to employer property

## Collective Bargaining

- Successfully represented steel manufacturer in negotiating three-year agreement covering unit of production and maintenance employees at Ohio facility, while avoiding strike and guiding employer through related decertification proceeding
- Represented armored guard company in separate negotiations with Teamsters and Consolidated Commercial Workers of America representing units of vault employees in Illinois and New Jersey; secured favorable ratification vote for three-year agreements with moderate wage increases and preservation of important management rights
- Represented association of landscape construction contractors in successive multi-employer negotiations with Local 150, International Union of Operating Engineers, Teamsters Local 703, and Local 707 of National Production Workers Union, for collective bargaining agreements covering employees employed by approximately 340 commercial landscape companies in the Chicago metropolitan area and Northeastern Illinois; most recent agreements provided the contractors with desired economic relief during the first year of the contract, a manageable three-year economic package, and advancements in several non-economic areas
- Served as chief negotiator for regional medical center in successive collective bargaining negotiations with union representing unit comprised of 450 registered nurses; worked closely with the Chief Financial Officer, Chief Nursing Officer and Senior Director of Human Resources to develop and successfully implement a bargaining and communication strategy designed to preserve the hospital's management rights in such areas as staffing, safety and the introduction of new technology; establish a fair and competitive wage structure; and reduce or control the hospital's overall benefit costs
- Negotiated agreements for armored transport company covering units of guards, drivers and messengers represented by Special and Superior Officers Benevolent Association at locations in New York and New Jersey; concluded negotiations with no disruptions in operations and mutually agreeable contract terms
- Assisted national service company in collective bargaining negotiations resulting in contracts with UNITE HERE, Culinary Workers Union, Workers United, and SEIU covering bargaining units providing cleaning and other managed services to hospitality industry clients, including luxury hotels, casinos and horse racing venues in Nevada, Ohio and Maryland
- Negotiated collective bargaining agreement with Teamsters Local 330 for Chicago-based waste removal company
- Represented Chicago-area nursing home operators in multi-employer and single-employer collective bargaining negotiations with Service Employees International Union and UNITE HERE
- Assisted Chicago-based employee leasing company in collective bargaining negotiations with Local 831, National Allied Workers Union, for contract covering construction materials suppliers' drivers and warehouse employees
- Represented trailer repair and inter-modal company in negotiating successive collective bargaining agreements with Automobile Mechanics' Union, Local No. 701, International Association of Machinists & Aerospace Workers

- Represented manufacturer of prison locking systems in successive collective bargaining negotiations with General Teamsters Local No. 179
- Assisted regional spent oils recycler in successive collective bargaining negotiations with Teamsters Local 710
- Negotiated successive collective bargaining agreements between Chicago-based produce wholesaler and Teamsters Local 703
- Represented Chicago-based bakery in collective bargaining negotiations with Local Union No. 1, Bakery, Confectionery & Tobacco Workers, International Union
- Represented manufacturer of steel pipe and tubing in collective bargaining negotiations with Metal Processors Workers Union, Local No. 16
- Assisted Chicago-based manufacturer and distributor of windows and doors in developing bargaining strategy and negotiating collective bargaining agreement with United Electrical, Radio and Machine Workers of America; conducted related training for company's collective bargaining team
- Assisted with collective bargaining negotiations between large, Chicago-based social services agency and Local 1, Service Employees International Union

## National Labor Relations Board Proceedings and Federal Court Actions

- Successfully represented landscape construction contractors in 10(k) jurisdictional dispute hearings culminating in NLRB decisions upholding assignment of installation of "green grid" and "built-up" vegetative roof systems to contractors' employees represented by Local 150 of the Operating Engineers and Teamsters Local 703; NLRB rejected Roofers Union's competing claims for the disputed work based on application of traditional 10(k) factors, including collective bargaining relationships and certifications, employer preference, area and industry practice, relevant skills and experience, and economy and efficiency of operations
- Successfully represented nationwide vegetation and line clearance company in NLRB representation hearing dealing with the supervisory status of Crew Forepersons; Regional Director issued post-hearing decision finding that the Crew Forepersons were supervisors based on their authority in the areas of discipline and discharge, promotions and wage increases, direction of employees and assignment of work; decision resulted in Crew Forepersons being excluded from unit of employees seeking representation by the International Brotherhood of Electrical Workers
- Secured Administrative Law Judge decision dismissing unfair labor practice charge alleging that general construction contractor violated Section 8(a)(1) of the NLRA by threatening picketers because evidence failed to show that offending employee was a supervisor or agent of the company or that his conduct reasonably tended to restrain or coerce the picketers' statutorily protected activities
- Secured dismissal of unfair labor practice charge filed by IBEW Local Union alleging that a national vegetation and line clearance company engaged in bad faith and surface bargaining during prolonged negotiations for a first contract covering employees in eight separately organized and certified bargaining units in the state of Kentucky; dismissal was upheld by NLRB Office of Appeals in Washington, D.C.
- Secured withdrawal of unfair labor practice charge alleging that regional trucking company unlawfully disciplined and discharged employee-union activist one week prior to hotly-contested NLRB representation election; employee withdrew charge, in lieu of dismissal by Region 13, based on position statement establishing the legitimate, non-retaliatory reasons for the company's challenged actions

- Secured withdrawal of unfair labor practice charge filed by employee of landscape contractor allegedly laid off due to his union activities and in retaliation for asserting his union contract rights and filing a prior NLRB charge; employee withdrew charge, in lieu of dismissal by Region 13, based on position statement demonstrating that the company's layoff decision was motivated by reasonable and good faith interpretation of relevant provisions of union contract
- Persuaded NLRB Regional Office that approximately 200 Crew Forepersons employed by vegetation management company were statutory supervisors who were not subject to the protections of the NLRA; the Region's supervisory determination resulted in the withdrawal of unfair labor practice charges filed on behalf of Crew Forepersons who allegedly were terminated because of their support for a union organizing campaign and in a substantial reduction in the number of employees included in the bargaining unit that the Union was seeking to represent
- Secured dismissal of unfair labor practice charge filed by IBEW Local Union alleging that a national line clearance company unlawfully created a new position without bargaining with the union and supported efforts to decertify the union as the representative of employees in a bargaining unit in the state of Kentucky; dismissal was upheld by NLRB Office of Appeals in Washington, D.C.
- Secured Administrative Law Judge decision dismissing unfair labor practice charge alleging that lithographing company violated Sections 8(a)(1) and 8(a)(4) of the NLRA by threatening to discharge and discharging employee for expressing intention to lodge complaint with the NLRB because evidence failed to establish that employee actually engaged in statutorily protected activity or that the company had knowledge of any such activity
- Secured dismissal of NLRB unfair labor practice charge alleging unlawful sale and closure of Michigan manufacturing plant to evade union and avoid collective bargaining obligations
- Secured withdrawal of unfair labor practice charge filed by IBEW Local Union alleging that national line clearance company unlawfully withdrew recognition from, and refused to bargain with, the union as the certified representative of employees in three separate bargaining units in the State of Pennsylvania
- Secured dismissal of NLRB unfair labor practice charge alleging that supervisor at company's Pennsylvania manufacturing facility unlawfully threatened a union-represented employee for filing a grievance and interfered with his rights under the NLRA
- Secured dismissal of NLRB unfair labor practice charge alleging that company wrongfully discharged employee at Florida manufacturing facility for engaging in protected concerted activity
- Secured dismissal and/or favorable settlement of unfair labor practice charges arising out of International Brotherhood of Electrical Workers' unsuccessful efforts to organize employee's at company's Arkansas manufacturing facility; charges asserted multiple violations of Sections 8(a)(1) and 8(a)(3) of the NLRA based on company's alleged unlawful intimidation, discrimination and surveillance of employees and termination of union activists
- Prepared position statement resulting in withdrawal of unfair labor practice charge filed by HERE Welfare Fund alleging that healthcare employer violated Section 8(a)(5) of the NLRA by refusing to make health and welfare fund contributions at increased rate unilaterally established by the Fund's Trustees, after underlying collective bargaining agreement expired and while the employer and HERE were negotiating a successor agreement
- Represented national window manufacturer in connection with dismissal or favorable settlement of multiple unfair labor practices charges brought by United Electrical, Radio & Machine Workers of America, including alleged unlawful threats, disciplinary action and termination of union stewards and other employees for filing grievances and engaging in various types of protected concerted activity

- Secured dismissal of Section 301 and common law breach of contract action filed against regional nursing home operator in U.S. District Court for the Northern District of Illinois, based on defenses of preemption and failure to exhaust administrative remedies
- Successfully represented regional nursing home operator in multi-faceted litigation campaign by Local 4, Service Employees International Union, including grievances under collective bargaining agreement with Illinois Association of Healthcare Facilities, unfair labor practice charges before the NLRB, and federal court actions for breach of contract and to compel arbitration
- Secured summary judgments in favor of employer in two Section 301 breach of contract and breach of duty of fair representation actions filed in U.S. District Court for the Eastern District of Tennessee by employees allegedly discharged without just cause in violation of applicable collective bargaining agreement; both judgments affirmed by U.S. Court of Appeals for the Sixth Circuit
- Secured favorable settlement of Section 301 breach of contract and breach of duty of fair representation claim brought against company and union in U.S. District Court for the Eastern District of Tennessee; during related mediation, persuaded co-defendant union to fund 80% of the negotiated settlement
- Persuaded U.S. Court of Appeals for the Sixth Circuit to vacate arbitration award in favor of employee allegedly discharged in violation of just cause provision of collective bargaining agreement on grounds that award was arbitrary and capricious
- Secured decision from U.S. Court of Appeals for the Sixth Circuit vacating arbitration award in favor of discharged employee based on company's argument that the underlying grievance was untimely and therefore not arbitrable under the parties' collective bargaining agreement
- Successfully represented several employers in Section 301 and ERISA actions seeking payment of alleged delinquent contributions to multi-employer health, welfare and pension funds; negotiated favorable settlements by filing third-party claims attempting to shift liability to employees' union representative based on theories of breach of contract, fraud and promissory estoppel

## Grievances and Arbitration

- Secured favorable arbitration award upholding discharge of nuclear facility employee who engaged in sexual misconduct in the workplace; arbitrator rejected union's procedural defenses and efforts to establish disparate treatment
- Successfully represented metropolitan transit authority in arbitration proceeding upholding discharge of bus service employee for violating "zero tolerance" policy against use of personal electronic devices while on duty; persuaded arbitrator to reject union's arguments that the employer had failed to establish a violation, that there were insufficient grounds for accelerating discipline to discharge, that there were procedural defects in the employer's investigation, that the employer was guilty of lax enforcement of the rules and disparate treatment, and that the zero tolerance policy was inconsistent with fundamental "just cause" principles
- Secured favorable arbitration award upholding discharge of rapid transit operator for misusing FMLA leave and engaging in related falsifications during employer's investigatory interviews; arbitrator rejected union's claims that employer failed to carry burden of establishing just cause and that the discharge penalty was too severe
- Secured favorable arbitration award upholding company's discharge of employee for engaging in self-help and pattern of conduct which company reasonably determined rose to the level of gross insubordination

- Secured arbitral award upholding discharge of transit employee for FMLA abuse; arbitrator agreed that evidence gathered through video surveillance and investigatory interviews established that employee had falsified his request for FMLA leave, employee had used the leave other than for its intended purpose, and there were no mitigating factors warranting reduction of the discharge penalty imposed by the employer
- Secured favorable arbitration award dismissing grievance challenging company's right to subcontract clean-up and equipment-dismantling work associated with shut-down and relocation of New Jersey manufacturing operations
- Secured arbitration award upholding discharge of a rapid transit operator whose train struck a passenger vehicle that had driven onto the tracks at a street crossing; arbitrator found that the operator failed to heed to flashing wayside signal requiring her to bring the train to a stop and did not have the train under control as it approached the crossing, rejecting the union's argument that the accident was caused by the negligence of the driver of the passenger vehicle
- Secured favorable arbitration award for manufacturer of industrial floor-cleaning equipment upholding company's right to discharge employee for excessive absenteeism under newly-adopted "no-fault" performance counseling program designed to control plant-wide absenteeism rate; arbitrator rejected union's argument of disparate treatment and accepted company's argument that the propriety of the discharge decision should be determined by the company's reasonable and good faith application of the counseling program to each employee's particular situation and not by specific comparisons between or among employees
- Saved metropolitan transit authority millions of dollars in potential back pay liability by securing complete victories in 9 of 11 arbitration cases involving discharges of bus operators and maintenance employees for conduct and performance issues including fighting with passengers, displaying a weapon while on duty, safety violations, falsification of documents, misuse of FMLA time, missed assignments, and excessive absenteeism; in one of the 11 cases, grievant was reinstated without back pay
- Secured favorable arbitration award upholding manufacturer's right to discharge two bargaining unit employees for fighting on company premises, notwithstanding the grievants' conflicting testimony regarding who was the aggressor; arbitrator agreed that company was not obligated to resolve credibility dispute in favor of one or the other of the grievants where evidence showed that they each bore some fault for instigating, provoking and participating in the altercation
- Secured favorable arbitration award upholding automotive parts supplier's right to terminate union steward for committing excessive errors over extended period of time despite imposition of progressive discipline designed to correct the ongoing performance problems; arbitrator rejected union's argument that company treated grievant more harshly than similarly situated employees and was motivated by grievant's union activities
- Secured favorable arbitration award for manufacturer of pressure-sensitive tapes upholding propriety of company's discharge of union-represented employee for verbal threat of physical violence against department manager
- Secured favorable arbitration award affirming company's interpretation of vacation and holiday pay provisions of collective bargaining agreement and related denial of negotiated "add-on" day to employees who were ineligible for vacation pay
- Secured favorable settlement of adverse arbitration decision awarding severance pay to employees terminated in connection with plant closing, by filing federal court action to vacate award based on union's fraudulent procurement of underlying severance pay agreement
- Secured favorable arbitration award upholding company's contractual right to temporarily transfer senior employee, instead of more junior qualified employee, to perform work outside the department to which the senior employee regularly was assigned, based on company's assessment of the employees' respective skills

- Secured favorable arbitration award for nursing home holding that employer had just cause to suspend employee for lack of judgment resulting in injury to resident, denying employee's request for lost wages during extended suspension, and placing employee on notice that any future indiscretions would provide just case for discharge
- Successfully settled grievance challenging hotel's layoff of union-represented parking lot cashiers as a result of upgrades to company's automated parking operations; settlement agreement created limited obligation on the part of the company to utilize bargaining unit employees when it needed to supplement its automated operations with on-site personnel for high-volume special events
- Successfully represented Chicago-area nursing homes in multiple grievance and arbitration proceedings involving discipline, discharge and contract interpretation issues

## Labor Law Counseling and Transactional Work

- Serve as labor counsel for association of landscape construction contractors, including negotiation of collective bargaining agreements which set the standards for unionized employers in the landscape construction industry in Northeastern, Illinois, ongoing counsel to employer members of negotiated Joint Grievance Committee responsible for resolving grievances arising under the agreements, and regular advice regarding jurisdictional disputes, project labor agreements, strikes and picketing, and prevailing wage disputes
- Counseled employers in healthcare, construction, transportation and manufacturing industries regarding development of strike contingency plans and related employee and media communications
- Helped nationwide intermodal and logistics company with union and non-union operations navigate complicated double-breasting, single employer, collective bargaining and other issues associated with planned business expansion
- Counseled employers in various industries regarding multiemployer withdrawal liability issues associated with sale or purchase of unionized company contributing to multiemployer pension fund; provided related advice regarding application of "controlled group" principals to parents, subsidiaries and equity investors, impact of bankruptcy on withdrawal liability of controlled group members, and expanding scope of successor liability; conducted related negotiations with multiemployer pension funds
- Advised Chicago-based construction contractors, landscape contractors and materials suppliers on use of reserved-gates, reserved-times, and other techniques to address actual and threatened picketing and hand billing by trade unions on construction worksites
- Counseled regional supplier of construction materials on Section 8(e) hot cargo agreements, construction industry proviso, lawful work preservation clauses, and related secondary activity principles
- Advised construction, transportation, intermodal, security, and manufacturing industry employers regarding establishment of lawful double-breasted operations and related single-employer and alter-ego doctrines
- Counseled group of nursing home operators regarding strategy for withdrawing from multi-employer collective bargaining association, negotiating individual contracts, and related legal and business issues
- Assisted employers acquiring union-represented companies with labor-related due diligence, analysis of collective bargaining contracts, and development of strategy for integrating union and non-union operations

- Counseled union-represented companies in various industries regarding strategy for lawfully subcontracting or relocating work to non-union employers or facilities
- Drafted non-representation agreement between hotel and union representing the hotel's employees pursuant to which the union agreed not to seek to represent employees of independent restaurant company operating a fine-dining restaurant in leased space on the hotel's property or to assert that this arrangement violated the prohibition on subcontracting contained in the hotel's collective bargaining agreement
- Provide ongoing advice and counsel to healthcare industry employers, including regional medical centers, nursing homes and assisted living facilities, on interpretation and application of collective bargaining agreements, development of supervisory guidelines for processing grievances, and related policies and practices

## List of Unions Dealt With on Behalf of Clients

- Graphic Communications International Union
- International Association of Machinists & Aerospace Workers
- Automobile Mechanics Union
- Service Employees International Union
- Michigan Nurses Association
- International Brotherhood of Electrical Workers
- International Brotherhood of Teamsters
- UNITE HERE
- Workers United
- Culinary Workers Union
- Consolidated Commercial Workers of America
- Special and Superior Officers Benevolent Association
- International Union of Operating Engineers
- Laborers International Union
- Southwest District Council of Laborers
- National Allied Workers Union
- United Electrical, Radio and Machine Workers of America (UE)
- Bakery, Confectionery & Tobacco Workers International Union
- Metal Processors Workers Union
- National Production Workers Union
- Northwest Indiana District Council of Carpenters
- United Steelworkers of America
- Amalgamated Clothing and Textile Workers Union
- Toy & Novelty Workers Union