



## Employer's Organizing Assistance May Be 'Illegal Payment' to Union

Welcome David J. Riewald ▾

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An agreement that provides for an employer's organizing assistance may constitute an improper payment, in violation of federal law, if it was entered into to improperly influence a union, the 11th U.S. Circuit Court of Appeals held.

The employer, Hollywood Greyhound Track Inc., doing business as Mardi Gras Gaming, and the union, UNITE HERE Local 355, executed a cooperation agreement. According to the terms of the agreement, the union promised to lend financial support to a ballot initiative regarding casino gaming. In return, the employer promised to provide the union with an employee list containing names, job classifications, departments and addresses; provide the union with access to its work premises in order to organize employees during nonwork hours; and remain neutral during the union's efforts to organize the employees.

The parties also agreed that if Mardi Gras recognized Unite as the exclusive bargaining agent for its employees, Unite would refrain from picketing, boycotting, striking or undertaking any other economic activity against Mardi Gras. In accordance with the agreement, Unite spent more than \$100,000 campaigning for the ballot initiative favored by Mardi Gras.

A Mardi Gras employee who opposed the union filed suit in federal court. His complaint sought to prohibit enforcement of the agreement on the grounds that it violated the Labor Management Relations Act. The relevant provision of the act, section 302, makes it unlawful for any employer to give money or any other "thing of value" to any union, with limited exception. It was enacted to curb bribery and extortion by regulating payments from employers to union representatives.

The employee argued that the agreement was illegal, and therefore unenforceable, because Mardi Gras provided something of value—in this case, organizing assistance—in exchange for Unite's financial support of the ballot initiative. Unconvinced, the lower court dismissed the complaint on the grounds that the employee could not state a valid claim under the act.

On appeal, the appeals court disagreed with the lower court's conclusion that the provision of organizing assistance could never be a "thing of value" for purposes of the act. As a threshold matter, the court recognized that the 3rd and 4th U.S. Circuit Courts of Appeals had previously found that such assistance was not a thing of value. The court agreed that an employer does not violate the act simply because it provides organizing assistance or otherwise cooperates with the union. However, it concluded that if the employer offered such assistance with the motive of improperly influencing a union, then the policy concerns of the act—namely, curbing bribery and extortion—were implicated. The court cautioned that, while employers and unions were free to enter into cooperation agreements such as the one between Mardi Gras and Unite, such agreements would be illegal if they were used as payment in a "scheme to corrupt a union or to extort a benefit from an employer." Therefore, the court remanded the case to the lower court to determine the underlying motives for the agreement.

*Mulhall v. UNITE HERE Local 355*, 11th Cir., No. 11-10594 (Jan. 18, 2012).

**Professional Pointer:** Employers contemplating entering into cooperation and neutrality agreements should consult with labor counsel about the legal implications. This area of the law is evolving.

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