Cutting-Edge Court Challenge to Top-Down Organizing Becomes Moot Due to Company's Bankruptcy: *Patterson v. Heartland Indus. Partners* (6th Cir.)—Staff Attorneys Bill Messenger and Glenn Taubman.

Bill Messenger and Glenn Taubman filed this action for Wanda Patterson and five other employees at the Collins & Aikman Corp. auto interior components plant in Holmesville, Ohio. Collins & Aikman's employees had previously rejected union efforts to obtain recognition through the secret-ballot election process supervised by the NLRB. Defendants were the Steelworkers union, Collins & Aikman, and Heartland Industrial Partners, an investment firm that acquired Collins & Aikman and required it to comply with a so-called "neutrality" agreement. Under this agreement, any company Heartland acquires must not oppose union organizing, must give the union access to company premises and employees' names and home addresses to aid it in soliciting signatures on union authorization cards, and must recognize the union without a secret-ballot election if a majority of employees sign such cards. Moreover, if the union is recognized, the company must force employees to join or pay union dues to keep their jobs. This case was filed to establish a precedent that such "neutrality" agreements violate the Taft-Hartley Act's provision, § 302, that prohibits employers from giving any "thing of value" to a union seeking to represent its employees and prohibits unions from accepting such things.

Defendants moved to dismiss, arguing that there is no private cause of action under § 302 and that the "neutrality" agreement is not a "thing of value." In January 2004, the court denied that motion, because defendants disputed some of the plaintiffs' factual claims, and "the record . . . should be as factually complete as possible" given probable appeals. The court later declined to certify an interlocutory appeal. Desperate to stop the action, defendants then asked the U.S. Court of Appeals for the Sixth Circuit for a writ of mandamus ordering the district court to dismiss the case. In April 2004, the Sixth Circuit, explicitly recognizing that a private cause of action exists, denied mandamus.

During discovery, the union refused to produce hundreds of documents concerning its organizing strategy and negotiations with the company defendants. A Magistrate Judge ordered those documents produced. In December 2004, the District Judge rejected the union's objections to that order, holding "that the First Amendment associational privilege does not apply" and that an NLRA "privilege does not exist." Cross-motions for summary judgment were filed in April 2005, but the case was temporarily automatically stayed due to Collins & Aikman's bankruptcy. In October 2005, the bankruptcy court lifted the stay to allow the district court to decide the motions for summary judgment.

The district court granted defendants summary judgment on April 21, 2006. It held that the plaintiff employees had standing to bring the suit and a private right of action under § 302. The court also found that the employers "gave, and the union received, certain benefits from the agreements related to access for the organizing drive and future benefits related to a collective bargaining agreement if the union was chosen through the card check procedure." Nonetheless, the court inconsistently held that the "neutrality" agreement is not a thing of value under § 302.

Plaintiffs' notice of appeal to the U.S. Court of Appeals for the Sixth Circuit was filed on May 15, 2006. On the same day, the district court took the unusual step of entering an order denying the award of costs to Defendants. The court explained that it was doing so because the "neutrality agreements at issue offer a new way of negotiating a collective bargaining agreement and there was difficulty in terms of resolving the issues presented . . . . Further, significant public importance attaches to the resolution of this matter."

After the case was fully briefed in the Sixth Circuit and oral argument scheduled, defendant employers' attorneys announced that they would move to dismiss the appeal as moot because Collins & Aikman would cease to exist as of September 20, 2007. On September 7, plaintiffs agreed to a stipulation that the appeal should be dismissed as moot, because there was no doubt that the motion would be granted. The court dismissed the appeal on October 25, 2007. The case is now closed.