

**Court Challenge to Top-Down Organizing Resumes: *Patterson v. Heartland Industrial Partners* (N.D. Ohio)**—Staff Attorneys Bill Messenger and Glenn Taubman.

Bill Messenger and Glenn Taubman filed this federal court 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 are the Steelworkers union, Collins & Aikman, and Heartland, 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 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 to enforce the statutory provision 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." In March 2005, the Magistrate denied the union a protective order against public disclosure of most disputed documents. The District Judge has not yet ruled on the union's objections to that order. Cross-motions for summary judgment were filed in April 2005, but the case was temporarily automatically stayed due to Collins & Aikman's bankruptcy. On October 24, the bankruptcy court lifted the stay to allow the District Court to decide the motions for summary judgment. The District Court then resumed the case, but has not yet ruled on those motions.