

Federal Appellate Court Strikes Down Milwaukee County Ordinance Requiring Private Employers to Assist Coercive Union Organizing: *Metropolitan Milwaukee Association of Commerce v. Milwaukee County* (7th Cir.)—Staff Attorney William Messenger.

Milwaukee County, Wisconsin, enacted an ordinance that requires employers that contract with the County to provide services for elderly and disabled County residents to sign so-called “labor peace agreements” with any union seeking to organize employees who work on County contracts. Under the agreements the ordinance mandates, employers must give union organizers access to their facilities and provide them employees’ names, addresses, and telephone numbers, and cannot express opposition to unionization. A business association that includes contractors affected by the ordinance sued to enjoin enforcement of the ordinance on the ground that it is preempted by the National Labor Relations Act (NLRA).

The U.S. District Court for the Eastern District of Wisconsin granted summary judgment for the County, reasoning that the ordinance was not preempted because it reasonably served the goal of reducing “the likelihood of service disruptions caused by labor disputes.” The business association appealed to the U.S. Court of Appeals for the Seventh Circuit, where Bill Messenger filed an amicus brief for the National Right to Work Legal Defense Foundation supporting the association. The Foundation’s brief argued that the NLRA prohibits “labor peace agreements” in contracts of private employers outside the construction industry, and government agencies should be held to the same standard.

On December 5, 2005, the Seventh Circuit reversed the District Court’s judgment with directions to enter judgment for the association, ruling that the ordinance is preempted by the NLRA as an attempt “to substitute [the County’s] own labor-management philosophy for that of the [NLRA].” The court pointed out, as our brief argued, that “labor-peace agreements . . . are not recognized by the [NLRA].” It explained that such an agreement “would give the union a leg up to organize the company’s entire workforce even if the vast majority of the employees’ time was devoted to the employers’ private contracts,” “favoritism that the [NLRA] anathemizes.” Moreover, the court emphasized that “a labor peace agreement is as likely to increase as to decrease work stoppages,” because if more contractors’ workforces are unionized “there will be an increased risk of strikes.” Milwaukee County did not petition for review by the U.S. Supreme Court within the time required, so the Court of Appeals’ decision is final.