Cutting-Edge NLRB Challenge to Top-Down Organizing Becomes Moot Due to Company's Bankruptcy: *Kandel v. Heartland Indus. Partners* (D.C. Cir.)—Staff Attorney Bill Messenger.

Section § 8(e) of the National Labor Relations Act prohibits agreements between an employer and a union in which the employer agrees not to do business with another person. On August 6, 2003, Bill Messenger filed unfair labor practice charges for Linda Kandel and three other employees of Collins & Aikman auto components parts company seeking to strike down as prohibited by § 8(e) the agreement under which investment firm Heartland Industrial Partners had committed to cause companies in which it invested, including Collins & Aikman, to enter into an neutrality and card-check organizing agreement with the Steelworkers union.

In September 2004, the National Labor Relations Board's General Counsel ordered that a complaint should issue that the Heartland agreement violated § 8(e). A complaint so alleging was issued on February 9, 2005, and the case was tried before an Administrative Law Judge (ALJ) on March 21, 2005. The ALJ dismissed the complaint on June 16, 2005, ruling that the Heartland agreement was not an agreement not to do business with others, despite the fact that it required Heartland to force any acquired controlled business to abide by the neutrality and card-check agreement with the Steelworkers.

The General Counsel and Bill, for the workers, filed timely exceptions. On November 7, 2006, a two-Member majority of the Board affirmed dismissal of the complaint. The majority reasoned that Heartland's agreement to require acquired companies to enter into the neutrality and card-check agreement did not literally require Heartland to cease doing business with anyone or to refrain from investing in any company. Chairman Battista, dissenting, argued that the Heartland agreement violated § 8(e), because, under it, "Heartland cannot invest in, i.e, do business with [another business entity] unless the [other business entity] will be bound to the neutrality and card-check clauses." Were Heartland not to force the organizing agreement on the acquired company, the dissent explained, Heartland would be "subject to a breach-of-contract suit and to damages."

Bill filed a petition for review for the workers with the U.S. Court of Appeals for the D.C. Circuit. However, on January 28, 2008, after the appeal had been fully briefed and oral argument scheduled, the court dismissed the petition for lack of jurisdiction due to Collins & Aikman's dissolution and the sale of the workers' facility to company not subject to the Heartland agreement. After the court denied reconsideration of this order, the case was closed.