

National Right to Work Committee

A COALITION OF EMPLOYEES AND EMPLOYERS

MARK MIX, *President*

Mr. Lester Heltzer, Executive Secretary
National Labor Relations Board
1099 14th Street, N. W.
Washington, D.C. 20570

Re: *Roundy's Inc. and Milwaukee Building & Trades Council*, Case No. 30-CA-17185

Dear Mr. Heltzer:

This letter brief is submitted to the Board in response to the Board's November 12, 2010, Notice and Invitation to File Briefs in the above-referenced case.

INTEREST OF THE NATIONAL RIGHT TO WORK COMMITTEE

The National Right to Work Committee, established in 1955, is a nonprofit, nonpartisan, single-purpose citizens' organization dedicated to the principle that all Americans must have the right to join a union if they choose to, but none should ever be forced to affiliate with a union to get or keep a job.

The Committee's members are men and women — in all walks of life, from every corner of America, including union members, nonunion employees, and small business owners — who, through their voluntary contributions, support the Committee's work. The Committee is one of the largest public-interest groups in America. It has 2.5 million members and supporters nationwide. Moreover, poll after poll shows that nearly 80% of all Americans oppose forcing workers to affiliate with a union as a job condition.

Through its own experiences and those of its sister organization, the National Right to Work Legal Defense Foundation, the Committee knows of the harassment, pressure and coercion that employees often face at the hands of union organizers intent on procuring their signatures on authorization cards. This abuse of employee rights has been documented in cases brought by employee clients of Foundation lawyers, such as the individual employees in *Dana Corp.*, 351 NLRB 434 (2007), and *Lamons Gasket*, Case No. 16-RD-1597 (pending on a Request for Review and Notice and Invitation to File Briefs).

For this reason, the Committee strongly urges the Board not to force employers to open their doors to union organizers to make it easier for unions to cram more employees into dues-paying union ranks against their will. The Committee asks the Board, once and for all, to respect the determination of the United States Supreme Court in *Lechmere, Inc. v. NLRB*, that “[b]y its plain terms, . . . the NLRA confers rights only on employees, not on unions or their nonemployee organizers.” 502 U.S. 527, 532 (1992).

ARGUMENT

The issue raised in the Board’s Notice and Invitation to File Briefs concerns nonemployees’, *i.e.*, union organizers’, access to employers’ private property for the sole purpose of unionizing employees. Through its Notice and Invitation to File Briefs, the Board majority and current Acting General Counsel seem intent on forcing employers to grant unions access to their employees under the Board’s discredited decision in *Sandusky Mall Co.*, 329 NLRB 618 (1999) (3-2 decision). The Board’s decision in that case, allowing broad access for nonemployee

organizers, was soundly rejected on direct review in *Sandusky Mall Co. v. NLRB*, 242 F.3d 682 (6th Cir. 2001). Similar Board orders have been rejected in other cases. See *Albertson's Inc. v. NLRB*, 301 F.3d 441 (6th Cir. 2002); *Salmon Run Shopping Center LLC v. NLRB*, 534 F.3d 108, 117 (2d Cir. 2008).

Nevertheless, the Board majority and its General Counsel seem intent upon resurrecting that discredited rule, which would increase the ability of unions to harass and intimidate employees in the workplace. As shown by the sworn employee declarations filed in cases like *Dana Corp.* and *Lamons Gasket*, employees are often harassed by union agents intent on securing their signatures on authorization cards and driving them into forced-dues-paying union ranks. See Nat'l Right to Work Legal Def. Found. Amicus Br. in *Lamons Gasket*, accessible at http://www.nlr.gov/nlr/about/foia/vr/lamon/Nat_Right_to_Work_Legal_Defense_Amicus_Brief.pdf. Although employees have a fundamental right to refrain from any and all collective activity under Section 7 of the NLRA, 29 U.S.C. § 157, the current Board majority seems intent on gutting that right for the benefit of union bosses.

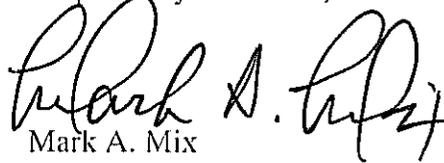
CONCLUSION

The Board should not override and subvert the courts' decisions in cases such as *Lechmere* and *Sandusky Mall Co.*, thus facilitating and encouraging the harassing and abusive conduct to which unions and their paid nonemployee organizers often subject individual workers.

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Rather, the Board should overrule its discredited decision in *Sandusky Mall* to protect employees from such abusive union tactics.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark A. Mix". The signature is fluid and cursive, with a large initial "M" and a stylized "A".

Mark A. Mix
President

cc: Yingtao Ho, Esq.
Previant Goldberg Uelmen Gratz Miller & Brueggeman
1555 North Rivercenter Drive Suite 202
P.O. Box 12993
Milwaukee, WI 53212

Regional Director Irving E. Gottschalk
NLRB Region 30
310 West Wisconsin Avenue, Suite #700
Milwaukee, WI 53203-2211

Scott Gore, Esq.
Mark L. Stolzenburg
Laner, Muchin, Dombrow, Becker, Levin & Tominberg
515 North State Street, Suite 2800
Chicago, IL 60610