



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

Appellate and Supreme Court Litigation Branch
Washington, D.C. 20570

September 14, 2020

Molly C. Dwyer
Clerk, U.S. Court of Appeals
for the Ninth Circuit
PO Box 193939
San Francisco, CA 94119-3939

Re: *Service Employees International Union Local 87 v. NLRB*,
No. 19-70334, Board Case No. 20-CA-149353

Dear Ms. Dwyer:

Pursuant to Rule 28(j), the Board notes that on September 11, 2020, the Court denied a petition for panel rehearing and for rehearing en banc in *NLRB v. Int'l Ass'n of Bridge, Structural, Ornamental, & Reinforcing Iron Workers, Local 229*, 941 F.3d 902 (9th Cir. 2019), a panel decision that the Board addressed at pages 50-51 of its brief in the instant case.

The Court's denial of the petitions for rehearing leaves the panel's decision intact. That decision explicitly rejected the argument (made by SEIU Local 87 here) that recent Supreme Court decisions have changed First Amendment jurisprudence such that courts are now required to apply strict scrutiny in cases involving conduct prohibited by Section 8(b)(4). *Id.* at 905-06. (*See* NLRB Br. 49-51.)

As the Board explained in its brief here at pages 45-48, SEIU's First Amendment arguments are barred by Section 10(e) of the NLRA, 29 U.S.C. § 160(e), because SEIU failed to raise them before the Board at the appropriate time under the Board's procedures. In any event, those arguments are contrary to the law of this Circuit.

Very truly yours,

/s/ David Habenstreit

David Habenstreit

Assistant General Counsel

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cc: all counsel (via CM/ECF)