



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
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Division of Advice
Injunction Litigation Branch

January 25, 2021

VIA CM/ECF

Office of the Clerk
United States Court of Appeals
for the Seventh Circuit
Everett McKinley Dirksen United States Courthouse
219 S. Dearborn Street
Room 2722
Chicago, IL 60604

Re: *Hadsall v. Sunbelt Rentals, Inc.*
Case No. 20-2482

This case was argued before Circuit Judges Ripple, Kanne, and Scudder on January 22, 2021. Per the discussion at oral argument, the appellee, Jennifer Hadsall, Director of Region 18 of the National Labor Relations Board, for and on behalf of the National Labor Relations Board (“Director”) files this supplemental letter brief in response to Judge Scudder’s line of questioning about the propriety of a broad cease and desist order in light of the Supreme Court’s decision in *NLRB v. Express Pub. Co.*, 312 U.S. 426 (1941).

In *Express*, the Supreme Court declined to enforce the portion of the Board’s order that sought to enjoin Express from,

In any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act.

Id. at 430. The Court explained that Express’ violations were not sufficient to warrant such a broad order prohibiting Express from violating the Act “in any manner.” *Id.* at 433. However, the Court did not foreclose the possibility of a broad order where an

employer's conduct warrants it. In *Express*, the employer had violated Section 8(a)(5) of the Act by refusing to bargain and Section 8(a)(1) by making unlawful statements, but nothing in the record suggested that the employer might engage in future unlawful actions. *Id.* at 429, 434, 437. However, the Court in *Express* left open the possibility of broad orders if an employer's pervasive unlawful actions tend to show "that danger of their commission in the future is to be anticipated from the course of [the employer's] conduct in the past." *Id.* at 437.

The Seventh Circuit has recognized this danger and approved broad, "in any other manner" cease-and-desist orders in appropriate situations, citing *Express* in support. For example, in *U.S. v. Ellis Research Laboratories*, this Court upheld a broad order because the defendant would likely continue and indeed expand its unlawful conduct. 300 F.2d 550, 555 (7th Cir. 1962). The Court there said, "[w]hen such conduct is anticipated, the fact that defendants have not engaged in such conduct in the past does not preclude the issuance of an injunction." *Id.*

Similarly, in the labor context, this Court held a broad order appropriate where there were persistent attempts by an employer to thwart employees' Section 7 rights through various means. *See NLRB v. Reynolds Wire Co.*, 121 F.2d 627, 630 (7th Cir. 1941) (broad order enjoining employer from violating NLRA "in any other manner" appropriate and citing *Express Publishing Co.* as support). Indeed, this Court has held broad, "in any other manner" orders warranted in cases where the facts are appropriately distinguishable from those in *Express Publishing*. *See, e.g., Perry Coal Co. v. NLRB*, 284 F.2d 910, 917 (7th Cir. 1960) (Board has the power to issue broad cease-and-desist orders as long as they are justified by circumstances); *NLRB v. American Furnace Co.*, 158 F.2d 376, 378–79, 380 (7th Cir. 1946) (panoply of unfair labor practices warranted broad cease-and-desist order); *NLRB v. Jasper Chair Co.*, 138 F.2d 756, 757–58 (7th Cir. 1943) (broad order supported by range of unfair labor practices committed by employer); *NLRB v. Aintree Corp.*, 132 F.2d 469, 473 (7th Cir. 1942) (broad order warranted where the facts support it).

Other circuits also recognize that broad cease-and-desist orders are warranted in Board cases in the appropriate circumstances. The D.C. Circuit, for example, has held that consistent with *Express Publishing*, broad remedial orders are appropriate where there is evidence of "a generalized scheme to violate the Act." *Federated Logistics and Operations v. NLRB*, 400 F.3d 920, 935–36 (D.C. Cir. 2005). A broad order is warranted where "a [violator] is shown to have a proclivity to violate the Act, or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights." *Id.* at 936 (internal quotations and citations omitted). *See also, e.g., NLRB v. Postal Service*, 486 F.3d 683, 687 (10th Cir. 2007) (broad order appropriate where employer's actions display opposition to protect the rights of employees generally); *NLRB v. Metro. Reg'l Council of Carpenters*, 316 F.App'x 150, 159, 161 (3d Cir. 2009) (broad "in any other manner" order appropriate where danger of union's future unlawful acts could be anticipated from its course of past conduct); *NLRB v. Local 3, Broth. Of Elec. Workers, AFL-CIO*, 730 F.2d 870, 880 (2d Cir. 1984) (broad order warranted where evidence shows party likely to commit future unlawful acts). And

circuit courts have affirmed broad cease-and-desist orders as part of Section 10(j) injunctions in cases that involved a variety of serious violations, like those in this case. *See, e.g., Norelli v. HTH Corp.*, 699 F.Supp.2d 1208 (D. Haw. 2010), *aff'd sub nom. Frankl v. HTH Corp.*, 650 F.3d 1334 (9th Cir. 2011); *Sharp v. Webco Ind., Inc.*, 1999 WL 33101251 at *1 (N.D. Okla. 1999), *aff'd* 225 F.3d 1130 (10th Cir. 2000).

Here, the Director has made a strong showing that she is likely to succeed on the merits and that Sunbelt committed persistent and pervasive violations of Sections 8(a)(1), (3), and (5) of the Act, showing a general disregard for employees' fundamental statutory rights. Indeed, Sunbelt's unlawful efforts sought to attack employees' Section 7 rights on multiple fronts, substituting in a new tactic when the former was not working. Briefly, Sunbelt made threats of termination during organizing, followed by a pattern of bargaining delays and surface bargaining, assisted with a decertification petition one year after the Union's certification, interrogated and surveilled employees, and after all else failed, culminated in the elimination of the entire bargaining unit. This record shows that further unlawful conduct can be anticipated and should be prospectively enjoined. Indeed, Sunbelt's anti-Union campaign here was broader than the employer's violations in *Express Publishing*, consisting of "persistent attempts by varying methods to interfere with the right of self-organization in circumstances ... threat[ening] ... continuing and varying efforts to attain the same end in the future." *Express*, 312 U.S. at 438.

Thus, the district did not abuse its discretion in ordering Sunbelt to refrain from violating the Act "in any other manner" and the Court should affirm the district court's broad order in addition to the remaining portions of the order.

Sincerely,

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