Employer's Attempt to Escape Union Agreement Unsuccessful

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In these tough economic times, many unionized employers are carefully considering their options to get rid of union collective bargaining agreements. Many employers assume that by simply shutting down the business, collective bargaining agreements may be terminated and struggling businesses may be resuscitated. The recent decision of *Barker v. Conner, Inc.* out of the Northern District of Illinois is a classic example of an employer jumping from the frying pan into the fire and accomplishing nothing but the creation of back pay liability to add to their financial woes.

In the *Barker* case, a principal owned and ran Conner, a unionized facility. He later purchased and made the ultimate business decisions for a non-union company called Heidenreich. He largely turned over the reins for the unionized Conner operation. When Conner found itself in financial difficulty in 2010, the former manager contacted the union and attempted to negotiate a reduced wage package. The owner then approached the Conner drivers to encourage them to decertify the union and, after the union was unresponsive to the renegotiation effort, advised the union that Conner was going out of business. Several of the Conner drivers received work at non-union Heidenreich. The union filed an unfair labor practice charge and sought an injunction to set aside Conner's shut down.

Both the Board and the federal district court agreed with the union and held as follows. First, Heidenreich was held to be the alter ego of unionized Conner. Second, the owner's statements regarding decertification constituted unlawful promises and threats. Third, the owner engaged an unlawful direct dealing with employees in attempting to negotiate a lower wage rate for the unionized operation. Finally, the employer failed to negotiate with the union about the

effects of Conner's closure. Based upon the respective merits, a remedial order was entered by the court forcing non-union Heidenreich to recognize the union, cease making threats to, and bargain directly with employees, apply the terms of the expired collective bargaining agreement to the non-union entity, and make drivers whole who were not paid union wage rates.

The case is a vivid reminder that collective bargaining agreements are treated differently from other contracts. An employer has a duty to negotiate with the union, even if the collective bargaining agreement has expired. While the shutdown of a business is always allowed under federal labor law, there is a corresponding duty to engage in effects bargaining with the union about the shutdown and both the union agreement and federal labor law may require application of the agreement to the successor employer springing from the ashes of the closed business. Employers can spend a great deal of time, effort and money shutting down one business and forming another only to find that they have arrived where they started. Even in these tough economic times, federal labor law may trump economic reality. One need only examine the Board's decision to take on Boeing and its transfer of an assembly line to South Carolina, as evidence of this.