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ALLEGHENY COUNTY LABOR COUNCIL
REPORT OF LEGAL COUNSEL
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An interesting case arose before the NLRB in *Wells Enterprise v. United Dairy Workers of LeMars*. The union was an independent organization, not affiliated with any international union, and received its funding exclusively from various vending machines installed on the employer's premises. The employer permitted the machines to operate on the premises, and the machines were owned by another company known as Chesterman. Nearly 100% of all union funds were derived from the 8% commission being paid to the union by Chesterman based on the products sold by them.

Charges were filed against the union and the company alleging the payment of monies from Chesterman, although paid initially to the employer, Wells Enterprise, who remitted the checks to the union and subsequently, directly to the union from Chesterman, amounted to violations of 8(a)(1) and (2), and 8(b)(1)(a) of the Act. The allegations were that because the employer had a scheme by which they were allowing a vendor to operate machines on their property then remitting the commissions to the union, the union was employer dominated.

The administrative law judge found the conduct was a violation of the Act and ordered the union no longer be recognized as the bargaining representative, as well as ordering the vendors to cease and desist from remitting such receipts to the union. On appeal the Board overruled the ALJ with regards to the order requiring the employer to cease recognizing the union, but did find the conduct violated the NLRA. The Board found that the vast majority of union funds were derived from profits realized by a third party (Chesterman), paid over to the union simply because the employer permitted Chesterman to operate vending machines on its property. It ordered the employer to cease and desist from offering or contributing financial or material systems and support, including providing vending machine proceeds to the independent union.

Another allegation in the complaint contested the employer paying union officers for time in which they would meet with the employees and/or the employer in attempting to resolve grievances and/or issues on the plant floor. The Board found that such payments were not illegal. Although Section 8(a)(2) makes it an unfair labor practice for an employer to dominate or interfere with a labor organization, the proviso of 8(a)(2) permits an employer to pay union personnel who confer with employees and management during working hours without loss of time or pay.

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16

What makes this case most unusual is that the entire union treasury was made up of commissions being provided by an employer's vendor. Whether this same result would obtain if the union had received standardized dues, membership fees, etc. is problematic. Nevertheless, our recommendation is that a union should always be skeptical about receiving anything of value from any employer. Not only could the conduct be considered an unfair labor practice, but it also has the possibility of criminal overtones.

Respectfully submitted,

JOSEPH J. PASS, ESQUIRE