WOLFE & GOODWIN

Attorneys at Law

Memorandum

Re: A Lawyer's Role

To: Alex Associate

From: Kinsey Millhone

The Transome Fabricators Company is a new client of the firm. Unknown to the managers, a union has been working to organize Transome's employees. The union has filed a petition. Ellie Kline, Transome's president, is determined to defeat this organizing drive. Obviously, we are late getting into this.

I would like for you to take the leading role in handling this matter for the firm. I will be available to help, especially in conveying information to Ms. Kline.

Memorandum

Re: A Lawyer's Role

To: Alex Associate

From: Perry Paralegal

Transome has seventeen non-management employees. The union is the IBEW (electrical workers). After Kline received the letter from the Labor Board, Kline told her supervisors to find out what this was all about. The supervisors report that three Transome electricians are leading the campaign for a union. They are LeRoy Brown, Peggy Bremmer, and Samuel "Big" John. Bremmer and John have been with the company for several years and are well-liked by other workers. LeRoy Brown is a tireless worker on behalf of the union.

When I was looking into this, went to the plant to talk with a supervisor. When Ms. Kline found out that I was in the plant, she came storming into the supervisor's office. Boy, was she mad. She said, "Tell your people I want Brown, Bremmer, and John out of here. You can tell me HOW to do it, but I am canning those @&#%."

The supervisor told me that unless something drastic happens, he thinks the union can win a vote.

Since you told me that you are new to this, I have included a copy of the NLRB letter and a description of election procedures.

NATIONAL LABOR RELATIONS BOARD

REGION 5

Ninth Floor
516 Walnut Street
Richmond, Virginia 22555
Telephone (714) 298-9873

February 6

Transome Fabricators Company
Attn: Ellie Kline
153 N. Stratton Street
P.O. Box 130
Gettysburg, PA 17325

Re: Transome Fabricators Company
Case No. 5-RC-21334

Dear Sir or Madam:

A petition pursuant to the provisions of the National Labor Relations Act has been filed with this office. A copy is attached. Also enclosed is a copy of Form NLRB 4812 which explains our investigation and voluntary adjustment procedures.

Attention is called to your right, and the right of any party, to be represented by counsel or other representative in any proceedings before the National Labor Relations Board and the Courts. You may also choose to designate a representative as agent for service of documents. Form NLRB 4701 and NLRB 4813 are enclosed for this purpose. If you choose to use these forms, please submit them promptly to this office.

In addition, please submit promptly to this office the following information:

(1) The attached questionnaire filled out in the appropriate sections. If the criteria set forth in the questionnaire do not apply to your enterprise, please telephone the Board Agent assigned to the case.

(2) Copies of correspondence and existing or recently-expired collective bargaining contracts, if any, covering any of the employees in the unit alleged in this petition. Names and addresses of any other labor organizations claiming to represent any of the employees in the proposed unit.

(3) An alphabetized list of employees described in the petition, together with their job classifications for the payroll period immediately preceding the date of this letter.

(4) Your position as to the appropriateness of the unit.

(5) Names and addresses of eligible voters must also be furnished by the Employer in accordance with the instructions given in Form NLRB 4812, in the event an election is agreed to or directed in this case.

(6) Are you willing to consent to an election? If so, please specify the date or dates within the next five working days on which you can attend a joint conference.

(7) If no joint conference can be held within the next week or if any of the parties do not indicate a willingness to consent to an election, formal notice of hearing may issue scheduling a hearing within eighteen days from the date the petition was filed in order to resolve the issues concerning representation raised by the filing of the petition.

It has been our experience that by the time a petition such as this one has been filed, employees may have questions about what is going on and what may happen. At this point in the handling of this case, we, of course, do not know what disposition will be made of the petition, but experience tells us that an explanation of rights, responsibilities, and Board procedures can be helpful to your employees.

The Board believes that employees should have readily available information about their rights and the proper conduct of employees representation elections. At the same time, employers and unions should be apprised of their responsibilities to refrain from conduct which could impede employees' freedom of choice. Accordingly, you are requested to post the enclosed Notice to Employees in conspicuous places in areas where employees such as those described in the enclosed petition work, and to advise me whether they have been posted. Copies of this Notice are being made available to the labor organization(s) involved. In the event an election is not conducted pursuant to this petition, you are requested to remove the posted Notice.

For your information, we are also enclosing six copies of the leaflet "Your Government Conducts an Election". Additional copies are available in sufficient quantities for distribution to all employees and supervisory personnel.

Investigation of this matter has been assigned to the staff member named below. If you have any questions, do not hesitate to communicate with the Board Agent.

Your cooperation in this matter will be appreciated.

Very truly yours,

Lawrens W. Strider
Regional Director

Enclosures

CC: International Brotherhood of Electrical Workers, Local 742,
Attn: William Gott, President

Laura K. Yount, Esquire, 1818 Chestnut Street
Richmond, VA 22554

James Q. Harty
UNION ORGANIZING DRIVE—AN INTRODUCTION

SB36 ALI-ABA 1699 (1997)

. . . When a union decides to launch an organizing effort against an employer their first goal is to obtain a sufficient "showing of interest." This is done by passing out union authorization cards and obtaining signed cards from at least thirty percent of the employees who will be eligible to vote. Only after this is accomplished does the union file an Election Petition with the Regional Office of the National Labor Relations Board. Once this is filed, the Board Agent determines whether they have jurisdiction over the employer and whether the union has signed cards (showing of interest) from at least 30 percent of the employees. Either formally or informally the Board Agent obtains agreement by the parties, or by a Decision by the Regional Director as to the appropriate unit, the eligibility list and the time and place for a secret ballot election. (These terms are discussed later in this paper). The parties then have a few weeks in which to conduct their respective election campaigns before the actual voting day. On the voting day each eligible employee who goes to the polling place established by the Labor Board receives a ballot, goes into a private voting booth, and marks his ballot. He then deposits it in a ballot box outside of the voting booth. At the end of the election period, the ballot box is opened in public and the votes are counted. The union wins only if it receives a majority of the valid votes cast. If the vote is tied, the union does not win representation rights. There is a short period of time (five business days) thereafter during which either party can protest the election procedures. Then the Labor Board issues its formal results of the vote and declares the Union as having won representation rights or not. Shortly thereafter the union, if they won, requests the beginning of negotiations. . . .

NATIONAL LABOR RELATIONS BOARD v. JAKEL MOTORS, INC.

875 F.2d 644
United States Court of Appeals, Seventh Circuit, 1989

FLAUM, J.

. . . Jakel is an Illinois corporation engaged in the manufacture and sale of small electric motors with production facilities in Highland, Illinois, and Palestine, Illinois. The company is family-owned and run primarily by several of the Jakel brothers. During March 1985, Jakel employees began a union organizing effort which culminated in a Board election held on October 4, 1985. Jakel's flagrant anti-union response to this organizing effort resulted in an NLRB finding of more than thirty violations of § 8(a)(1) of the Act. The violations included coercive interrogation of employees; threatening employees with plant closures, discharges, retaliatory transfers of work, loss of jobs, less desirable work assignments, and unfavorable employment references; telling employees that they or certain named co-workers had been discharged because they were pro-union; telling employees that their union activities were futile because the company would never negotiate or sign a contract with the union; engaging in surveillance of union meetings; prohibiting employees from distributing union literature on company property; and promulgating an overly broad no-solicitation/no-distribution rule. Jakel does not contest these findings, and we summarily affirm the § 8(a)(1) violations.

In addition, the Board found that Jakel had violated § 8(a)(3) of the Act with respect to twelve employees. It is the § 8(a)(3) violations that Jakel challenges, asserting that the Board's finding, as to each employee, is not supported by substantial evidence. Jakel raises no legal issues, nor does it contest any of the Board's underlying findings of fact. Jakel merely challenges the inferences drawn by the Board from those facts and contests the credibility findings of the ALJ.

The legal framework for review of an NLRB decision was aptly stated by this court in NLRB v. Dorothy Shamrock Coal Co., 833 F.2d 1263 (7th Cir. 1987):

> Our task is to determine if the judgment of the NLRB is supported by substantial evidence on the record as [a] whole. We must defer to the expertise of the Board and will not displace its reasonable inferences even where a plenary review of the record might yield a different result. Moreover, we "must accept the Board's credibility findings unless the party challenging [those determinations] establishes [that] 'exceptional circumstances'" justify a different result.

The *Shamrock* court also stated the burdens of proof for a § 8 violation and commented on the types of evidence on which the Board may rely:

> The General Counsel carries the burden of proving the elements of a § 8 unfair labor practice. Thus, the Counsel must establish that the discharge or other adverse labor practice was "based in whole or in part on antiunion animus—or . . . that the employee's protected conduct was a substantial or motivating factor in the [employer's] adverse action." The employer, however, may avoid liability by showing that his actions would have been the same "regardless of his forbidden motive." . . .
>
> The Board, however, is "free to rely on circumstantial as well as direct evidence" in assessing motive. . . . [The timing of the adverse action] also serves as evidence of the Company's motive.

As to each employee, Jakel denies that anti-union animus was a motivating factor in its decision and contends that each adverse employee action was taken for non-discriminatory reasons. We initially note that Jakel's denial of any anti-union animus is belied by the uncontested findings of the Board that Jakel committed numerous, flagrant, and widespread acts of interference, restraint, and coercion in violation of § 8(a)(1). With respect to Jakel's claim that despite any purported anti-union animus, the adverse employee actions were motivated by non-discriminatory reasons, we will briefly summarize the main points of evidence supporting the Board's findings.

Buzick incident

Theresa Buzick initiated the organizational effort at Jakel's Highland plant. In March 1985, she contacted the union headquarters, and an organizing meeting was set for June 12. Buzick, Strowmatt and Beckering all attended and signed authorization cards at that meeting. Daniel Jakel and another Jakel official conducted unlawful surveillance of the meeting. Within one week of the meeting, Daniel Jakel transferred Buzick, Strowmatt and Beckering to Jakel's Palestine facility, 150 miles away. At the time, the Palestine plant was closed and had been closed for about a month; no production work was being done at the plant. The three women, all production line employees, were made to do janitorial cleanup work. In order to document the conditions at Palestine, the three transferees took pictures of themselves at the plant. One evening, they also taped a conversation with a laid-off Palestine employee concerning conditions at the plant. Within one week of their transfers to Palestine, the three were discharged. Jakel contended that they were discharged for taping supervisors' conversations and for taking unauthorized pictures. Jakel's contention is without merit. No evidence was introduced to show that any supervisors' conversations were taped, and picture-taking was not a prohibited activity. Substantial evidence in the record supports the Board's finding that the transfers and discharges were discriminatory in violation of § 8(a)(3).

Pryor incident

Pryor did not attend the June 12 meeting. However, on June 13, a Wednesday, she was unlawfully interrogated by a Jakel supervisor about whether she had attended the meeting and whether she was for the union. Pryor told the supervisor that she was for the union, and during the next few days Pryor talked to several other employees, encouraging them to support the union. On Friday, June 14, Pryor was looking at the efficiency reports for one of the plant's departments in order to get a list of employee names for organizing purposes. While so engaged, Daniel Jakel came by and instructed the department leadman not to let Pryor look at the reports. In the past, employees, including Pryor, had been allowed to look at the reports without interference by management. On the next workday, Monday, June 17, Robert Jakel, president of the company, delivered an anti-union speech to his assembled employees, during which he stated that the union would do them no good and could only cause a loss of jobs and that the company would never negotiate or sign a contract with the union. On that same day, Daniel Jakel called Pryor to his office and discharged her. Jakel contends that Pryor was discharged for her poor attitude and use of foul language (evidence of which is contained in the record). However, we find that substantial evidence in the record—including the timing of the discharge, the unlawful interrogation of Pryor a few days prior to the discharge, the unprecedented interference with her looking at efficiency reports, and the fact that her two work evaluations had shown satisfactory performance—supports the Board's finding of unlawful discrimination.

Rench incident

Each Jakel production employee was rated for efficiency on a weekly basis. If an employee's efficiency rating fell below the acceptable standard, that employee was ordinarily given a warning and a period of time to improve. Rench's efficiency ratings during April and May, 1985, fell below standard. On about May 31, Daniel Jakel called Rench to his office and explained to her that they wanted to keep her but that she would have to improve her efficiency ratings. The ALJ credited Rench's testimony that Jakel gave her a 3-month probationary period to get her efficiency rating up to standard. Rench attended the June 12 union meeting which, as noted, had been unlawfully monitored by Daniel Jakel. On June 17, the same day that Robert Jakel delivered his anti-union speech and Daniel Jakel transferred Strowmatt and Beckering to the Palestine plant and discharged Pryor, Daniel Jakel precipitously fired Rench. At the time of her discharge—less than three weeks after she had been promised a 3-month probationary period-Rench had already succeeded in raising her efficiency rating to above-standard. Accordingly, the Board's finding with respect to the discharge of Rench is supported by substantial evidence.

Failure to recall Vivian Cox, Janet Franklin, and Diana Hauger

On June 21, in anticipation of reopening the Palestine plant, Jakel conducted interviews of laid-off employees who desired to return to work. Cox, Franklin and Hauger were among those employees who had been retained until the day or week that the plant had been closed. All three had above-standard efficiency ratings, had no disciplinary records or warnings, were sufficiently versatile to work in various positions, and had specific notations in their files recommending them for reemployment. During their rehire interviews, the three were unlawfully interrogated about their union sentiments, and all made what could be considered pro-union statements. The three were not rehired, even though Jakel hired new employees and rehired several former employees who had disciplinary records and warnings and who had been identified as not recommended for reemployment. The ALJ found Jakel's rationale for refusing to recall these three employees to be a pretext. The Jakel interviewer claimed that Cox had been "nervous" during her interview, that since Franklin's husband was in Indiana she was probably "transient," and that Hauger's personal

appearance was unappealing. On the record as a whole, there is substantial evidence to support the Board's finding that Jakel's proffered explanations were pretextual.

Discharges of Elizabeth Nye and Deborah Westbrook

Nye and Westbrook were active union supporters who had worn union buttons on a daily basis, had attended union meetings, had distributed union literature to employees, and had solicited employees to sign authorization cards. In addition, Nye had co-authored and signed a letter published in a local newspaper detailing the company's treatment of employees Buzick, Strowmatt and Beckering. Company President Robert Jakel later characterized the letter as the "Norma Rae" letter. Both employees had consistently high efficiency ratings and neither had ever been disciplined or warned. In fact, Nye had been designated "Quality Employee of the Month" in January 1985. On July 2, Nye and Westbrook were suddenly discharged. Jakel offered no explanation for the firings to either the ALJ or to this court. In its brief on appeal, Jakel merely argues that the company did not know of their union activities. The argument is without merit.

Discharge of Rodney O'Brien

Like Nye and Westbrook, O'Brien was a very active and visible union supporter. In an employee evaluation dated April 25, O'Brien had received high ratings in every category. He had never been disciplined nor received any warnings or reprimands of any kind. On June 27 and again on July 1, a Jakel manager warned O'Brien to be careful because the company was looking for a reason to fire him. Thereafter, a series of eight memos citing a decline in O'Brien's work found their way into his personnel file. On July 23, he was discharged. The ALJ found both the circumstances and the content of the eight memos to be suspect, and we agree. Substantial evidence on the record as a whole supports the Board's finding with respect to O'Brien.

Transfer of Clyde Hentz

On September 24, Hentz attended a union meeting. On October 3, Daniel Jakel called Hentz to his office and demanded to know how Hentz intended to vote in the union election and threatened him with replacement if he did not vote for the company. On October 4, election day, Hentz wore a union button to work. On October 7, Hentz was transferred from the position of leadman to production work repairing motors. Jakel offers one line of argument in its brief in defense of this discriminatory transfer, contending that the transfer was not discriminatory because Hentz's pay was not reduced. The argument is without merit.

For the reasons stated herein, the judgment of the National Labor Relations Board is enforced.

BOIRE v. PILOT FREIGHT CARRIERS, INC.

515 F.2d 1185
United States Court of Appeals, Fifth Circuit, 1975

GEWIN, J.

This appeal involves the second occasion on which the Regional Director of the NLRB has sought § 10(j) relief in a Florida labor dispute between Pilot Freight Carriers, Inc. (Pilot) and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Teamsters). Section 10(j) of the Taft-Hartley Act authorizes the NLRB to seek temporary injunc-

tive relief against a party allegedly committing unfair labor practices pending final disposition of the charges by the Board.

The prior proceeding was aimed at the Teamsters, to keep the union from forcing Pilot to bargain before the legal questions could be determined by the Board. The district court granted relief, and we affirmed. Boire v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 479 F.2d 778 (5th Cir. 1973) (hereinafter cited as Boire v. Teamsters). This case presents the reverse side of the coin, for here the Regional Director seeks temporary relief against Pilot and its dock contractor, BBR of Florida, Inc. (BBR) for claimed coercive tactics designed to impede the employees' organizational efforts. The district court granted the desired relief in part, denied it in part, and we affirm. . . .

Section 10(j) of the Taft-Hartley Act . . . was enacted in 1947, despite Congress' general aversion to labor injunctions. In the fifteen years following passage of the Norris-LaGuardia Act, it had become evident that normal NLRB machinery—involving issuance of an unfair labor practice complaint, a hearing before a trial examiner, de novo review by the Board, and an enforcing order by a Court of Appeals—was so time-consuming that guilty parties could violate the Act with impunity during the years of pending litigation, thereby often rendering a final order ineffectual or futile. Congress therefore gave the labor board a discretionary tool to prevent erosion of the status of the parties pending its final decision.

In an effort to further the principles underlying § 10(j), courts have fashioned a bipartite test for determining the propriety of temporary relief: (1) whether the Board, through its Regional Director, has reasonable cause to believe that unfair labor practices have occurred, and (2) whether injunctive relief is equitably necessary, or, in the words of the statute, "just and proper." The first question requires the Board to sustain a minimal burden of proof, but the second demands some exercise of discretion on the part of the trial judge.

I. Reasonable cause to believe

In determining whether reasonable cause exists to believe that unfair labor practices have been committed, the district court need only decide that the Board's theories of law and fact are not insubstantial or frivolous. The Court of Appeals, in turn, reviews the trial court's factual determinations for clear error and its legal conclusions to determine whether they are correct. Whether reasonable cause exists, of course, depends upon the facts of a particular case. . . .

Briefly, some background information is necessary to put the present dispute in perspective. In 1970 the Interstate Commerce Commission granted Pilot Freight Carriers, Inc., a North Carolina corporation, the authority to extend its freight operations as far south as the Florida Keys. Pilot promptly established terminals in Jacksonville, Tampa, Hollywood and Orlando. It did not, however, employ its labor force directly, but instead commissioned men who owned their own trucks, appropriately called owner-operators, to haul freight in the Florida area. Pilot also commissioned dock contractors, who were responsible for hiring dockworkers. Since 1964 Pilot had been a member of the National Master Freight Agreement, and most of Pilot's employees in other areas of the country were Teamsters. The Teamsters took the position that the Florida operations were an accretion to the pre-existing National Master Freight Agreement, so Pilot's new employees were governed by its terms. Pilot disagreed and filed unfair labor practice charges against the Teamsters for their allegedly illegal organizational activities. In the meantime, a unit clarification petition had been filed to determine the accretion question. The Regional Director petitioned the district court for § 10(j) relief against the Teamsters pending final Board determination of the unfair labor practice charges. As mentioned above, we affirmed the district court's grant of relief.

Subsequent to our decision in Boire v. Teamsters, the Board announced its decision in the unit clarification dispute. Released January 31, 1974, the NLRB made four important determinations: (1) the Florida operation was not an accretion to the national bargaining agreement, (2) the owner-operators were employees of Pilot, despite the company's assertions of independent contractor status, (3) Pilot and the dock contractors were joint employers of the dockworkers, and (4) "each of the Florida terminals or the 4 terminals together, may constitute an appropriate unit."

The Board's decision on the accretion issue spurred the Teamsters to immediate organizing at the Jacksonville terminal. The union's efforts were not limited to owner-operators, but also included the dockworkers who worked on the same premises.

The first employee to sign a union card was Melvynn Johnston, a dockworker. He testified that he signed on February 5, 1974 and sponsored a meeting the next day to convince others to join the Teamsters. Johnston was fired on February 7 by the president of BBR who refused to give any reason for the dismissal.[1] Clarence Brace, one of the first people Johnston solicited concerning the union, testified that he signed a union card on February 6 and was fired on February 7.

Shortly after the discharges, "no solicitation no distribution" signs appeared in the employee lounges of the Jacksonville terminal, along with large octagonally shaped "stop" signs that cautioned employees to think before signing union cards. Management of Pilot and BBR continually voiced their opposition to the Union. There was evidence that the president of BBR promised to fire any employees whom he found had signed union cards, though he denied making such statements. Pilot's president and vice-president gave one "captive audience" speech in which they told the drivers that if the union proved successful, the men would no longer be able to drive their own trucks. Instead, they would have to use company equipment, and the company would not purchase their trucks from them. The speech caused grave concern among the owner-operators who had made substantial investments in their equipment. Pilot personnel added that they would continue to treat the drivers as "independent businessmen," despite the NLRB's ruling that they were employees. Management spokesmen for the freight company said they could not afford union wages or collateral union benefits, and the president of BBR stated flatly that the union would break him.

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[1] Johnston testified concerning the circumstances of his discharge:

> A. He (the President of BBR) said, "Mel, the reason I called you tonight," he says, "there won't be any need for you to come to work tonight." And I asked him why. He said, "I'm firing you."
>
> Q. What did you say, if anything, when he said that?
>
> A. I asked him if he was going to give me a reason for firing me. And he said that he didn't have to give me "any goddamm reason."
>
> Q. And what did you say to that, if anything?
>
> A. I asked him if he knew what he was doing. And he says, "Yeah. You know more about what's going on around here than I do." So --
>
> Q. Can you recall anything else that was said in that conversation?
>
> A. I asked him again if he was going to give me a reason for firing me. And he said that he didn't owe me any reason and that he wasn't going to give me one.

(Transcript of § 10(j) hearing).

During the second week in February Pilot granted pay increases to the over-the-road and city drivers. The impetus for the wage hikes is hotly contested, as Pilot maintains they were instituted in response to a mandatory ICC ruling that an increased fuel surcharge be passed on to the drivers who would pay for fuel. There were, however, additional wage increases in the course of the organizational drive that were inaugurated by Pilot without federal pressure. Pilot also began to allow "double runs," *i.e.*, two men riding in a truck at the same time, thereby increasing the mileage an employee could cover in a given period of time. Again, Pilot maintains that it initiated the double runs at the drivers' behest, because they felt endangered by other operators out on strike. There was evidence, however, from which the Regional Director could conclude that the double runs were a benefit instituted by management to undermine union strength.

Despite management's antagonism to unionization, the employees continued to hold organizational meetings off company property. Growing numbers signed authorization cards, and on February 13 the union announced it had majority support and requested Pilot to bargain. Pilot personnel repeatedly refused.

Based on this evidence, the district court determined that the Board had reasonable cause to believe that Pilot and BBR had violated §§ 8(a)(1), 8(a)(3) and 8(a)(5) of the National Labor Relations Act.[2] [The court found that the Regional Director satisfied the "reasonable cause to believe" requirement.]

II. Equitable necessity

Having determined the record before the district court contains substantial evidence to support its finding of reasonable cause, we must now delimit the breadth of relief a district court may order under § 10(j). The statute allows "such temporary relief or restraining order as it [the district court] deems just and proper," a requirement we have given the shorthand label "equitable necessity." This second prong of the § 10(j) test thus confers a certain range of discretion upon the trial court, reviewable for abuse.

In the present case the district court enjoined Pilot and BBR from violating §§ 8(a)(1), 8(a)(3), and 8(a)(5) in the future through such activities as financial inducements not to join the union, threats of economic reprisals, discriminatory discharges, and other methods of interfering with employees' organizational rights. The court refused, however, to order mandatory injunctive relief in the form of temporary reinstatement or a temporary bargaining order. It focused on the distinction between prohibitory and mandatory injunctive remedies, reasoning that a majority of courts have denied mandatory relief because it usurps the Board's powers and prerogatives.

Section 10(j) is itself an extraordinary remedy to be used by the Board only when, in its discretion, an employer or union has committed such egregious unfair labor practices that any final order

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[2] Specifically, the district court found reasonable cause to believe Pilot and BBR had engaged in various activities to thwart union membership:

a. threatening the employees with financial loss if they selected the Union;
b. increasing compensation to the over-the-road and local drivers;
c. stating that other increases were being withheld because of the labor dispute with the union;
d. promising the use of Pilot's equipment if drivers would return to work;
e. allowing certain over-the-road trips to be made with two drivers instead of one, thus substantially increasing the pay of each;
f. informing employees that 10 million dollars had been reserved to keep the Union from organizing Pilot's Florida employees; and
g. discharging employees Roy Brace and Melynn [sic] Johnston for their union activities.

of the Board will be meaningless or so devoid of force that the remedial purposes of the Act will be frustrated. Proper composition of the bargaining unit, reinstatement of unlawfully discharged employees, and certification of the union as bargaining representative are matters generally left to the administrative expertise of the Board. We believe that measures to short-circuit the NLRB's processes should be sparingly employed. While it is true Congress implemented § 10(j) to aid the Board in administration of national labor policy, its scope should not overpower the Board's orderly procedures. Moreover, though traditional rules of equity may not control the proper scope of § 10(j) relief, some measure of equitable principles come into play. If the trial court, in its discretion, does not believe that far-reaching mandatory relief would serve the purposes of the Act, it need not grant the full remedy requested by the Board. The Chancellor does not abdicate his powers merely upon a showing that the Regional Director's theories surpass frivolity. He maintains some power to do equity and mold each decree to the necessities of the case.

Here the district court has prohibited Pilot and BBR from committing any unfair labor practices *in futuro*, pending final determination of the charges before the Board. Although a decree enjoining a party from violating the law might appear superfluous at first blush, we believe the order adequately protects the interests of the union, since the employers can be held in contempt if they try to dissipate union strength in any unlawful manner.

Nor did the district court abuse its discretion in failing to order reinstatement of the two employees arguably discharged for union activity. The Board waited three months before petitioning the district court for temporary relief. Although the time span between commission of the alleged unfair labor practices and filing for § 10(j) sanctions is not determinative of whether relief should be granted, it is some evidence that the detrimental effects of the discharges have already taken their toll on the organizational drive. It is questionable whether an order of reinstatement would be any more effective than a final Board order at this point. Whether these employees were in fact dismissed for their organizational efforts will be determined by the Board when it brings the full panoply of its resources to bear upon issuance of the final order; the issues are now well preserved for its review. . . .

The judgment of the district court is affirmed in all respects.

Charles Pharol, Labor Law Basics

Margee Pub. Company

In the last year for which relevant data are available, the Board received 9,699 charges of violations of § 8(a)(3). These cases alleged 13,316 instances of discriminatory conduct. That year, 7,947 employees were offered reinstatement to their jobs by employers who had been alleged to have engage in discrimination. Of these reinstatements, 6,882 were pursuant to informal settlements.

In the last year for which data respecting injunctions are available, the General Counsel sought § 10(j) injunctions in 73 cases (65 successfully) in which serious discriminatory conduct was alleged by the employer and in which the union did not have a majority of authorization and the time of the conduct. The Board sought injunctions in 39 cases (33 successfully) where similar employer conduct was alleged but the a majority of the employees had signed cards when the conduct allegedly occurred.