

\$76 MILLION SETTLEMENT REACHED IN DECADE LONG NLRB CASE

By: Katherine F. Cser, Senior Associate, Workplace Law Practice

On Friday, January 10, 2020, the National Labor Relations Board (NLRB) announced a \$76 million backpay settlement with CNN benefiting more than 300 individuals. This is the largest backpay award in NLRB history.

For several years, Team Video Services (TVS) provided CNN with technicians to operate CNN's electronic equipment. In 2003, CNN decided to hire operators directly and terminated its relationship with TVS. CNN allegedly sought to avoid hiring employees who were affiliated with TVS or the two unions representing TVS employees.

As a result of CNN's staffing decision, the two unions filed complaints with the NLRB, the federal agency charged with enforcing the National Labor Relations Act ("NLRA"). The complaints alleged that CNN cancelled its contract with TVS to avoid the union connection. An NLRB administrative law judge agreed in 2008, determining that CNN's actions violated the NLRA by (1) terminating the TVS subcontract out of antiunion animus; (2) failing to bargain with the Union about the termination decision and the effects of that decision; (3) making coercive statements; (4) implementing a hiring plan to limit the number of former TVS employees to avoid a successorship bargaining obligation; and (5) as a successor, failing to recognize and bargain with the Union and unilaterally changing the employees' terms and conditions of employment.

In 2014, the NLRB issued its Decision and Order, agreeing with the administrative law judge that CNN was a joint employer of the TVS technicians and ordering CNN to pay backpay for its violations of the NLRA. A panel of the D.C. Circuit Court of Appeals adopted the majority of the Board's findings, and enforced the Board's order that CNN cease and desist from refusing to recognize and bargain with the unions. As to the joint employer finding, the court remanded the issue for further clarification, along with the issue of backpay. The settlement does not resolve the issue as to whether CNN and TVS were joint employers. However, the NLRB and other agencies are working on regulations to address when companies qualify as joint employers.

This case demonstrates the need for careful, strategic union avoidance strategies. If you have questions about union avoidance or whether you may have joint employer obligations, please please call any member of Bodman's Workplace Law Practice Group.



ABOUT THE AUTHOR

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Katherine counsels employers on compliance with state and federal labor and employment laws and represents them in resolving a broad range of workplace disputes.

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