

Insights, News & Events

## EMPLOYER WINS \$5 MILLION FROM AGGRESSIVE UNION

Lessons To Be Learned For Organizing Campaigns

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For the first time in American labor law history, a jury found that a union defamed and disparaged an employer while waging a bitter organizing campaign, costing the union at least \$5.3 million. The September 6 jury award spells bad news for aggressive unions, and provides a blueprint for those employers wishing to hold unions accountable for underhanded organizing tactics.

### **Union Uses Scorched Earth Tactics Against Employer**

The case started about a decade ago when a local branch of the Service Employees International Union (SEIU) plotted a strategy for entering the Houston-area janitorial services market. SEIU Local 5 unveiled its “Justice for Janitors” campaign to much fanfare, promising improved working conditions and higher pay for those who signed up.

The union’s scheme targeted the six biggest building services companies in the area. Five of the six quickly ceded to union demands and signed neutrality agreements, clearing the way for easy union organizing. However, one of the six – Professional Janitorial Service of Houston Inc. (PJS) – said that the union would need to win a secret ballot election if it wanted to represent PJS workers.

The union waged an all-out campaign against PJS. It began by recruiting PJS workers to file wage claims with the U.S. Department of Labor (USDOL), alleging the company withheld worker pay and forced them to work off the clock. Of the 25 or so claims filed, only one yielded any results: a 2008 determination that one worker was shorted \$1,854 in

### Related People



**Todd A. Lyon**

Partner and Labor Relations  
Group Co-Chair

503.205.8095



**Richard R. Meneghello**

Chief Content Officer

503.205.8044

overdue wages. The union also filed a wage and hour class action lawsuit against PJS and cited the lawsuit as confirmation that the employer was violating federal wage laws, despite the fact that the lawsuit was ultimately dismissed without a finding against the employer.

The union also filed unfair labor practice (ULP) complaints on behalf of employees let go from their jobs, alleging that their terminations were motivated by anti-union sentiment. However, each and every one of the 19 ULPs was resolved either by the National Labor Relations Board (NLRB) clearing the company of any wrongdoing, or because the union withdrew the ULP.

The union spread the news that PJS routinely violated workers' rights. Through a coordinated campaign of fliers, handbills, newsletters, emails, letters, websites, speeches, rallies, and protests, it routinely published information describing wage violations and labor law abuses at the company.

The union directed this information to PJS customers, causing at least 12 businesses to sever their relationship with the janitorial service. One customer described at trial how she decided to fire PJS after union protestors stormed into her building and occupied her conference rooms to protest her relationship with PJS.

### **Employer Vindicated In Historic Trial**

PJS filed a lawsuit against SEIU Local 5 in Texas state court in 2007 alleging that the union's defamation and disparagement directly led to lost business. The union stalled the litigation as long as possible, including filing motions to dismiss the case and seeking help from the appeals courts when not receiving satisfaction at the trial court.

The case finally went to trial in August 2016. After four weeks of evidence and testimony, the jury returned a 10-2 verdict in the company's favor on September 6 (ironically, the day after Labor Day) and awarded \$5.3 million in damages against the union, which represents every dollar sought by the employer at trial. This amount comprises an estimate of the company's lost business, not including punitive damages. The company also seeks nearly \$2.5 million from the union in prejudgment interest.



**Stephen J. Roppolo**

Partner

713.292.5601



**A. Kevin Troutman**

Senior Counsel

713.292.5602

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## **Service Focus**

Labor Relations

The jury found that the union showed reckless disregard for the truth when it waged its organizing campaign against PJS, especially given the fact that the company was vindicated at just about every step when its business practices were examined by the USDOL and the NLRB. The company uncovered evidence that local union officials celebrated each time that PJS lost business. Internal union emails also revealed that its goal was to force PJS to lose enough business that it would either become irrelevant in the market or come back to the union for help.

This trial was the first time any branch of the SEIU, which boasts over 2 million members, was forced to defend its organizing tactics to a jury. In 2011, a similar case alleging racketeering allegations against SEIU seemed destined for a battle in a Virginia federal court, but the union settled the case with the employer on the eve of trial.

According to company lawyers, this also marks the first time any labor union was found liable for defamation or disparagement in connection with an organizing campaign. Although SEIU Local 5 has vowed to appeal, this decision is a momentous one and should have ripple effects over the national labor landscape.

### **Blueprint For Success**

Unions will no doubt pay attention to the jury's decision, and you should, too. Businesses should feel emboldened to stand up to particularly egregious campaign tactics given the size and scope of this jury verdict. Here are several practical lessons you can learn from this case as you deal with labor matters at your own organization:

#### ***Push Back***

Importantly, you should push back on any excessively aggressive conduct. Regularly communicate with the union about any untrue statements, complaints, or charges it initiates, calling them out as necessary. Keep records of your victories in the defense of the claims as well as the expense of defending them.

#### ***Budget And Plan Ahead***

A stated union goal is to wear down the employer until it no longer has the financial resources to resist the multiple forums of litigation, internal unavailability, and customer pressure. Therefore, you should maintain a contingency plan to manage anticipated litigation expenses, redistribute personnel duties as warranted, and develop an aggressive

customer retention program (which includes copies of your communications to the unions).

### ***Do Your Research***

A critical component to PJS's success at trial was the introduction of SEIU's own "Contract Campaign Manual" as evidence. The company found the manual – the union's playbook for conducting organizing campaigns – by digging through public court files from the 2011 Virginia case.

It included portions instructing workers to "disobey laws" they believed were unjust towards working people, and to threaten managers with accusations of racism and sexism as part of their organizing efforts. These kinds of messages resonated with the jury when they were called to judge the local union's actions, so work with your counsel to research the union on a national and local level to develop similar ammunition.

### ***Check Your Emails***

The company was also able to use the union's own words, in the form of internal email traffic, to demonstrate SEIU's specific intent to cause financial harm to PJS through the use of unsubstantiated accusations. In the face of such irrefutable evidence, the union's denial of these actions only undermined its own credibility and undoubtedly resonated with the jury.

Although you might not have access to a union's own internal emails unless you are engaged in active litigation, you should review your own email traffic (and other correspondence) with union representatives for possible damning statements. It may be possible to display concrete evidence of bad faith or malicious motives using the union's own words against it.

### ***Fight For 15 Might Be Impacted***

Finally, if you happen to be in the crosshairs of the national "Fight for 15" movement (seeking a \$15 minimum wage), you might be aware that the SEIU is a driving force behind the crusade on a national level. Although the Texas case was filed against a local branch of the SEIU, the internal email traffic unearthed in this case might shed considerable light on some of the union's tactics.

It would be worthwhile to explore the evidence in this case to get a sneak peek into the inner workings of the union and get a sense for how it operates. You may also determine that

the information could be put to use to sway uncertain employees during an organization campaign or decertification effort.

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*For more information, contact the authors at*  
[KTroutman@fisherphillips.com](mailto:KTroutman@fisherphillips.com) (713.292.5602),  
[SRoppolo@fisherphillips.com](mailto:SRoppolo@fisherphillips.com) (713.292.5601),  
[TLyon@fisherphillips.com](mailto:TLyon@fisherphillips.com) (503.205.8095), or  
[RMeneghello@fisherphillips.com](mailto:RMeneghello@fisherphillips.com) (503.205.8044).