

Matis, Jennifer A.

From: Flynn, Terence F.
Sent: Friday, July 29, 2011 11:07 AM
To: peter@schaumber.com
Subject: FW: Memos from the AGC to the Board

Attachments: MEMO TO THE BOARD.PDF



MEMO TO THE
BOARD.PDF (506 KB)
fyi

From: Board Member's Asst [REDACTED]
Sent: Friday, July 29, 2011 10:11 AM
To: Kane, Robert F.; Flynn, Terence F.
Subject: FW: Memos from the AGC to the Board

FYI!

From: Special Litigation Support Staff [REDACTED]
Sent: Friday, July 29, 2011 9:04 AM
To: Cowen, William B.; Leverone, Susan; Moton, Rosetta L.; Lesesne, Katherine
Subject: Memos from the AGC to the Board

Enclose please find Memos from the AGC to the Board.

Special Litigation Support Staff [REDACTED]
National Labor Relations Board
Special Litigation Branch
PHONE: [REDACTED]
FAX: [REDACTED]
E-MAIL: [REDACTED] >

"Objectivity is the key to sorting out a tangled web at the workplace"

UNITED STATES GOVERNMENT

**National Labor Relations Board
Office of the General Counsel**



MEMORANDUM

TO: The Board

Date: July 28, 2011

FROM: Lafe E. Solomon, Acting General Counsel
Celeste Mattina, Acting Deputy General Counsel
John H. Ferguson, Associate General Counsel
for Enforcement Litigation
Margery E. Lieber, Deputy Associate General Counsel
Eric G. Moskowitz, Assistant General Counsel for Special Litigation
Nancy E. Kessler Platt, Supervisory Attorney, Special Litigation
Denise F. Meiners, Attorney, Special Litigation

SUBJECT: Letter Sent in Response to Request to Initiate Preemption Litigation
Concerning California Statute Prohibiting the Employment of
Professional Strikebreakers

Related Board Case: *Service Employees International Union, Nurses Alliance, Local 121RN (Pomona Valley Hospital Medical Center)*, 355 NLRB No. 40 (June 8, 2010), *enfd NLRB v. Service Employees International Union, Nurses Alliance, Local 121RN*, No. 10-72481 (9th Cir. June 28, 2011)

By memorandum dated February 25, 2011 (attached), I advised the Board that I sent a letter to the Attorney General of the State of California concerning provisions of the California Labor Code that prohibit the employment of "professional strikebreakers," and prohibit individual "professional strikebreakers" from offering themselves for employment to replace employees involved in a strike or lockout (Cal. Labor Code §§ 1130-1136.2). I sent this letter in order to determine whether to request Board authorization to engage in *Nash-Finch*¹ preemption litigation pursuant to a request of the National Right to Work Legal Defense Foundation (NRTWLDF).

By letter dated July 5, 2011, the California Attorney General's Office responded to my preemption concerns and advised me that it is unaware of any criminal action brought under this statute since its enactment, that there is no record of any conviction under the statute, that there is no pending investigation or prosecution in the Office, and that the Office has no present intention to bring

¹ *NLRB v. Nash-Finch Co.*, 404 U.S. 138 (1971).

an action to enforce the statute. The Office also advised that if a potential violation of the law was brought to its attention, it would, at that time, consider examining the statute's viability and take whatever action it deemed appropriate under the circumstances.

For these reasons, and in light of the fact that the provisions of this statute have been in effect for many years, but have only become an issue before the Board in one unfair labor practice case, I determined that no further action by the Agency is necessary at this time. Accordingly, I have today sent the attached letter to Mr. Raymond LaJeunesse, Jr. of the NRTWLDF to advise him of my decision not to institute legal action at this time.



L.S.

Attachments



United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
www.nlrb.gov

July 28, 2011

Raymond J. LaJeunesse, Jr., Esq.
National Right to Work Legal Defense
Foundation, Inc.
8001 Braddock Road, Suite 600
Springfield, VA 22160

Re: California Labor Code §§1130 – 1136.2

Dear Mr. LaJeunesse:

This is a further response to your letter of February 7, 2011, requesting that this Agency bring a lawsuit to invalidate the California professional strikebreaker statute, Cal. Labor Code §§1130 – 1136.2. In my initial response dated February 25, 2011, I explained that I would contact the Attorney General of the State of California to advise her of my preemption concerns and to obtain information concerning the extent to which California has enforced the provisions in the past or intends to do so in the future.

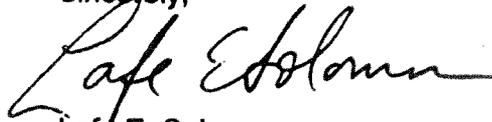
I have now received a response from the California Attorney General's office. That office has reviewed the State's records and found no evidence that anyone has ever been convicted for violating the California professional strikebreaker statute. Indeed, the California Attorney General has never had occasion to issue a formal opinion concerning the validity of the statute, and the office represents that, so far as it has been able to determine, no action has ever been commenced under this statute and that none is contemplated now.

This response from the California Attorney General, attesting to the statute's lack of use, is consistent with this Agency's own experience. As I noted in my February 25 letter, the provisions of this statute have been in effect for 35 years, but have only become an issue before the Board in one case, where the Board was presented with, but did not rule on, the preemption issue. See *Service Employees International Union, Nurses Alliance, Local 121RN (Pomona Valley Hospital Medical Center)*, 355 NLRB No. 40 (June 8, 2010), *enfd NLRB v. Service Employees International Union, Nurses Alliance, Local 121RN*, No. 10-72481 (9th Cir. June 28, 2011). I am not aware of any other instance where the statute has been invoked by private individuals or groups to deter employees from obtaining positions to replace striking workers. Nor does it appear that the law is so well known that employees have been discouraged from replacing striking workers based upon a fear that the law will be enforced against them. If you have evidence to the contrary, I invite you to share that evidence with me.

Raymond J. LaJeunesse, Jr., Esq.
July 28, 2011
Page 2 of 2

For all these reasons, we do not presently have any basis to argue that the statute has had more than a de minimis impact on the rights of employees over the years. Therefore, I see no need to institute legal action at this time. That said, I appreciate your time and effort in raising this issue with me, for such communications provide a mechanism for my office to conduct inquiries and express concerns regarding the validity and enforcement of state and local statutes. If you have any questions, or wish to discuss this further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Lafe E. Solomon". The signature is written in a cursive style with a long, sweeping underline.

Lafe E. Solomon
Acting General Counsel

**UNITED STATES GOVERNMENT
National Labor Relations Board**



Memorandum

Date: February 25, 2011

To: The Board

From: Lafe E. Solomon, Acting General Counsel
Celeste J. Mattina, Acting Deputy General Counsel
John H. Ferguson, Associate General Counsel for Enforcement Litigation
Margery E. Lieber, Deputy Associate General Counsel
Eric G. Moskowitz, Assistant General Counsel for Special Litigation
Nancy E. Kessler Platt, Supervisory Attorney, Special Litigation Branch
Denise F. Meiners, Attorney, Special Litigation Branch

Subject: Letter Sent to the State of California Requesting Information Concerning Enforcement of Preempted California Statute Prohibiting the Employment of Professional Strikebreakers

Related Board Case: *Service Employees International Union, Nurses Alliance, Local 121RN (Pomona Valley Hospital Medical Center)*
355 NLRB No. 40 (June 8, 2010)

I wish to inform the Board that, in order to obtain information on the basis of which I can make a recommendation to the Board, I sent the attached letter to the Attorney General of the State of California concerning provisions of the California Labor Code that prohibit the employment of "professional strikebreakers," and prohibit individual "professional strikebreakers" from offering themselves for employment to replace employees involved in a strike or lockout (Cal. Labor Code §§ 1130-1136.2). As stated in my letter, the strikebreaker provisions appear to be preempted. However, as they have been in effect since 1976, I also need to determine whether there is a present need to consider taking action to prevent further enforcement of or reliance upon those provisions. Accordingly, I have requested that the Attorney General advise me of California's legal position regarding the validity of California's professional strikebreaker provisions and also inform me of the extent to which the State has enforced them in the past and any intention regarding enforcing them in the future. I will inform the Board of the Attorney General's response and, at that time, request any authorization to engage in *Nash-Finch*¹ preemption litigation should that appear necessary.

The Board previously was presented with but did not rule on the preemption issue in the above-referenced unfair labor practice case, *Service Employees International Union, Nurses Alliance, Local 121RN (Pomona Valley Hospital Medical*

¹ *NLRB v. Nash-Finch Co.*, 404 U.S. 138 (1971) (*Nash-Finch*).

Center), 355 NLRB No. 40 (June 8, 2010), petition to review pending sub nom. *Carole Jean Badertscher v. NLRB* (9th Cir. Nos. 10-72082, 10-72182 & 10-72481). More recently, the Board received a request that the California law be given treatment similar to the Board's authorization of preemption lawsuits against the four State secret ballot constitutional amendments.²

Background

The California Labor Code provisions prohibit employers from using, and individuals from working as professional strikebreakers, and provide sanctions for such conduct. Section 1134 of the California Labor Code makes it unlawful "for any employer willingly and knowingly to utilize any professional strikebreaker to replace an employee or employees involved in a strike or lockout located at a place of business within the state." Section 1134.2 makes it unlawful "for any professional strikebreaker willingly and knowingly to offer himself for employment or to replace an employee or employees involved in a strike or lockout" Section 1133 defines "professional strikebreaker" as any person who, during a period of five years, has been employed for the purpose of replacing an employee or employees involved in a strike or lockout on "three or more occasions" by "two or more employers." Under Section 1136, any individual or employer who violates these provisions is subject to a fine not to exceed \$1,000, or imprisonment for a period not to exceed 90 days, or both.

On October 30, 2007, a charge was filed alleging that Service Employees International Union, Nurses Alliance, Local 121RN violated Section 8(b)(1)(A) by, *inter alia*, threatening employees who might cross the union's picket line during a strike with enforcement of the California professional strikebreakers sanctions. In May 2008, then-General Counsel Meisburg was presented with several options, including:

(1) sending a letter to the California Attorney General seeking (i) agreement that the law is preempted and voluntary measures to ensure the law would not be enforced or applied, or (ii) the Attorney General's reasoning on why the law is not preempted. and/or

(2) issuing an administrative complaint consistent with the charge allegation that the union violated Section 8(b)(1)(A) of the Act by distributing a flyer concerning the California statute and its potential penalties.

Consistent with the Agency's practice of treating *Nash-Finch* as an extraordinary tool to be used only when normal administrative responses are not available, General Counsel Meisburg opted to raise the preemption issue through issuance of an unfair labor practice complaint. Accordingly, no letter was sent to the California Attorney General.

² The National Right to Work Legal Defense Foundation sent a letter (attached) dated February 7, 2011 to the Board Members and the Acting General Counsel. I have also attached my response to Mr. LaJeunesse.

Administrative Law Judge William Kocol issued a decision dismissing the allegations of the complaint concerning the union's distribution of the flyer with information about the professional strikebreaker statute, as well as its distribution of an additional flyer regarding continuing dues obligations under a union-security clause even though the contract had expired. He concluded that "before the Board can find an unfair labor practice based on a law or lawsuit that may be preempted there must be some resolution of the preemption issue *before* the conduct alleged can be an unfair labor practice." 355 NLRB No. 40, at 16 (emphasis in original). He further found that, even if it were established that the statute was preempted, the General Counsel did not show the union's statements tended to restrain or coerce employees because the General Counsel did not show any employee who met the definition of professional strikebreaker saw the union's flyer. Nor was there evidence the union attempted to mislead employees that the law applied to them even if they were not professional strikebreakers.

In disagreement with the judge, the Board concluded that the union violated the Act by circulating the flyer concerning the employees' dues obligations. 355 NLRB No. 40, at 4. However, the Board did not rule on the allegation concerning informing employees of the professional strikebreaker statute:

Based on our finding that the Respondent's "dues and fees" flyer unlawfully restrained and coerced employees, it is unnecessary to pass on the judge's dismissal of an allegation that the Respondent also coerced employees in violation of Sec. 8(b)(1)(A) by circulating a flyer describing the impact of California's "professional strikebreaker" statute on the employees. The finding of another 8(b)(1)(A) violation would be cumulative, and would not materially affect our remedial order.

355 NLRB No. 40, at 1 n.2. The Board's decision is now pending enforcement in the Ninth Circuit, with briefing fully completed as of February 10, 2011.³


L.S.

Attachments

³ The charging party has argued to the Circuit, *inter alia*, that the Board improperly refused to decide the issue concerning the union's distribution of the strikebreaker statute flyer, and that the statute is preempted. On this point, the Board has argued to the Circuit that no party disputed the Board's "cumulative" finding, and no party is aggrieved by the Board's failure to order additional relief that would only be cumulative. The Board further argued that in the event the Court finds the Board erred in its cumulative finding, the Court should remand the case to the Board for a determination of the merits. SEIU Local 121RN agreed with the Board's position on this issue.



United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
www.nlr.gov

February 25, 2011

The Honorable Kamala D. Harris
Attorney General, State of California
1300 I Street
Sacramento, CA 95814-2919

Re: California Labor Code §§1130 – 1136.2

Dear Ms. Harris:

I recently received a letter from the National Right to Work Legal Defense Foundation requesting that I bring a lawsuit to invalidate the California professional strikebreaker statute, Cal. Labor Code §§1130-1136.2, as preempted by the National Labor Relations Act ("NLRA"), 29 U.S.C. §151 et seq.

These provisions of the California Labor Code, which have been in effect since 1976 came to the attention of the Office of the General Counsel in 2007, when a charge was filed with NLRB Region 21 in Los Angeles, alleging that Service Employees International Union, Nurses Alliance, Local 121RN violated Section 8(b)(1)(A) of the NLRA by, inter alia, threatening employees who might cross the union's picket line during a strike with enforcement of the California professional strikebreakers sanctions. In May 2008, then-General Counsel Ronald Meisburg chose to raise the preemption issue through the issuance of an unfair labor practice complaint in that case rather than contacting your office about possible litigation in federal court. The National Labor Relations Board recently issued a decision in the unfair labor practice case, finding, inter alia, that it was unnecessary to pass on the preemption issue, and the Board's decision is now pending review in the Ninth Circuit Court of Appeals. *SEIU, Nurses Alliance, Local 121RN (Pomona Valley Hospital Medical Center)*, 355 NLRB No. 40 (June 8, 2010), petition to review pending sub nom. *Carole Jean Badertscher v. NLRB* (9th Cir. Nos. 10-72082, 10-72182 & 10-72481).

As you know, the California law prohibits employers from using, and individuals from working as, professional strikebreakers, and punishes such conduct. Section 1134 of the California Labor Code makes it unlawful "for any employer willingly and knowingly to utilize any professional strikebreaker to replace an employee or employees involved in a strike or lockout located at a place of business within the state." Section 1134.2 makes it unlawful "for any professional strikebreaker willingly and knowingly to offer himself for employment or to replace an employee or employees involved in a strike or lockout" Section 1133 defines "professional strikebreaker" as any person who,

The Honorable Kama D. Harris
February 25, 2011
Page Two

during a period of five years, has been employed for the purpose of replacing an employee or employees involved in a strike or lockout on "three or more occasions" by "two or more employers." Under Section 1136, any individual or employer who violates these provisions is subject to a fine not to exceed \$1,000, or imprisonment for a period not to exceed 90 days, or both.

I am concerned about this law given the overwhelming authority concluding that similar state statutes prohibiting or limiting the employment of strikebreakers are preempted by federal law. See I.W. Fisher and J. McDonald, Jr., *State Anti-Strikebreaker Laws: Unconstitutional Interference With Employers' Right to Self-Help*, 3 Hofstra Lab. L.J. 59, 76-87 (1985). Every court decision that has looked at similar state laws prohibiting the hiring of a certain class of employees as striker replacements has held them to be preempted. See, e.g., *520 South Michigan Ave. Assocs. Ltd. v. Devine*, 433 F.3d 961, 965 (7th Cir. 2006) ("The state's effort to make the hiring of replacement workers a crime is so starkly incompatible with federal labor law, which prevails under the Constitution's Supremacy Clause, that we do not understand how a responsible state legislature could pass, a responsible Governor sign, or any responsible state official contemplate enforcing such legislation."); *Employers Ass'n, Inc. v. United Steelworkers of America*, 32 F.3d 1297, 1301 (8th Cir. 1994); *Kapiolani Medical Center for Women and Children v. Hawaii*, 82 F. Supp.2d 1151, 1157 (D. Haw. 2000); *Charlesgate Nursing Center v. State of R.I.*, 723 F. Supp. 859, 865 (D. R.I. 1989); *Prof'l Staff Nurses Ass'n v. Dimensions Health Corp.*, 110 Md. App. 270, 677 A.2d 87, 101 (1996). While the provisions of state strikebreaker laws vary to some extent in their definition, scope, and penalties, the general thrust of these laws, like California's, is that they prevent an employer involved in a strike or lockout from freely using a particular economic weapon otherwise available under federal labor law.

However, in light of the existence of California's professional strikebreaker provisions for over 35 years, I also need to determine whether there is a present need to consider taking action to prevent future enforcement of or reliance upon these provisions. I would therefore appreciate your advising me of California's legal position regarding the validity of California's professional strikebreaker provisions, including whether and to what extent these provisions have been enforced in the past and any State intention to enforce them in the future.

Please feel free to contact me or a member of my staff directly with any questions or if you wish to discuss this matter. You may contact Denise Meiners, Senior Attorney at (202) 273-2935, or Nancy E. Kessler Platt, Supervisory Attorney at (202) 273-2937. I look forward to hearing from you. Thank you, in advance, for your time and consideration.

Sincerely,



Lafe E. Solomon
Acting General Counsel



NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.
 3881 BRADDOCK ROAD, SUITE 600, SPRINGFIELD, VIRGINIA 22160 • (703) 321-8210

RAYMOND J. LAJEWICZ, JR.
Vice President & Legal Director

FAX (703) 321-8239
Home Page <http://www.nrtw.org>
E-mail rj@nrtw.org

February 7, 2011

Chairman Wilma B. Liebman
Member Craig Becker
Member Brian Hayes
Member Mark G. Pearce
Acting General Counsel Lutz Solomon
National Labor Relations Board
 1099 14th Street, N. W.
 Washington, D.C. 20570

2011 FEB 14 A P 3 0
 COUNSEL

Re: NLRB Lawsuits Against Preempted State Statutes

Dear Chairman Liebman, Board Members and General Counsel Solomon:

On January 14, 2011, the Board announced with great fanfare that it will sue four states, Arizona, South Carolina, South Dakota and Utah, because they recently enacted laws prohibiting "card checks" in union organizing drives. The Board's announcement announced its belief that states have no room to legislate in areas the National Labor Relations Act regulates.

Whatever the merits of the Board's actions against these four states, there appears to be a case of rank hypocrisy occurring at this time. Apparently the current Board will only act at the behest of labor union officials to challenge state laws that are perceived as restricting union power to force more workers into union ranks. However, when a state law promotes unionization or limits employees' choice to refrain from union activity, and thus is preempted by the National Labor Relations Act, the current Board stands mute.

This is demonstrated by what the Board has done, or more correctly not done, in *SEIU Local 121RN (Pomona Valley Hospital Medical Center)*, 355 N.L.R.B. No. 40 (2010), petitions for review pending, Case Nos. 10-72082 & 10-72182 (9th Cir.), a case that involves California's "anti-strikebreaker" law, California Labor Code Sections 1132 and 1133. That law, violations of which can result in criminal sanctions and/or fines against both employers and employees, is described in the Administrative Law Judge's decision in *SEIU Local 121RN (Pomona Valley Hospital Medical Center)*, 355 N.L.R.B. No. 40, at 14-15.

Defending America's working men and women against the injustices of forced unionism since 1948.

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February 7, 2011
Page 2

In *Pomona Valley Hospital Medical Center*, National Right to Work Legal Defense Foundation attorneys filed an unfair labor practice charge against SEIU Local 121RN for Carol Badertscher, a registered nurse employed by the health care institution. That charge was filed because the SEIU union had threatened employees with enforcement of the California "anti-strikebreaker" law's civil and criminal provisions if they crossed the union's picket line. Faced with this egregious violation of the NLRA, the then General Counsel issued a complaint against SEIU Local 121RN for threatening Ms. Badertscher and other nurses with sanctions under this California law. In the complaint and at trial, the then General Counsel argued that the law is preempted because it directly interferes with employees' federally protected right to cross a union picket line.

Given the Board's current zeal in attacking state laws that purportedly interfere with union organizing, one would have expected the Board to declare the California statute preempted in *Pomona Valley Hospital* and find that the union's threat to use it violated the National Labor Relations Act. However, when the Board decided the case, it found it "unnecessary to pass on the [ALJ's] dismissal of [the] allegation that the [union] . . . coerced employees in violation of Sec. 8(b)(1)(A) by circulating a flyer describing the impact of California's 'professional strikebreaker' statute on the employees." 356 N.L.R.B. No. 40, at 1 n.2. In other words, notwithstanding the then General Counsel's positions that the California statute is preempted, and that the union's invocation of that statute was a serious enough violation of the Act to issue a complaint, the Board swept that violation under the rug in *Pomona Valley Hospital*. That ruling is on appeal at this time.

More importantly, the current Board and General Counsel have never issued a press release with great fanfare denouncing the California "anti-strikebreaker" statute or threatened the state of California with a federal lawsuit attacking that statute. As the then General Counsel recognized in issuing the complaint in *Pomona Valley Hospital*, that statute is clearly and unequivocally preempted. 529 S. Mich. Ave. Assoc. v. Devine, 433 F.3d 961, 965 (7th Cir. 2006); *Employers Ass'n v. United Sheetworkers*, 32 F.3d 1297, 1301 (8th Cir. 1994); *Caterpillar Inc. v. Lyons*, 318 F. Supp. 2d 708, 709 (C.D. Ill. 2004); *Kaplan Medical Ctr. for Women & Children v. Hara*, 82 F. Supp. 2d 1151, 1157 (D. Haw. 2000); *Greater Boston Chamber of Commerce v. Boston*, 778 F. Supp. 93, 97 (D. Mass. 1991); *Charinggate Nursing Ctr. v. R.L.*, 723 F. Supp. 859, 865 (D.R.I. 1989); see also *Chamber of Commerce v. Brown*, 554 U.S. 60 (2008) (California's statutory "neutrality" scheme preempted). To this day, the "anti-strikebreaker" statute remains on the books and employees in California are subject to threats that they will be fined or jailed if they cross a union's picket line.

In sum, we urge you to end the current Board's rank hypocrisy, and apply the NLRA even-handedly for the benefit of all citizens and employees, not just for the benefit of union officials. That requires that you denounce and sue to strike down not just state statutes that interfere with

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February 7, 2011
Page 3

unionization, but also statutes that interfere with the right of employees to refrain from unionization or participation in union concerted activity, including the California "anti-strikebreaker" statute.

Respectfully submitted,

Raymond J. Lafrenese, Jr.
Raymond J. Lafrenese, Jr.

CERTIFICATE OF SERVICE

I hereby certify that true copies of this letter were on February 7, 2011, served by First Class Mail on the following and by hand-delivery to Glenn M. Tushman, attorney for Carol Badartcher at the address on the above letterhead:

James F. Small, Director, NLRB Region 21
888 South Figueroa Street, 9th Floor
Los Angeles, CA 90017-5442

Linda Deuben, Deputy Chief
NLRB Appellate Court Branch
1099 14th Street, N. W.
Washington, D.C. 20570

Matthew Ganger, Esq.
Weinberg Roger and Rosenfeld
428 J Street, Suite 520
Sacramento, CA 95814
Attorney for SEIU Local 121RN

Raymond J. Lafrenese, Jr.
Raymond J. Lafrenese, Jr.



United States Government
NATIONAL LABOR RELATIONS BOARD
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Washington, DC 20570
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February 25, 2011

Raymond J. LaJeunesse, Jr., Esq.
National Right to Work Legal Defense
Foundation, Inc.
3001 Braddock Road – Suite 600
Springfield, VA 22160

Re: California Labor Code §§1130 – 1138.2

Dear Mr. LaJeunesse:

I have received your letter of February 7, 2011, requesting that this Agency bring a lawsuit to invalidate the California professional strikebreaker statute, Cal. Labor Code §§1130 – 1138.2. While I agree that the provisions appear to be preempted by federal law, they have been in effect for over 35 years, and, as you know, in May, 2008, then-General Counsel Ronald Meisburg chose to raise the preemption issue through the issuance of an unfair labor practice complaint in the Pomona Valley Hospital Medical Center case rather than contacting the office of the California Attorney General about possible litigation in federal court.

I have today sent a letter to the California Attorney General to advise her of my preemption concerns and also my need to determine whether there is a present need to consider taking action to prevent future enforcement of or reliance upon these provisions. In this regard, I have asked her to advise me of California's legal position regarding the validity of California's professional strikebreaker provisions, including whether and to what extent these provisions have been enforced in the past and any State intention to enforce them in the future.

After I receive a response from the California Attorney General, I will evaluate whether further action by this Agency is advisable.

Sincerely,

A handwritten signature in black ink that reads 'Lafe E. Solomon'. The signature is written in a cursive, flowing style.

Lafe E. Solomon
Acting General Counsel