

Employers Face The Music: NLRB Judge Rules Musicians May Protest Outside Auditorium

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As with property, many union protests seem to boil down to three things: Location, location, location! After being ushered across the street, union members' recent protest outside the Tobin Center of Performing Arts in San Antonio, Texas, hit a high note with an NLRB administrative law judge who held the union members had a right to protest outside the auditorium. This decision serves as a caution that employers may have to relinquish some control over their premises to peaceful union activity, particularly where there is no real threat of disruption. Members of the American Federation of Musicians were protesting the use of recorded, instead of live, music, which has a negative economic impact on symphony musicians. Union members handed out leaflets outside the auditorium before the performance, inviting people to "demand live music." The arts center employees informed union members they couldn't hand out the leaflets on the center's property, including the sidewalks in front of the facility. The musicians were thus required to distribute the leaflets on sidewalks across the street from the main entrance. The judge held that such interference with union members' activity violated their right to "mutual aid or protection" under the National Labor Relations Act. The judge reasoned the center had not shown the leaflet activity significantly interfered with its operations, other than to rely on vague concerns about the risk of terrorism or violence outside the center. However, there was no showing of any legitimate security concern, and no reason to suspect violence. Employers should consider their no-solicitation and distribution of literature rules as mere hypothetical concerns of safety may not win out over union members' right to peacefully protest and engage the public.

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