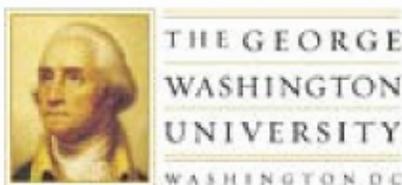


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Edward J. DeBartolo Corp. v. NLRB

463 U.S. 147 (1983)

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

BRW suggests
Petrs - in their
case we ^{have} granted
June 22, 1982 - be

asked to
address
mootness

MEMORANDUM TO THE CONFERENCE

Re: No. 81-1985, Edward J. Debartolo Corp.
v. NLRB, et al.

6/23

I relisted this case, in which there was a unanimous vote to grant at the last conference, to consider a potential mootness problem. The issue presented is whether the publicity proviso to §8(b)(4) of the NLRA protects union handbilling of a shopping center when the store of one of the center's lessees is being constructed by a contractor not paying prevailing wages. Petitioner is the owner of the shopping mall; respondents are the NLRB and the Union. According to the Court of Appeals, the construction of the store is complete and the contractor paying less than prevailing wages is no longer performing work at the shopping mall. The Court of Appeals did not consider the case moot, stating that "[i]n labor cases, cessation of the challenged conduct does not assure that the underlying controversy will not be reopened or that the challenged conduct will not reoccur. See NLRB v. Raytheon Co., 398 U.S. 25 (1970); Pet, Inc. v. NLRB, 641 F.2d 545, 545 n.1 (CA 8 1981). In the papers filed here, none of the parties has addressed the issue of whether an Article III case or controversy persists.

The Court of Appeals is correct that in a number of our labor cases, the termination of a strike or other union activity has not mooted the controversy. The facts in these cases, however, differ significantly from the instant matter. In many cases, the dispute arises from an ongoing relationship between the company and the union which is likely to reoccur. The decision relied on by the Court of Appeals, NLRB v. Raytheon Co., supra, was a such a case. See also Super Tire Engineering v. McCorkle, 416 U.S. 115 (1974), (settlement of strike did not moot need for declaratory

Good suggestion

DL

relief since state law affects collective-bargaining relationship). In other situations, the end of the strike did serve to moot the case. See, e.g., Oil Workers Unions v. Missouri, 361 U.S. 363 (1960); Harris v. Battle, 348 U.S. 803 (1954). The best support for the Fourth Circuit's position is Carpenters Unions v. NLRB, 341 U.S. 707 (1951), which involved secondary pressure against a renovation project performed by nonunion labor. Even there, however, the case as it reached this Court was between the union and the Board; here the matter is between the third party and the union (aligned with the Board).

The touchstone in all these cases is whether there is a "reasonable expectation that wrong will be repeated." NLRB v. Jones & Laughlin Steel Corp., 331 U.S. 416, 428 (1947); United States v. W.T. Grant Co., 345 U.S. 629, 633 (1953). The question here is whether it is reasonable to expect, despite the lack of an ongoing relationship between the respondent union and petitioner, that a handbilling dispute will again arise involving petitioner.

I believe this issue should be dealt with by the parties in their forthcoming briefs. Accordingly, I suggest that they be requested, in addition to the questions presented, to address whether the case has become moot.

BHW