US Supreme Court hears oral arguments in union “neutrality agreements” case

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The US Supreme Court heard oral arguments last Wednesday in the case of *Unite Here Local 355 v. Mulhall*, which involves the legality of certain terms of so-called “neutrality agreements” betweens unions and management. A neutrality agreement is a contract in which a company agrees to work with union executives to unionize the workforce.

The neutrality agreement in this case, which dates from 2004, involves the Mardi Gras Gaming company, which operates casinos in Florida, and the Unite Here union. A lawsuit was filed on behalf of Martin Mulhall, a Mardi Gras employee, to prevent unionization on the basis of the neutrality agreement.

The terms of the neutrality agreement between Mardi Gras and Unite Here give a sense of the backroom quid-pro-quo arrangements that typify contemporary union-management relations. The Unite Here union agreed to spend $100,000 campaigning for a ballot initiative that would authorize slot machines at Mardi Gras casinos in Florida. (The union campaigned and spent the money, and the ballot initiative passed in 2006.) In return, Mardi Gras agreed to provide the union access to its facilities, turn over lists of employee names and addresses, and remain neutral during the organizing campaign. Unite Here also promised not to “engage in a strike, picketing, or other economic activity” during the period of the agreement.

After the union succeeded in its political initiative to legalize slot machines, Mardi Gras reneged on the agreement, distributing anti-union flyers and withholding the promised lists of employee names. Mardi Gras argued that the agreement was unenforceable under the Taft-Hartley Act.

Section 302 of the Labor Management Relations Act (commonly known as the Taft-Hartley Act of 1947) is designed to prohibit corrupt practices by union bureaucrats. The Act makes it a felony for unions to ask for or accept a “thing of value” from the employer. The issue in the case is whether the agreement between Mardi Gras and Unite Here violates Section 302.

During the oral arguments on November 13, 2013 (transcript available here), Attorney Richard G. McCracken argued for Unite Here, contending that neutrality agreements “avoid the hard feelings that come in many contested organizing campaigns and thereby create a good environment for collective bargaining.” Justice Anthony Kennedy intervened to point out that the union had paid $100,000 to campaign for the slot machine initiative, and that the union must have expected something in return.

McCracken observed that unions “help[ing] the employer in business” is “something that happens a great deal in labor relations,” and that the $100,000 expense should not be considered corrupt.

During oral arguments, the Obama administration’s deputy solicitor general supported Unite Here, arguing that the neutrality agreement did not involve a “thing of value” within the meaning of Section 302. Before oral arguments, the administration had filed a brief downplaying Unite Here’s neutrality agreement, characterizing it as merely setting forth “ground rules for an organizing campaign.”

William L. Messenger, the attorney for Mulhall, argued that the “$100,000 political campaign and agreement not to strike” was clearly a “payment.” Messenger went on to take the position—apparently to the surprise of even the right-wing justices—that all organizing agreements violate the Taft-Hartley act.

Justice Ruth Bader Ginsburg asked, “Then may I ask you, Mr. Messenger, to clarify, because I thought you told me before that some organizing agreements are okay. Are you taking the position that all organizing

agreements [are invalid]?" Messenger replied, "Yes," going on to argue that previous court decisions upholding organizing agreements should be overruled.

The outcome of the case is by no means clear, but it likely depends on Justice Kennedy's vote. Kennedy, who is a consistent right-winger, nevertheless often occupies the middle ground among the justices.

There are no official statistics on neutrality agreements, but there is every indication that the practice has become more and more widespread in recent decades.

Neutrality agreements commonly provide for "captive audience" meetings, where the unions and management share the platform and work together to pressure workers to join the union, often under slogans of a "partnership." Neutrality agreements also provide unions with access to workers' personal information, give union organizers access to company premises and waive procedures such as secret ballots.

Instead of a secret ballot, neutrality agreements may provide for card check procedures for or against unionization, often with the union "organizers" looking over their shoulders. (This coercive aspect of the "card check" procedure was criticized by some of the Supreme Court's right-wing justices on Wednesday.)

The phenomenon of neutrality agreements is a concentrated expression of the entire strategy and function of the union bureaucracies. A long time has passed since labor unions actually entered workplaces to organize workers in opposition to management. Now, the first people the union bureaucrats meet with when they arrive are not the workers, but the bosses. In these meetings, the bureaucrats offer their services to management as labor contractors, promising advantages in return for a cut of the workers' pay. The exact quid-quo-pro is negotiated behind the backs of workers—often, as in this case, accompanied by a healthy dose of backstabbing on both sides.

The interests of workers are not represented by any party in the ongoing Supreme Court litigation over neutrality agreements.

In the final analysis, disagreements in the Supreme Court in the *Unite Here Local 355 v Mulhall* case represent divisions within the ruling class over the best methods of imposing its will on the working class in the context of the developing economic crisis. Those defending the neutrality agreements consider the unions to be an essential instrument in the political suppression of workers and in the imposition of concessions, wage cuts, and give-backs.

This perspective has been the majority position in the ruling class over the previous several decades, and is associated in general with the Democratic Party. The union bureaucracies contribute huge sums each year to the Democratic Party in return for protection and the maintenance of their privileges. This perspective was reflected, for example, in the Obama administration's intervention in the 2009 auto bankruptcies, during which it collaborated with the unions to shred workers' pensions, pay, and benefits.

Those attacking the neutrality agreements in the Supreme Court do so from the right, taking advantage of the corrupt practices of Unite Here to advance the "rights" of employers. This faction, today associated with sections of the Republican Party, favors dispensing with the unions altogether and returning to the "laissez faire" doctrines that predominated in the American legal system a hundred years ago. Under these doctrines, any collective activity of workers whatsoever is considered illegitimate and unfair.

The litigation over neutrality agreements confirms once again that organized workers' opposition within the US and around the world cannot develop within the corrupt trade unions, which function as management partners in the exploitation and suppression of workers. Opposition must develop outside of the trade unions and against them, and against the entire system of capitalist exploitation in which the unions play an essential role.