

UNITE HERE LIABLE FOR ORGANIZING BREACH, SUPREME COURT RULES

The Supreme Court let stand a federal appeals court decision that UNITE HERE violated the federal Driver's Privacy Protection Act (DPPA) by accessing the motor vehicle records of Cintas Corp. workers to obtain their home addresses during an organizing campaign.

The Third Circuit ruled 2-1 that the class of Cintas workers and their relatives and friends were entitled to summary judgment on liability under the DPPA. The appeals court majority rejected UNITE HERE's argument that the activity was allowed under the DPPA exceptions for activity related to litigation or law enforcement, finding that the union attempted to mask its "clear labor-organizing purpose" for obtaining the vehicle records.

In the fall of 2002, UNITE HERE began preparations for a campaign to organize Cintas workers. The company has 28,000 employees working at 350 facilities in the United States and Canada. The union compiled lists of the names and addresses of Cintas workers so that union representatives could make home visits to discuss workplace issues and identify potential legal claims against the company. One of the methods for obtaining worker contact information was "tagging." Union representatives walked through employee parking lots at Cintas facilities and recorded license plate numbers. The union then used Internet sources, private investigators, and information brokers to access motor vehicle records to obtain home addresses.

From January 2002 to October 2004, the union brought or assisted nine lawsuits against Cintas and also filed charges with the National Labor Relations Board, the Equal Employment Opportunity Commission, and the Labor Department's Occupational Safety and Health Administration. The union also sent letters to thousands of current and former Cintas employees informing them about a nationwide overtime pay suit covering Cintas drivers.

Various Cintas employees at a facility in Emmaus, Pennsylvania, and relatives or friends whose vehicles were used by Cintas workers sued the union under the DPPA in June 2004. The DPPA prohibits state officials from knowingly disclosing personal information contained in motor vehicle records and prohibits anyone else from obtaining or disclosing such information or making a false representation to obtain the information. One exception allows access to the records for use in connection with litigation, including "investigation in anticipation of litigation," and another exception allows access by any government agency or a person or entity acting on behalf of an agency.

In its petition for Supreme Court review, UNITE HERE argues that the Third Circuit's determination that a person who obtains motor vehicle information for two purposes, one of which is not permitted by the DPPA, is liable for violating the statute conflicts with the high court's mixed-motive analysis in other employment law contexts. The Supreme Court has held, in situations where the employee was discharged for both permissible and impermissible reasons, "that if the lawful reason alone would have sufficed to justify the firing, the employee could not prevail in a suit against the employer." UNITE HERE also argues that the Third Circuit erred in finding that a defendant can be civilly liable under the DPPA without knowing that the purpose for using the information is not permitted, unlike for criminal liability.

(Source: *UNITE v. Pichler*, U.S. No. 08-862, *cert. denied* March 23, 2009, as reported in BNA, *Daily Labor Report*, No. 54, March 24, 2009, pp. AA1-AA2, E1- E2.)