

12-99 UNITE HERE LOCAL 355 V. MULHALL

DECISION BELOW: 667 F.3d 1211

LOWER COURT CASE NUMBER: 11-10594

QUESTION PRESENTED:

Section 302 of the Labor-Management Relations Act, 29 U.S.C. § 186 -the federal labor anti-bribery statute -makes it criminal for an employer "to pay, lend, or deliver ... any money or other thing of value" to a labor union that seeks to represent its employees, and prohibits the labor union from receiving the same. The Third and Fourth Circuits have held that agreements between employers and unions that set ground rules for union organizing campaigns -including employer promises to remain neutral and recognize the union upon a showing of majority support, and union promises to forego the rights to picket, boycott, or otherwise put pressure on the employer's business -are not "payment" of "things of value" proscribed by § 302. The Third Circuit found that a contrary holding would "wreak havoc on the carefully balanced structure of the laws governing recognition of and bargaining with unions." *Hotel Employees & Restaurant Employees, Local 57 v. Sage Hospitality Resources, LLC*, 390 F.3d 206, 219 (3d Cir. 2004), *cert. denied*, 125 S.Ct. 1944 (2005). In this case, however, the Eleventh Circuit came to the opposite conclusion. The question presented is:

Whether an employer and union may violate § 302 by entering into an agreement under which the employer exercises its freedom of speech by promising to remain neutral to union organizing, its property rights by granting union representatives limited access to the employer's property and employees, and its freedom of contract by obtaining the union's promise to forego its rights to picket, boycott, or otherwise put pressure on the employer's business?

DISMISSED AS IMPROVIDENTLY GRANTED.

CERT. GRANTED 6/24/2013