

NOT INCLUDED
IN BOUND VOLUMES

LBPB
Milwaukee, WI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ROUNDY'S INC.

and

Case 30-CA-17185

MILWAUKEE BUILDING AND
CONSTRUCTION TRADES COUNCIL, AFL-CIO

NOTICE AND INVITATION TO FILE BRIEFS

This case involves the Respondent's exclusion of union handbillers from 26 of its store locations. On November 12, 2010, the National Labor Relations Board issued a Supplemental Decision and Order finding that the Respondent failed to establish an exclusionary property interest at 23 of those stores,¹ and, accordingly, that the Respondent violated Section 8(a)(1) of the Act by prohibiting Council representatives from handbilling in front of those stores.

The Board severed the allegations concerning the remaining two store locations (127/Capitol, located at 12735 West Capitol Drive, Brookfield, Wisconsin, and Bluemound East, located at 8151 West Bluemound Road, Milwaukee, Wisconsin) and retained them for further consideration. The General Counsel has alleged that the Respondent violated Section 8(a)(1) of the Act by unlawfully discriminating against the Council at those stores under *Sandusky Mall Co.*, 329 NLRB 618, 623 (1999), enf. denied 242 F.3d 682 (6th Cir. 2001). In that case, the Board held that an employer violated Section 8(a)(1) of the Act by denying union access to its property while permitting other individuals, groups, and organizations to use its premises for various activities.

The parties and interested amici are invited to file briefs on the following questions:

¹ No exceptions were filed to the judge's dismissal of the allegation relating to the Respondent's East Pointe store.

1. In cases alleging unlawful employer discrimination in nonemployee access, should the Board continue to apply the standard articulated by the Board majority in *Sandusky Mall Co.*, above?
2. If not, what standard should the Board adopt to define discrimination in this context?
3. What bearing, if any, does *Register Guard*, 351 NLRB 1110 (2007), enf. denied in part 571 F.3d 53 (D.C. Cir. 2009), have on the Board's standard for finding unlawful discrimination in nonemployee access cases?

Briefs not exceeding 25 pages in length shall be filed with the Board in Washington, D.C. on or before December 13, 2010. The parties may file responsive briefs on or before December 28, 2010, which shall not exceed 10 pages in length. No other responsive briefs will be accepted. The parties and amici shall file briefs electronically at <http://mynlrb.nlr.gov/efile>. If assistance is needed in filing through <http://mynlrb.nlr.gov/efile>, please contact the undersigned.

Dated, Washington, D.C. November 12, 2010

By direction of the Board:

Lester A. Heltzer
Executive Secretary