

# **Eighth Circuit Upholds National Labor Relations Act’s Union “Salting” Protections**



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On February 21, 2018, the Eighth Circuit Court of Appeals issued new guidance regarding when and how the National Labor Relations Act (“NLRA”) protects union “salting” campaigns. A “salting” campaign involves union members, known as “salts,” who seek to secure jobs at non-union work sites to recruit additional union members and organize the site.

In *Aerotek Inc. v. National Labor Relations Board*, four members of the International Brotherhood of Electrical Workers Union (“IBEW”) applied for positions with Aerotek, Inc. (“Aerotek”) to attempt to recruit new members and organize the company’s non-union sites. In this case, the four “salts” were transparent about their intentions to organize the site; one stated he would accept any available position because he wanted to expose more electricians to the IBEW. Aerotek refused to hire any of the four salts, and the IBEW filed unfair labor practice charges.

The Administrative Law Judge determined that Aerotek violated Sections 8(a)(1) and 8(a)(3) of the NLRA by refusing to hire or place the salts because of their background as union activists. The National Labor Relations Board (“NLRB”) affirmed the decision, which Aerotek appealed to the Eighth Circuit.

On appeal, the Eighth Circuit affirmed the NLRB's decision and provided new guidance regarding when an employer violates the NLRA during a "salting" campaign. Specifically, the Eighth Circuit stated that an employer violates the NLRA only if the NLRB's General Counsel shows the following:

- (1) The salt's genuine interest in obtaining employment with the employer;
- (2) the employer was hiring or had concrete plans to hire (or place);
- (3) the salt had the requisite experience or training for the position; and
- (4) anti-labor animus contributed to the decision not to hire (or place) the salt.

*Aerotek* serves as a reminder to employers that salting campaigns may be protected activity under the NLRA, and attempts to circumvent or quash salting campaigns can result in steep penalties. Employers that are approached by applicants who express a desire to organize or further the efforts of a union should consult with labor counsel to ensure compliance with the NLRA.

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