



Electronic Dispatch

# Labor and Employment Law Information Memo

June 2005

[Go to BS&K Labor and Employment Law Home Page](#)

## FEDERAL COURT STRIKES DOWN NEW YORK LAW PROHIBITING USE OF STATE-APPROPRIATED FUNDS TO ENCOURAGE OR DISCOURAGE UNIONIZATION

On May 17, 2005, the United States District Court for the Northern District of New York issued a decision in Healthcare Association of New York State (“HANYS”) et al. v. Pataki et al., striking down Section 211-a of the New York Labor Law, which prohibited employers from using state-appropriated funds to encourage or discourage union organization. The Court held that the law was preempted by the National Labor Relations Act (“NLRA”), and permanently enjoined the State of New York from implementing or enforcing the law. The Court’s decision ensures that employers who receive state funds will be free to communicate with their employees regarding union organization, without having to adhere to rigorous and burdensome record-keeping requirements.

This information memo summarizes the provisions of Labor Law Section 211-a, and describes the rationale behind the Court’s decision in the HANYS case.

### Labor Law Section 211-a

Labor Law Section 211-a, as amended on December 29, 2002, prohibited employers from using state-appropriated funds for the following purposes: (1) to train managers, supervisors, or other administrative personnel regarding methods to encourage or discourage union organization; (2) to hire or pay attorneys, consultants, or other contractors to encourage or discourage union organization; or (3) to hire employees or pay the salary and other compensation of employees whose principal job duties are to encourage or discourage union organization.

An employer who received funds from the state and wished to engage in activities intended to encourage or discourage union organization was required to maintain, for at least three years, financial records demonstrating that state funds were not used to pay for such activities. The state agency that provided the funds to the employer and the New York State attorney general could make a request at any time to review those financial records, and the employer was required to provide those records within ten business days of the request.

The statute also imposed severe penalties upon an employer who was found to have used state-appropriated funds to encourage or discourage union organization. A court had the authority under the statute to order the employer to return the unlawfully expended funds to the state, and to pay a civil penalty of up to \$1,000.00. If the employer was found to have knowingly violated the statute, a court had the authority to require the employer to pay a civil penalty of up to three times the amount of money unlawfully expended.

### The Court’s Decision in the HANYS Case

In HANYS, a group of five health care organizations challenged the enforceability of Labor Law Section 211-a on two grounds: (1) that the statute was preempted by the NLRA; and (2) that the statute was unconstitutional. The Court held that the statute was preempted by the NLRA, and therefore did not need to decide the alternative issue as to whether the statute was unconstitutional.

The doctrine of federal preemption, in general, precludes a state from enacting a law dealing with a particular subject matter where the federal regulation of that subject matter is so pervasive that it is intended to fully occupy the field. The



NLRA is the federal statute that regulates and governs labor-management relations in the private sector. In HANYS, the Court held that Labor Law Section 211-a improperly regulated labor-management relations in the private sector, and was therefore preempted by the NLRA. The Court observed that, under the NLRA, an employer has the right to hire a consultant or attorney to assist in opposing a union organizing campaign, and to use its resources and personnel to communicate the disadvantages of unionization. The Court found that the prohibitions on the use of state-appropriated funds to encourage or discourage union organization had the effect of interfering with these employer rights.

The Court rejected the defendants' argument that the statute merely affected the state's use of its own funds, and did not affect an employer's actual right to oppose a union organizing campaign with private funds. The Court held that the statute's requirement that employers maintain separate accounts for funds received from the state, as well as records of what funds were being used to oppose a union organizing campaign, imposed undue costs and burdens upon employers who wished to exercise their rights under the NLRA. Therefore, in effect, Labor Law Section 211-a did not merely regulate the use of state-appropriated funds – it also regulated employer conduct and speech that is protected under the NLRA.

For these reasons, the Court held that Labor Law Section 211-a was preempted by the NLRA, and permanently enjoined the State of New York from implementing or enforcing the law. The State of New York has the right to appeal the decision to the Second Circuit Court of Appeals.

If you have any questions about the HANYS case or need assistance dealing with a union organizing campaign, please contact:

In the Capital District, call 518-533-3000 or e-mail:

John M. Bagyi	jbagyi@bsk.com
Nicholas J. D'Ambrosio	ndambrosio@bsk.com

In Central New York, call 315-218-8000 or e-mail:

R. Daniel Bordoni	dbordoni@bsk.com
Robert A. LaBerge	rlaberge@bsk.com

On Long Island, call 516-267-6300 or e-mail:

Terry O'Neil	toneil@bsk.com
--------------	----------------

In New York City, call 646-253-2300 or e-mail:

Michael I. Bernstein	mbernstein@bsk.com
Louis P. DiLorenzo	ldilorenzo@bsk.com
Stanley Schair	sschair@bsk.com

In Western New York, call 716-566-2800 or e-mail:

Robert A. Doren	rdoren@bsk.com
Daniel P. Forsyth	dforsyth@bsk.com
Richard C. Heffern	rheffern@bsk.com