

## LEGAL CORNER

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**HAVE ALWAYS THOUGHT** there were several immutable truths in labor law and labor relations. One is that good faith bargaining is an essential component of labor negotiations. Another is that yellow dog contracts – in which workers agree in advance not to join a union – have been completely discredited and abandoned.

In fact, way back in law school, I had learned that contracts with yellow dog provisions had gone the way of the Tasmanian wolf and spectacled cormorant (if you don't already know, these are extinct animals).

Well, imagine my surprise when I read Ray Hair's article in last month's *International Musician* denouncing yellow dog contracts.

My first reaction: this can't be true.

But yet it is. In fact, it appears as though an entirely new breed of yellow dog has been unleashed.

For instance, quite recently, a hair salon in Montana forced its employees to sign an agreement that would require them to nullify any future support for unionization.

The employer's rationale was that such statements would ensure that employees seek unionization by means of a secret ballot election rather than by an informal card check or voluntary recognition agreement.

The document that the employees were required to sign stated that they agreed to renounce any future signature they might place upon a union authorization card indicating their support for a union. The agreement was entitled "Pro-

tection of Secret Vote Agreement."

The effort to compel employees to sign such an agreement was a clear reaction to possible card check legislation that was being advanced at the time in Washington.

Of course, the problem with such an agreement is that it actually prevents employees from obtaining secret ballot elections, since union authorization cards are the primary means by which employees could demonstrate to the National Labor Relations Board that there was a question concerning a union's representational status that required an election.

Furthermore, the agreement trounced upon employees' Section 7 rights to engage in concerted activity for their mutual aid, benefit and protection.

The union authorization card is the principal vehicle unions use to organize the unorganized. Requiring the revocation of a card before it is even signed is an egregious violation of the National Labor Relations Act.

What's most ironic about this situation is that there was absolutely no effort to organize the employees of the salon.

However, that's not even the worst of it. In 2005, Walter Block, an economics professor at Loyola University, wrote an article entitled "The Yellow Dog Contract: Bring it Back!" Normally, I would think that such an article was satirical, but when I read it I saw that the author was totally serious. To Professor Block, unions are pernicious entities from which employees must be protected.

He equates union security provisions (contractual clauses requiring employees

to join a union as a condition of employment) to being forced to wear a funny hat upon entry into a friend's apartment.

While Professor Block's argument is laughable, there are many in this country who agree with it.

Union advocates must not forget that yellow dog contracts were for many years deemed to be legal in this country.

Cases such as *People v. Marcus*, 185 N.Y. 257 (1906), held that state laws making yellow dog contracts illegal were unconstitutional and an abridgement of an employer's right to freely contract with its employees.

These state court decisions were upheld by the Supreme Court in *Adair v. United States*, 208 U.S. 162 (1908).

Without strong advocacy, the rejected arguments of the past may one day become the prevailing opinion.

If you are forced to sign a yellow dog contract – or any contract that says that you will not join a union, form a union or hire fellow union members – my opinion is that such contracts are illegal and unenforceable. I suggest you sign the contract, take the job, and call the union confidentially for further advice.

(By the way, you may be wondering how the yellow dog contract got its name. It's simple: "yellow" means cowardly, so a "yellow dog" is a cowardly dog. Workers who were forced to sign yellow dog contracts were said to be have been reduced to the level of a cowardly dog. The phrase goes back to at least 1921, although similar anti-union contracts have been around since the 1870's.)

## MUSICIANS WIN APPEAL

Are musicians entitled to unemployment benefits? Yes!

Last year, union rep Shane Gasteyer wrote a story in *Allegro* about musicians who were mistreated at the hands of the owners of Sofrito, a Midtown restaurant. I'm going to quote a little of Shane's story here, then give an important update.

At Sofrito, musicians had experienced repeated verbal abuse, no scheduled breaks, and demands to start their sets early without extra pay.

The group was then fired without notice at the end of 2009, and the band turned to Local 802 for help.

After consulting with union reps, the bandleader decided to file for unemployment benefits and after a protracted back and forth process with the Department of Labor, he was retroactively awarded compensation for the months he had been without work since losing his regular gig.

The restaurant appealed to the New York State Unemployment Appeals Board.

Now, a judge has upheld the original decision and ruled that the musicians were in fact employees entitled to unemployment compensation.

We are extremely pleased with the outcome of this appeal, which will stand as a precedent for similarly situated musicians.

Remember: musicians are eligible for unemployment benefits! For more details, please see [www.TinyUrl.com/MusicUnemployment](http://www.TinyUrl.com/MusicUnemployment).

# THE DOG IS BACK IN TOWN

**What are yellow dog contracts, and should we fear them?  
Also: musicians win appeal on unemployment benefits**

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