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JEFFREY W. PAGANO



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Education

College of Europe
(Bruges)

Ohio University, B.S., cum
laude

Rutgers School of Law,
J.D.

Areas of Law

Employment and Labor
Counseling and Litigation

Jeffrey W. Pagano is a partner in the Labor & Employment Group. He focuses upon all forms of corporate operating design, litigation and negotiation, primarily in the area of labor and employment law, arising under the NLRA, RLA, Jones Act, Title VII of the 1964 Civil Rights Act, ADEA, FLSA, SCA, ERISA, E.O. 11246, Rehabilitation Act, VEVRAA, OSHA, ADA, FMLA, SCA, FCRA, FCA, as well as the numerous state statutory schemes impacting the workplace, throughout the U.S. Additionally, he continues to litigate significant complex commercial matters arising out of the purchase and sale of business organizations, intellectual property, and contractual disputes in courts throughout the U.S. or in the arbitration context. His experience and knowledge is deep, having had the opportunity over a 30-year period to strategically build, restructure and/or rebuild organizations, whether union represented or union-free, in order to create value. In doing so, he deals with the complexity of simultaneously achieving internal change, while managing the risk of external liability and minimizing the cost of implementation.

OVERVIEW

Mr. Pagano has experience in many industries, including all forms of transportation (armored, OTR, shipping, aircraft), manufacturing, financial, automotive, steel, retail and consumer products, hospitality, health care, and a myriad of other service industries. He approaches each assignment as unique, requiring independent and creative thinking, regardless of the "norm," in order to achieve a client's objectives.

Mr. Pagano has been involved in hundreds of union organizing campaigns on behalf of management. He also has extensive experience before the NLRB, in collective bargaining, as well as the ongoing administration of the employment relationship, including arbitration. Mr. Pagano has also developed workplace policies and procedures that produce effective internal workplace dispute mechanisms designed to avoid external liability. These practices enhance management's operational and leadership credibility, while reducing union organizing risk, discrimination claims, whistleblower claims and wage hour claims (collective, class, and individual), which reduces the potential legal spend in the process. In this regard, once a client has followed the program designed by Mr. Pagano, whether in relation to an organizing campaign, wage-hour and other compliance processes or any workplace system, should litigation arise, he can utilize alternative fee arrangements to reduce the legal spend and "partner" with the client toward the resolution of any dispute arising as a consequence. Mr. Pagano's client relationships are typically long standing because he actually invests in the relationship at many levels.

CLASS AND COLLECTIVE ACTIONS

Mr. Pagano routinely defends employers facing class and/or collective action wage-hour claims throughout the U.S., whether arising under federal or state law. He has managed the entire wage hour defense process in approximately 15 class and/or collective actions, encompassing claims of minimum wages, tip credit, overtime, off the clock, on-call payments, uniform maintenance, meal and rest periods, protective devices, exempt status, itemized payroll documents, waiting time, fraudulent misrepresentation, breach of contract, and independent contractor status. Typically, he has been able to either achieve a dismissal of claims or a favorable disposition from the perspective of the client in the settlement context.

Mr. Pagano uses his years of litigation experience to design operational practices which eliminate wage hour claims, as well as diminish the likelihood of class certification and potential liability. He has been called upon to structure internal and external employment and operating policies and procedures that minimize non-compliance with applicable interstate and intrastate wage hour statutory schemes, from hours of service obligations of OTR teams, to electronic messaging to tip credits, as well as designing web based local on time delivery systems which ensure the continued preservation of independent contractor status.

REPRESENTATIVE CLASS AND COLLECTIVE ACTION ASSIGNMENTS

- *Polanco v. Brink's, Incorporated*(LA Superior Court, Complex Division (2012)) dismissal of class action inadequate class representative.
- *Rodriguez v. Brink's, Incorporated*(LA Superior Court, Complex Division (2012)) denial of class certification of thousands of employees because individual issues predominated over common issues.
- *Guaman v. 5 "M" Corp.* (SDNY 2012) denial of FLSA and NYSLR class and collective action concerning multiple restaurant operations but one restaurant operation.
- *Hernandez v. Brink's, Incorporated*(SDFL 2009) grant of summary judgment in FLSA collective action for overtime compensation, covering mixed fleet operations, based upon FMCSA.

LABOR MANAGEMENT RELATIONS

Mr. Pagano has extensive experience in negotiating with and litigating against the most sophisticated labor unions in the country, including the International Brotherhood of Teamsters (IBT), American Postal Workers Union (APWU), Service Employees International Union (SEIU), the International Longshoremen's Union (ILA), the Machinists (IAM) the Steelworkers (USW), United Food and Commercial Workers (UFCW), International Brotherhood of Electrical Workers (IBEW) and numerous labor organizations pursuant to 9(b)(3).

When acting either as lead negotiator or strategic advisor, he has successfully managed contentious collective bargaining negotiations through impasse and implementation of final offer, without any adverse findings by any regulatory authority.

SPECIFIC LABOR MANAGEMENT RELATION PROJECTS

- Operationally restructured a nationwide market leader in the secure transportation industry through the creative and aggressive use of legal tactics and operational strategies, prevailing in hundreds of proceedings before the NLRB and in various federal courts. As a consequence, the historical collective bargaining representatives were eliminated without any business interruption, and the historical culture and operational methodology of the business operations was replaced thereby increasing operating and asset values for investors. Not one proceeding before any regulatory authority or court, including before the NLRB, EEOC, and DOL resulted in an adverse outcome.
- Structured the acquisition and merger strategy of the largest domestic non-union heavyweight freight -forwarder requiring the integration of an organized employer, resulting in a non-union merged enterprise, thereby increasing the operating and asset value of the transaction, without

- any business interruption. Not one proceeding before any regulatory authority or court, including before the NLRB, EEOC, and DOL resulted in an adverse outcome.
- Structured the acquisition and labor strategy of the largest domestic heavyweight cargo freight forwarder of a domestic heavyweight air cargo carrier, which was leveraging the forwarder during peak demand to be acquired, as the carrier's pilots had recently voted for labor organization representation in a proceeding before the NMB. After finalizing the transaction, Jeff designed the operating structure of the transaction to enhance the application of the NLRA to protect the freight forwarder and its non-union NLRA workforce, while acting as lead negotiator to successfully negotiate the pilots collective bargaining agreement under the RLA, which contained groundbreaking productivity, operational flexibility and scope provisions, including scheduling, compensation and dispute resolution, that enhanced the operating success and asset value of the overall enterprise. Not one proceeding before any regulatory authority or court, including before the NLRB, NMB, EEOC, and DOL resulted in an adverse outcome.
 - Restructured an operating strategy for the largest over the road mail carrier following a series of acquisitions, and created, as well as executed as lead negotiator a national bargaining strategy to change historic collective bargaining relationships and operating culture, implicating simultaneous Service Contract Act and NLRA adherence. Jeff successfully negotiated pattern-making collective bargaining agreements, which improved the carrier's competitive position for future government contracts. Not one proceeding before any regulatory authority or court, including before the NLRB, EEOC, and DOL resulted in an adverse outcome.
 - Structured an acquisition labor strategy and methodology of two EU freight forwarders in the U.S., which included the integration of the business and revenue of the acquired U.S. freight forward operations, while eliminating collective bargaining relationships as lead negotiator throughout the implementation of the collective bargaining strategy. Not one proceeding before any regulatory authority, including the NLRB, EEOC, and DOL resulted in an adverse outcome.
 - Created a collective bargaining strategy for an entire industry in the U.S., which successfully leveraged fundamental operating and economic change throughout the East Coast, for domestic participants in the ocean transportation industry implicating numerous regulators, including the DOJ, NLRB, EEOC, and DOL.
 - Created and executed a collective bargaining strategy as lead negotiator involving the hospitality industry, involving the certain work central to the industry covered by the collective bargaining agreement. He was able to convert the internal workplace into a real estate transaction on behalf of a third party allowing for the outsourcing of the work historically performed on the premises. Not one proceeding before any regulatory authority resulted in an adverse outcome.
 - Created and executed a labor/litigation strategy within the energy and construction industry implicating the NLRA and the RLA, which was designed to manage and appropriately deploy 8(f) collective bargaining agreements at various locations throughout the U.S. Not one proceeding before any regulatory authority resulted in an adverse outcome.
 - Designed the structural elements of a web based "last mile" transportation providers and brokers to ensure independent contractor status to avoid wage-hour liability and litigation.

- Negotiate, implement and monitor various multi-union PLAs on behalf of investor and construction enterprises within the solar energy and construction industry.

INTELLECTUAL PROPERTY/COMMERCIAL LITIGATION

Mr. Pagano has also devised policies, procedures, and agreements, as well as structure business transactions to protect intellectual property from theft or misuse by incoming or outgoing employees and failed business arrangements. He has successfully commenced litigation designed to thwart the theft and/or misuse of intellectual property by former employees and/or competitors. He routinely litigates commercial disputes arising in the construction, transportation and live events industries.

INTERNATIONAL

Mr. Pagano's employment practice is not limited to the United States. He has evaluated and structured organizations in foreign jurisdictions, remaining sensitive to local practices and cultures. Additionally, employment litigation can arise among jurisdictions depending upon a definition of an employer within each jurisdiction, which has prompted Mr. Pagano to be responsible for simultaneous multiple-country employment issues and disputes.

In addition to his employment practice, Mr. Pagano also has extensive experience representing multi-national clients in the international air-freight, logistics and transportation industries relating to regulatory, customs matters, and trademark protection, as well as structuring agreements for the transportation of international cargo, litigation of pricing issues under multi-lateral treaties affecting international cargo and mail, and litigation of international mail and international cargo matters, including intellectual property claims arising under the Lanham Act.

Mr. Pagano is Contributing Editor of the *Developing Labor Law*, and a lecturer for the American Management Association and the Institute for Applied Management and Law, Inc. He served as counsel to the general counsel, National Labor Relations Board, Region 9, Cincinnati, Ohio. Mr. Pagano has participated in various speaking forums, including the National Policy Conference sponsored by the National Mediation Board concerning the globalization of collective bargaining under the RLA in the airline industry, National Armored Car Association, and the Independent Armored Car Association, and he has testified before Congress.

Affiliations

Admitted to practice: New York, New Jersey and District of Columbia bars; the U.S. Supreme Court, U.S. Court of Appeals, Second, Third, Fourth, Fifth, Sixth, Ninth and Eleventh, DC Circuits; U.S. District Court, District of New Jersey; U.S. District Court, District of Columbia; U.S.

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District Court, Southern, Eastern and Northern Districts of New York; U.S. District Court, Eastern District of Michigan; and U.S. District Court, Eastern District of Wisconsin.