The United States Court of Appeals for the Fifth Circuit has issued a recent decision that could have a far-reaching impact on the collective bargaining relationship between unions and employers utilizing or suspected by unions of utilizing “double-breasted” operations.

In NLRB v. Leonard B. Hebert, Jr. & Co., 696 F. 24 1120 (5th Cir. 1983), the court of appeals held that ten construction contractors who refused to supply information requested by a union concerning their use of double-breasted operations violated their duty to bargain in good faith with the union under Sections 8(a)(1) and (5) of the National Labor Relations Act.

The ten construction contractors in Hebert were members of the Associated General Contractors of Louisiana (AGC). Each of the contractors had a long-standing relationship with the Carpenters District Council of New Orleans and Vicinity Local 1846 (Union). Each collective bargaining agreement entered into by the Carpenters and the contractors contained a “recognition clause” acknowledging the Union as the exclusive representative of each employer’s carpenters.

The Union, however, had bargained unsuccessfully over the years for a “subsidiary clause” which would have applied the collective bargaining agreements signed by the contractors to any double-breasted counterpart. The contractors denied that they maintained any double-breasted operation.

Despite the contractors’ denials, the Court found that the Union had evidence that some contractors were utilizing double-breasted operations. The court pointed out that during a representation election at the site of a non-union construction employer, Union observers noticed that the site also served as a premises of a construction employer who was a member of AGC and a party to the collective bargaining agreement with the Union.

Based on this type of evidence, the Union—in anticipation of upcoming collective bargaining negotiations—had requested information as to possible double-breasting. None of the companies supplied the Union with the information requested. The Union then filed unfair labor practice charges. The NLRB General Counsel issued a complaint based on the charges, and the Board, upholding a decision of an Administrative Law Judge, concluded that the contractors violated the Act by refusing to furnish the information. The Board ordered the disclosure of the information, and the contractors appealed.

The Fifth Circuit enforced the order of the Board. As a threshold matter the court concluded that the double-breasting information—unlike information about wages and fringe benefits—was not available to the Union as a matter of right simply because it made a request.

The court went on to conclude, however, in a 2-1 decision—with Judge Garwood dissenting—that the Union was entitled to the information requested because it had met its burden of showing that the information was relevant to the fulfillment of its obligations as collective bargaining representative.

Of particular significance, the Fifth Circuit stated in Hebert that “the type of information sought by the Union would assist it in confining its suspicions and thereby allow it to make an informed choice whether to pursue legal means by which it could hold the nonunion companies to the terms of the collective bargaining agreements involved here.”

Unions are, therefore, more likely to challenge business practices of construction contractors through traditional “labor law” means-collective bargaining, filing unfair labor practice charges, etc.—than in protracted federal court litigation. Earlier this year the Supreme Court dismissed the unions’ antitrust claims in Associated General Contractors of California, Inc. v. California State Council of Carpenters, 103 S. Ct. 897 (1983).

The Fifth Circuit denied the contractors’ petition for rehearing in Hebert on April 1, 1983. As we go to press, the contractors have not yet asked the Supreme Court to review the Fifth Circuit’s decision; they have until the beginning of July to do so.