

EXECUTIVE SUMMARY OF *ENERSYS v JACKSON LEWIS*
MALPRACTICE CASE

The malpractice suit provides a highly unusual glimpse of what a company claims goes on behind the scenes when Jackson Lewis “engineered” what EnerSys refers to as a “relentless and unlawful campaign to oust the union.”

EnerSys, a multinational manufacturer of industrial batteries with a base of operations in Pennsylvania, is suing Jackson Lewis for malpractice arising from the law firm’s role in a nearly decade-long campaign to oppose employee union organizing, oust the union and ultimately close down the company’s Sumter, South Carolina, battery plant. An extensive array of illegal, and all too common, union-avoidance and unionbusting tactics were on display in Sumter over the course of eight years. Among other things, EnerSys fired seven of the employee leaders of the union, fired supervisors unwilling to carry out improper instructions, threatened to close facilities, and orchestrated a decertification campaign, culminating in EnerSys agreeing to pay the union and employees nearly \$8 million in settlement of multiple charges and lawsuits. But what makes the case truly extraordinary is that the company is now claiming publicly, through its malpractice suit, that the true culprit is Jackson Lewis, one of the nation’s largest management labor law firms.

EnerSys & Jackson Lewis: A partnership forms

EnerSys turned to Jackson Lewis in 1994, in an attempt to stop employees at its Sumter plant from organizing with the International Union of Electronics, Electrical, Salaried, Machine and Furniture Workers-Communication Workers of America (hereafter “union”). Jackson Lewis began advising and representing the company in labor and employment matters at Sumter, including “mounting an opposition to the union’s organizing drive.” From 1994 through October 2003, EnerSys “relied exclusively on Jackson Lewis for all legal dealings with the union and employees at the Sumter Plant,” at a cost of \$2.7 million for these services.

Pulling out the stops to squelch the organizing campaign

The initial organizing campaign was “hotly contested,” with allegations of unfair labor practices. Nevertheless, on February 23, 1995, a majority of 400 EnerSys production and maintenance employees at the Sumter plant voted for union representation. The union victory was followed not by immediate collective bargaining, but, instead, by company efforts to challenge the election result through litigation.

In December 1995, the National Labor Relations Board (NLRB) upheld the election result, but two years of legal appeals followed when EnerSys refused to bargain with the union. A federal court eventually ordered the company to bargain, and ten months later a contract was concluded in April 1998.

Anti-union campaign continues after union certification

During the contract negotiations, EnerSys insisted that wages be based on a new incentive pay plan called “gainsharing.” The union agreed to the gainsharing plan with the assurance that it

would afford employees “the opportunity to earn more money than the [previously existing] incentive plan.”¹

However, as soon as the plan was implemented, employee pay went down by 16 percent on average despite improvements in performance. The union immediately protested and filed a grievance. Eventually an arbitrator ruled that the company had manipulated the new pay system and ordered the company to recalculate pay. But implementation of the arbitrator’s decision was delayed for years through appeals. Meanwhile, the wage cut remained in place and became a principal issue in what turned out to be an illegal decertification campaign launched against the union.

According to EnerSys, “[i]n the years following the union’s certification as the bargaining representative, Jackson Lewis . . . engineered a relentless and unlawful campaign to oust the union from the Sumter Plant,” using tactics that included covert aid and advice to an anti-union committee. Although the company was responsible for docking workers’ pay through the gainsharing plan, the anti-union committee was blaming the union for the wage decrease in order to turn employees against the union and spur decertification.

Illegal Decertification Campaign

According to EnerSys, “Jackson Lewis advised EnerSys to work toward the decertification of the union or a withdrawal of recognition,” and the law firm “worked closely on a campaign to oust the union, despite knowing that such efforts on behalf of EnerSys would constitute unlawful assistance and, if discovered, would invalidate any resulting decertification or withdrawal of recognition.” Additionally, “Jackson Lewis retained, contacted and used consultants to assist in the decertification effort.” Jackson Lewis also “planned and conducted seminars for EnerSys employees advising them on how to decertify or effect EnerSys’ withdrawal of recognition from the union.”

In June of 2001, Jackson Lewis “advised EnerSys to withdraw recognition of the union,” and the company followed that advice. According to EnerSys, “[n]otwithstanding the almost certain invalidity of the withdrawal of recognition and the immediate union challenges to it, Jackson Lewis . . . recklessly advised EnerSys to rely completely on the withdrawal of recognition and to ‘ignore’ the existence of the union in future dealings.” Jackson Lewis’ advice in this respect “was particularly reckless because . . . [a Jackson Lewis attorney] . . . participated in and/or knew of the unlawful assistance the union contended invalidated the withdrawal of recognition.”

Expensive Settlement for Violating Federal Labor Law

EnerSys paid a huge price for hiring Jackson Lewis to run an anti-union campaign. On January 7, 2004, EnerSys signed an agreement with the IUE to pay \$7.75 million to settle the lawsuits and unfair labor practice charges pending against it for unlawful firings, improper implementation of gainsharing under the contract, illegal withdrawal of recognition of the union as the employees’ representative, failure to give notice of the plant closing, and refusal to bargain with the union about the closing. According to EnerSys, this resolution included approximately \$3.4 million to “settle the unfair labor practice charges directly and proximately caused by [negligent advice of] Jackson Lewis,” and approximately \$2.3 million for WARN Act claims,

counsel fees and costs “directly and proximately caused by [Jackson Lewis’] negligent advice” and “concealment of their conflict of interest in representing EnerSys in the WARN Act case.”

The Malpractice Lawsuit

On April 23, 2004, EnerSys filed its malpractice action against Jackson Lewis in South Carolina state court, EnerSys Delaware Inc. v. Jackson Lewis LLP, Civil Action No. 2004-CP-23-2685 (Court of Common Pleas, Thirteenth Judicial Circuit). The parties are currently engaged in discovery.

NOTE: All quotes except where indicated derive from the Complaint filed by EnerSys in the Court of Common Pleas, Thirteenth Judicial Circuit, State of South Carolina, EnerSys Delaware Inc. v. Jackson Lewis LLP, Civil Action No. 2004-CP-23-2685 (filed April 23, 2004).

¹ Yuasa, Inc. v. International Union of Electronic Workers, Local 175, 224 F.3d 316 (4th Cir. 2000), cert. denied, 531 U.S. 1149 (2001).