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It Just Became A lot Easier for a Union to Represent Your Employees

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On August 25th, 2023, the National Labor Relations Board (NLRB) issued a major decision that details a new standard for determining when employers are required to recognize and bargain with unions without a representation election.

In *Cemex Construction Material Pacific LLC (Cemex)*, the NLRB reversed decades of established precedent and found that when a union requests recognition on the basis that a majority of employees have designated the union as their representative, the employer has two choices:

1. Recognize the union as the bargaining representative or
2. File a petition for election ("RM Petition") within two weeks of the demand for recognition.

If the employer fails to file the RM Petition within that two-week period, or if the employer commits any violation of the National Labor Relations Act ("Act") that would require setting aside the election, the RM Petition will be dismissed, and rather than re-run the election, the NLRB will order the employer to automatically recognize and bargain with the union.

The NLRB will continue to rely on the same factors that it uses to determine whether an election should be set aside due to an employer's unfair labor practices, including but not limited to: the number and severity of unfair labor practices, the proximity of the unfair practices in relation to the timing of the election; the number of employees impacted by the misconduct; the size of the bargaining unit; the margin of the vote; etc.

With the *Cemex* decision, the NLRB reverted to a modified *Joy Silk* standard for union recognition. In *Joy Silk*, the NLRB held that employers were required to recognize and bargain with the union when the union demonstrated it had a majority of signed authorization cards, unless the employer had a "good faith doubt" regarding the cards' authenticity and the accuracy of the alleged union support. However, the *Joy Silk* doctrine was overturned by *Linden Lumber* in 1971, which held that employers were allowed to refuse to accept evidence of a majority support of a union and instead insist on secret-ballot elections when confronted with a demand for recognition. The *Cemex* decision revisits *Joy Silk*, thus now facilitating union organization by card check instead of a secret ballot election.

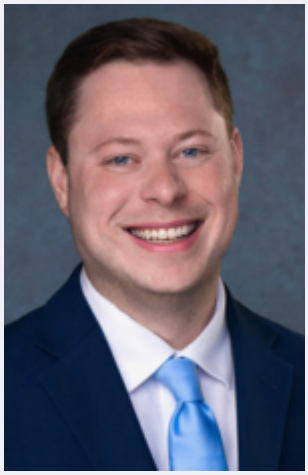
The dissent in *Cemex* argued that the decision violates court precedent. And while the decision was appealed on August 30th for further litigation, employers must recognize that *Cemex* represents the current NLRB stance on union recognition. Alarmingly, the NLRB indicated its willingness to apply *Cemex* retroactively to all pending cases.

As such, it is crucial for employers to take steps now to reduce the risk of union organizational activity and the violation of the Act. Given the stricter recognition requirements, managers and supervisors should be trained in how to handle union recognition requests, elections, and outcomes.

The Labor & Employment Group at Knox Law has the experience and skillset to provide this training.

The NLRB press release can be found here: https://www.nlrb.gov/news-outreach/news-story/board-issues-decision-announcing-new-framework-for-union-representation.

If you would like to learn more or receive training, please contact your Knox Law attorney, one of our Labor & Employment attorneys, or call us at 814-459-2800.



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