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LABOR AND EMPLOYMENT LAW

FEBRUARY 16, 2021

Lessons from Google: What Employers Should Know About Minority Unions

It is no secret that private sector union membership has dramatically decreased over the past several decades. This reality has forced labor organizers to get creative with their efforts. Perhaps this is one reason why stories of a union presence at tech industry giant, Google, have recently gained so much attention. Reports of a "minority union" at Google began to swirl earlier this year after a group of several hundred Google employees announced their creation of the "Alphabet Workers Union." Named for Google's parent, Alphabet, Inc., the Alphabet Workers Union was supported by, and now affiliated with, the Communication Workers of America. The union claimed its membership quickly grew to more than 800 members.

Unlike the agendas of many traditional labor unions, improving wages and benefits do not appear to be among the Alphabet Workers Union's top concerns. Instead, it claims to be largely focused on issues such as creating an inclusive workplace, promoting diversity, and rejecting harassment, discrimination and retaliation. Further distinguishing it from the prototypical union is the fact that the Alphabet Workers Union is operating as a minority union. Explained in greater detail below, this designation has significant consequences on whether the employer has a duty to recognize and/or bargain with the union. The situation at Google poses the questions for other private sector employers in industries where unionization is not common: what is a minority union; and how could it impact my company?

Under Section 7 of the National Labor Relations Act (NLRA), employees have the right to self-organize and bargain collectively through representatives of their own choosing. Section 7 gives employees the right to join a union. Typically, through a National Labor Relations Board (NLRB) election proceeding, if a majority of employees in a defined bargaining unit vote for a union, the union becomes the exclusive representative of all unit employees and a statutory duty is imposed upon the employer to bargain with the union on behalf of all unit workers. Though this is an oversimplification of the certification and election process, it is fundamental to labor relations in the United States.

A minority union is a union that does not have the support of a majority of bargaining unit employees. Unlike a union that enjoys majority support, a minority union represents only those employees who affirmatively choose to join it. There is no formal election process, no NLRB proceeding, nor formal recognition procedure.

While an employer *may* choose to recognize and bargain with a minority union on behalf of its members, it has no legal duty to do so. This means an employer does not have to bargain with minority unions over the wages, working conditions, discipline or discharge of the union's members. An employer also has no obligation to furnish requested information to a minority union or provide the union access to its facilities. This stands in stark contrast to an employer's duty to bargain with an NLRB certified union.

Traditionally, collective bargaining agreements are a cornerstone of the company-union relationship, but an employer has no obligation to negotiate or reach an agreement with a minority union. Even if an employer consents to bargain, the scope of any such relationship with a minority union *must be limited* to those employees who have consented to the

union's representation. In fact, it is unlawful for an employer to extend exclusive status to, or negotiate an agreement covering all unit employees with, a minority union. Over the objection of minority unions, the NLRB and courts have also consistently held that an employer has no statutory duty to bargain with a minority union even on a members-only basis.

Though there is no obligation to recognize or bargain with minority unions, employers should take care to remember that the NLRA more broadly protects collective action. It is undeniable that employee support for a minority union is activity protected under Section 7. Therefore, an employer cannot take adverse action against employees for joining or supporting a minority union.

Much of a minority union's impact will be determined by the employer's response to it. That there is no NLRB certification and that employers have no legal obligation to recognize or negotiate with a minority union potentially stymies much of the bargaining power traditional unions are able to leverage. Though minority unions cannot force employers to sit at the bargaining table, they can use other strategies such as social media, political pressure and traditional media attention to influence managerial decisions and advance the interests of their members. As is the case with the Alphabet Workers Union, minority unions may be more interested in furthering equity issues and drawing attention to employer conduct and policies, rather than addressing wages and benefits. In the current social and political climate these efforts can be effective. Even still, employers must be careful to not submit to the demands of a few at the expense of the majority of employees who do not support the minority union.

Finally, whether the Alphabet Workers Union becomes a trend-setter, or an isolated case remains to be seen. The fact that the Communications Workers is supporting this initiative suggests minority unions may be a future concern, particularly for employers and industries in which a majority of employees prefer to remain union free.

If you have any questions about this information memo, please contact Thomas Eron, Hannah Redmond or any attorney in Bond's Labor and Employment practice.

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