

Biden's NLRB Reshaping the Labor Relations Landscape

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Agenda

- The Set Up
- The Big Picture
- The *Cemex* Holding
- Scenarios and Strategies
- What You Can Do Today



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The Set Up

- Recap of the NLRB's role in the union recognition/certification process
- Overview of the election process in place from approximately 1970 until August 25, 2023
- Synopsis of the NLRB's *Gissel* bargaining order remedy



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The Big Picture: Fundamental Employer Considerations

- Is this a proper bargaining unit from the employer's perspective?
- Does the union really represent a majority?
 - An election is the best way to answer that question.
 - Union cards are questionable/unreliable.
- Do the employees understand the advantages and disadvantages of union representation so they can make an informed choice?



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Cemex Construction: The New Union Representation Process

- After the union demands recognition, the employer **must** :
 - recognize and bargain with the union, or
 - file an NLRB petition for an election within two weeks
- If an election petition is filed but the employer is found to have committed a ULP, Board will dismiss the election petition and issue a bargaining order.



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New Election Rules

- On top of *Cemex*
- Expedited election procedures -- effective December 26, 2023
- Shorten the time between any petition and election
- Require the employer to act more quickly on posting notice, employee list and statement of position
- Streamline pre-election hearing
- Apply to both union (RC) and employer (RM) petitions



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Scenarios & Strategies

- The union's proposed unit is wrong for the employer
- Challenges to the showing of interest/union's claim of majority status



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Scenarios & Strategies

- A new risk calculus during the election campaign
 - Captive audience meetings (lawful now, but on the chopping block)
 - Maintenance of overly broad handbook policies (*Stericycle Inc.*)
 - Disciplinary action during the organizing campaign
 - Concerted activity? (*Miller Plastic*)
 - Protected activity? (*Lion Elastomers*)



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Scenarios & Strategies Cont.

- Unilateral decisions supported by past practice or decided prior to demand for recognition
 - Compare Starbucks cases and *CVS Pharmacy*
- The option to recognize and bargain
- Demand for recognition slips through the cracks/goes unnoticed and unanswered
 - Other evidence of majority support?
- Others??



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What Can I Do Now?

- Educate on union cards (or signing anything)
- Review handbooks and policies
- Vulnerability evaluation
- Alert to union activity
- Supervisory Training on the Do's and Don'ts
- Have a plan
 - Bargaining units
 - Draft correspondence
 - Cemex/quickie election schedule of response
 - bargaining strategy



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BOND

QUESTIONS?

