



Labor & Employment @lert

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NLRB Issues Historic Decision on Employer's Duty to Recognize and Bargain With Union

On August 25, the National Labor Relations Board's (NLRB) majority issued a historic decision in *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130, on when an employer must recognize and bargain with a union. This decision is a modified version of the long ago abandoned 1949 *Joy Silk* doctrine, which required an employer to recognize and bargain with a union if there was evidence a majority of employees wanted the union to represent them, unless the employer had good faith doubt as to the union's majority support.

Under *Cemex*, unions may now demand recognition and bargaining by demonstrating majority support of employees in an appropriate bargaining unit. Majority support can be demonstrated without NLRB involvement, such as by presenting signed cards from employees in support of unionization, in which case an NLRB-conducted representation election is no longer necessary. After a union demands recognition and bargaining, the employer has two options: recognize and bargain with the union, or expeditiously file its own NLRB election petition ("RM" petition) requesting an election. If the employer files an RM petition, *Cemex* requires the election petition to be dismissed if the employer commits an unfair labor practice during the "critical period," which is the period between the petition filing and the election. Only if the unfair labor practice is so minimal or isolated that it could not have affected the election results will the NLRB not dismiss the petition. If the petition is dismissed based on an employer's unfair labor practice, the employer will be required to recognize and bargain with the union, with no possibility of a rerun election.

The *Cemex* decision is a massive shift in the union organizing process and representation matters and makes it much easier for unions to organize. Under this new standard, and especially in light of the Teamsters' recent widely publicized collective bargaining success with UPS, employers can expect a significant increase in union demands for recognition. Employers should consider promptly reassessing their current labor-management relations programs and should seriously contemplate providing training on recognizing and responding to union organizing campaigns.

FOR MORE INFORMATION

For more information, please contact:

Bret W. Vetter

513.352.6502

Bret.Vetter@ThompsonHine.com

John Wymer

404.407.3669

John.Wymer@ThompsonHine.com

or any member of our [Labor & Employment](#) group.

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