Labor & Employment Issues
Client Alert

Pitta LLP
For Clients
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IN MIDST OF PANDEMIC, NATIONAL LABOR RELATIONS BOARD ACTS TO WEAKEN WORKER REPRESENTATIONAL RIGHTS

On March 31, 2020, the National Labor Relations Board, which currently has no Democratic members, issued three wide ranging final rules which broadly serve to undermine worker rights.

Blocking Charges

The final rule on "blocking charges" states that elections can no longer be "blocked" by pending unfair labor practice (ULP) charges. Instead, elections will proceed and votes will either be counted or impounded, depending on the nature of the charge. This is particularly important in the context of decertification elections, as unions will no longer be able to block decertification elections by filing ULP charges. The new rule provides that only charges alleging "violations of section 8(a)(1) and 8(a)(2) or section 8(b)(1)(A) of the Act and that challenge the circumstances surrounding the petition or the showing of interest submitted in support of the petition, or a charge is filed that alleges an employer has dominated a union in violation of section 8(a)(2) and seeks to disestablish a bargaining relationship" may "block" an election. In any event, the rule provides that the election should proceed with the ballots impounded for up to 60 days. Even though elections may go forward, the NLRB clarified that it will not certify the election results until relevant ULP charges have been resolved.

Voluntary Recognition Bar

The Board's final rules also make significant changes to its voluntary recognition bar standard. Previously, where a Union was voluntarily recognized, the Union would have a "reasonable period of time" before their majority support could be challenged. Under the new rule, when an employer agrees to voluntarily recognize a union, it must notify the affected employees of the voluntary recognition and, in turn, the employees have 45 days to file a petition with the NLRB challenging the employer's recognition of the union. In effect, if there is voluntary recognition, it can be challenged immediately.

Section 9(a) Agreements

The last rule change has to do with "pre-hire" agreements in the construction trades. Typically, in the construction industry, employers sign what are known as "pre-hire" agreements or "section 8(f)" agreements. Pre-hire agreements are collective bargaining agreements signed without a union's first being certified through an NLRB election or recognized after demonstrating majority support, often, as the name implies, even before any employees have been hired. However, a section 8(f) agreement can be terminated on expiration, with no duty to bargain. After the expiration of a pre-hire agreement, the agreement can generally be converted to a Section 9(a) agreement, with bargaining obligations, in one of two ways: 1. The union wins a majority of the votes of employees in an NLRB conducted secret ballot election; or 2. The contractor signs a document in which recognition on a Section 9(a) basis is voluntarily extended to the union.

The new rule changes this standard of proof. The new rule holds that "positive evidence of majority employee support" is now required for converting a Section 8(f) agreement into a Section 9(a) agreement in the construction industry. Accordingly, a Section 8(f) relationship cannot become a Section 9(a) relationship based solely on language in the parties' collective bargaining agreements or a voluntary recognition. Instead, the majority of the affected employees must affirmatively indicate that they do, in fact, want the union to act as their legal representative for purposes of collective bargaining. In effect, the Union must have another card count with a majority of the unit signing.

To Our Clients: If you have any questions regarding any of the matters addressed in this newsletter, or any other labor or employment related issues in general, please contact the Pitta LLP attorney with whom you usually work.

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