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NLRB General Counsel Seeks to Facilitate Organizing

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The National Labor Relations Board's current General Counsel, Jennifer Abbruzzo, is currently taking aggressive positions designed to help unions be more successful in organizing. The General Counsel is the agency's top lawyer. While she cannot unilaterally change the law, she can argue that prior precedent was wrongly decided and urge the present union-friendly NLRB members to change rules regarding organizing.

Making Elections Optional

For about 50 years, the law has been stable. An employer can insist on an NLRB supervised secret ballot election instead of recognizing a union as the exclusive representative of its employees when a union claims that it has authorization cards signed by a majority of the employees. However, the General Counsel submitted a legal brief in a recent case (*Cemex Construction Materials Pacific*), arguing that the NLRB should return to the 1949 standard which required an employer to recognize a union unless the employer proves that the union does not have authorization cards authentically (not fraudulently) signed by a majority of employees.

A return to this standard would eliminate elections in the vast majority of cases. This would make it very difficult for an employer to combat union organizing. Employers often don't know about organizing efforts until after cards are signed. A union could be put in place before the employer has the opportunity to engage in a pro-employer campaign. Alternatively, the employer would be forced to engage in the expensive process of arguing, before the NLRB, the authenticity of each employee's authorization card. If the standard is changed, employers would be advised to proactively educate employees about unions, before there is any indication of union organizing, to reduce the chances of unionization.

Depriving Employers of the Right to Require Employees to Attend Speeches

Employers often require employees to attend speeches and meetings on work time to educate employees about why the employer does not believe that a union is in their or the employer's best interest. This practice has been lawful (except for the 24 hour period immediately prior to an election) for nearly 75 years. The General Counsel recently issued

a memorandum declaring her position that requiring employees to attend these speeches violates the law, and that she will ask the NLRB to reverse this precedent. If the NLRB agrees to reverse this long-standing precedent, it will make it more difficult for employers to win an election.

The Bottom Line

Employers who are concerned about becoming a union target should consider taking a proactive approach, including supervisor training on how to recognize a union campaign, the legal dos and unlawful don'ts when confronted with union organizing, and how to lawfully respond to employee questions. Also, employers should consult with legal counsel on when it is appropriate in their particular situation to provide employees with information on unions to get ahead of organizing efforts.

Contact any member of **Bodman's Workplace Law Group** for more information. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

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