

NLRB Decisions Make it Easier for Unions to be Recognized and Shortens Election Cycles

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Cemex Decision

In *Cemex Construction Materials Pacific* (372 NLRB No. 130), the NLRB ruled that an employer must either recognize a union that seeks to represent its employees or else file its own petition for an election. This ruling overturned fifty years of precedent under *Linden Lumber*. Prior to *Cemex*, the union had to file for an election if the employer did not voluntarily recognize it as the bargaining representatives for the sought after employees. The *Cemex* ruling modifies the standard from the NLRB's 1949 ruling in *Joy Silk Mills*.

Under the new standard in *Cemex*, when a union presents an employer with a demand for recognition and a showing of interest from a majority of employees, an employer must either (i) immediately recognize the union as the bargaining representative; or (ii) file an RM petition (within 2 weeks of the union's demand for recognition) for an election to test the union's majority status or the appropriateness of the proposed bargaining unit, assuming the union has not already filed its own election petition. Unlike the standard in the *Joy Silk* doctrine, the employer can file the RM petition without a good faith doubt of the union's majority status. This decision effectively makes it easier for unions to be recognized through authorization cards signed by employees and without an election.

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The employer may also choose to challenge the Union's claim via a timely filed RM petition and hearing process. Without a timely filed RM petition, the employer must recognize and bargain with the union or be faced with an NLRB charge. If the employer does nothing, that can also result in an NLRB charge. Furthermore, if an employer who seeks an election commits any unfair labor practice that would require setting aside the election, the petition will be dismissed in lieu of re-running the election. The NLRB would then order the employer to recognize and bargain with the union.

Shortened Election Cycles

On another note, effective December 26, 2023, the NLRB revived election rules that shorten the time it takes to get from petition to election in contested elections and expedite the resolution of any post-election litigation. Under the final rule, the election should be held as soon as three weeks after a union representation petition is filed (either by the union or employer). In order to shorten the timeline, the NLRB eliminated the mandatory 20-day waiting period. The final rule also provides only eight days to schedule pre-election hearings from when an employer receives a Notice of Hearing. The statement of position will now be due by noon the business day before the opening of the pre-election hearing. Furthermore, the final rule also requires employers to post the notice of petition for election within two days after service of the notice of hearing.

If you have any questions about the impact of these NLRB decisions on your workforce, please contact your Laner Muchin attorney.