

NLRB General Counsel Calls for Reinstatement of Card Check Standard in Union Organizing Drives

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National Labor Relations Board (NLRB) General Counsel Jennifer Abruzzo recently called for overturning fifty years of precedent that allows employees to decide via a vote whether to have a union represent them for collective bargaining purposes. Currently, employers may, but do not have to recognize unions who organize through “card checks”. General Counsel Abruzzo desires to have the NLRB reinstate a requirement rejected over 50 years ago. If this standard is revived, it would grant unions representation without a formal election.

The request to make it easier for unions to organize came in the form of a brief filed in *Cemex Construction Materials Pacific, LLC*, by the NLRB’s General Counsel. General Counsel Abruzzo requested the NLRB reinstate the *Joy Silk Mills* standard, which allows a union to be recognized through the informal card signing process. In practice, this means that once a union gains majority interest by having employees physically sign authorization cards, the NLRB would accept those cards and grant recognition to the Union. The Employer would then have to recognize and bargain with the union as the exclusive bargaining representative. Currently, employers may formally recognize a union voluntarily using the card check process, however they are not required to do so. Employers may decline to recognize a union based on the claim of majority support. The Union could then seek recognition through the NLRB’s election process, which would allow employees to vote in a secret ballot government supervised election to determine if they wanted a bargaining representative.

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While the General Counsel argued in her brief that reinstating the card check recognition process would deter unfair labor practices during organizing, opponents argue that elections allow employees the opportunity to vote in confidence and secret, free from potential interference by another person being present at the time the employee makes their determination.

While it remains unclear how a reinstatement of the *Joy Silk* standard would be implemented under the current National Labor Relations Board, the shift to this abandoned standard would signal a significant change to the labor movement. Employers who have questions about the best practices related to union and employer rights in the workplace should contact their Laner Muchin attorney. Laner Muchin will continue to monitor for further developments.