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Insights

NLRB Reports Significant Surges in Union Election Petitions and Unfair Labor Practice Charges

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On October 14, 2024, the National Labor Relations Board ("NLRB" or "Board") issued a press release announcing a spike in both the number of union election petitions and unfair labor practice charge filings in fiscal year ("FY") 2024.

Union Election Petitions Increase by 27%

The number of union election petitions filed from October 1, 2023, to September 30, 2024, has doubled since FY 2021—the year of President Joe Biden's inauguration. The NLRB received 3,286 union election petitions in FY 2024, up 27% from FY 2023. Generally, unions must petition for elections overseen by the NLRB in order to represent groups of workers known as "bargaining units." Winning the election is a crucial step in securing union representation, and unions are doing so at staggering rates.

Unfair Labor Practice Charges Increase by 7%

Similarly, between FY 2023 and FY 2024, the number of unfair labor practice charge filings rose by 7%, from 19,869 to 21,292 cases. This "significant jump in case intake" resulted in the highest total of cases in over a decade.

Why the Increases?

Various factors have contributed to the increase in union election petitions and unfair labor practice charge filings. Namely, the NLRB modified the election procedure rules that "meaningfully reduce[d] the time from petition filing to election," according to the NLRB's December 8, 2023, General Counsel Memorandum. The NLRB's decision in *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 (2023) is likely to have spurred rise in election petitions, which uprooted the previous standard that had prevailed for more than 50 years. Under the *Cemex* framework, when the majority of employees in an appropriate bargaining unit has designated a union to represent them and the union requests recognition, an employer *must* either (1) recognize and bargain with the union or (2) promptly file a specific type of union election petition, an "RM petition," to seek an election. Additionally, workers are unionizing in companies that have historically been nonunion, such as Starbucks, Amazon, Trader Joe's, and REI, with Generation Z at the helm of this union resurgence.

The NLRB primarily attributed the increase in unfair labor practice charge filings to heightened awareness and exercise of workers' rights and Board commitment. NLRB General Counsel Jennifer Abruzzo stated, "The surge in cases [the NLRB] received in the last few years is a testament to workers knowing and exercising their rights under the National Labor Relations Act and to our board agents' accessibility and respectful engagement

with them.”

Next Steps

Vigilant monitoring of union activity within the workplace will help ensure timely response to union organizing and fulfillment of employer obligations under the new *Cemex* framework, requiring employers to file an RM petition within two weeks of a demand for recognition. Employers should also review their policies and procedures with the goal of proactively avoiding charges of unfair labor practices. Importantly, committing unfair labor practices during a certain period after the demand of recognition may effectively instate the union by default, meaning the NLRB may dismiss the employer-filed RM petition and require employers to bargain with the union—it is essential to avoid pitfalls and inadvertently commit violations. Communication with employees regarding union organization may be on the horizon. Preparation and actively taking pulse on employee morale is crucial overall.

Our Labor and Employment team is available to provide assistance regarding labor-related employer preparations and obligations, revising policies, or to answer any questions regarding workplace relations or NLRB guidance. Please feel free to contact David A. Buls, Chloe N. Craft, or another member of our Labor and Employment Practice.

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