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# NLRB Issues Decision Favorable to Successor Employers

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In a ruling that the Republican majority states will "save jobs and help struggling businesses survive," the National Labor Relations Board issued a 3-1 decision on Tuesday April 2, 2019 limiting the circumstances under which a successor employer of a unionized workforce forfeits its right to unilaterally set initial terms and conditions of employment for its workers.

In *Ridgewood Health*, 367 NLRB 110 (April 2, 2019), Ridgewood Health Services took over operation of a nursing home in Alabama, hiring some, but not a majority, of its predecessor's union employees. Ridgewood established new employment terms for its workforce and refused to recognize or bargain with the union. The Administrative Law Judge found that Ridgewood unlawfully refused to hire four of its predecessor's former union employees because of their union status. Had Ridgewood hired these four workers, it would have employed a majority of its predecessor's union workforce, therefore obligating the successor to recognize and bargain with the union.

Under longstanding Board law, successor employers, including buyers of unionized businesses, are generally free to unilaterally set initial terms and conditions of employment even if they hire a majority of their predecessor's union workforce. The exception to the general rule is when it is ***perfectly clear*** that the new employer ***plans to retain all or substantially all*** of its predecessor's union workforce. In such instances, termed the "perfectly clear doctrine," the successor employer is required to bargain with its predecessor's union prior to establishing new employment terms. As a practical matter, this requires the successor to comply with the terms of its predecessor's union contract until it negotiates a new collective bargaining agreement with the union.

The Board has held, however, that where a successor employer engages in ***widespread anti-union hiring practices*** that make it impossible to determine whether it would have hired all or substantially all of the predecessor's union employees absent such hiring discrimination, the successor forfeits the right to set initial terms and conditions of employment.

Over the past twenty years starting with *Galloway School Lines*, a Clinton-era decision, the Board has gradually expanded the situations in which a successor employers forfeits its right to set initial terms. Prior to *Ridgewood Health,* a successor employer lost its right to set initial terms if it ***discriminated in hiring*** a predecessor's union employees to ***any degree***. Thus, a successor's failure to hire a single predecessor employee to avoid a continuing union majority, would deprive it of the right to unilaterally set new employment terms.

In striking down *Galloway* and its progeny, the Trump Board has greatly narrowed the circumstances under which a successor employer forfeits its right to set initial employment terms. Now successors

lose that right only where they communicate that they will be retaining all of their predecessor's union employees or engage in an unlawful anti-union hiring scheme that targets all of those union employees.

**To speak with a Benesch attorney about this case and its effect, please contact an attorney in Benesch's Labor and Employment Practice Group.**

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