CLIENT ALERTS & INSIGHTS

Teamsters Test the Bounds of the NLRB's Cemex Decision, Seeking to Unionize Amazon Workers Without an Election

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On October 23, 2024, Teamsters Amazon National Negotiating Committee ("Teamsters") filed an unfair labor practice charge ("ULP") with the National Labor Relations Board ("NLRB") alleging that, within the past six months, Amazon has failed and refused to negotiate with the union upon request or to promptly file an RM Petition with the NLRB after a majority of workers at the company's San Fransisco warehouse signed authorization cards. The filing of the ULP marks Teamsters first step in testing the NLRB's 2023 Cemex decision which, among other things, gave unions the power to organize a workforce without holding a formal election.

In *Cemex Construction Materials Pacific, LLC*, the NLRB established a new framework for evaluating employers' statutory obligations when faced with a union's claim to represent its employees. In doing so, the Board held that an employer violates the National Labor Relations Act ("NLRA") by refusing to recognize a union demonstrating support by a majority of employees in an appropriate unit unless the employer promptly files an RM Petition to lawfully test the union's majority support. An employer who neither seeks an election to contest the union's alleged majority support nor voluntarily recognizes the union within two weeks of receiving a demand for recognition potentially subjects itself to a NLRB-issued bargaining order requiring the employer to negotiate with the union without an election.

Teamsters allege that Amazon's failure to voluntarily recognize the union or timely file an RM Petition warrants the issuance of a bargaining order requiring Amazon to bargain with the union. Although the procedure employed by Teamsters permits the union to bypass procedural steps in order to quickly gain recognition and begin bargaining, Amazon's willingness to litigate in order to prevent the organization of its facilities makes it unlikely that Teamsters will be at the bargaining table anytime soon. In fact, less than a month before Teamsters filed their ULP, the Fifth Circuit Court of Appeals issued a stay halting NLRB proceedings against Amazon for its apparent refusal to bargain with workers at its Staten Island, New York Facility who voted to unionize 2022, based on Amazon's constitutional challenges to the NLRB's structure. Amazon may either launch similar constitutional challenges to halt bargaining at its San Fransisco warehouse or separately test the *Cemex* framework in federal court. Either way, it is incredibly unlikely that Teamsters will have a contract with Amazon in the near future.

As employers continue to monitor these developments, they should keep in mind that the outcome of the 2024 presidential election will likely result in seismic shifts in many areas of labor law. With a Republican controlled Senate and President-elect Donald Trump's ability to appoint new Board

members and General Counsel in the coming years, it is likely that we will not only see a dismantling of the *Cemex* framework, but also the rejection of other union-friendly precedent established during the Biden Administration.

For more information, please contact a member of Benesch's Labor & Employment Practice Group.

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