

Bodman PLC

November 18, 2024

### Beware of Union Organizing Pitfalls

By: Aaron Graves, Member/Chair and Cameron D. Ritsema, Senior Associate, Workplace Law Group

On October 14th, The National Labor Relations Board (“NLRB”) announced that the number of union organizing petitions filed from October 1, 2023 to September 30, 2024, more than doubled from the same period in 2021. Petitions were up nearly 30% from the same period in 2023.

**Why have Union Certification Petitions Increased?** A significant factor is the NLRB’s August 2023 *Cemex Construction Materials Pacific LLP* decision. *Cemex* shifted the burden of proving claims of support from unions to employers. Prior to *Cemex* the burden was on unions to prove majority status by filing union authorization cards signed by employees with the NLRB and then winning a majority of votes in a secret ballot election. There was no employer obligation to recognize a union based on union authorization cards.

Under *Cemex*, if a union shows the employer proof that a majority of employees wish to be represented by the union the employer is obligated to either: 1) recognize and bargain with the union; or 2) file a petition with the NLRB for a secret ballot election. Typically, unions will offer signed union authorization cards or a petition signed by employees as proof of majority status. Now, if the employer fails to voluntarily recognize the union or request an election within two (2) weeks from when the demand for recognition is made, the NLRB will presume that the union represents the employees and order the employer to recognize and begin bargaining with the union.

As a result, the number of employer-filed election petitions has skyrocketed over 2000% since the *Cemex* decision, explaining the increase in union election petitions.

Consider the incentive that *Cemex* has created. An employer could be caught unaware and ignore the Union’s showing of majority interest. If this occurs, the NLRB can and will order the employer to recognize and bargain even if the union’s proof of majority support was, ultimately, lacking. This seismic shift in the burden of proving majority support creates

an incentive for unions to present employers with proof of support they know is insufficient hoping that the employer will fail to take action, in which case the union will obtain recognition by NLRB order.

**Do not get caught in this trap.** If you are presented with purported evidence of majority support for a union, do not ignore it. Filing a petition with the NLRB may be the only way to avoid union recognition. Contact an experienced traditional labor attorney immediately and avoid the pitfall of union organization by NLRB order.

Please contact the authors or any member of [Bodman's Workplace Law Group](#) if you have questions regarding any of the information above. Bodman cannot respond to your questions or receive information from you without establishing an attorney-client relationship and clearing potential conflicts with other clients. Thank you for your patience and understanding.

<b>WORKPLACE LAW GROUP</b>	<b>AARON D. GRAVES   Chair</b> 313-392-1075 <a href="mailto:agraves@bodmanlaw.com">agraves@bodmanlaw.com</a>	<b>JOHN T. BELOW</b> 248-743-6035 <a href="mailto:jbelow@bodmanlaw.com">jbelow@bodmanlaw.com</a>	<b>JOHN C. CASHEN   Of Counsel</b> 248-743-6077 <a href="mailto:jcashen@bodmanlaw.com">jcashen@bodmanlaw.com</a>
	<b>MACKENZIE E. CLARK</b> 248-925-1926 <a href="mailto:mclark@bodmanlaw.com">mclark@bodmanlaw.com</a>	<b>AMANDA MCSWEEN EMPEY</b> 313-392-1056 <a href="mailto:aempey@bodmanlaw.com">aempey@bodmanlaw.com</a>	<b>GARY S. FEALK</b> 248-743-6060 <a href="mailto:gfealk@bodmanlaw.com">gfealk@bodmanlaw.com</a>
	<b>JOHN DAVID GARDINER</b> 616-205-3123 <a href="mailto:jgardiner@bodmanlaw.com">jgardiner@bodmanlaw.com</a>	<b>MICHELLE L. KOLKMEYER</b> 248-743-6031 <a href="mailto:mkolkmeyer@bodmanlaw.com">mkolkmeyer@bodmanlaw.com</a>	<b>KAREN L. PIPER   Of Counsel</b> 248-743-6025 <a href="mailto:kpiper@bodmanlaw.com">kpiper@bodmanlaw.com</a>
	<b>CAMERON D. RITSEMA</b> 616-205-4358 <a href="mailto:critsema@bodmanlaw.com">critsema@bodmanlaw.com</a>	<b>REBECCA C. SEGUIN-SKRABUCHA</b> 248-925-1936 <a href="mailto:rsequinskrabucha@bodmanlaw.com">rsequinskrabucha@bodmanlaw.com</a>	<b>MELISSA M. TETREAU</b> 248-743-6078 <a href="mailto:mtetreau@bodmanlaw.com">mtetreau@bodmanlaw.com</a>
	<b>DAVID B. WALTERS</b> 248-743-6052 <a href="mailto:dwalters@bodmanlaw.com">dwalters@bodmanlaw.com</a>		