Legal Update Article

Union Pulls Rug from Labor Board's Review of '8(f)/9(a)' Relationships

By Richard F. Vitarelli

December 18, 2018

Meet the Authors

Richard F. Vitarelli

Principal
860-331-1553
Richard.Vitarelli@jacksonlewis.com

Related Services

Construction
Labor Relations

The National Labor Relations Board (NLRB) has suspended briefing in a case on whether National Labor Relations Act (NLRA) Section 9(a) bargaining relationships in the construction industry may be established by contract language alone. The union that brought the underlying charge in the matter withdrew the charge.

NLRA Section 9(a) vs. Section 8(f)

Most collective bargaining agreements (CBAs) in the private sector are governed by NLRA Section 9(a), which generally requires that a majority of the employees in the bargaining unit supports having a union represent them. In the construction industry, however, CBAs are presumed to be covered by NLRA Section 8(f), which does not require a showing of majority support.

Whether a construction company and a labor union have a "9(a)" relationship or an "8(f)" relationship dictates whether the parties have a binding, ongoing relationship or one that is binding only as long as a valid CBA is in effect.

Under NLRA Section 8(f), an employer primarily engaged in the construction industry may enter into a collective bargaining relationship with a union before receiving proof of employees' desire to unionize. Because the union relationship does not depend on the employees' demonstration of majority support, the law only requires an 8(f) relationship to continue as long as a valid CBA remains in effect. The Board presumes that CBAs in the construction industry are governed by Section 8(f), unless and until a 9(a) relationship is proven.

Staunton Fuel

In 2001, the Board ruled in *Staunton Fuel & Material,* 335 NLRB 717 (2001), that the parties' contract language may be sufficient to prove and establish a binding 9(a) bargaining relationship.

Staunton Fuel thereby allowed unions to obtain a much more durable bargaining relationship than under Section 8(f), without actually having to organize the bargaining unit, or solicit or prove majority support. Under *Staunton,* a 9(a) relationship may be created by contract language reciting that the employer agrees to recognize the union as the 9(a) representative of its employees after the union having shown, or having offered to show, evidence of majority support.

Loshaw Thermal Technology

Showing its interest in reviewing the 17-year-old *Staunton Fuel* doctrine, on September 11, 2018, the NLRB invited briefs in *Loshaw Thermal Technology, LLC,* 05-CA-158650. The Board's decision in that case could have limited the 9(a) relationship to where employees' majority support for a union was actually obtained and proven. Briefs were due to be filed by October 26, 2018. But on October 5, 2018, the union in *Loshaw Thermal* asked to withdraw its charge. The Board suspended its invitation to file briefs just 10 days later, and formally rescinded the invitation on December 14.

For now, *Staunton* remains the law of the land.

Please contact your Jackson Lewis attorney if you have any questions on this or other development.

Focused on employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit https://www.jacksonlewis.com.