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ACCNJ LEGAL & INSURANCE UPDATE

NJ Supreme Court Rules That County Improvement Authorities Are Subject to Local Public Contracts Law

On April 28, 2022, the New Jersey Supreme Court ended litigation spanning over a year that raised questions about whether County Improvement Authorities ("CIA") are subject to Local Public Contracts Law ("LPCL") when acting as redevelopment entities under the Local Housing and Redevelopment Law ("Redevelopment Law"). The answer – they absolutely are. All six justices agreed on this point.

At issue was an $80 million project in Bergen to renovate the county's historic courthouse through a no-bid contract. The Bergen CIA was used as the vehicle to redevelop the properties. Bergen took the position that its CIA was soliciting redevelopers through the Redevelopment Law, which does not expressly require solicitation in accordance with LPCL. A Bergen taxpayer, along with a contractor that was passed up for the job, disagreed and filed suit claiming the Bergen CIA was required to solicit the project in accordance with LPCL. The Appellate Court agreed with the plaintiffs and the New Jersey Supreme Court affirmed.

Notably, the Court highlighted that the Redevelopment Law expressly allows an entity to "lease or convey property or improvements to any other party . . . **without public bidding**." However, when that same statute grants redevelopment entities the ability to "contract with public agencies or redevelopers for the planning, replanning, construction, or undertaking of any project or redevelopment work," similar language excluding the action

from public bidding is absent. Therefore, the Court found no basis for concluding that CIAs are somehow outside the purview of LPCL when acting as a redevelopment entity.

The ruling will presumably impact a Union County project that was procured using a process very similar to the one used in Bergen. Union's long-planned $123 million government complex was recently put on hold after an Appellate Court found the solicitation process suffered from the same legal deficiencies found in the Bergen case. While the Union County project was not referenced in the New Jersey Supreme Court opinion, it stands to reason that the Union project will now have to abide by LPCL.

NLRB General Counsel Continues Push to Expand Union Rights.

The General Counsel for the National Labor Relations Board ("NLRB" or "the Board"), Jennifer Abruzzo, continues her pursuit of pro-labor initiatives by seeking to reverse decades of NLRB precedent. The latest targets include (1) an employer's right to demand a secret ballot election in lieu of authorization cards, and (2) an employer's right to hold so-called "captive audience" meetings.

A. Union Recognition and Authorization Cards

Under existing legal precedent, an employer presented with an alleged majority of signed union authorization cards does not have to take them at face value and may insist on an election to determine whether a majority of the employees wish to be represented by the union. The current legal framework does not require the employer to question the validity of the cards.

The NRLB General Counsel would like to change this. On April 11, she filed a asking the NLRB to reinstate a legal standard that was rejected decades ago. Under the proposed standard, employers will be required to recognize the union if presented with signed authorization cards from a majority of workers. The employer would have to demonstrate a "good faith doubt" as to the union's majority status to avoid recognition based solely on the presented authorization cards. As mentioned, employers currently have the right to demand a secret ballot election as a matter of law and there is no requirement that they demonstrate "good faith doubt" as to majority status. The General Counsel's brief does little in terms of providing guidance as to what will constitute "good-faith doubt." If adopted, more employers will face demands that they bargain with a union even in absence of a secret ballot election.

B. Mandatory "Captive Audience" Meetings

Another hot-button issue for the General Counsel is mandatory employer meetings during union organizing campaigns. Currently, an employer is allowed to hold a mandatory meeting to discuss its view on unionization. Oftentimes these are referred to as "captive audience" meetings. Section 8(c) of the National Labor Relations Act explicitly allows employers to express their views about labor organizing, so long as there is no threat of reprisal or promise of benefits.

Once again, the General Counsel would like to change this legal standard. She argues that "captive audience" meetings should be prohibited because they "inherently involve a threat

of reprisal to employees for exercising the protected right to refrain from listening to such speech." This view is directly at odds with the NLRA and U.S. Supreme Court precedent. In *Chamber of Commerce of United States v. Brown*, 554 US 60 (2008), the Supreme Court stressed that the NLRA "favor[s] uninhibited, robust, and wide-open debate in labor disputes," and therefore, noncoercive speech about labor issues should not be restricted by regulation.

Despite this well-established legal principle, the General Counsel is asking the NLRB to make all mandatory meetings unlawful if they concern an employee's unionization rights. Under the General Counsel's new approach, employers would be required to state that any such meeting: (i) is entirely voluntary; (ii) employees are free to leave at any time if they choose to attend; (iii) non-attendance will not result in reprisals, including loss of pay for choosing not to attend if the meeting occurs during the employee's regular working hours; and (iv) attendance will not result in rewards or benefits. Additionally, the General Counsel would like to restrict an employer's right to inform employees about how the employer-employee relationship may change with union representation.

If adopted, it will significantly impact the way employers respond to union organizing campaigns. Mandatory meetings will no longer be permitted, and employers can expect more union scrutiny of statements made by the employer during organization efforts. This will provide more grounds to challenge election results that resulted in the employees remaining union-free.

We will of course keep members informed of the latest developments taking place with the NLRB.

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