



Pennsylvania Conference of Teamsters

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LEGISLATIVE ACTION ALERT

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NATIONAL LABOR
RELATIONS BOARD

Board Issues Decision Announcing New Framework for Union Representation Proceedings

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Today, the Board issued a decision in *Cemex Construction Materials Pacific, LLC* announcing a new framework for determining when employers are required to bargain with unions without a representation election. The new framework will both effectuate employees' right to bargain through representatives of their own choosing and improve the fairness and integrity of Board-conducted elections.

Under the new framework, when a union requests recognition on the basis that a majority of employees in an appropriate bargaining unit have designated the union as their representative, an employer must either recognize and bargain with the union or promptly file an RM petition seeking an election. However, if an employer who seeks an election commits any unfair labor practice that would require setting aside the election, the petition will be dismissed, and—rather than re-running the election—the Board will order the employer to recognize and bargain with the union.

The Board explained that the revised framework represents an effort to better effectuate employees' right to bargain through their chosen representative, while acknowledging that employers have the option to invoke the statutory provision allowing them to pursue a Board election. When employers pursue this option, the new standard will promote a fair election environment by more effectively

disincentivizing employers from committing unfair labor practices.

The new *Cemex* standard differs from the historical *Joy Silk* standard, which required an employer to bargain with a union unless it had a good-faith doubt of the union's majority status.

“Today's decision, along with the Board's recently issued Final Rule on Representation, will strengthen the Board's ability to provide workers across the country with a timely and fair process for seeking union representation,” said Chairman Lauren McFerran. “The *Cemex* decision reaffirms that elections are not the only appropriate path for seeking union representation, while also ensuring that, when elections take place, they occur in a fair election environment. Under *Cemex*, an employer is free to use the Board's election procedure, but is never free to abuse it—it's as simple as that.”

In *Cemex*, the Board found that the employer engaged in more than 20 instances of objectionable or unlawful misconduct during the critical period between the filing of the election petition and the election. Accordingly, the Board found that the employer was subject to a bargaining order under both the Supreme Court's decision in *NLRB v. Gissel Packing Co.* and under the newly announced standard, applied retroactively in this case.