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## NLRB Shifts Position on Successor Employers

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A recent decision by the National Labor Relations Board (NLRB), *Ridgewood Health Care Center, Inc. (Ridgewood)*, has changed how the Board will define a “perfectly clear successor” when evaluating whether an employer is bound by an existing collective bargaining agreement (CBA) after acquiring another business.

In a 3-1 decision, the Board held that the purchaser of a business was not a “perfectly clear successor” because it was not apparent that it would have hired all or substantially all of its predecessor’s unionized employees absent discriminatory animus.

Under Supreme Court precedent, the purchaser of a business generally has the right to set the initial terms of employment and may decline to adopt an existing CBA after the takeover. However, a “successor employer”—a purchaser who substantially continues its predecessor’s unionized business and hires a majority of the predecessor’s workforce—has an obligation to recognize and bargain with the existing union.

If a purchaser misleads the union into believing it will retain all or substantially all union employees under the terms of an existing CBA then refuses to retain them because of discriminatory animus, the employer is considered a “perfectly clear successor” and must adopt the existing CBA. A 1996 Board decision, *Galloway School Lines*, had extended this rule so a purchaser would be a “perfectly clear successor” where there was evidence that the union’s majority status would continue in the purchasing business. The Board’s *Ridgewood* opinion explicitly overruled *Galloway*.

In *Ridgewood*, the purchaser originally told the union employees that it planned on retaining “99.9%” of them and would keep their existing CBA. During the transition process, however, the purchaser made it clear it would not retain many of the union employees. Ultimately, it retained 49 employees, hired 52 new employees, and refused to recognize the union. Following the takeover, the purchaser’s president voiced her opinion that unions were unnecessary and the business might close if the union became the employees’ bargaining representative. She also threatened to fire an employee for recruiting non-union employees to support the union.

The Board—affirming the decision of administrative law judge—found that the employer’s refusal to hire four additional union employees demonstrated anti-union animus. Had the employer retained these employees, the union would have maintained a majority status among the employees, and the purchaser “would have been a successor employer obligated to bargain with the Union.” However, the Board also found the purchaser did not create uncertainty whether it would have hired all or substantially all of the predecessor’s unionized employees. As a result, while the purchaser was required to bargain with the union, it was not bound by the existing CBA as a “perfectly clear successor.”

Employers are encouraged to contact legal counsel with any questions regarding the Board’s decision and to ensure compliance with all provisions of the National Labor Relations Act.

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