



Labor & Employment Issues In Focus

Pitta LLP
For Clients and Friends
April 13, 2021 Edition



“All that serves labor serves the Nation. All that harms labor is treason to America. No line can be drawn between these two. If any man tells you he loves America, yet hates labor, he is a liar. If any man tells you he trusts America, yet fears labor, he is a fool. There is no America without labor, and to fleece the one is to rob the other.”

Abraham Lincoln

UNIONS DO NOT FIND A SWEET HOME IN ALABAMA

On April 9, 2021 the National Labor Relations Board (“NLRB”) completed the count in a union election at Amazon’s Bessemer, Alabama facility. A clear majority of Amazon employees voted against joining the Retail, Wholesale and Department Store Union (“RWDSU”) seeking to organize the first Amazon worksite in the United States.

Amazon, the country’s second-largest employer, has long been targeted by organized labor, especially as the company reaps record profits during the COVID-19 pandemic. RWDSU and its labor supporters were hopeful that the plant in Bessemer, Alabama would vote in favor of unionization as some of Amazon’s questionable employment practices and difficult working conditions came to light. In early April, the NLRB held that Amazon illegally fired two employees that were vocal critics of the safety conditions during the early days of the COVID-19 pandemic and Amazon’s record on climate practices. The NLRB reported that there have been at least 37 retaliation charges filed against Amazon with the agency across 20 cities since February 2020. The company has also received negative press for record profits while paying minimal taxes. Labor advocates were hopeful that they could capitalize on Amazon’s negative press, successfully organize workers in Alabama and set a precedent for other Amazon facilities and transportation hubs. President Joe Biden and other high-profile politicians such as Senator Bernie Sanders expressed support for the right of workers to choose unionization.

Amazon aggressively campaigned against the RWDSU’s efforts. Workers alleged that Amazon required them to attend multiple meetings during their shifts in which Amazon representatives expounded on why unions were not beneficial to workers. The company distributed anti-union buttons and stickers for workers to wear and created a website with the hashtag #DoItWithoutDues which highlighted that workers would have to pay the RWDSU \$500 in dues.

Amazon’s efforts proved successful. Out of the 3,041 ballots mailed in the union election, 1,798 workers voted against joining the RWDSU with only 738 voting in favor. Seventy-six ballots were voided and 505 ballots were challenged. The RWDSU has indicated that it will file objections to overturn the election and win a rerun, but given the numbers faces a difficult burden on both counts.

Despite the setback in Alabama, some labor supporters believe that the organizing drive shed useful light on Amazon's difficult working conditions and will eventually lead to success. RWDSU spokesperson Chelsea Connor said that the union has received over a thousand inquiries about organizing from Amazon workers at other facilities since the campaign in Alabama started. In contrast, reports from Bessemer Amazon workers were critical of what they regarded as union misinformation, reliance on outsiders and a lack of understanding of local issues and economics. Given the extent of the Alabama defeat, unions taking aim at Amazon should carefully consider whether their current tactics work for the workers.

NEW YORK STATE BUDGET INCLUDES FIRST OF ITS KIND RENEWABLE ENERGY JOB STANDARDS

Recognizing that renewable energy jobs are the jobs of the future, New York Building and Construction trades unions worked with the Legislature and Governor's office to establish a first in the nation "job standards" for renewable energy jobs, effective October 1, 2021.

The April 6 New York State Budget included pro-labor renewable energy job standards for construction, operation and maintenance jobs. The Budget also included "Buy American" requirements and incentives for supply chain manufacturing in New York.

The renewable energy jobs standards include a provision that requires either a prevailing wage for covered projects subject to New York State Department of Labor enforcement and oversight or a project labor agreement with a bona fide Local or State Building Trades Council.

The renewable job standards also include a labor peace requirement where owners will be required to have a labor peace agreement for operations and maintenance workers and a "Buy American" provision for steel and iron used in the construction project as well as a "Build New York" provision which creates a process by which the New York State Energy Research and Development Authority or other public entity is able to create a bidding process to incentivize New York State energy equipment and supplies.

As President Joe Biden and Congressional leaders focus on a national infrastructure bill that includes significant investment in renewable energy, these new New York job standards may prove critical to ensuring that employers hire local workers who receive a fair wage and benefits for their honest day's work.

BIDEN DEPARTMENT OF LABOR ENDS TRUMP ERA RULE LIMITING DOUBLE DAMAGES IN WAGE CASES

On April 9, 2021 the United States Department of Labor ("DOL") announced that it will increase its use of liquidated damages, doubling the amount of back pay an employer owes when the DOL enforces wage laws. This is a reversal of a Trump-era policy that limited the application of liquidated damages as punitive tool against bad employers.

Last year, the Trump DOL issued guidance curtailing the use of liquidated damages at pre-litigation settlements. The Trump DOL directed investigators to only assess liquidated damages when there was clear evidence of bad faith and unwillingness on the employer's part or if there was a history of violations. The Trump DOL also required approval from the Wage and Hour Division Administrator and the DOL solicitor's office.

The DOL's Wage and Hour Division has now revoked the Trump-era policy, effective immediately. Investigators will again have greater discretion when seeking liquidated damages in settlements for unpaid wages or overtime. Underscoring the return of local discretion, the DOL now only requires approval from a regional solicitor or a person that the local solicitor designates.

BIDEN NOMINATES NEW HEAD TO LEAD OSHA

President Joe Biden has nominated Doug Parker to lead the Occupational Safety and Health Administration ("OSHA"). Parker is currently serving as the chief of the California Division of Occupational Safety and Health. Parker served in the Obama Administration as the deputy assistant secretary for policy at the United States Department of Labor's Mine Safety and Health Administration. If confirmed by the United States Senate, Parker would be the first Senate-confirmed head of OSHA since David Michaels stepped down in January 2017.

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