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LAS VEGAS CASINO'S AGGRESSIVE ANTI-UNION CAMPAIGN RESULTS IN FIRST CEMEX BARGAINING ORDER

As previously reported in *In Focus*, in August 2023 in the National Labor Relations Board (“NLRB” or “Board”) established a new framework for issuing bargaining orders to employers that violate labor laws in a case called *Cemex Construction Materials Pacific, LLC*, 372 N.L.R.B. No. 130 (Aug. 25, 2023). Now, the Board has issued its first *Cemex* bargaining order since setting that precedent.

In *Red Rock Casino Resort Spa*, 373 NLRB No. 67 (June 17, 2024), the Board upheld an Administrative Law Judge’s decision finding that Red Rock Casino and Spa committed “hallmark” violations of labor law in direct response to an organizing campaign launched in 2018 by Unite Here. The Company made promises and implemented new benefits to dissuade employees from joining the Union, it threatened to withhold benefits if employees elected the Union, it warned that electing a Union would be futile, and it failed to rehire a laid off employee who was a union organizer. Among the most egregious violations was the Casino’s promises to employees that they would be receiving new benefits, including free healthcare and increased 401(k) contributions. The ALJ determined, and the Board agreed, that these benefits and others, which were part of a “Strategic Plan” that was fast-tracked, developed, and announced in the weeks leading up to the election, were clearly intended to undermine the Union organizing campaign. A few days before the election, the Casino also served steaks in the employee dining room with “Vote No” branded into them.

The ALJ determined that the Casino’s behavior warranted an affirmative bargaining order under *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). In *Gissel*, the Supreme Court of the United States held that where a union has achieved a majority during a union organizing campaign, and an employer has engaged in unfair labor practices having “the tendency to undermine majority strength and impede the election processes,” the Board “should issue” an order for the respondent to bargain with the union without an election if the “possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) . . . is slight and that the employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order.” However, the Board found a second bargaining order appropriate under *Cemex*, which was issued after the ALJ had rendered his decision in *Red Rock*. Under *Cemex*, employers must recognize a union upon a showing of majority support or file a petition for an election within two weeks. Failure to meet that deadline triggers the order to

recognize and bargain. Thus, while *Gissel* bargaining orders focus on the impact of employer conduct on a future election, *Cemex* bargaining orders focus on employer conduct after a demand is made and a petition is filed.

Here, the Union filed its election petition on November 22, 2019, with a majority of the unit having designated Unite Here as their bargaining representative by October 16, 2019. In addition to committing the above-mentioned unfair labor practices, the Casino clearly refused to bargain with the Union after the Union had demonstrated a majority. Accordingly, the Casino's conduct warranted two distinct bargaining orders. Consequently, the Casino has been saddled with a broad cease-and-desist order; must recognize and bargain with the Union; and must provide employees with explanations of their rights.

COURT BLOCKS PARTS OF THE DOL'S EXTENSION OF PREVAILING WAGE RULE TO TRUCK DRIVERS AND TRUCK COMPANIES

On June 24, 2024, Judge Sam Cummings of the United States District Court, Northern District of Texas ("Court") issued a preliminary injunction blocking parts of the Department of Labor's ("DOL") "Updated the Davis-Bacon Act and Related Acts Regulations" ("Final Rule"). The case is *Associated General Contractors of America et al. v. DOL et al.*, Case No. 5:23-CV-0272-C (N.D.T.X. June 26, 2024).

The Davis-Bacon Act ("DBA") sets prevailing wages that contractors must pay workers on federal construction projects. The Final Rule made several changes including giving prevailing wage standards the "operation of law" meaning prevailing wage standards apply, even if a federal contract does not mention them. Additionally, the Final Rule extended the DBA's definition of "mechanics and laborers" to include truck drivers who make deliveries to work sites. The Associated General Contractors of America ("AGC"), among others, sued to block the truck driver and "operation of law" provisions.

Judge Cummings found that the Final Rule likely went beyond the DOL's authority when it expanded the meaning of "mechanics and laborers" to truck drivers. According to the Judge, "mechanics and laborers" is clear and unambiguous as used in the DBA, and extending the definitions to cover truck drivers ignores the statutory language. Additionally, the Court found that the "operation of law" provisions, reading the DBA into contracts where there is no explicit DBA provision, went beyond the authority Congress gave the DOL in the DBA. As such the truck drivers and "operation of law" provisions of the Final Rule are blocked nationwide.

STRATEGIC ALLIANCE: THE TEAMSTERS-AMAZON LABOR UNION MERGER SHAPES THE FUTURE OF LABOR

In April 2021, amidst a global pandemic, a group of determined workers at Amazon's JFK8 warehouse in Staten Island, New York, galvanized by dissatisfaction with Amazon's COVID-19 safety policies, formed the Amazon Labor Union (ALU). This grassroots initiative quickly gained momentum, leading to a surprising victory when they won the right to represent approximately 8,000 workers. Despite this early success, the union faced significant hurdles, including internal conflicts and a lack of resources, which hampered its ability to secure a collective bargaining agreement and replicate its success at other Amazon facilities.

Recognizing the need for stronger support and broader influence, the ALU members recently voted overwhelmingly in favor of merging with the International Brotherhood of Teamsters ("IBT"), a seasoned union with extensive resources and political clout. This strategic merger, ratified by over 98% of ALU members, aims to fortify the union's position against Amazon's formidable anti-union tactics and extend its influence across the sprawling logistics network of the retail giant.

The Memorandum of Agreement ("MOA") between the IBT and the ALU meticulously outlines the terms of their affiliation. Key aspects of the agreement include that the ALU is chartered as the autonomous Local 1 of the IBT, covering all Amazon warehouse employees within New York City's five boroughs. This allows the ALU to maintain its identity while benefiting from the Teamsters' organizational structure and resources. The agreement also facilitates the creation of additional ALU-IBT locals as more Amazon workers unionize. The IBT commits to providing ALU-IBT Local 1 with financial, organizing, strategic, and legal support. This support is critical as the local works towards securing its first contract with Amazon. The MOA requires ALU-IBT Local 1 to adjust its organizational structure to comply with the IBT Constitution within six months, ensuring proper governance practices are in place.

The merger's timing is particularly significant, unfolding during a presidential election year when labor rights and corporate accountability are hot-button issues. The Teamsters' involvement brings not only logistical and financial support to the ALU but also considerable political influence that could shape policy discussions at the national level. This strategic alliance could serve as a catalyst for broader labor reforms, especially in sectors dominated by a few powerful corporations like Amazon.

However, challenges remain. Amazon has utilized every opportunity provided by the National Labor Relations Act's framework to delay negotiations. The Teamsters' deep experience with NLRB procedures and their political leverage could prove crucial in

moving these negotiations forward. Moreover, the integration of the ALU's grassroots approach with the Teamsters' more structured organization requires careful management to avoid internal conflicts and ensure cohesive strategies.

This merger marks a new chapter in labor organizing at Amazon, potentially influencing the broader narrative around worker rights and corporate accountability in the United States. As the presidential election approaches, this union alliance not only underscores the resilience of labor movements but also highlights their evolving strategies in the face of growing corporate power. Whether this partnership will lead to significant changes at Amazon remains to be seen, but it undoubtedly positions the labor movement as a key player in the ongoing dialogue about the future of work in America.