

NLRB Upholds “Successor Bar Doctrine,” Citing Labor Market Volatility

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On June 28, 2022, the National Labor Relations Board (“NLRB”) voted to uphold the so-called “successor bar doctrine” in [Hospital Menonita de Guyama, Inc.](#) This doctrine provides incumbent unions with an irrebuttable presumption of majority support for at least six months after a change in employer ownership. Incumbent unions enjoy this irrebuttable presumption even if, as in Hospital Menonita, the employer claims it can provide objective evidence that the union has lost majority support.

The majority opinion cited the increasing volume of mergers and acquisitions in the contemporary economic landscape as supporting the successor bar doctrine, finding that failing to retain incumbent unions in the wake of increasingly frequent changes in company ownership would increase volatility and litigation in the labor market.

The dissenting opinion proposed that the NLRB return to the pre-2011 approach to changes in company ownership, in which the incumbent union had only a rebuttable presumption of majority support. The dissent also disagreed with the majority’s assertion that the successor bar would reduce labor volatility, arguing instead that forcing employees who no longer support a union to remain represented by that union would result in more, not less, instability in labor relations.

Takeaways

The successor bar doctrine is hardly a bedrock principle of labor law but rather an area where the NLRB has gone back and forth on the rebuttable vs. irrebuttable presumption issue over the years. Despite this lack of stability, employers who acquire companies with a represented workforce should take care for the first six months post-acquisition to deal with any incumbent union as if it had proof of majority support.

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