



Insights: Alerts

NLRB Holds That Hiring Permanent Strike Replacements Can Constitute an Unfair Labor Practice

June 10, 2016

Written by John W. Alden,

The National Labor Relations Board (“NLRB”) and the courts have long recognized an employer’s right to hire permanent replacements for economic strikers. Permanent replacements have traditionally been viewed as an employer’s ultimate economic weapon against a union’s ultimate economic weapon – the strike. An employer’s motive in hiring permanent strike replacements was deemed irrelevant except in the rare situation in which it could be shown that the employer acted based on an independent unlawful reason unrelated to the strike or collective bargaining. Recently, in a stunning reversal of more than half a century of precedent, the NLRB held in *American Baptist Homes of the West* that an employer will violate the National Labor Relations Act if it hires permanent strike replacements for the purpose of discriminating against employees for conduct protected by that law or for the purpose of discouraging future protected union-related conduct, even when the employer’s purpose is directly related to the underlying strike or the collective-bargaining relationship. In its decision, the NLRB found that the employer had committed an unfair labor practice by hiring permanent replacements for economic strikers based on a desire to “avoid any future strikes” and to “teach the strikers and the Union a lesson.”

Although the *American Baptist Homes of the West* decision does not make the hiring of permanent replacements for economic strikers a *per se* violation of the National Labor Relations Act, it does make employers who hire such replacements vulnerable to unfair labor practice charges. Employers who choose to hire permanent replacements for economic strikers should be prepared to show a legitimate business reason for doing so and must take care to avoid making any statements indicating that permanent replacements were hired because of union animus or because the employer wanted to retaliate against striking employees or to discourage employees from engaging in protected concerted activity in the future.

If you would like more information about this significant decision, please contact any of the attorneys listed below.

John W. Alden

Partner

t +1 404.815.6058

Jalden@kilpatricktownsend.com

Randall D. Avram

Partner

t +1 919.420.1812

RAvram@kilpatricktownsend.com

Charles E. Feuss

Counsel

t +1 919.420.1725

CFeuss@kilpatricktownsend.com

Related People



John W. Alden

t 404.815.6058

jalden@ktslaw.com