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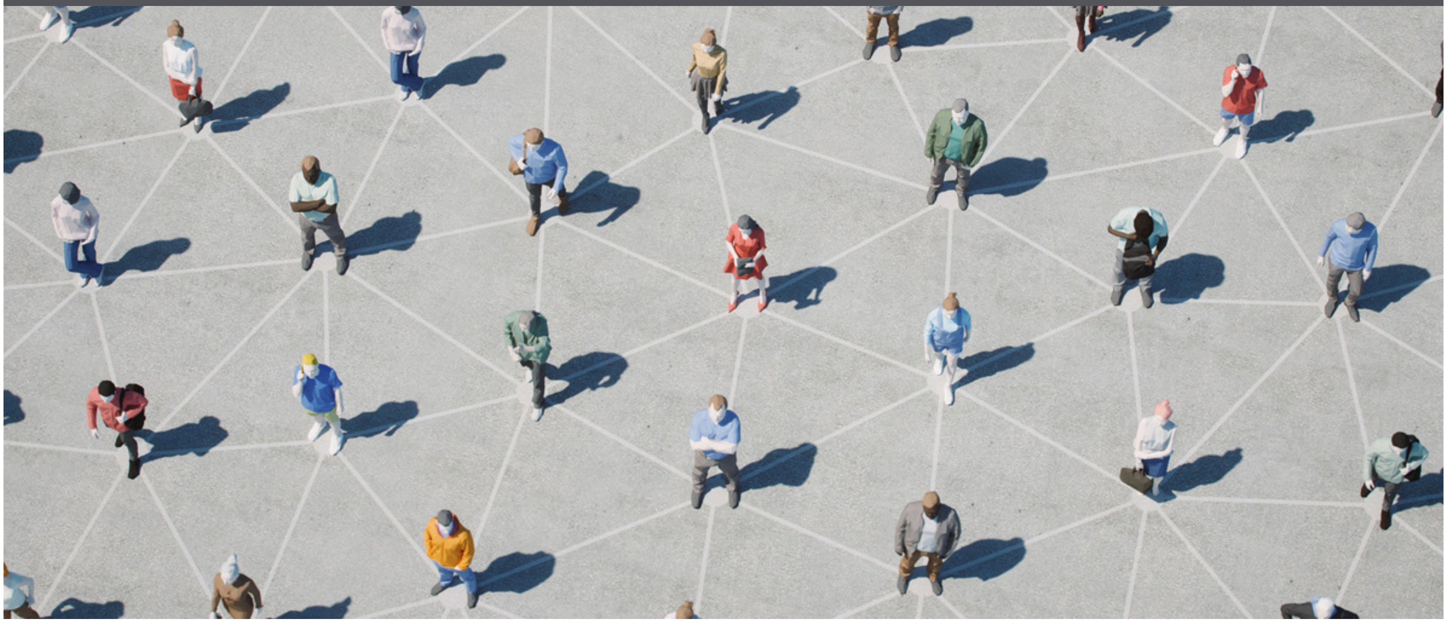

JULY 24, 2026

D.C. Circuit Rejects NLRB "Successor Bar" for Unionized Business Acquisitions

The D.C. Circuit has invalidated the National Labor Relations Board's ("NLRB") "successor bar," a rule that required a new owner of a unionized business to recognize and bargain with the incumbent union for up to one year after the ownership change before employees could challenge the union's status. When an employer acquires a predecessor's business, it is required to recognize the incumbent union if a majority of the successor's workforce is made up of employees from its predecessor. The court held that the successor bar rule conflicts with the National Labor Relations Act because it blocks employees, employers, and rival unions from testing whether the incumbent union still represents a majority of employees.

BACKGROUND

The employer, Hospital Menonita de Guayama ("Hospital"), acquired another hospital in 2017 where employees had long been represented by a union in five separate bargaining units. Hospital set initial terms, hired a majority of the unionized employees, and recognized the union. Over the course of five months following this initial recognition, Hospital received evidence that a majority of employees in each unit rejected the union as their representative. An employer may not solicit this sort of evidence, which must be presented by the unionized employees themselves. After Hospital refused to bargain and informed the union it would no longer recognize it as the employee's designated representative, the NLRB found unfair labor practices and ordered Hospital to recognize and bargain with the union. The Supreme Court later vacated the D.C. Circuit's initial decision upholding the successor bar and remanded for reconsideration after *Loper Bright Enterprises v. Raimondo*, which overruled *Chevron* deference.

WHAT THE D.C. CIRCUIT HELD

On remand, the D.C. Circuit held that it had to decide independently whether the NLRB had statutory authority to impose the successor bar. Applying that standard, the court concluded that the successor bar violates the National Labor Relations Act because it can require an employer to bargain with a union that it knows lacks majority employee support. The court emphasized that employees have the right to choose whether to bargain collectively and that an exclusive bargaining representative must be supported by a majority of employees in the unit.

The court rejected the NLRB's argument that the rule was justified by labor stability or administrative efficiency. In the court's view, broad policy goals cannot override the Act's specific protections for employee choice and majority rule. The court granted the hospital's petition, denied enforcement of the NLRB's order, and held that the hospital was entitled to present evidence that the union lacked majority support.

BUSINESS IMPLICATIONS

The immediate practical effect is that successor employers may have a stronger basis to challenge an incumbent union's representative status when there is reliable evidence that the union lacks majority employee support, which must originate with the workforce and cannot be solicited by employers. In the past, employers presented with such evidence were obligated to ignore it and continue to recognize the union during the successor bar period which lasted up to one year. Now, following a qualifying acquisition, whenever employees present a successor employer with evidence that a majority of the unionized employees no longer wish to be represented, the successor employer may take steps to remove the union. Businesses should not read the decision as eliminating all bargaining obligations after an acquisition.

Every employer can appeal an adverse NLRB ruling to the D.C. Circuit. Therefore, *Hospital Menonita de Guayama v. NLRB* is a case with national implications. Companies should also expect continued uncertainty. The D.C. Circuit's opinion may be appealed and the NLRB may continue to apply its traditional successor bar doctrine in other cases that come before it.

For more information or assistance, please contact Daniel J. Sobol, Brandon S. Shemtob, David G. Rodriguez, or another member of Blank Rome's Labor & Employment group.

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