

Right to Refuse to Bargain Over Union's COVID-19 Proposal in Collective Bargaining Agreement?

By Brian P. Lundgren

September 18, 2020

Construction employers should remain mindful of the terms of their collective bargaining agreements and their obligations under the National Labor Relations Act, the National Labor Relations Board (NLRB) Division of Advice reminded employers in five COVID-19 Advice emails as construction continues and resumes during the COVID-19 pandemic.

One Division of Advice email [addressed the obligation to bargain over union COVID-19 proposals](#). The Division of Advice concluded that a ready-mix concrete employer could lawfully refuse to bargain over a union proposal for paid sick leave and hazard pay during the COVID-19 pandemic. The Division of Advice noted that a party to a collective bargaining agreement need not bargain over issues covered by the contract during the life of the agreement.

Even if the provisions of the collective bargaining agreement did not specifically cover the issues proposed by the union, the Division of Advice reasoned that a clear, unambiguous "zipper" clause in the agreement may relieve the employer of the obligation to bargain over the proposals. A zipper clause in a collective bargaining agreement typically provides that the parties agree that all matters considered by them to be proper subjects for bargaining are already included in the agreement, and that during the term of the agreement, no further or other matters are subject to additional bargaining.

The Division of Advice cautioned, however, that a union was not permanently precluded from bargaining over the COVID-19 issues because, prior to expiration of the agreement, the union could reopen the agreement for bargaining by serving the contractually required notice upon the employer.

Thus, before acceding to a union request to bargain COVID-19 proposals during an existing labor agreement, employers should fully analyze the pertinent sections of the collective bargaining agreement. This includes analysis of whether the employer may decline to bargain COVID-19 proposals because any such obligation is eliminated by the issues already addressed in the agreement, by the management rights clause, or by a clear and unambiguous zipper clause.

If you have questions or need assistance, please reach out to the Jackson Lewis attorney with whom you regularly work, or any member of our [COVID-19 Team](#).

©2020 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 950+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.

Meet the Author



Brian P. Lundgren

Principal
Seattle 206-626-6424
Email

©2020 Jackson Lewis P.C. All rights reserved. Attorney Advertising. Prior results do not guarantee a similar outcome. No client-lawyer relationship has been established by the posting or viewing of information on this website.

*The National Operations Center serves as the firm's central administration hub and houses the firm's Facilities, Finance, Human Resources and Technology departments.