



# HR & BENEFITS UPDATE

## **NLRB To Review, Invites Briefs In Cases Involving Voluntary Recognition Agreements & Successor Employers**

*August 31, 2010*

A newly constituted National Labor Relations Board in a narrow 3-to-2 vote has granted review and is inviting interested parties to file briefs in two sets of cases that question when a labor union's support among employees can be challenged.

In one set of cases, Rite Aid Store #6473 and Lamons Gasket Co., the newly-constituted Board will reconsider the Board's 2007 holding in *Dana Corp.*, 351 NLRB 434 that an employer that agrees to voluntarily recognize a union based on signed authorization cards must post a notice advising the employees that they have a right, within 45 days of the notice, to file a petition for an election to decertify the union or in support of a rival union, if they so desire. If the notice is not posted, the union and employer may not later claim that their contract bars a petition by a rival union or for decertification.

In the second set of cases, UGL-UNICCO Service Company and Grocery Haulers, Inc., the Board is set to reconsider the Board's previous decisions regarding a successor employer's obligations toward an incumbent union. In its 2002 decision in *MV Transportation*, 337 NLRB 770, the Board ruled that the obligation of a successor employer – one that takes over its predecessor's business and hires primarily from its workforce – to recognize and bargain can be challenged by the employer, employees, or a rival union. The *MV Transportation* decision in turn reversed the Board's 1999 decision in *St. Elizabeth Manor, Inc.* 329 NLRB 341, which held that an incumbent union is entitled to a reasonable period of time for bargaining without challenge to its status. This was known as the "successor bar doctrine."

The invitations to file briefs, with questions to be addressed by briefing parties, can be found [here](#) and [here](#).

The decisions made by the Board could have significant impacts on the responsibilities of employers to recognize and deal with unions. Employers and others concerned with labor-management relations should monitor, and if appropriate, consider sharing their perspective through a timely submitted brief in these matters.

### **For Assistance or More Information**

If your organization needs assistance reviewing or responding to the request for comments or otherwise dealing with *ujug* or other human resources compliance concerns, please contact the author of this update, Board Certified Labor & Employment attorney Cynthia Marcotte Stamer at (469) 767-8872 or via e-mail [here](#).

Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization, Ms. Stamer has more than 23 years experience advising employers and others about *ujug* and other labor and employment, employee benefits, compensation and other workforce compliance, risk management and defense matters. She continuously advises employers about these and other related regulatory compliance, workforce management, operational, public policy, enforcement, litigation and risk management and other concerns. Ms. Stamer also publishes, conducts client and other training, speaks and consults extensively on these and other *rdqt"cpf"go r mq{o gpv"cpf "*

concerns and practices. She regularly speaks and conducts training for the ABA, American Health Lawyers Association, Institute of Internal Auditors, and many other organizations. Her insights on these and related topics have appeared in Atlantic Information Service, Bureau of National Affairs, World At Work, The Wall Street Journal, Business Insurance, Managed Healthcare, Health Leaders, various ABA publications and a many other national and local publications. To contact Ms. Stamer or for additional information about Ms. Stamer, her experience, involvements, programs or Publishers of her many highly regarded writings on health industry and human resources matters include the Bureau of National Affairs, Aspen Publishers, ABA, AHLA, Aspen Publishers, Schneider Publications, Spencer Publications, World At Work, SHRM, HCCA, State Bar of Texas, Business Insurance, James Publishing and many others. You can review other highlights of Ms. Stamer's experience [here](#).

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