

NLRB Restricts Employers' Right To Hire Permanent Replacements For Strikers

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07.14.2016

For decades, employers have lawfully used the threat of permanent replacements as a weapon against strikers. On May 31, 2016, however, in an unprecedented decision, the National Labor Relations Board (NLRB) ruled that an employer violated the National Labor Relations Act (NLRA) when it hired permanent replacements for striking workers because the employer was motivated by an “independent unlawful purpose.” The employer stated to the union that it hired permanent replacements because it “wanted to avoid any future strikes” and because it assumed that the permanent replacements would be willing to work in the event of another strike and the employer wanted to avoid the cost of hiring temporary employees again in the future. The dissenting Board Member’s opinion stated, “under the majority’s decision today, if the employer hires permanent replacements, it appears that any evidence of antistrike animus will render unlawful the employer’s actions, resulting in potentially debilitating backpay liability.” In a footnote within the decision, the NLRB noted that “an employer is not required to articulate a reason for permanently replacing economic strikers.” This decision may, in fact, lead to employer reluctance to provide any detail regarding its motives. In light of this decision, employers should consult with counsel to discuss available options if faced with a strike, as well as the communication of its reasons for electing to replace strikers.

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