

# PUBLICATION

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## Recent Union Organizing Efforts and What Employers Can Do

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During his campaign, President Biden promised to support organized labor, and he continues to act on that promise. In April 2021, President Biden issued an Executive Order creating a White House task force to develop strategies for the federal government to encourage workers to organize and bargain collectively. President Biden has made his position regarding unionization clear when he stated, "The middle class built the country. And unions built the middle class." He has also called on Congress to pass the Protect the Right to Organize Act (PRO Act) which would drastically expand the current National Labor Relations Act (NLRA) in favor of unions. You can read more about the PRO Act in a recent Baker Donelson article [here](#). In this alert, we review what these efforts may mean for employers.

### Increase in Union Organizing Efforts

Perhaps emboldened by strong and vocal support from the White House, unions are increasing their organizing efforts. The high-profile campaign at Amazon's Bessemer, Alabama distribution facility is just one example of union drives taking place across the country. The Biden administration demonstrated its support for the Retail, Wholesale, and Department Store Union (RWDSU) in this union election by sending a Congressional delegation to the Bessemer facility in March 2021. While the RWDSU failed to secure enough votes to organize employees at the Bessemer facility, the union challenged the election and the National Labor Relations Board (NLRB) held a hearing regarding this dispute in May 2021. The NLRB has not yet ruled on the challenges raised by the RWDSU, but the NLRB hearing officer has recommended overturning the election results and holding another election. This recommendation will be reviewed by an NLRB regional director. If the regional director adopts the recommendation, Amazon will have the opportunity to seek review of the decision by an NLRB panel. You can read more about the union election at Amazon's Bessemer facility in a Baker Donelson article [here](#).

In addition, in June, the NLRB approved a union election at Nissan's car manufacturing plant in Smyrna, Tennessee. The International Association of Machinists and Aerospace Workers (IAM) filed a petition to the NLRB seeking a union election limited to unit of a mere 87 tool and die technicians. However, the NLRB determined that these 87 employees share an "overwhelming community of interest" with the plant's other production and maintenance workers and all such workers could vote in the union election. The NLRB approved the election to include approximately 4,300 production and maintenance workers at Nissan's Smyrna facility. Voting was scheduled to begin in early July, but on June 24, 2021, IAM sought review of the NLRB's direction for an expanded election. This request for review is still pending.

### President Biden's Nominations to the NLRB

President Biden nominated two union side attorneys to fill seats on the five-member NLRB, David Prouty and Gwynne Wilcox. Mr. Prouty and Ms. Wilcox were recently confirmed by the U.S. Senate. This shifts the NLRB to a Democratic majority and will likely result in a reversion to Obama-era rules. For example, the Democratic NLRB could and likely will revert to allowing unions to organize micro-units, which is exactly what IAM sought to do at Nissan's Smyrna facility. We anticipate that the Democratic NLRB will also return to "quickie election" rules or something similar, making organizing easier for unions because the time between the petition for a union vote and the election itself could be as short as 23 days. Such a quick turnaround can prevent the employer from reasonably responding to the petition.

## **Employers Should Watch for Signs of Union Organizing Activity**

Most employers regularly face issues that adversely affect employee morale. Employers should preemptively evaluate areas where such issues can arise in order to stave off serious concerns that might generate organizing interest. Acting to provide competitive pay and benefits, safe and comfortable workplace conditions, fair workplace policies, and encouraging employee satisfaction and engagement can prevent these workplace issues. Moreover, addressing such issues through attentive management, open lines of communication, and a willingness to adapt when issues do arise can go a long way to improve workplace culture and hopefully curb concerns before things reach the point of a union election petition.

However, with the Biden Administration's full force efforts to support labor organizations, a Democratic NLRB, and the expected shift toward Obama-era election rules, organizing activity will continue to be on the rise. Thus, employers should stay alert to signs that a union election might be on the horizon such as employees gathering and excluding of managers or employees using union buzz words more frequently such as "seniority," "representation," "bumping," or "grievance." Employers should take a proactive approach and have a response plan in place prior to seeing signs of union organizing. If you do not have such a plan in place and see signs of union activity, promptly contact experienced counsel to understand your obligations and options for responding to such organizing efforts.

As always, if you would like to discuss any of these issues or if you have any questions, please contact one of the authors or any member of Baker Donelson's [Labor & Employment Team](#).