

## AUTO MANUFACTURER PAYS OVER \$20 MILLION TO SETTLE UNION DISPUTE

Insights

Nov 2, 2017

The National Labor Relations Board (NLRB) recently announced that it negotiated a \$21.6 million settlement on behalf of the International Brotherhood of Teamsters to settle allegations that VIUSA, Inc. refused to hire a group of Teamster-represented workers at the Ford Motor Company assembly plant in Louisville, Kentucky. According to the October 30 announcement, the NLRB will distribute about \$14.4 million in backpay to about 257 workers as payment for VIUSA's allegedly "casting aside" Teamsters Local 89 employees in favor of United Auto Workers (UAW) employees at lower wages. The remaining \$7.2 million will go to the Teamsters Central States Pension Fund to compensate for missed benefit contributions.

The NLRB's announcement signals the end of a lengthy battle in which the Teamsters claimed its members were passed over to save money on cheaper labor. It should send a strong signal to all automotive manufacturers to tread lightly when it comes to successorship situations, especially if there is a unionized presence.

### SUCCESSORSHIP SITUATION LEADS TO LABOR CHARGES

The Teamsters had represented the Ford plant's yard employees – those responsible for transporting finished vehicles from the plant to a staging area where they were sent away by rail or truck – since the 1950s. In 2010, however, when the Ford plant closed briefly to prepare to assemble the Ford Escape, it began laying off the Teamsters yard workers.

### Related People



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At that time, the vehicle processing work for Ford's Louisville Assembly Plant was performed by Auto Handling, Inc., whose employees had been represented by the Teamsters. In order to underbid Auto Handling, VIUSA, formerly known as Voith Industrial Services Inc., informed Ford that its workforce would be represented by the UAW and based its projected labor costs on the UAW tier 2 wage scale. The UAW scale was far below the scale for the Teamsters. Not surprisingly, Ford awarded the contract to VIUSA.

In August 2012, Teamsters Local 89 filed a complaint with the NLRB's Region 9 Office in Cincinnati. The complaint alleged, among other things, that "the Employer violated the National Labor Relations Act (NLRA) by refusing to hire Teamster-represented employees, recognizing the United Auto Workers as a minority union, refusing to recognize and bargain with Teamsters Local 89, and unilaterally establishing terms and conditions of employment for the employees that it did hire."

## **LABOR BOARD DROPS THE HAMMER ON EMPLOYER**

On February 17, 2016, the NLRB issued an order finding VIUSA violated the NLRA by committing a number of violations. The most serious findings were that the employer: (1) entered into an unlawful scheme enabling it to underbid other contractors seeking to provide vehicle processing work for Ford; (2) unlawfully attempted to avoid becoming a legal "successor" by refusing to hire 85 Teamsters-represented applicants who previously worked for its predecessor; (3) refused to hire predecessor employees because it believed they engaged in concerted activities; (4) refused to recognize and bargain with the Teamsters; (5) acted unlawfully by setting initial terms and conditions of employment without first giving the Teamsters notice and an opportunity to bargain about those changes; (6) unilaterally entered in a subcontracting agreement with a staffing company; and (7) rendered assistance and support to the UAW.

The Board determined that reinstatement and backpay remedies should be awarded to all 166 employees on Auto Handling's seniority list, not just the 85 employees listed in the complaint. Voith was also ordered to make whole any employee whose hiring was delayed on account of the discriminatory hiring scheme.

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VIUSA then petitioned the decision to the 6th Circuit Court of Appeals in Cincinnati. Thereafter, a federal appeals court mediator assisted the NLRB, VIUSA, and the Teamsters Local 89 with settlement negotiations. These settlement negotiations resulted in the approval of the aforementioned settlement terms which were announced on October 30.

## **WHAT LESSONS CAN BE LEARNED?**

You should always be mindful of successorship obligations. This most often occurs in the context of the sale of a business or contract rebidding. In this case, for instance, Auto Handling had a contract with Ford, and Ford subsequently awarded the contract to VIUSA in 2012. In such cases, the new employer must recognize and bargain with the predecessor's union if there is sufficient business continuity and if a majority of the successor's workforce consists of represented employees who were previously employed by the predecessor.

Even if the new employer is considered a legal "successor" obligated to recognize and bargain with the union, the Supreme Court has held it has the right to unilaterally set different initial employment terms, and is not required to adopt the predecessor's collective-bargaining agreement. But if the new employer engages in antiunion discrimination during hiring to avoid having a work force majority in an effort to defeat "successor" obligations, this violates the NLRA, and the Board will require the successor to recognize and bargain with the union. You should be mindful of these and many other issues that may arise in the context of successorship.

If you have any questions about this development or how it may affect your business, please contact any member of our [Automotive Manufacturing Practice Group](#), or your regular Fisher Phillips attorney.

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*This Legal Alert provides an overview of a specific federal labor settlement. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*