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**KENNETH W. COOPER**  
International President

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International  
Secretary-Treasurer

October 5, 2023

**VIA EMAIL**

TO: All IBEW Local Union Business Managers in the United States

**Re: Important Organizing Decision Issued by NLRB**

Dear Sisters and Brothers:

The National Labor Relations Board recently issued a major decision in *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 (2023), which will have a significant impact on organizing. The purpose of this letter is to provide local unions with insights and recommendations on how to use *Cemex* as a tool in organizing campaigns.

Under the new *Cemex* standard, when a union requests that an employer recognize and bargain with the union in an appropriate bargaining unit and shows or offers to show that the union has majority support of the employees in that unit (based on cards, etc.), the employer has two choices. The employer must either (1) recognize and bargain with the union, or (2) file a petition for an election (RM petition) within two weeks, unless the union has already filed a petition for an election.

If the employer does not recognize and bargain with the union, and does not file an RM petition, then it commits an unfair labor practice, and the Board will order the employer to recognize and bargain with the union. The unfair labor practice, however, will have to be litigated and take time. Local unions may want to move ahead and file for an election without waiting to see whether the employer seeks an election.

If an election is held because the union or employer filed a petition for an election, *Cemex* helps ensure that the election will either be a fair one, or the employer will have to recognize and bargain with the union. That is because if the employer commits an unfair labor practice during the election campaign that requires the election to be set aside, the Board will order the employer to recognize and bargain with the union. The Board will not order a re-run election. Attached is a chart from the NLRB that shows how a bargaining order could issue under the new *Cemex* standard.

There are still some unanswered questions about how the NLRB will apply this new standard moving forward. My office will provide further instruction as necessary if and when the NLRB's General Counsel issues guidance implementing the new *Cemex* standard. For the time being, local unions should begin using the following "best practices" in organizing campaigns.



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1. Before filing for an election, local unions should always demand voluntary recognition in writing with a showing or offer to show, proof of majority support.
2. Local unions should not demand voluntary recognition until they are ready to go to an election because the employer may seek an election immediately after the union demands recognition.
3. Local unions should always have at least majority support before demanding voluntary recognition.
4. Local unions should demand voluntary recognition only in units that are appropriate, and if there is a chance that the Board will find that only a larger unit is appropriate, local unions should have at least majority support in that larger unit, if possible, before demanding recognition.
5. Local unions need to make a strategic decision whether to file for an election after making a demand for recognition that is rejected. The International Representative servicing the local union and assigned Membership Development staff can assist in making that determination.
6. If the employer does not recognize the local union, the local union chooses not to file for an election, and the employer does not seek an election within two weeks after the local union demands voluntary recognition, the local union should file a ULP charge.
7. When soliciting authorization cards, organizers must be careful not to mischaracterize the cards, or suggest that they are only to get an election. Cards are an authorization for the local union to represent the employee, with or without an election.
8. Local unions must carefully document any ULPs committed during an organizing campaign.
9. The new *Cemex* standard does not alter the requirement that a contractor in the construction industry signatory to a Letter of Assent A or B (or C after 12 months) recognize the union as a Section 9(a) representative based on majority support. That contractor cannot seek an election when the union requests Section 9(a) recognition based on majority support because in the Letter of Assent, it has contractually agreed to recognize the union as a 9(a) representative upon a majority showing.





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10. Similarly, if the local union has a card-check agreement with an employer, the *Cemex* decision does not give the employer a right to seek an election if the local union demands recognition based on majority support because that employer has contractually agreed to recognize the union based on a card check.

Please contact the Membership Development Department in the International Office if you have any questions.

With best wishes, I am

In Solidarity,

Kenneth W. Cooper  
International President

KWC:jl

Enclosure

Copy to Paul A. Noble, International Secretary-Treasurer

All International Vice Presidents in the United States

Ricky L. Oakland, Chief of Staff

Jammi Ouellette, Assistant to the President for Membership Development



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