

Obligations of a Successor Owner

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By John Gilbert

A frequent question to lawyers who practice traditional labor law focuses on the recognition and bargaining obligations of employers who become successors to a business. When an employer merges with or acquires another business whose employees in a particular collective bargaining unit are represented by a union, certain obligations arise. If an employer qualifies as a successor in a situation in which it takes over the unionized business of another employer, the acquiring employer succeeds to the collective bargaining obligations of the former employer. To be a successor employer, the similarities between the two operations must demonstrate a substantial continuity between the enterprises, and, most importantly, a majority of the successor's employees in an appropriate bargaining unit must be former bargaining unit employees of the predecessor. The bargaining obligation begins when the successor employer has hired a substantial and representative complement of the former employer's workforce. These rules are based on two famous U.S. Supreme Court decisions, namely *NLRB v. Burns Security Services*, 406 U.S. 272 (1972) and *Fall River Dyeing and Finishing Corporation v. NLRB*, 482 U.S. 27 (1987).

On August 18, 2015, the NLRB decided a case called *Paragon Systems, Inc. and FCGOA International Union*. In the case, the Board reaffirmed the lessons from *Burns Security* and *Fall River* that a successor employer, even though it has to recognize the union and bargain with the union for the collective bargaining unit involved, is free to set initial employment terms and conditions without first bargaining with the incumbent union unless it is perfectly clear that the new employer plans to retain all of the employees in the unit.

If it is not perfectly clear that the new employer plans to retain all of the employees in the union but rather a majority, it may set initial terms and conditions of employment without bargaining. Once a successor has set the initial terms and conditions, however, a bargaining obligation attaches with respect to any subsequent changes.

In the *Paragon* case the issue revolved around what was known as "guard mount" time which the successor employer reduced from 30 minutes to 10 minutes per shift. The NLRB upheld the legality of the employer reducing the amount of guard mount time for which it would pay at the beginning and end of each shift since it was an initial employment term.

Successor employer obligations under the National Labor Relations Act can be tricky. Sound legal advice is required. The employment law team at Sandberg Phoenix and von Gontard P.C. can assist employers in navigating these waters.