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D.C. Circuit Rejects NLRB's "Irrational" View of Impasse

BY MARK M. TRAPP

Last week in *Troy Grove v. NLRB*, No. 23-1164 (D.C. Cir., June 13, 2025), the United States Court of Appeals for the D.C. Circuit delivered a sharp rebuke to the National Labor Relations Board, finding "irrational" the Board's refusal to recognize a bargaining impasse in light of a multi-year, deadlocked negotiation. The Court particularly criticized the Board's failure to recognize the practical reality that unions will *never* acknowledge a declared impasse because doing so empowers an employer to act unilaterally. This ruling may benefit employers facing difficult or protracted negotiations over key economic issues such as pension contributions.

Factual Background

The company and the union were parties to a collective bargaining agreement that ran from July 2014 to May 2016, covering just seven bargaining unit employees. That agreement required the company to contribute to a multiemployer pension fund. Just prior to the expiration of that agreement, and while engaged in bargaining over a new agreement, the company learned that its withdrawal liability to the pension fund had increased over a two-year period by nearly \$400,000.00.

For the next two years, the company offered, and the union refused to accept, a proposal to enter a contract in which the company would withdraw from the pension fund. At the end of the two years of negotiations, the company presented its "last, best and final" offer, which, like the proposals before it, would have discontinued contributions to the fund.

A majority of the seven employees voted to strike and the resulting strike lasted for more than three years. When the parties finally resumed bargaining in July 2021, the union again proposed a new contract requiring the company to continue contributing to the pension fund. Likewise, the company proposed a contract ending its contribution obligation. After both parties indicated they would not accept a contract on the other's terms, the company declared impasse, and threatened to implement its last, best and final offer, although it never actually did so.

The ALJ and then the Board ruled there was no true impasse, and the company had therefore bargained in bad faith by threatening to end its contributions to the fund. The D.C. Circuit disagreed, forcefully.

The Court's Opinion

Acknowledging that the company, like the union, had a duty to bargain in good faith, the Court found that the bargaining history “strongly supported” the company’s judgment that the parties had reached impasse by 2021, or even much earlier. Stating that the Board “did not achieve even minimal compliance with its duty to draw the inferences demanded from the parties’ bargaining history,” the Court sharply criticized the NLRB for ignoring the practical realities of the five years of bargaining that had taken place, and three times called the Board’s analysis “irrational.”

In fact, commenting on the Board’s reliance on the union’s denial that the parties were at impasse, the Court stated not only that it was “irrational,” but “arbitrary, capricious, and senseless.” The “obvious” reason for this, according to the Court, is because unions have a built-in incentive to deny impasse, because once impasse is declared, employers may lawfully implement their final proposals. That the company did not implement its threat to cease contributing to the pension fund and continued to bargain even after announcing the impasse set the case apart from many, if not most impasse cases, according to the Court, which granted the petition for review and vacated the Board’s order in relevant parts.

Perhaps most importantly, in a direct rebuke to the NLRB, the Court emphasized “[i]t would be a mistake to portray an employer’s bargaining to impasse as some sort of bargaining sin.” In fact, the Court noted that “the use of impasse is a legitimate bargaining tactic,” that parties may even bring about intentionally “to further, rather than destroy, the bargaining process.”

Conclusion

What makes *Troy Grove* especially significant is the Court’s reminder that impasse is not a “bargaining sin,” but instead remains a legitimate and permissible bargaining strategy. Simply put, employers may legitimately declare impasse when the parties have exhausted the prospects of concluding an agreement.

If you have questions about the *Troy Grove* decision, collective bargaining strategy, multiemployer pension plan withdrawal, or NLRA compliance, please contact one of the attorneys in CMC’s [Labor & Employment Practice Group](#).