

Berry, David P.

From: Flynn, Terence F.
Sent: Friday, September 16, 2011 1:50 PM
To: 'Grant, Glenn'
Subject: RE: Pre-recognition Issues

And their standard. It's like the bannering cases. They leave open the theoretical possibility of finding a violation, but it's not going to happen absent actual patrolling with signs – and maybe not even that now so long as the picketing is peaceful and doesn't impede. For the next three months, anyway, it's a good time to be a union (or an employer pre-negotiating with one).

From: Grant, Glenn [mailto:GGrant@crowell.com]
Sent: Friday, September 16, 2011 1:45 PM
To: Flynn, Terence F.
Subject: RE: Pre-recognition Issues

That certainly makes sense given the players.

From: Flynn, Terence F. [mailto:Terence.Flynn@nlrb.gov]
Sent: Friday, September 16, 2011 1:36 PM
To: Grant, Glenn
Subject: RE: Pre-recognition Issues

BTW, notwithstanding the "case-by-case" disclaimers, I would be surprised to see a complaint issue on anything short of a complete cba and recognition prior to proof of majority under this Board.

From: Grant, Glenn [mailto:GGrant@crowell.com]
Sent: Friday, September 16, 2011 10:27 AM
To: Flynn, Terence F.
Subject: RE: Pre-recognition Issues

Great thanks.

PS. How's the school year going so far for Devin?

From: Flynn, Terence F. [mailto:Terence.Flynn@nlrb.gov]
Sent: Friday, September 16, 2011 10:24 AM
To: Grant, Glenn
Subject: RE: Pre-recognition Issues

Not that I know of. I'm sure they are percolating, but I have not seen one presented for our consideration yet.

From: Grant, Glenn [mailto:GGrant@crowell.com]
Sent: Friday, September 16, 2011 10:21 AM
To: Flynn, Terence F.
Subject: Pre-recognition Issues

iii Terry:

Last year, the Board's majority ruled in the "other Dana case" that it was OK, at least in some circumstances, for an employer and union to enter into the agreements concerning certain terms and conditions of employment -- what I might call the architecture of a CBA -- prior to recognition without running afoul of Majestic Weaving/Altman-Bateman, etc. But, the majority didn't identify any sort of bright line as to what could be agreed to and what couldn't be, and said each case would be decided on a case by case basis. Just curious, do you know whether there are any cases dealing with this issue in the aftermath of the other Dana case?

GG