



Is That A Section 9(a) Or 8(f) Agreement? The NLRB May Soon Be Providing More Clarity.

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Most private sector collective bargaining agreements are governed by Section 9(a) of the National Labor Relations Act, and that section generally requires that a majority of the employees in the bargaining unit support having a union represent them. Things are different in the construction industry. In that industry, labor agreements are presumed to be covered by Section 8(f) of the act, which does not require such a showing of majority support.

On September 11, the [National Labor Relations Board announced](#) it may be revisiting several issues related to Section 8(f) agreements.

According to the press release:

“In a notice issued today in *Loshaw Thermal Technology, LLC*, 05-CA-158650, the National Labor Relations Board invites the filing of briefs regarding whether it should revisit the holding of *Staunton Fuel & Material*, 335 NLRB 717 (2001)...Under *Staunton Fuel*, this 8(f) presumption can be overcome, and a Section 9(a) relationship established, by contract language alone—specifically, where language in the parties’ collective-bargaining agreement unequivocally indicates that the union requested and was granted recognition as the majority or 9(a) representative of the unit employees, based on the union having shown, or having offered to show, evidence of its majority support. The Board invites briefs on whether it should adhere to, modify, or overrule *Staunton Fuel*. In addition, the Board is inviting briefing on

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Casale Industries, 311 NLRB 951 (1993), which governs the limitation period for challenging the extension of Section 9(a) recognition by a construction industry employer. Under *Casale Industries* and its progeny, a union's 9(a) status cannot be challenged more than six months after the employer recognized the union as the unit employees' 9(a) representative. This limitation period applies both where 9(a) recognition is alleged as an unfair labor practice and where the invalidity of the recognition is advanced as a defense against a refusal-to-bargain charge."

This may signal some major changes are on the horizon or Section 8(f) agreements. Stay tuned to see how this plays out.