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Do You Have To Bargain With Your Predecessor's Union After You Bid On And Win A Contract?

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**David J.
Pryzbylski**
Partner

Successor issues often pop up in the context of a sale or merger, [including under labor law](#). Some may be surprised to learn that these issues also can arise when a company bids on and wins a contract to perform work that previously was done by a unionized employer. A recently released National Labor Relations Board (NLRB) [advice memo](#) illustrates some of the nuance in play in these scenarios.

At issue in the case was a company – Walden Security, Inc. – who won a contract to provide security services for court houses around the country. Walden took the contract over from Akal Security, Inc. Akal was unionized and had a labor agreement with the United Government Security Officers of America union that covered workers at dozens of locations in various states. Upon taking over the security contract, Walden issued a notice to Akal's workers that they would become employees of Walden. That initial notice did not expressly communicate the company planned to depart from any of the terms set forth in their existing union contract.

Walden then held meetings with the former Akal employees and had them complete new employment documentation and other forms to formally transition them to be Walden employees. Walden also announced to the Akal employees that it was “repudiating [Akal’s] collective-bargaining agreement and would be setting its own terms and conditions of employment.” The only benefits it specially announced as being different at that time were medical,

dental, and vision insurance plans. A few weeks later, Walden also issued an employment manual setting forth other terms that differed from what was in Akal's labor agreement. Walden hired 405 out of 406 Akal employees when it took over the contract, but it did not bargain with the union over any of the changes it announced and implemented.

The union objected to the changes made unilaterally by Walden and filed charges with the NLRB. The Board determined that Walden violated labor law by hiring the vast majority of the predecessor's union-represented employees and failing to bargain with their union prior to making the changes to their terms and conditions of employment. Walden may have been privileged to make the changes had it, from the outset, clearly communicated to the Akal workers that it was not going to maintain the status quo under their union contract. The company's initial communication to the workers, however, failed to state that fact and detail what changes may be made. This was fatal to Walden's attempts to set its own employment terms for the workforce.

This case shows the importance of evaluating legal and contractual obligations that may be in play whenever an employer is taking over a unionized workforce – whether it be through a sale, merger, winning bid on an existing contract, or otherwise. There may be opportunity to get the employment terms your company needs or wants, but the strategy to get there must be carefully thought out and executed.