EDITION Nº FORTY

NEWS WITH PURPOSE, DECISIONS THAT COUNT

STATE OF THE UNION

THE JOHNSON + KROL NEWSPAPER

PAGE 02
REQUIRED AUTO-ENROLLMENT FOR ALL NEW 401(k) PLANS

PAGE 03
THE FEDERAL TRADE COMMISSION BANS NON-COMPETE AGREEMENTS

PAGES 06+07
THE JOINT EMPLOYER RULE IS ONCE AGAIN DIFFERENT

PAGE 10+11
UNITED AUTO WORKERS' ATTEMPTS TO UNIONIZE THE SOUTH

PAGES 04+05, 08, 09, 12
SEE MORE ARTICLES INSIDE

REQUIRED AUTO-ENROLLMENT FOR ALL NEW 401(k) PLANS

Legislation under the SECURE 2.0 Act ("Act") will require all 401(k) plans established after December 31, 2022, to have an automatic enrollment feature. To be compliant under the Act, employers must elect an automatic deferral rate between 3% and 10% of a participant's compensation and auto-increase the deferral by 1% each year up to at least 10% (but not more than 15%). Participants have the right to opt out of enrollment, change their contribution percentage, and change their auto-escalation amount. Participants must also receive proper notice of these rights annually. (Section 101 of the SECURE 2.0 Act).

The Act attempts to increase participation in retirement savings plans, which have traditionally required participants to "opt-in." While this may be a good idea in traditional employment settings, it is not necessary for multiemployer union plans, as Collective Bargaining Agreements already negotiate strong retirement saving plans for their members.

Currently, if an employer wants to add a 401(k) feature to their defined contribution plan, the Act will require automatic enrollment for all participants. While the law requires that participants can opt-out, it will likely take time and effort on behalf of participants to opt-out. This could be unpopular with members due to their already high retirement contributions and lead to administrative burdens on the funds, especially for multiemployer plans. Because of this, multiemployer plans may decide not to add a 401(k) feature, leading to the opposite goal of the legislation.

Currently, the Act exempts church plans, government-sponsored plans, employer-sponsored plans with fewer than ten employees, and employer-sponsored plans where the employer has existed less than three years from the auto-enrolment requirement.

While a few firms in the multiemployer space, including Millman and Morgan Lewis, have raised concerns over the administrative and compliance burdens associated with the Act, there has not been any proposed legislation to exempt multiemployer plans to date.

SECURE 2.0 LANGUAGE:
https://www.congress.gov/117/bills/hr2954/BILLS-117hr2954eh.pdf

DISCUSSION DRAFT:
https://www.sanders.senate.gov/wp-content/uploads/SECURE2TechnicalsDraft.pdf

IRS GUIDANCE:
(does not provide guidance re: multiemployer exemption)
https://www.irs.gov/pub/irs-drop/n-24-02.pdf

MORGAN LEWIS ARTICLE:
https://www.morganlewis.com/blogs/mlbenebits/2023/02/secure-20-challenges-for-taft-hartley-multiemployer-401k-plan-administration

MILLMAN ARTICLE:
https://us.milliman.com/en/insight/multiemployer-alert-secure-2-auto-enrollment-problematic

THE FEDERAL TRADE COMMISSION BANS NON-COMPETE AGREEMENTS

On April 23, 2024, The Federal Trade Commission (FTC) issued a new rule that will ban workers and employers from entering into noncompete agreements. This action created a heated debate between workers' rights and legitimate business decisions. Nevertheless, the FTC believes that this new ban will create more growth in the long-term.

Noncompete agreements are contracts that prevent former employees of a business from working in similar positions with the business' competitors following the conclusion of employment. Depending on the terms of the agreement, this could limit a former employee's job search by geographic area or a length of time. Effectively, this prevents a former worker from finding similar positions after they have already ended their employment, still tying them to their former employer. Historically, these agreements were entered into between senior executives and their employers but have now trickled down to every facet of working life.

Workers have chafed at the broad use of noncompete agreements, but business who use noncompete agreements have long argued that these agreements protect valuable trade secrets and investments. In contrast, economists argue that these types of agreements have become anticompetitive over time. The FTC published the proposed version of the rule in January 2024. After receiving over 26,000 comments, the FTC agreed with the workers' and economists' side of the debate and determined that the practice is an unfair method of competition, and therefore should be banned.

The rule itself calls for a total ban on all noncompete agreements for all workers, including senior executives, after the rule goes into effect. Although, if an individual is already a party to a noncompete agreement, then there will be changes depending on the worker's position. For senior executives, existing noncompete agreements are still enforceable after the new rule goes into effect. However, existing noncompete agreements for other workers will no longer be enforceable. If an employee is a party to a non-enforceable agreement, then the employer is required to give that employee notice that the agreement is no longer enforceable.

The FTC estimates that this final rule will lead to new business formation, higher earnings for workers, lower healthcare costs, and will help drive innovation in the coming years. The ongoing discussions between businesses and other invested groups are divided about the true effectiveness and value of banning noncompete agreements.

The FTC's final rule will go into effect on September 4, 2024. However, there is the possibility that the new rule will have to face legal challenges, since the U.S. Chamber of Commerce issued a statement on April 23, 2024, declaring its intent to sue the FTC for unlawful overreach. At least one federal judge has already issued a partial injunction. See Ryan, LLC v. Federal Trade Commission (3:24-cv-00986-E). Should such a challenge be successful, the FTC's rule may be blocked. In the meantime, the rule does not impact non-solicitation agreements and trade secret protecting plans, and thus are still viable options for employers concerned about their ability to protect their assets should the rule go into effect as planned.

Employers should also keep in mind that many states already have laws restricting or even outlawing noncompete agreements. Four states: California, North Dakota, Minnesota and Oklahoma have complete bans on noncompetes. Thirty-four other states have some form of restriction on noncompete agreements, whether it be based on employee income or other factors. Should the FTC's final rule get overturned, the state laws would not be impacted.

The full text of the FTC's final rule can be found at www.federalregister.gov.

Muldrow v. City of St. Louis:

POLICING DISCRIMINATION IN BENEFITS

In a unanimous ruling issued on April 17, 2024, the U.S. Supreme Court eased the standard for workers to bring employment discrimination suits over job transfers based on sex, race, religion, or national origin in its landmark decision of the case of *Muldrow v. City of St. Louis, Missouri*.

THE FACTS OF THE CASE

The *Muldrow* case was initiated by Sergeant Jatonya Clayborn Muldrow, who claimed she was transferred from her job as a plainclothes police officer in the Intelligence Division of the St. Louis Police Department because she is a woman. Her tenure in the Intelligence Division spanned from 2008 to 2017, during which she conducted investigations into public corruption and human trafficking. Additionally, she oversaw the Gang Unit, led the Gun Crimes Unit, and served as a task force officer with the FBI.

Despite consistently receiving high performance evaluations, a newly appointed unit commander orchestrated her transfer out of the Intelligence Division. The commander justified this decision by labeling the division's work as "very dangerous." Muldrow protested the transfer, but her objections were overruled, and she was reassigned to a uniformed position, where her duties included supervising neighborhood patrol officers, approving arrests, reviewing reports, and managing other administrative tasks.

Though her salary and rank remained unchanged, Muldrow filed suit against the police department, claiming that the transfer inflicted significant professional harm, as the reassignment led to the loss of her FBI status and the associated vehicle and because her new position required her to work nights and weekends, a stark contrast to the Monday-through-Friday schedule she had previously maintained in the Intelligence Division.

THE ISSUES AT BAR

Title VII Protections: Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, and national origin. It also protects employees from retaliation for participating in protected activities, such as filing discrimination complaints. Muldrow's claims brought into question whether her transfer was discriminatory (based on her gender) and retaliatory (a response to her complaints about discrimination).

The court examined whether Muldrow's transfer constituted an adverse employment action and whether the reasons given by the City were pretextual. The outcome of the case hinged on the interpretation of what qualifies as an adverse employment action and whether Muldrow provided sufficient evidence to show that the City's actions were motivated by discriminatory or retaliatory intent.

Discrimination Claim: Muldrow alleged that the City discriminated against her based on her gender when she was transferred from a specialized unit to a different position. She claimed the transfer resulted in a less prestigious role with fewer opportunities for overtime and career advancement, thereby constituting gender discrimination under Title VII of the Civil Rights Act of 1964.

Retaliation Claim: Muldrow also contended that her transfer was in retaliation for her complaints about gender discrimination and for supporting other officers who had raised similar issues. This, she argued, was in violation of Title VII's protections against retaliatory actions taken by employers against employees who engage in protected activities, such as filing complaints about discrimination.

PROVIDING EMPLOYMENT DISCRIMINATION 101

The decisions in discrimination and retaliation cases typically involve a detailed analysis of the employment context, comparison of job roles, evaluation of employer justifications, and the sufficiency of evidence presented to prove discrimination and retaliation claims under Title VII.

Historical Standard: The decades-old standard federal courts have required plaintiffs to meet in order to establish an "adverse employment action," for purposes filing a discrimination claim for under Title VII of the Civil Rights Act required such discrimination claims show "significant" or "material" harm to the employee. Using this standard, the district court judge ruled in favor of the police department without a trial, declaring that because Muldrow could show no "diminution to her title, salary, or benefits," her claims of discrimination were not "significant." On appeal, the Eighth Circuit ruled that, although the transfer decision

affected the "conditions" of Muldrow's employment, that alone was not sufficient to meet the required threshold. Instead, Muldrow had to *also* establish that either her reassignment or her denied transfer request imposed "a material employment disadvantage."

Muldrow Standard: However, the Supreme Court said that is too high a bar, as "whether the harm is significant" turns out to be "in the eye of the beholder.[1]" To illustrate its point, the Court cited examples of harm caused by transfer decisions that lower courts have held to be insignificant:

- a shipping worker is transferred to a position involving only nighttime work;
- an engineering technician is assigned to a new job site—in a 14 x 22-foot wind tunnel; and
- a school principal is transferred to a non-school-based administrative role supervising fewer employees.

In each of those sex or race discrimination cases, the lower courts found that there was no "significant" harm to the changed conditions of employment. Yet, the Court found the purpose of the anti-discrimination statute is to "target[]practices that 'treat a person worse'" because of their sex, race, religion, or national origin.

EFFECT ON MULDROW'S EMPLOYEE BENEFITS

Overtime Opportunities: Muldrow claimed that her transfer led to fewer opportunities for overtime, which directly affected her earnings. Reduced overtime can significantly impact an employee's overall compensation, especially in professions where overtime is a substantial part of the income.

Career Advancement: The transfer allegedly moved her to a less prestigious role, potentially affecting her career trajectory and future earning potential. This includes access to promotions, specialized training, and other benefits associated with career growth.

Adverse Employment Action: A critical aspect of the case was determining whether the transfer constituted an adverse employment action. For an employment action to be considered adverse under Title VII, it must materially affect the terms, conditions, or privileges of employment.

Employer Justifications: The City needed to provide legitimate, non-discriminatory reasons for the transfer. If the employer can show that the transfer was based on legitimate business reasons, such as operational needs or performance issues, it can counter claims of discrimination and retaliation. Muldrow was tasked with proving that the reasons given were a pretext for discrimination or retaliation, meaning the real motive was unlawful.

WHY MULDROW MATTERS

The *Muldrow* case highlights the importance of fair and non-discriminatory treatment in employment decisions that affect compensation, benefits, and career opportunities, while underscoring the protections employees have under Title VII and the need for employers to provide justifiable reasons for employment actions that could negatively impact an employee's benefits. For more information, please contact our office.

[1] *Muldrow v. City of St. Louis*, 601 U.S. _____, at 2 (April 17, 2024).

> *"The 2023 Rule returned to a BFI-like standard to include indirect or reserved authority to control but also included an exhaustive list of terms and conditions for consideration of joint employer status."*

THE JOINT EMPLOYER RULE IS ONCE AGAIN DIFFERENT

In October 2023, the National Labor Relations Board ("NLRB") released its final rule with respect to determining joint employer status. Under this 2023 Rule, an entity would be considered a joint employer if it had an employment relationship with an employee and it shared or codetermined one or more of an employee's "essential terms and conditions of employment." These terms and conditions include: wages, benefits, and other compensation; hours of work and scheduling; assignment of duties to be performed; supervision of performance of duties; work rules and directions governing manner, means, and methods of the performance of duties and the grounds for discipline; tenure of employment, including hiring and termination; and working conditions related to the safety and health of employees. The NLRB believes this rule more accurately reflects the joint-employer standard used in common-law agency principles. Notably, the 2023 Rule considered the employer's authority to control, *regardless of whether or not it was actually exercised,* as a determinative factor in consideration of joint employer status.

This 2023 Rule replaced the 2020 Rule, enacted under former President Trump's NLRB. Under the 2020 Rule, an entity would be considered a joint employer when it possessed and exercised substantial direct and immediate control with a regular or continuous consequential effect on essential terms or conditions of employment. These terms and conditions were limited to wages, benefits, hours of work, hiring, firing, discipline, supervision, or direction.

These are merely two iterations of the ongoing flip flopping the rule has undergone in the last decade. Before 2015, joint employer status was determined by whether two separate entities shared or codetermined, in a meaningful way, matters governing essential terms and conditions of employment which included the hiring, firing, discipline, supervision,

and direction of employees of another employer. Under this rule, control had to be direct and immediate.

In 2015, *Browning-Ferris Industries (BFI)* was decided by former President Obama's NLRB and introduced the theories of indirect control and reserved authority to control. The *BFI* Rule expanded those considered to be joint employers, thus triggering additional requirements for independent employers such as bargaining or exposing an entity to unfair labor practice charges. Because of this drastic change, *BFI* prompted congressional hearings seeking to overturn the rule. Ultimately, a D.C. Circuit Court invalidated portions of the rule finding that while evidence of indirect control was a factor to consider, it was applied too broadly. In response to *BFI*, the Trump Labor Board instituted the 2020 Rule which essentially reinstated the pre-*BFI* rule.

Then came the proposal of the 2023 Rule and rescission of the 2020 Rule, with its intended effective date of December 2023. The 2023 Rule returned to a *BFI*-like standard to include indirect or reserved authority to control but also included an exhaustive list of terms and conditions for consideration of joint employer status. In its current iteration, the NLRB sought to provide clarity and was likely an attempt to avoid the legal challenges that were faced in the wake of the *BFI* Decision. Of procedural interest, the NLRB rescinded the 2020 Rule prior to the effective date of the 2023 Rule. In November 2023, a group of industry associations filed a lawsuit challenging its implementation. The basis for this lawsuit alleged the new rule was arbitrary and capricious.

On March 8, 2024, an order was issued vacating the 2023 Rule and reinstating the 2020 Rule. Important in the Court's analysis of the 2023 Rule was whether there existed a true "two step analysis" which was intended to act as a filter, sifting out employers that should not actually be considered joint. The Industry Plaintiffs argued there was not a true "two step analysis" and the Court agreed. Under this two-step analysis, a joint employer will be established when, (1) under the common law test, an employment relationship existed and (2) there was a sharing or codetermining of essential terms and conditions of employment, regardless of whether or not this authority was exercised.

The Court found the 2023 Rule "would treat virtually every entity that contracts for labor as a joint employer because every contract for third-party labor has terms that impact, at least indirectly, at least one of the specified 'essential terms and conditions of employment.'" This, the Court determined, exceeded common law bounds and rendered the rule contrary to law.

When it came to the recission of the 2020 Rule, the Court noted the NLRB's decision was problematic. First, it did not provide any reason for establishing that the 2020 Rule was no longer valid. Second, the NLRB rescinded the 2020 Rule without first releasing the final 2023 Rule. The Court wrote the NLRB "did not articulate a good reason (or any reason at all) why it believed a joint-employer standard set in adjudications to be preferable to a standard set in rulemaking."

In early May, the NLRB filed notice of its intent to appeal. If the NLRB wins on appeal, the 2023 Rule could result in reinstatement. Alternatively, there is a chance only the recission of the 2020 Rule is overturned, which would leave the NLRB, employers, and employees with no rule at all. Added to the mix is the fact that appeal is not the only available option for the NLRB. It could push the policy through adjudication alone or institute another round of rulemaking.

Johnson & Krol will continue to monitor for developments and how this may affect our clients.

MENTAL HEALTH PARITY PROPOSED CHANGES: IS IT A LOSE-LOSE SITUATION?

In July 2023, the Departments of Health and Human Services, Labor and Treasury issued new guidance on the Mental Health Parity and Addiction Equity Act in the form of a proposed rule. The proposed rule primarily addresses the rules related to nonquantitative treatment limitations ("NQTLs"), and this article will only address one aspect of the expansive proposed rule.

Under the rule, NQTLs—which include prior authorization, concurrent reviews, network availability and provider reimbursement—would be required to meet a three-part test. The test, called the "substantially all" or "predominant" test, is currently used for determining the financial requirements and quantitative treatment limitations. The test means that if a plan applies an NQTL to a mental health/substance use disorder ("MH/SUD"), then at least 2/3 of the medical and surgical benefits ("MED/SUR") in the same classification must be subject to the same NQTL. Classifications include inpatient care (both in and out of network), emergency care and prescription drugs.

Groups that represent employer-sponsored health plans have criticized the proposed rule, specifically arguing that employers will be forced to stop using NQTLs because they would cause plans to fail the new test.[1] Critics have pointed to the fact that the treatment of mental health and substance use differs significantly from medical and surgical care, which makes coverage difficult to compare. The uneven distribution of types of treatment between mental health and medical benefits makes the test difficult to comply with while still maintaining cost-saving measures necessary to keep plans afloat.

In a comment submitted by Brookings, a nonprofit public policy organization, only 41% of general medical visits are for chronic conditions that are more likely to be subject to utilization management techniques (such as concurrent review), compared to 64% and 69% of mental health visits for issues such as depression and anxiety.[2] This means that even if all chronic visits in general medical practice were subject to concurrent review, any concurrent review for mental health or substance use disorders would fail the "substantially all" test.[3] The result is that mental health providers are basically prevented from applying any utilization management techniques to evaluate the necessity of care.

Critics have proposed alternative methods to determine parity, such as basing the rule on outcomes. Meaning, plans should ensure that participants have comparable access; for example, does a person with a chronic condition such as heart disease get treated at the same rate as a person with depression? If the answer is no, then plans should examine whether the reason for difference are cost control mechanisms such as utilization management techniques.

If the proposed rule is finalized, it would be effective on the first day of the first plan year beginning on or after January 1, 2025.

[1] Hansard, Sara. Mental Health Coverage Test Slammed as Undermining Cost Controls. https://news.bloomberglaw.com/daily-labor-report/mental-health-parity-test-raises-cost-control-concerns-for-plans. May 6, 2024.
[2] Frank, Richard G. and Chloe Zilkha. Comments on amendments to the Mental Health Parity and Addiction Equity Act. October 13, 2023.
[3] Hansard, Sara. Mental Health Coverage Test Slammed as Undermining Cost Controls. https://news.bloomberglaw.com/daily-labor-report/mental-health-parity-test-raises-cost-control-concerns-for-plans. May 6, 2024.

COURT RULING CLARIFIES PENSION CONTRIBUTION TERMS IN MULTI-EMPLOYER AGREEMENTS

Bulk Transport Corp. (“Bulk Transport”) and Teamsters Local 142 (“Local 142”) previously entered into a collective bargaining agreement that included a Construction Agreement and a Steel Mill Addendum. These agreements governed various aspects of employment, including pension contributions. Local 142 insisted that Bulk Transport apply the Steel Mill Addendum—a provision related to steel mill operation work only—to non-steel mill work.

In 2004, Bulk Transport landed a contract to haul commodities and made pension contributions on behalf of its non-steel mill work employees in compliance with Local 142’s request. Subsequently, Bulk Transport lost its contract and ceased these contributions. As a result, the Teamsters Union No. 142 Pension Fund (“Pension Fund”) assessed withdrawal liability against Bulk Transport in the approximate amount of $2 million under the Multiemployer Pension Plan Amendments Act (MPPAA).

While Bulk Transport paid the assessed liability, it ultimately demanded review of the decision through arbitration and, later, by the United States District Court for the Northern District of Indiana. Both the arbitrator and the district court found that Bulk Transport’s conduct—specifically adopting the Steel Mill Addendum by practice—entitled the Pension Fund to the withdrawal liability. Bulk Transport then appealed to the United States Court of Appeals for the Seventh Circuit in the case stylized as *Bulk Transp. Corp. v. Teamsters Union No. 142 Pension Fund*, 96 F.4th 1027 (7th Cir. 2024).

In March 2024, the Seventh Circuit issued its order on the issue which emphasized that written agreements should dictate the terms of pension contributions in multi-employer plans. Substantive terms cannot be altered by conduct, practice, or oral agreements alone. Since the written Steel Mill Addendum did not explicitly cover hauling commodities or other non-steel mill work, the court rejected the argument that Bulk Transport’s conduct modified the agreement.

The Seventh Circuit’s decision in this case significantly limits a pension plan’s options to argue conduct in the withdrawal liability context. Thus, if you have any work being done under a collective bargaining agreement where the language does not squarely cover the work in question, you may want to address this as soon as possible.

UNITED AUTO WORKERS' ATTEMPTS TO UNIONIZE THE SOUTH

While there is no one answer why the employees in Tennessee voted overwhelmingly for representation while those in Alabama voted against it, one key may be the different positions of the companies.

On April 20, 2024, the NLRB announced the results of an election at the Volkswagen plant in Chattanooga, Tennessee. The employees there voted 2,682 to 985 (73%) in favor of being represented by the United Auto Workers ("UAW"). This marks the first time since the 1940s that an auto plant in the south has voted to unionize through an NLRB election and the first time ever for a foreign-owned automaker in the south. However, less than a month later, on May 17, 2024, the UAW suffered a defeat at the Mercedes-Benz battery and auto plants in Tuscaloosa, Alabama. The employees in Alabama voted 2,642 to 2,045 (56%) against being represented by the UAW.

After Rolls-Royce left U.S. manufacturing in the 1930s, there were no foreign automobile manufacturing plants in the United States until Volkswagen set up shop in Pennsylvania in 1978. The UAW swiftly won an election at the Pennsylvania plant, 865 to 17. Thereafter, the rise of foreign automakers building manufacturing plants in the U.S. did not lead to a corresponding rise in representation by the UAW. Foreign automakers began building plants all over the Midwest and the South, just as American automakers were shuttering factories, contributing to the rust belt. In 1985, Toyota built its plant in Georgetown, Kentucky employing more than 8,000 employees. BMW moved into South Carolina, Mercedes-Benz and Hyundai set up shop in Alabama followed shortly by Kia, Subaru, Nissan, Honda and Volvo all opening plants across the south.

The UAW was founded in 1935 in Detroit, Michigan, the same year as the passage of the National Labor Relations Act. Membership in the UAW thrived, peaking at 1.5 million members in 1979. As American automakers floundered and foreign automakers flourished, the current number of members is 971,000, with 391,000 active members and 580,000 retired members. While some of this was due to lack of market share, there were other factors at play such as automation.

This was not the first attempt to unionize this very plant in Chattanooga. The Union had previously lost narrow election votes

in 2014 and 2019. Shawn Fain, the newly elected President of the UAW who led a popular strike against the Big Three U.S. automakers in 2023, has said, "the workers at VW are the first domino to fall."[1] Fain has made it clear that the UAW will continue to attempt to organize in the south.

While there is no one answer why the employees in Tennessee voted overwhelmingly for representation while those in Alabama voted against it, one key factor may be the different positions of the companies. Volkswagen took a neutral position on unionization. This was Volkswagen's only non-union shop and in Germany, the Volkswagen workers have probably the strongest union protections in the world. Volkswagen has traditionally been a union friendly company.

The same cannot be said for the position of Mercedes-Benz in Alabama. Mercedes put on a strongly anti-union campaign, going so far as to bring in former University of Alabama football coach, Nick Saban, to speak to the workers to persuade them to vote against unionization. While politicians in both Tennessee and Alabama spoke out against unionization, the pressure was stronger in Alabama, where Republican Governor Kay Ivey banded together with other governors to oppose the campaign and Alabama House Speaker Nathaniel Ledbetter wrote an op-ed opposing the UAW in which he referred to the UAW as "a dangerous leech."[2]

This may not be the end of the election in Alabama, as the UAW has filed objections which could lead to a re-run election. The objections include firing pro-union workers, allowing anti-union workers to campaign during work hours, holding captive audience meetings, displaying anti-union propaganda, polling union workers about union support, suggesting that organizing would be futile and seeking to enflame racial tensions. In addition, the German government has announced that it is "officially investigating Mercedes-Benz Group AG for the company's illegal anti-union conduct at the Mercedes-Benz plant in Vance, Alabama. Germany's Federal Office of Economic Affairs and Export Control announced the formal investigation [May 15, 2024]."[3]

We are unlikely to have a final word on this election for many months, if not years.

There is no question that the Volkswagen election was a historic and monumental win for the UAW, but whether it can be repeated remains to be seen.

[1] https://www.theguardian.com/us-news/2024/apr/22/united-auto-workers-auw-shawn-fain
[2] https://www.al.com/opinion/2024/04/alabama-house-speaker-calls-uaw-a-dangerous-leech-in-op-ed-ahead-of-mercedes-plant-vote.html
[3] https://uaw.org/mercedes-benz-under-investigation-by-german-government-for-illegally-violating-workers-rights-at-alabama-plant/

DISNEYLAND UNIONIZING

Disneyland employees in Anaheim, California recently moved to become unionized with the National Labor Relations Board. The Disneyland employees include Disneyland and Disney California Adventure Park greeters and daily park performers. This election was open to 1,700 Disneyland employees in the character and parade departments. On May 18, 2024, the Disneyland performers voted to be a part of Actors Equity Association, which largely represents actors and stage managers on Broadway. The Disneyland actors and stage performers voted 953 to 258 to unionize.

The Disneyland performers unionized to secure higher wages in response to rising living costs. Additionally, they were concerned about health and safety issues arising from sharing costumes and having physical contact with the park visitors. A representative from Disney issued a statement regarding the Disneyland employees' decisions to unionize. Specifically, Disney stated that "[w]e believe that our cast members deserve to have all the facts and the right to a confidential vote that recognizes their individual choices."

Unlike Amazon and Starbucks employees, Disney employees encountered minimal resistance from the company during their unionizing efforts. Amazon and Starbucks employees attempting to unionize in various locations across the country did not receive the same level of support from their employers. Amazon and Starbucks both fought avidly to stop their employees from forming a union. Despite numerous Amazon and Starbucks locations moving to unionize, both companies are actively working to overturn union election results.

Given that a significant portion of Disney's workforce is already unionized, it is unlikely the company will resist this recent move to unionize. Stage performers and hospitality workers are unionized, and parade and character performers at Walt Disney World in Orlando, Florida, are represented by the Teamsters. Therefore, with significant union representation within its workforce, Disney is expected to accept the recent unionization efforts with minimal opposition.

Specifically, Disney stated that "[w]e believe that our cast members deserve to have all the facts and the right to a confidential vote that recognizes their individual choices."

JK JOHNSON +KROL ATTORNEYS AT LAW