

NLRB ALJ: Employer's Interim Grievance Procedure need not Provide Opportunity for Arbitration

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In March 2012, employees of an EMS ambulance service certified a new union to replace their existing representative. At the outset of the negotiations regarding a new collective bargaining agreement, the parties agreed that, until a new CBA was signed, they would utilize two of the three grievance steps identified in the prior union's CBA — the third and final step, arbitration, would not be available until a new contract was signed. Subsequently, the employer terminated various employees for misconduct and poor performance and refused to arbitrate pursuant to the parties' agreement. The union filed an unfair labor practice charge based upon the refusal to arbitrate, and the employer responded that the union should be bound by its agreement to an interim grievance process that excluded arbitration.

The union sought to void the agreement, pointing to NLRB precedent which, the union argued, provided that an interim grievance process must be fully negotiated by the parties (not just verbally agreed to) and must contain the opportunity for arbitration. The administrative law judge rejected the union's agreement, finding that it was bound by its agreement not to pursue arbitration during the interim period. The judge specifically found that the union's verbal agreement constituted sufficient "bargaining" regarding the interim grievance process, and that NLRB precedent does not strictly require that an interim process must include arbitration. This decision provides crucial guidance for employers during the transition from one union to another — securing agreement on a favorable interim grievance process can facilitate effective discipline during the transition process and provide leverage vis-a-vis the union during the critical initial bargaining period.

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