JPI
JUBELIRER, PASS & INTRIERI, P.C.
Attorneys-at-Law

Joseph J. Pass
Edward H. Walter
James A. Welker
Joseph Santino Pass*
Steven E. Winslow
Patrick K. Lemon

*also admitted in Ohio

of counsel
Neal R. Cramer

Ben Paul Jubelirer (1904–1983)
Frank P. G. Intrieri (1942–1976)

ALLEGHENY COUNTY LABOR COUNCIL
REPORT OF LEGAL COUNSEL
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NLRB Upends Obama-Era Board Rule on Employer's Obligations to Bargain in *Raytheon Network Centric Systems*, 365 NLRB No. 161

It is well-established in the unionized workplace that employers may not make unilateral changes in employment terms without first giving notice to the union and giving the union the opportunity to bargain over the change. However, on Dec. 15, 2017, the National Labor Relations Board (NLRB) reversed the Obama-era Board and held that an employer has no obligation to bargain with a union over changes in working conditions that are a continuation of past practices. In *Raytheon Network Centric Systems* (365 NLRB No. 161), the 3-2 Republican majority overruled the Obama-Board's decision in *E.I. du Point de Nemours,* 364 NLRB No. 113 (2016). *E.I. du Point* held that an employer must bargain over changes to terms and conditions of employment, even if the employer had a past practice of making the changes.

The facts in *Raytheon Network* were straightforward. The employer had an established practice of unilaterally making changes to the health insurance plan affecting bargaining unit employees on an annual basis. The change at issue was consistent with the changes made by Raytheon Network in the past. The union alleged these changes violated the standard established in *E.I. du Pont de Nemours*, 364 NLRB No. 113 (2016). The *Raytheon Network* majority returned to "the dynamic status quo" doctrine, which "makes clear that conditions of employment are to be viewed dynamically and that the status quo against which an employer's 'change' is considered must take account of any regular and consistent past pattern of change." Therefore, the Board held that an employer modification consistent with such a pattern is not a "change" in working conditions at all and therefore not a disruption to the "status quo". In other words, if a change is made that is a continuation of a past practice, it is not considered a "change" that triggers the obligation to bargain.

While the *Raytheon Network* decision clearly favored Raytheon Network by allowing the company to make changes to health insurance (changes that were consistent with a past practice) without bargaining with the Union, the proposition of law that emerged in this case necessarily works both ways. Stated another way, if a past practice benefits the union and the employer attempts to disavow or repudiate the past practice, the Union can insist the practice continue as a preservation of the *status quo* while bargaining continues.

Respectfully Submitted,
Joseph S. Pass

219 Fort Pitt Boulevard 1st Floor, Pittsburgh, PA 15222-1576 Ph: 412.281.3850 • 412.261.0147 F: 412.281.1985
facebook.com/jpilaw www.jpilaw.com