

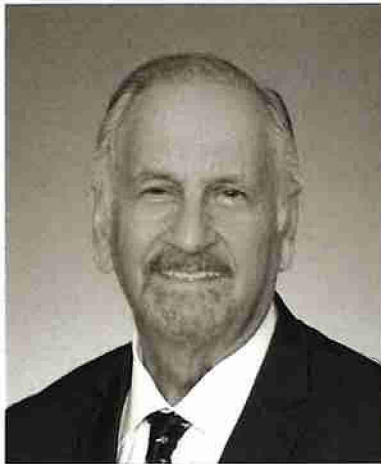
# **2022 MITA ANNUAL CONFERENCE**

## **LIVING WITH NEW (BIDEN) LABOR RULES**

Presented by:

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## Frank T. Mamat

Of Counsel

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Frank focuses his practice on labor and employment law and is prepared to respond whenever clients face employment-related issues. He understands the importance of addressing these matters quickly as they affect business clients' short- and long-term goals. Through more than four decades, Frank has counseled businesses, political groups, and governments on a variety of labor and employment matters, political issues, and legislative topics including contract negotiations, elections, labor arbitrations, unfair practice litigation, union avoidance, wage and hour matters, harassment suits, boycotts, OSHA-MIOSHA matters, mass picketing, and National Relations Board cases. In every situation, Frank prioritizes learning about a client's concerns and goals in order to craft a strategy that best suits their needs.

Employer associations, nonprofit trade associations, and boards of directors regularly seek Frank's counsel, and he is a regular speaker to trade groups about employment issues. Throughout his career Frank has also advised lawmakers including governors, congressmen, senators, and local executives, as well as political parties and campaigns. He served as special counsel to former Michigan Governor Rick Snyder concerning anti-mandatory PLA statue enforcement, and was special campaign counsel for Michigan to President Donald Trump.

### Services

- Labor
- Employment
- Audits, Counseling & Training
- Employment Discrimination Litigation
- Wage/Hour Law
- Workplace Safety
- Collective Bargaining Negotiations
- Labor Arbitrations
- NLRB Issues

- RICO Actions
- Strike Preparation/Litigation

## **Education**

- Syracuse University College of Law (J.D., 1974)
- University of Rochester (B.S., 1971)

## **Bar Admissions**

- Michigan
- Florida
- District of Columbia

## **Court Admissions**

- U.S. Supreme Court
- U.S. Court of Appeals for the Sixth Circuit
- U.S. Court of Appeals for the District of Columbia Circuit
- U.S. District Court for the Northern District of Indiana
- U.S. District Court for the Eastern District of Michigan
- U.S. District Court for the Western District of Michigan

## **Affiliations/Memberships**

- Association for Corporate Growth, Detroit Chapter, Board of Directors
- American Society of Employers, Education Foundation chair
- Michigan Association of Home Builders, Board of Directors
- Michigan Infrastructure and Transportation Association, Board of Directors
- Michigan Food and Beverage Association, Labor counsel
- Michigan Business and Professional Association, Labor counsel
- Wayne State University Law School, adjunct professor of labor law
- 400 Club, Republican Party, founder and president
- Oakland County Republican Party, finance chairman and general counsel
- Jewish Bar Association of Michigan, vice president of policy and procedures
- Temple Israel Brotherhood, Board of Directors
- College of Labor & Employment Lawyers, member
- National Labor Relations Board's Practice and Procedure Committee for Region 7 (Michigan), member
- American Bar Foundation, member

- Senior Lawyers Committee of the State Bar of Florida, member
- Detroit Economic Club Speakers Committee, member
- Oakland County Sheriff Advisory Committee, member
- Construction Association of Michigan, member
- Private Directors Association, member
- Federalist Society, member
- Republican National Lawyer's Association, member
- Oakland County Lincoln Republican Club, member and past president
- Metropolitan Detroit Council of B'nai B'rith, member
- Detroit Area Construction Association, co-founder and former president
- Membership Development Committee of Detroit Athletic Club, member
- American Society of Employers, past chair
- Labor & Employment Council for Associated General Contractors of America, past chairman
- Construction Finance Management Association, past president
- Construction Code Commission of Michigan, past chairman
- Anti-Defamation League, former board of directors
- Jewish Vocational Services, former Board of Directors
- Barristers of B'nai B'rith, past president

## **Distinctions**

- AV Preeminent in *Martindale-Hubbell*
- *Top 100 Labor Lawyers in the U.S., Labor Relations Institute*
- *Best Lawyers®*
- Michigan *Super Lawyers®*
- Top Lawyers in Metro Detroit, *DBusiness Magazine*
- The American Lawyer Top Lawyers
- Crain's Detroit Business Best Lawyers
- Top Lawyers in Michigan, The American Registry

### *MITA Opening Remarks*

What you need to know in 2022 as to rights and obligations as a Construction Employer has changed 180% since 1/1/21. Joe Biden's political appointees have taken over the levers of power at the NLRB (as well as OSHA and DOL) and even if the radical Pro-Act is never formally passed into legislation by Congress, Biden's political appointees are already trying to implement key parts of the radical Pro-Act regulation, executive action and new "interpretations" of the 80 year old National Labor Relations Act. Buckle up; this will be a very bumpy ride!

The Iceberg is coming at you.

1. Federal blacklisting of labor law violators ("debarment")
2. Increased Davis Bacon enforcement
3. Higher minimum wages - \$15 minimum (as well as force all your wages up)
4. Increased OSHA/MIOSHA inspections
5. Independent contractor reviews (tougher reviews and penalties)
6. Card-check elections instead of secret ballot NLRB elections (51% employee petitions)
7. No right to negotiate your first contract if your company is unionized (Government will write it!)
8. NLRB being given the right to fine \$50,000 to \$100,000 each Unfair Labor Practice Charge
9. A rollback of all NLRB regulations and decisions of the Trump Administration
10. Firing of all Trump NLRB appointees
11. DOL Secretary is now from the former head of the Massachusetts Building Trades Council

*Main Points for Contractors about the “Biden” NLRB Changes:*

- 1) The National Labor Relations Act (NLRA) applies to union and nonunion companies alike.
- 2) The NLRB will put its thumb on the scale of justice to make sure unions or complaining employees win every election and every unfair labor practice filed against your Company.
- 3) There will be “no way to settle” in the NLRB cases under the new Biden NLRB rules.
- 4) No honest investigators in NLRB Field Examiners anymore.
- 5) Expect the same bias against contractors from the Department of Labor/OSHA/MIOSHA/EEOC, etc.
- 6) Handling the NLRB: Do not ever speak to the NLRB without your attorney. Better yet, have your attorney do all the interactions with the NLRB. Nothing you say is ever off the record. Anything you share the NLRB will escape into the Internet world and your enemies or competitors will get your sensitive information.
- 7) Figure out your worst-case dollar scenario as soon as possible with your labor attorney. It will be easier and cheaper to settle before the NLRB decides it has enough evidence to issue a Complaint than after they make a decision or you are found guilty of violating the National Labor Relations Act. Damages could be 5 to 20 times what they would have been before Biden appointees took over the NLRB.
- 8) Don't make yourself an easy target for NLRB or delete a DOL investigators. They are both looking at people you may wrongly classify as independent contractors – and if any wrongful classification can subject you to overtime claims, wage and hour claims and BSC claims as well as IRS issues – and down to the vibe and B they are seeking out new basis to conclude that the misclassification of an employee is an independent contractor is by itself a standalone unfair labor practice subjected the company to liability.
- 9) On January 6, 2022, the National Labor Relations Board and the Department of Labor announced a new joint cooperation agreement to allow them to share data and information from their investigations and filings with each other's investigative teams; this clearly makes it easier for garb Department of Labor wage and hour investigations as to whether or not it employees and independent contractors are not to be shifted over to the NLRB for additional NLRB sanctions and penalties.
- 10) Please understand that you may not be able to use Reserve Gates or Reserve Schedules any longer when you're on a multi-employer construction site. This can have a devastating effect on work progress when mass picketing shows up

to protest the single small subcontractor on a huge multibillion-dollar job with 55 Union companies.

- 11) If you are struck following an unsuccessful negotiation with the union for a new contract, you may no longer have the option of replacing striking employees with "replacements". This severely limits your bargaining ability and strength.
- 12) If you are "hard bargaining with the union, you may not be able to bargain indefinitely anymore even if bargaining is totally lawful. The NLRB will be going to court to get injunctions against "slow outcomes" at the bargaining table.
- 13) You have no constitutional rights as an employer or an individual at this Agency. Forget the concept of freedom of speech unless you are a picketing union or complaining individual employee.
- 14) Be "afraid" of the new Biden "micro-unit" union organizing theory, e.g., a union doesn't need to take all of your employees, only the ones it thinks will vote for them (making it much easier for union to "run" an NLRB election).
- 15) Banning Employer "campaign" speeches before a union election.
- 16) Eliminating in-person NLRB voting – allowing electronic and/or mail ballots only.



### *MITA Closing Remarks*

While “you” (union and non-union contractors alike) were always subject to the NLRB, up until now it was a “relatively” fair Agency – trying to interpret and fairly administer the NLRA since 1935.

Today is a new day. The stated goals of the Biden NLRB are not to administer the historic NLRA, but to blow up any road blocks to union organizing, disarm Employers’ rights totally, and tip the scales of justice 100% in favor of unions and complaining individuals (employees).

The civil fines, new anti-employer policies will make it hard, if not impossible, to win a union election, deal with illegal secondary, boycotts and pickets, and other illegal pressures against otherwise law abiding corporate citizens.

This will only get worse as the days go on. Even if the Republicans take control of the House and Senate in November 2022, all of Biden’s political appointees to the NLRB have the 4-6 year terms – they aren’t going away anytime soon!

As a service to my fellow MITA members, if you return the form attached (or give me your business card) I will make sure you receive the important labor and employment law updates that could impact the Construction Industry and your Business!

Frank T. Mamat

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Yes! Please put me on your mailing list to receive periodic material regarding employment, OSHA, labor and union-related issues that could affect employers. (I understand that these mailings are at no cost and I may direct that they be discontinued at any time.)

From: \_\_\_\_\_

By: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

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Phone: (\_\_\_\_) \_\_\_\_\_

Fax: (\_\_\_\_) \_\_\_\_\_

E-mail: \_\_\_\_\_