

If we buy another company, are we also buying the union that represents its employees?

Q. We're considering buying another company in the same industry. That company has a unionized workforce, and our executives are concerned because they don't want to deal with a union. Otherwise, though, they are positive about this possibility.

I've been asked whether we will have to deal with the union if we buy the company. I looked at the union contract, and it has a "successorship" clause that says the union contract "shall be binding on the company and its successors."

If we buy this company, will we have to deal with the union?

A. Your company might have to deal with the union, depending on how it buys and operates the other company. You might, however, not need to take on the existing union contract even though it has a successorship clause.

Generally, following the purchase of another employer's assets, if a majority of the buyer's workforce is made up of the seller's unionized employees, then the buyer will have to bargain with the union. In other words, this will still be a unionized operation.

In such an asset transaction, however, the successorship clause in the seller's union contract is generally not binding on the buyer. And unless the buyer's conduct reasonably makes employees believe it is taking on the union contract, the buyer will be free to set the initial terms and conditions of employment for its new workforce, subject to subsequent bargaining with the union for a new contract.

That will not be the case, however, if the transaction involves purchasing stock of the other company. In that situation, the buyer will probably be stuck with both the union and the existing contract.

The rules about these sorts of transactions are complex, so it is important to involve a labor attorney early on to avoid unintended consequences that can arise from well-meaning but uninformed words and actions on the part of the buyer's management and HR team.