

**NATIONAL LABOR
RELATIONS BOARD
UPDATE-2024**

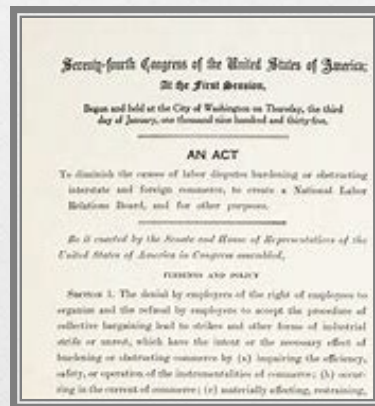
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NLRB Region 19

Seattle, WA

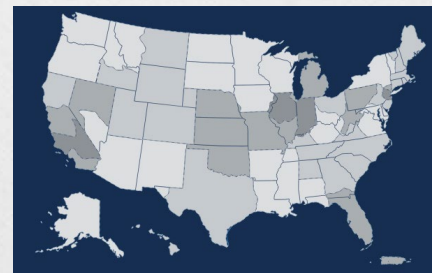
What is the National Labor Relations Act?



- Pre-1935 labor strife
- 1932 Congress passed the Norris-LaGuardia Act
- 1935 Wagner Act created the NLRB. It gave employees rights to form and join unions, and obligated employers to bargain
- 1947 Taft-Hartley Amendments

What is the National Labor Relations Board?

- Board
- General Counsel
 - Field Offices
 - Region 19



Career vs. Presidentially Appointed Employees at the NLRB

The vast majority of the Agency's approximately 1,200 employees are career employees with no political appointment or affiliation.

6 political appointees, *i.e.*, positions appointed by the President and confirmed by the Senate:

- The General Counsel (5-year term);
- 5 Board Members (staggered 4-year terms)
 - 3 from the President's Party, 2 from the other Party (once vacancies come open)

Who is Covered by the NLRA

- Covered: virtually all employees working for a private sector employer (but still must meet some basic interstate commerce standards)
 - This includes most non-governmental workplaces in the United States, including:
 - non-profits,
 - employee-owned businesses,
 - labor organizations (as an employer),
 - The United States Postal Service,
 - non-union businesses, and
 - businesses in states with “Right to Work” laws.

What the NLRB does not cover

- Race/Age/Gender/National Origin etc. discrimination
 - MT Human Rights Commission
 - Equal Employment Opportunity Commission
- Wage and hour law, workplace health and safety
 - MT DLI Employment Standards Division
 - US Department of Labor
- City labor ordinances
- Public sector + rail and airline labor relations
 - MT BOPA
 - Federal Labor Relations Authority
 - National Mediation Board
- Farm & domestic workers

What Does the NLRB Do?

- Conduct Secret Ballot Elections;
 - Investigate ULPs; and
- Prosecute meritorious ULPs.

The Union Election Process

UNITED STATES OF AMERICA
National Labor Relations Board
OFFICIAL SECRET BALLOT
For certain employees of

Do you wish to be represented for purposes of collective bargaining by:

MARK AN 'X' IN THE SQUARE OF YOUR CHOICE

YES <input type="checkbox"/>	NO <input type="checkbox"/>
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DO NOT SIGN THIS BALLOT. Fold and drop in ballot box.
If you spoil this ballot return it to the Board Agent for a new one.

The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.



The NLRA: Protecting Employees' Rights by Proscribing Certain Conduct by Employers and Unions (common ULPs)

Employers

- Coercive Conduct like threats, promise of benefits, interrogation, surveillance;
- Discriminating against employees for engaging in;
- Must bargain in good faith (once employees choose to be represented by a union).

Unions

- Duty of Fair Representation;
- Must also bargain in good faith;
- Prohibits certain strike activity (strikes against neutrals, notices at health care institutions, etc.).

How are
these
rights
protected?

File an Unfair Labor Practice Charge

An NLRB Board Agent Investigates

Regional Director Determines Merit

Complaint Issues

Hearing before an ALJ

ALJ Decision can be appealed to the Board

Significant Cases and
Recent Changes at the
NLRB

Current Trends and Personnel at the NLRB

- ULP and R-Case intake continues to be high
- Staffing is a problem in many field offices, but help is on the way.
 - Region 19, which covers the western half of Montana, will be adding four additional Board Agents by the end of the fiscal year. Region 27, which covers the eastern half of Montana, is also planning on hiring additional Board Agents.

GC Abruzzo's Initiatives

- Each new General Counsel sets priorities and initiatives. Here are a few of GC Abruzzo's:
 - Utilizing 10(j) injunctions when employers threaten or coerce employees during an organizing campaign, *i.e.*, not waiting for a discharge before initiating 10(j) proceedings; *See* GC Memorandum 22-02.
 - Seeking expanded and non-traditional remedies in settlements with the NLRB (Notice readings, training management, letters of apology, etc.); *see* GC Memoranda 21-06, 21-07, and 22-06.

Changes to ULP Caselaw

- *Lion Elastomers*, 372 NLRB No. 83 (2023) – the “equality rule” returns
- *McLaren Macomb*, 372 NLRB No. 58 (2023) – confidentiality and non-disparagement provisions in severance agreements may be unlawful
- *Thryv, Inc.*, 372 NLRB No. 22 (2022) – consequential damages

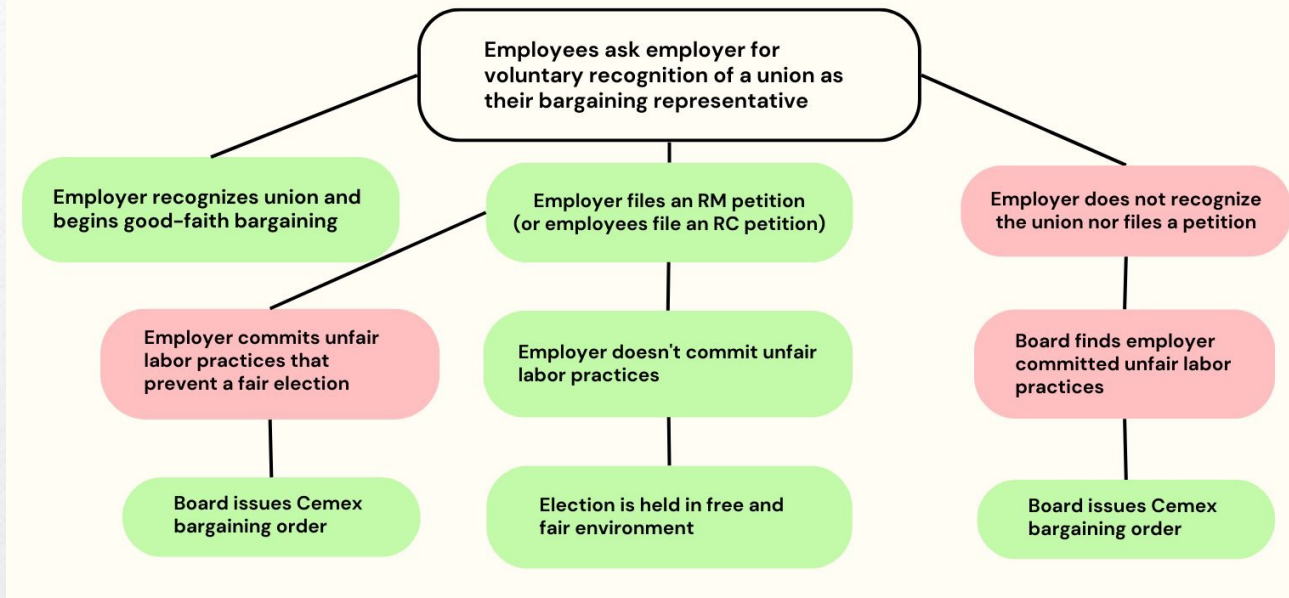
Potential Additional Changes

- Return to old handbook rule standard
- Pre-2019 application of standard for discrimination
- Bad faith bargaining damages
- Revising Moore Dry Dock secondary picketing standard
- Contract coverage vs. clear and unequivocal waiver
- Union access to private property
- Employer's obligation to share finances during bargaining
- Misclassification of workers as independent violation
- Withholding new benefits from unionized employees
- Use of employer-provided IT systems
- Confidentiality during internal investigations
- Search for work requirements for discriminatees
- NLRB jurisdiction over religious schools
- Limitations on use of permanent replacements during strikes
- Weingarten rights for non-union workers
- Negotiating discipline with newly-certified union
- Replacing locked out workers

Bargaining Orders

- *Cemex Construction Materials Pacific, LLC, 372 NLRB No. 130 (2023)*

Cemex Bargaining Orders



Bargaining Order Considerations

ULP that would result in re-run of election

- Types
- Dissemination not presumed

Authorization card chain of custody

- Who distributed
- Who collected

Appropriate unit

- Demand to bargain

Changes to Representation

Caselaw

- *Atlanta Opera*, 372 NLRB No. 95 (2023) – tightened independent contractor standard
- *American Steel Construction*, 372 NLRB No. 23 (2023) – *Specialty Healthcare* returns
- In-person elections are back

2014 R-Case Rules are Back

- Hearing scheduled 8 days from filing – not 21
- Petitioning party not required to file responsive statement of position
- Likely impact: reduced time from petition to election
 - 2014 Rules: Time from petition to election in FY 16 (23 days), FY 17 (22 days), FY 18 (23 days)
 - 2019 Rules: Time from petition to election in FY 21 (34 days), FY 22 (37 days)
- Effective December 26, 2023

Rule on Fair Choice & Employee Voice

- Blocking charges return
- Voluntary recognition bar
- Construction industry bargaining relationships
- Effective September 30, 2024

Recent Supreme Court Decisions that Potentially Affect the NLRB's Process

- *Loper Bright Enterprises v. Raimondo*, 603 U.S. ____ (June 28, 2024) (ends *Chevron* deference that directed courts to defer to an agency's reasonable interpretation of an ambiguous statute that the agency enforces).
- *Jarksey v. Securities and Exchange Commission*, 603 U.S. ____ (June 27, 2024) (defendant has a right to a jury trial when the SEC seeks civil penalties against the defendant for securities fraud).

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