



LEHR MIDDLEBROOKS
VREELAND & THOMPSON, P.C.

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NLRB's Holiday Gifts to Unions

'Tis the season for giving, which the NLRB has embraced in a most generous manner to unions. Last week, the NLRB either decided or announced as a matter of policy:

- A return to the “micro-unit” determination under the Obama Board, which will make it easier for unions to organize discrete groups of employees.
- Issued an unfair labor practice complaint against the University of Southern California, asserting that football players and men’s and women’s basketball players are misclassified as “student athletes” and instead should be treated as employees.
- Reduced an employer’s property rights to remove picketers from employer premises.
- Expanded financial remedies in unfair labor practice cases to include all “foreseeable” financial harm, such as late auto/mortgage payments and credit card interest.
- A return to the “blocking charge” process for unions, where if they file an unfair labor practice charge, the NLRB will postpone an election—this strategy is used by unions when they believe they will lose the election.

The Biden Board boost to unions adds a more favorable process to union organizing, which employers need to consider in conjunction with the following facts:

- Unions filed the highest number of election petitions last year since 2015 and won approximately 70% of those elections.
- Millennials comprise the highest workforce percentage—35%--and the highest percentage who have said they will vote for a union if given the opportunity—74%.
- 65% of US workers view unions favorably, the highest percentage since this annual poll began in 1967.
- Recent eye-popping national bargaining outcomes encourage employees to see unionization as a model for wage and benefits increases.

Considering these developments regarding unions, the following are New Year’s resolutions we encourage employers to adopt and stick to (unlike resolutions such as to exercise more and eat less):

- Make sure employer rights policies are up to date, including solicitation, distribution, and social media/email use and messaging.
- Conduct a workplace culture audit: where do leaders and the company need to improve? What are we doing well? How vulnerable are we to potential union organizing?

- Train supervisors and managers about union organizing, their role, and their rights. The focus of the training should be on what they can and should do, rather than what they cannot do.
- Assess the level of workforce engagement: how can it improve, what should leaders do to facilitate it?
- Run on your record. Too often, reward and recognition expenses are cut when business conditions tighten. Don't do that. Never pass up an opportunity to celebrate and recognize workplace success.

Please contact Richard Lehr at rlehr@lehrmiddlebrooks.com to discuss these developments, culture audits, and training.