

NLRB Imposes Additional Remedies

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On April 20, 2023, the National Labor Relations Board (NLRB) issued a decision wherein it discussed and explained the grounds for affirmatively adding to and imposing a variety of remedies against repeat labor law violators. The case arose from failed negotiations over a new contract between a Nebraska-based meat processing company and a union of food workers.

In relation to these negotiations, the company had been previously found to have violated multiple provisions of the National Labor Relations Act (NLRA), was subject to an injunction by a federal court, and was found in contempt of court.

Before the Board, the NLRB affirmed a finding that the company had engaged in bad faith in these negotiations. But it did not stop there. Instead, the NLRB issued an amended remedy that it believed was “necessary and appropriate to remedy the Respondent’s misconduct and to ensure that its employees understand their rights under the [NLRA] and feel free to exercise them going forward, despite what has come before.”

In that regard, “[i]n addition to the Board’s standard remedies for the violations found in this case,” the NLRB discussed and imposed the following:

1. Compensating the union for all bargaining expenses for a certain period of time;
2. Requiring the company’s CEO (or a Board agent in his presence) to read, sign and mail a notice to employees regarding the case, prohibitions on Respondent, and their rights (including a right of the NLRB to visit the worksite to ensure this notice continues to be posted for a specific time period);
3. Imposing a schedule on collective bargaining, along with required progress reports;
4. Ordering the company to compensate employees for “any other direct or foreseeable pecuniary harms incurred as a result of the Respondent’s unlawful implementation of its last, best, and final offer in the absence of an impasse”; and
5. Imposing a broad cease-and-desist order beyond the specific NLRA provisions violated.

Significantly, there was a dissenting opinion by Board Member Marvin E. Kaplan. He largely took issue with the “advisory” nature of parts of the Board’s decision as far as the availability and purpose of certain remedies—that is, parts which do “not change Board law” in his view. He then proceeded to question certain remedies awarded (such as ordering payment of bargaining expenses and notice reading by the company CEO and allowing subsequent “visitation” to check on postings), finding them to be “unwarranted.”

Given this decision, it is nonetheless important for employers to take note of the significant changes unfolding at the NLRB with respect to its enforcement policies and interpretation of the NLRA. Do not hesitate to contact us with any questions or concerns you may have in handling any matters with the NLRB.