



EMPLOYER LAW BLOG

The NLRB Strikes Again

AUTHOR: JOHN L. GILBERT

On August 2, the NLRB majority continued its relentless reversal of Board precedent which reasonably balanced rights of employees and employers. In *Stericycle and Teamsters Local 628*, the Board revisited its standard for evaluating work rules and employment policies.

The Board adopted a new standard favoring employees and perhaps establishing a self-fulfilling prophecy which may make defending general employment policies next to impossible.

The Board's new standard requires that the General Counsel prove that a challenged rule has a reasonable tendency to chill employees from exercising their Section 7 rights. The Board will interpret the rule from the perspective of an employee who is subject to the rule, economically dependent upon the employer, and who contemplates engaging in protected concerted activity. If the employee could reasonably interpret the rule to be coercive, then the General Counsel will have met her burden even if a contrary non coercive reasonable interpretation of the rule is possible. The employer may rebut the presumption of coerciveness by proving that its interests cannot be achieved with a more narrowly tailored rule.

The Board emphasized that it will judge complaints on a case by case basis and overruled its precedent which categorized employer policies according to their level of exposure to denial of Section 7 rights. That precedent provided some clarity in this area of the law.

The Board also decided to apply the new standard retroactively.

We have now returned to the days of fearing Board invalidation of reasonable workplace policies. Legal counsel is again more important than ever in this resurrected labor law minefield. The Labor and Employment Law team at Sandberg Phoenix stands ready to assist employers with these challenges.