

PUBLICATION

NLRB Seeking Expanded Remedies And Employee Notices

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On December 20, 2010, the General Counsel of the National Labor Relations Board (NLRB) issued a memorandum that attempts to dramatically expand the scope of the NLRB's remedial power in certain unfair labor practice cases. In September 2010, the General Counsel announced an initiative to seek immediate injunctive relief in federal court to require reinstatement of employees who are terminated during a union organizing campaign. The General Counsel has now gone a step further and indicated that the NLRB will seek enhanced remedies for relatively minor unfair labor practices that occur during a union organizing campaign. It will seek these enhanced remedies through federal court injunctions as well as administrative proceedings before the NLRB.

The new remedies will include: requiring management to read cease and desist orders out loud to employees, allowing union access to employer bulletin boards, providing updated names and addresses of employees to unions, allowing union access to employer premises in non-work areas during non-work time and providing equal time for unions to engage in captive audience speeches to employees on company premises on company time. The NLRB will seek these new remedies in cases of alleged interrogation, surveillance, threats, promises, solicitation of grievances and overbroad solicitation and distribution policies. In some cases, the NLRB will seek these remedies before the employer is found to have committed the alleged unfair labor practice. The NLRB's attempt to expand its remedial power under the National Labor Relations Act (NLRA) will undoubtedly meet legal challenges. In the interim, it is essential for employers in a union organizing campaign to secure effective legal representation.

In another initiative announced December 21, 2010, the NLRB has submitted a proposed rule that would require private employers to post a notice informing employees of their rights under the NLRA. Under the proposed rule, employers would also be required to disseminate the notice electronically to employees who have email. This proposed rule has not yet taken effect.