

Top Five Labor Law Developments for October 2021

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1. *The National Labor Relations Board (NLRB), its Regions 2 (New York), 22 (Newark), and 29 (Brooklyn) and the Consulate General of México in New York have signed an agreement formalizing the relationship between the NLRB and the Mexican government.* The agreement creates a relationship that will involve outreach and educational events conducted by the Regions' personnel and Consulate staff for the benefit of the Mexican population they serve, according to the NLRB's press release. Regional Director John Walsh of Region 2, Acting Director Eric Schechter of Region 22, and Assistant Director Teresa Poor of Region 29 attended the celebration for the NLRB. Regional Director Walsh spoke at the event, highlighting the Regions' goal to ensure immigrant populations know their rights under the National Labor Relations Act (NLRA). On behalf of the Mexican Consulate, Consul General Lopez expressed his appreciation for labor rights in the United States and for the opportunity to partner with the Regions to educate Mexican workers, their employers, and Mexican nationals who own businesses in the United States about their rights.
2. *The NLRB filed a motion with the U.S. Court of Appeals for the D.C. Circuit seeking review of former member William Emanuel's alleged conflict of interest in ongoing litigation before the NLRB.* NLRB Deputy Associate General Counsel Ruth Burdick filed a motion with the court requesting review of a Board decision issued by a panel that included Emanuel. The motion explained that the Board was unaware of Emanuel's alleged conflict when it ruled on the case in April 2021. In that decision, the NLRB reversed an administrative law judge's ruling that George Washington University Hospital committed a series of labor law violations as part of an anti-union campaign. However, Burdick's motion did not describe the alleged conflict or when the NLRB learned of it. Emanuel was one of two Republicans on the three-member panel that ruled in favor of the hospital. Burdick asked the court to remand the case to the Board so that it may consider how to address the alleged conflict. Burdick wrote, "After the Board's decision issued, it was determined that Member Emanuel, who sat on the original panel, was disqualified due to a previously unreported conflicting financial interest." Meanwhile, Board Chairman Lauren McFerran announced on Nov. 5 that new Board Members Gwynne Wilcox and David Prouty will not recuse themselves from a lawsuit filed by their former employer, the Service Employees International Union, challenging the Trump-era "joint employment" rule.
3. *Following an employer's defeat in a representation election, the NLRB rejected the employer's objection to the union's hiring hall operations at a critical time during the election process.* *JAM Productions, Ltd., Event Productions, Inc., Standing Room Only, Inc., and Victoria Operating Co.*, 13-RC-160240 (Sept. 30, 2021). The union filed a petition seeking an election in a unit of approximately 60 stage production employees employed by a concert and event producer at various venues around Chicago. Following the election in which the union prevailed, the employer filed objections alleging that during the last six weeks of the organizing campaign, the union provided premium work at union venues to unlawfully induce support from workers. Following a hearing, the NLRB Regional Director adopted the hearing officer's recommendation to dismiss the allegation. The Board affirmed, finding the referrals were consistent with the union's usual practices and there was no evidence that the union created the job referrals as a new benefit in connection with the election, or that it gave referrals only to those who signed authorization cards, who became members, or who otherwise showed support for the union before the election. As a result, the NLRB found the employer could not prove the union granted job referrals that would have impermissibly tended to influence the outcome of the election.
4. *Student-workers at Kenyon College filed an NLRB petition requesting a union election.* In 2020, the Kenyon Student Worker Organizing Committee requested voluntary recognition of the Committee as bargaining representative for undergraduate student-workers. After a three-month deliberative process, the College rejected the request, explaining it could "best fulfill its educational mission, preserve Kenyon's collaborative environment, and meet students' financial needs by working directly with students and their families." Thereafter, the Committee filed a petition with the NLRB, seeking an election to represent a wall-to-wall unit of 600 undergraduate student-workers. The group claims it

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has 60 percent of the student-workers' support, double the number required to commence the NLRB election process. Attorneys for the College filed a motion to stay the processing of the petition while the NLRB resolves the question of jurisdiction over a unit composed entirely of undergraduate student-workers. The NLRB has changed its position on this issue three times in the last 19 years, based on changing party-line votes. The current NLRB, it is expected, would again extend jurisdiction over student-workers. NLRB General Counsel (GC) Jennifer Abruzzo has made clear her position that the NLRA should apply to student-workers and athletes at private universities, and it is likely the Democrat-controlled NLRB will be sympathetic to that position.

5. *The U.S. House of Representatives is moving forward with a proposal to fine employers for existing violations of the NLRA but dropped an earlier plan to create new violations under the Act.* On October 28, the U.S. House Rules Committee released the latest version of the Democrats' sweeping tax and social spending package, which also contained provisions enabling the NLRB to collect penalties of at least \$50,000 for certain NLRA violations. The bill as originally proposed attached monetary penalties to newly defined violations of the NLRA, like "captive audience" meetings to discourage workers from supporting union organizing efforts. However, the provisions creating new violations were dropped from the bill. Meanwhile, GC Abruzzo has already taken steps in implementing the Board's aggressive remedial agenda.

Please contact a Jackson Lewis attorney if you have any questions about these developments.

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