



Pennsylvania Conference of Teamsters

Strength in Numbers 95,000

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LEGISLATIVE ACTION ALERT

NOTICE:

IMPORTANT FOLLOW-UP

TO

IMPORTANT NOTICE TO ALL UNION OFFICERS

NEW NLRB DIRECTIVE

Labor unions will likely face more litigation from dissatisfied workers and right-to-work groups under a new directive issued by the NLRB.



PLEASE FIND ATTACHED A TWO-PAGE LETTER FROM ATTORNEY TOM KOHN (WHO REPRESENTS TEAMSTERS JOINT COUNCIL NO. 53) ENTITLED "NLRB CONTINUES ASSAULT AGAINST UNIONS" THIS LETTER CLARIFIES SOME AREAS THE NLRB MEMO DOES NOT ADDRESS.



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NLRB CONTINUES ITS ASSAULT AGAINST UNIONS

As we are all aware, one of the changes that came with Trump's election is a Republican controlled NLRB, including a new General Counsel, Peter Robb. The Board has already issued a series of decisions that change the law to the benefit of employers, and Robb has indicated that it is his intention to question the continued viability of numerous well-established doctrines, almost all of which, if changed, would be to the detriment of organized labor.

On September 14, Robb's Associate General Counsel issued a memorandum to all NLRB Regional Directors, Officers-in-Charge and Resident Officers, GC 18-09, that will drastically alter the Board's approach to the circumstances under which labor unions will be held to have violated their duty of fair representation. In that memo, Robb's office acknowledges that "a union's mere negligence, alone, does not rise to the level of arbitrary conduct" and, therefore, has traditionally served as a valid defense to a charge of a violation of the duty of fair representation. Going forward, however, Regional offices have been directed that "where a union asserts a mere negligence defense based on its having lost track, misplaced or otherwise forgotten about a grievance, whether or not it had committed to pursue it, the union should be required to show the existence of established, reasonable procedures or systems in place to track grievances, without which, the defense should ordinarily fail." The Board would argue in those circumstances that a union that loses or misplaces a grievance engages in gross negligence unless it has a system or procedure in place which, while reasonable, was net effective in a particular case for an identifiable and clearly-enunciated reason.

Additionally, a union's failure to communicate decisions related to a grievance or to respond to inquiries for information or documents by the charging party would constitute arbitrary conduct absent a reasonable excuse or meaningful explanation, regardless of whether the decisions, alone, would violate the duty of fair representation. The mere failure to return phone calls or emails or other efforts by the charging party to inquire about a grievance or attempt to file one would be considered willful and arbitrary conduct.

One question that the memo does not address is what remedy the Board would seek if a union violated its duty of fair representation by, for example, negligently failing to file a grievance that lacked merit. Presumably there would not be any financial liability, since the grievance lacked merit, but presumably there would be, at a minimum, a requirement to post a notice of violation.

In any event, what needs to be done is to establish, and follow, a system of filing and keeping track of everything that is done to process grievances. For example, the Union official responsible for grievances might set up a computerized database, or a written system, for all grievances, to include when the member brought the grievance to his/her attention, what was done to file it, to whom the agent spoke or wrote, etc. Alternatively, the Union official might keep a detailed log, in writing, of such information.

The bottom line is that the NLRB will no longer accept mere negligence as a defense if the union does not establish some sort of system to process grievances and keep track of what is done once a grievance is filed.

If you have any questions concerning this memo, you should consult your Local's attorney.