

Pennsylvania Conference of Teamsters

Strength in Numbers 95,000

LEGISLATIVE ACTION ALERT

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>>>>>>> This report supplied by our legal advisor Tom Kohn, Esq. <<<<<<<<

NLRB ABANDONS ACCEEPTANCE OF CONSENT ORDERS TO SETTLE ULP CASES

On August 22, the National Labor Relations Board, in *Metro Health, Inc.*, overruled its precedent that permitted a respondent in an unfair labor case to unilaterally settle the matter by entering into a consent order, even over the objection of the charging party and/or the Board's General Counsel. The prior practice allowed a defending party to settle the case by submitting a proposed consent order to the administrative law judge, who had the discretion to accept it and thereby end the litigation, even where the accepted order may not have provided for a complete remedy. In reversing that practice, the Board explained that "a consent order does not represent an agreement between a respondent and *any* opposing party in the case. Rather, a consent order is proffered by the respondent and accepted by the administrative law judge, over the *objection* of both the General Counsel and the charging party."

Although this new approach to settlements will be applicable to both union and employer defendants, as a practical matterunilateral settlements occur with more frequency in cases brought by unions against employers. Thus, once again, the Biden Board's change would most likely benefit unions over employers.

NLRB ENACTS FAIR CHOICE-EMPLOYEE VOICE FINAL RULE

Recently the NLRB issued what it termed its Fair Choice-Employee Voice Final Rule that restored policies that provide workers with a fair opportunity to decide whether they want union representation and a process that respects workers' choices: the blocking charge policy and voluntary recognition of a union, including construction industry bargaining relationships. As stated by the Board, "The Final Rule returns to the Board's pre-2020 practice on blocking charges before an election, restoring a Regional Director's authority to delay an election if unfair labor practice conduct is sufficiently serious to interfere with employee free choice. [The] rule reverses the Board's 2020 rule requiring Regional Directors to run elections in an election environment tainted by unfair labor practices." That prior rule had eliminated the ability to block a petitioned-for election pending the outcome of ULP charges, an important right that unions frequently invoked in situations where employers engaged in illegal activities during a union organizing drive.

Additionally, the rule removes the 2020 rule's requirement that when an employer chooses to voluntarily recognize a union, the parties provide for a mandatory 45-day period to allow a minority of workers to demand an election questioning that choice.

These changes, together with others that the current NLRB has initiated, demonstrate the importance of maintaining the composition of the existing Board membership.



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