



Mark R. Gleeman

**The NLRB Comes Out Swinging:
NEW EFFORTS BY THE NATIONAL LABOR RELATIONS
BOARD TO HIT THE BALL OUT OF THE PARK**

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EMPLOYEE RIGHTS POSTER

- The rule applies whether or not you have unionized employees.
- The poster must be printed on 11 x 17 inch paper or printed on two 8½ x 11 inch pages taped together. The poster is available on the NLRB's website which is www.nlrb.gov, from a regional NLRB office or I have some notices with me today. You can also buy from a commercial vendor a poster that consolidates the new notice with existing federal notices.



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EMPLOYEE RIGHTS POSTER (cont.)

- The Notice must be posted by January 31, 2012



TIMING OF ELECTIONS

- The NLRB has proposed shortening the time between the filing of an election petition and the actual election.
- Currently, the NLRB policy is to hold an election within 6 weeks after the petition is filed. On average, an election occurs 38 days after the petition is filed.



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TIMING OF ELECTIONS (cont.)

- The NLRB wants to reduce the time between the filing of the election petition and the election to 10-21 days.
- If this occurs, employers will have far less time to campaign and explain to employees the benefits of remaining union free.



DESCRIPTION OF THE BARGAINING UNIT

- In a recent decision, the NLRB dramatically changed the way bargaining units are defined.
- “Overwhelming community of interest”



PLANT LOCATIONS

- This past year, the NLRB sued airplane manufacturer Boeing alleging that it illegally moved a second production line for its new 787 Dreamliner airplane from its union plants Washington State or Oregon to a new non-union plant in South Carolina.



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PLANT LOCATIONS (cont.)

- The lawsuit alleges that Boeing is retaliating against employees for strikes that occurred in 1977, 1989, 1995, 2005 and 2008 and that Boeing is trying to threaten employees that they will lose additional work in the event of future strikes.



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PLANT LOCATIONS (cont.)

- The NLRB points to statements made by Boeing executives that part of the reason for moving the second production line to South Carolina was to diversify the labor pool and labor relationship and avoid future strikes and delivery disruptions caused by work stoppages.



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PLANT LOCATIONS (cont.)

- The NLRB is trying to force Boeing to move the second production line back to Oregon and Washington State.



SOCIAL NETWORKS

- The NLRA applies to all employers.
- Section 7 of the NLRA protects employees engaged in “concerted activities for the purpose of collective bargaining or other mutual aid or protection.”



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SOCIAL NETWORKS (cont.)

- The NLRB has issued a series of decisions in the past year in which they have determined that discipline taken against employees based on Facebook or Twitter use may be protected if the topics relate to the terms and conditions of employment and involve discussions with co-workers. These include postings about job compensation, performance and staffing complaints.



SOCIAL NETWORKS (cont.)

- The NLRB has also reviewed several employer internet policies and has found many of them to be overly broad because they do not allow for protected concerted activity.

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PERSUADER LAW (DOL RULE CHANGE)

- Currently, there is a rule that requires employers who hire third parties (including law firms) to file a disclosure form with the U.S. Department of Labor (DOL) if the third party engages in activity to persuade employees as to their collective bargaining rights, or to obtain information about the activities of a labor organization involved in a labor dispute with the employer. The third parties are also required to file the disclosure form



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PERSUADER LAW (cont.)

- However, since 1959, there has been an exception to the rule for providing “advice” so that the disclosure is only required if a third party speaks directly to employees.



PERSUADER LAW (cont.)

- The “advice” exception allows employers to obtain counsel on what they can say to employees without violating the law. Examples include providing union avoidance training, supervisor training and drafting or reviewing documents, letters, or speeches presented to employees during an organizing drive or in anticipation of an NLRB election.



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PERSUADER LAW (cont.)

- The DOL (not the NLRB) is proposing to significantly narrow the advice exception to “oral or written recommendations regarding a decision or course of conduct,” outside of representing the employer in a court, administrative, or arbitration proceeding. As a result, “persuader activity” will include supervisor training, preparing for employee meetings and elections after a petition is filed, preparing policies and practices designed to prevent organizing and determining the timing and sequencing of strategies.



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PERSUADER LAW (cont.)

- This will be a major change. The filing will be available on the DOL's website and provide unions with lots of information they will certainly try to use against employers.



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