

What Manufacturing and Other Employers Can Expect From Biden National Labor Relations Board

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Through its decisions, the five-member National Labor Relations Board interprets the National Labor Relations Act. These decisions set rules that regulate unionized and non-unionized workplaces, including the relationship between employers and organized labor and the rights of employees to engage in concerted activities. With President Joe Biden's appointees taking their seats, the Board's Democratic majority is expected to make changes that would likely benefit organized labor.

In addition, General Counsel Jennifer Abruzzo, also a Biden appointee and the Board's de facto "prosecutor," has announced her enforcement priorities. Here are four of the most significant potential changes for manufacturers:

1. *Card Check*. In recent years, legislative attempts to replace the secret ballot election process with card check have failed. General Counsel Abruzzo has indicated in a memorandum that she may seek a ruling from the Board that employers that commit unfair labor practices, or that cannot offer a legitimate reason for doubting a union's claim of majority support, must recognize the union based on majority support as evidenced by signed authorization cards.
2. *Quickie Strikes*. Quickie strikes occur when employees intermittently walk off the job for short periods. Quickie strikes can greatly impede production as employees repeatedly walk off the job. At the same time, the employer is effectively denied the opportunity to shore up production by using replacement workers because the strikers return to work before the replacements can be hired. Thus, quickie strikes are treated as unprotected activity, meaning the strikers can be disciplined or discharged. General Counsel Abruzzo has indicated she will seek to narrow the definition of what constitutes an unprotected quickie or intermittent strike. Quickie strikes could be damaging to many companies, but the impact to manufacturing with its often-unforgiving production schedules could be especially damaging. If she were to succeed, employers undoubtedly would be exposed to more quickie-type strikes.

3. *Acquisitions*. Under current law, a company that acquires a unionized business generally has the right to reject an existing union contract and set the initial terms and conditions of employment for the employees of the acquired company. Thus, acquiring businesses generally can (and often do) implement pay, benefits, and other working conditions that differ substantially from those stated in the union contract in force prior to the acquisition. In fact, the ability to make these changes is often a significant factor in making the deal work and making the newly acquired operation profitable. This issue is particularly critical in manufacturing, where older plants with mature union contracts and inflexible unions might be at risk of eventual closure. One priority General Counsel Abruzzo has identified is placing limits on a purchaser's right to make these changes and requiring the terms of the union contract be maintained.

4. *Status Quo Obligation Expansion*. When a collective bargaining agreement expires, an employer is required to maintain the status quo as to wages, benefits, and other working conditions until a new contract is reached or bargaining comes to an impasse. Under current law, if a contract provides for annual increases, the status quo obligation does not require an employer to continue making the increases after the contract expires, in most cases. For example, if a contract requires yearly increases in the amount the employer contributes to health insurance, the status quo obligation is to continue to contribute the dollar amount that applied before the contract expired but does not require any post-expiration increases. General Counsel Abruzzo has indicated she will likely press for a change to require increases in pay and benefits that occur over the term of a contract continue even after the contract expires.

General Counsel Abruzzo's aggressive agenda goes well beyond the four major items discussed above. For instance, the ability of a company to make reasonable work rules may become more limited if unions can claim those rules potentially chill union rights. With the Biden majority firmly in place on the Board, there is a real possibility much of that agenda will become the law of the land.

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