

NLRB Potential Remedies: Sign of Things to Come?

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Over the past few years, a labor-friendly National Labor Relations Board (NLRB or “the Board”) has expanded the scope of the NLRB’s jurisdictional reach in multiple ways, notably in the area of potential remedies. Indeed, in its 2022 *Thryv* decision, the NLRB ruled that the standard make-whole remedy should include consequential damages including but not limited to all “direct or foreseeable pecuniary harms” related to the underlying unfair labor practice violations. Since that 2022 decision, the NLRB has sought a wide range of remedies under the umbrella of consequential damages which are well beyond what has been the typical remedy for violations, namely backpay and reinstatement. However, in *Thryv*, the NLRB ruled that true “make whole” relief needed to include more than just backpay and include such things as relocation costs, cost of living adjustments, mileage reimbursement, interest, and excess taxes.

However, on December 27, 2024, the U.S. Third Circuit Court of Appeals gave employers a year-end gift. In *NLRB v. Starbucks*, the court ruled that the NLRB exceeded its authority under the National Labor Relations Act (NLRA) when it held that two individuals were entitled to “reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings.” The Third Circuit found that the Board’s remedial authority was limited to equitable relief only. This is certainly welcome news for employers who have pending unfair labor practice cases before one of the NLRB’s regions throughout the United States.

In light of the fact that the Republican Party will now be in control of all three branches of the federal government in the coming weeks, a dramatic sea change within the NLRB is imminent. Upon being sworn in on January 20, 2021, one of the first actions President Joe Biden took as president was to fire the then-general counsel of the NLRB. It will be interesting to see what newly sworn in President Donald Trump does with current General Counsel Jennifer Abruzzo, who has worked during her term to expand the protections afforded to workers and [pushed the NLRB to reconsider many of its prior precedents](#). As a result, it is very likely that the future NLRB will seek remedies which more closely resemble typical backpay awards as well as other changes to interpretation of the NLRA. Employers need to stay attentive.

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