



Pennsylvania Conference of Teamsters

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LEGISLATIVE ACTION ALERT

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(NLRB) Board Details Potential Remedies for Repeated or Egregious Misconduct

Supplied by Thomas Kohn, Esq.

As I have previously noted, the current NLRB is vastly different from the Trump-appointed Board. This latest decision constitutes a major change in its approach to remedies for repeat or serious offenders. While the circumstances that must exist for such extensive remedies to be appropriate will be rare, the fact that the Board has finally addressed such offenders in a meaningful way is significant and constitutes yet another shift in favor of unions and their members.

See the decision below.

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In a new decision issued by the National Labor Relations Board in *Noah's Ark Processors, LLC D/B/A WR Reserve*, the Board detailed potential remedies it will consider in cases involving Respondents who have shown repeated or egregious disregard for employees' rights under the National Labor Relations Act (the Act).

The Board determined that when the unfair labor practice violations found in a case justify a "broad" cease-and-desist order (traditionally ordered in cases where the Respondent has shown a proclivity to violate the Act or has engaged in egregious or widespread misconduct), in addition to the cease-and-desist order, the Board should consider a non-exhaustive list of potential remedies, discussed in depth in the *Noah's Ark* decision and, depending on the circumstances of the case, apply some or all

of those remedies. The Board's discussion of these potential remedies is part of an effort "to bring greater consistency to the Board's exercise of its remedial discretion, and to better ensure that all appropriate remedies are ordered in any given case." Such remedies may include:

- Adding an Explanation of Rights to the remedial order that informs employees of their rights in a more comprehensive manner;
- Requiring a reading and distribution of the Notice and any Explanation of Rights to employees, including potentially requiring supervisors or particular officials involved in the violations to participate in or be present for the reading and/or allowing presence of a union agent during the reading;
- Mailing the Notice and any Explanation of Rights to the employees' homes;
- Requiring a person who bears significant responsibility in the Respondent's organization to sign the Notice;
- Publication of the Notice in local publications of broad circulation and local appeal;
- Requiring that the Notice/Explanation be posted for an extended period of time;
- Visitation requirement, permitting representatives of the Board to inspect the Respondent's bulletin boards and records to determine and secure compliance with the Board's order;
- Reimbursement of Union's bargaining expenses, including making whole any employees who lost wages by attending bargaining sessions.

Applying these principles to the facts of the case, the Board upheld the Administrative Law Judge's decision that the employer bargained in bad faith with the union and determined that—because the employer had also previously been found in violation of the Act, as well as in contempt of a U.S. District Court injunction ordering it to bargain in good faith—the employer's open hostility toward its responsibilities under Act warranted a broad order and appropriate remedies. In addition to traditional remedies for refusal to bargain, such as rescission of unilateral changes and make-whole relief, and in addition to additional remedies ordered by the judge—including reimbursement of bargaining expenses and a reading of the Board's notice to employees—the Board ordered: the addition of an Explanation of Rights to the remedial order, a bargaining schedule with written progress reports, reimbursement of the union's bargaining expenses and earnings lost by individual employees while attending bargaining sessions, extended posting of the Notice and Explanation of Rights for one year, electronic distribution of the Notice and Explanation of Rights, mailing of the Notice and Explanation of Rights, reading of the Notice and Explanation of Rights in English and Spanish by the Respondent's CEO or by a Board agent in the CEO's presence, union presence at the Notice reading upon request, distribution of the Notice and Explanation of Rights to employees at the reading, and authorizing a Board agent to enter the Respondent's facility for a period of one year at reasonable times for the purpose of determining whether the Respondent is in compliance with its posting and mailing requirements under the Board's order.

"The Act gives the Board broad discretion to exercise its remedial authority, and it can and should tailor the remedies to the violations, including to their nature, severity, and extent," said Chairman Lauren McFerran. "Our aim is to ensure that in every case involving repeated or serious misconduct, the Board will consistently consider and implement a full range of potential remedies, so that our actions will make victims of unfair labor practices whole, while ensuring that employees not only understand their rights under the Act but also feel free to exercise them going forward."

Member Prouty joined Chairman McFerran in the issuance of the decision. Member Kaplan concurred in part and dissented in part.