



# Pennsylvania Conference of Teamsters

## Strength in Numbers 95,000

# LEGISLATIVE ACTION ALERT

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## ANOTHER TRUMP-BOARD DOCTRINE OVERTURNED

Continuing its review of numerous Trump-Board doctrines, the NLRB, on February 21, has overturned yet another pro-employer precedent. In *McLaren Macomb and Local 40 RN Staff Council, OPEIU*, the Board found that the employer had violated Section 8(a)(1) of the National Labor Relations Act (“Act”) by conditioning the receipt of severance payments on signing an agreement that contained confidentiality and non-disclosure provisions. In doing so, it specifically overruled two Trump-Board decisions and returned to what it termed “the prior, well-established principle that a severance agreement is unlawful if its terms have a reasonable tendency to interfere with, restrain, or coerce employees in the exercise of their Section rights” and that the mere proffer of such agreements to employees is unlawful. It held that it is not necessary to show that the employer had any animus against protected activity nor that the affected employee was actually restrained or coerced in

the exercise of such rights; rather, the Board will apply an objective test that asks whether a reasonable employee would be so impacted.

In rendering that decision, the Board cautioned that while a broad range of communication with others is protected, the communication must be “related to an ongoing labor dispute” and not be “so disloyal, reckless, or maliciously untrue” as to lose the protection of the Act. It concluded that a “severance agreement is unlawful if it precludes an employee from assisting coworkers with workplace issues concerning their employer, and from communicating with others, including a union, and the Board, about his employment.”

While this decision deals with severance agreements, it is likely that the Board would view settlement agreements in the same manner.

*This report has been provided by Tom Kohn, Esq. Legal Advisor to the PA Conference of Teamsters*