

# EMPLOYERS BEWARE: NLRB LIKELY TO DROP MORE PRO-UNION RULINGS BY END OF AUGUST

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The article, "Employers Beware: NLRB Likely To Drop More Pro-Union Rulings By End Of August," featured in *Forbes*, discussed how the National Labor Relations Board (NLRB) may hand down some big decisions in favor of labor unions before the expiration of Board Member Kent Hirozawa's term on Aug. 27, including a "clear successor" rule making it easier to impose union contracts on the buyers of companies and a decision in favor of Columbia University graduate students seeking to form a union.

Steve Bernstein examined the NLRB's rulings over the past years and discussed the likelihood of the agency re-examining the "clear successor" rule.

"We've seen decisions in the last couple of years from this agency eroding the notion of confidentiality and employee privacy rights," said Steve, including a 2012 decision striking down Costco's prohibitions on sharing employee information on social media. In a 2015 decision involving Banner Healthcare, the board also struck down employee confidentiality rules regarding internal investigations.

Adding coworkers or lawyers to interviews with managers could make it difficult for employers to investigate wrongdoing without spreading the news throughout the workplace, Steve said. "The reality is once that toothpaste comes out of the tube it's hard to put it back in," he said.

No one can predict exactly which cases will be decided at any time, since the board issues hundreds of decisions a year and many of them are settled and go away before a

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decision can come out. But Steve said it is likely the board will also revisit the “clear successor” rule requiring the buyers of companies with union workforces to honor existing labor contracts instead of negotiating afresh. Appeals courts have ruled that most acquirers can avoid honoring existing labor contracts unless it is “perfectly clear” the buyer plans to retain all of the workers post-acquisition. The NLRB nevertheless rejected that reasoning in a 2014 decision requiring an employer to provide back pay to workers after refusing to honor a prior contract.

“I am increasingly finding myself advising clients to proceed with caution in an acquisition,” Steve said. “At the end of the day they may find themselves eating a collective bargaining contract they don’t want.”

To read the full article, please visit [Forbes](#).