



NLRB Decisions Demand In-House Counsel Vigilance

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Although union membership has declined steadily since the 1970s, a string of August decisions by the National Labor Relations Board (NLRB) may re-invigorate large unions and make union organizing easier. Thus, even in a right-to-work state such as Texas, in-house counsel seeking to preserve their companies' union-free status must prepare for more organizing activity. This can include unions' corporate campaigns, which rely on nontraditional organizing tactics, such as political or public activities, and often involve the employer committing to neutrality agreements. It can also include unions' efforts to exploit small pockets of unhappy workers.

In-house counsel seeking to maintain a union-free work environment must be proactive. Preparation begins with supervisor training. Before this can take place, in-house counsel should verify who the NLRB would consider a supervisor under the law.

Supervisors are the eyes and ears of the company. They must know and understand the company's position regarding unionization and how to respond legally to questions about it without inadvertently committing unfair labor practices. Supervisors should also learn how to recognize and respond to early signs of organizing activities. By conducting interactive, group training sessions, in-house counsel can teach supervisors not only what they can legally say or do, but also what they should not do to preserve a union-free environment.

Critically, in-house counsel also must strive to ensure that the entire company demonstrates fairness and respect toward employees and responds appropriately to concerns. To do this, in-house counsel should ensure that the company maintains and publicizes effective avenues through which employees can express complaints or concerns. They should also audit or test these avenues to ensure that they work.

Even in a right-to-work state, where employees are not required to join, a lawfully recognized union represents all the workers in the applicable bargaining unit. This is a critical consideration for in-house counsel, because it could have a lasting impact upon recruiting, work flow, customer relationships and costs, among other things.

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