

## A Double Whammy for American Business

Insights

3.31.15

Today, business in this country got a double dose of bad news when, first the President vetoed a joint resolution under the Congressional Review Act that sought to block implementation of the National Labor Relations Board's controversial amendments to its regulations for processing union representation cases, and the National Labor Relations Board decided the "mother" of all social media cases.

The Senate March 4 adopted the resolution of disapproval ([S.J. Res. 8](#)) by a 53-46 vote and the House passed the measure 232-186 March 19, but Obama said in a presidential memorandum he would not approve congressional action to overturn NLRB rule changes that he considers "modest but overdue reforms to simplify and streamline private sector union elections."

In remarks at the White House, Obama called the joint resolution of Congress a "bad idea." The president said, "One of the freedoms of folks here in the United States is that if they choose to join a union, they should be able to do so. And we shouldn't be making it impossible for that to happen." The NLRB rule changes are set to take effect April 14.

And is if that were not bad enough, the NLRB has determined that an employee's obscene and vulgar Facebook post directed at a supervisor and his family is protected under the National Labor Relations Act. The Board applied the new Triple Play standard for social-media posts made while off-site and off-duty. *Pier Sixty, LLC*, 362 NLRB No. 59 (3/31/2015) [incorrectly dated 3/31/2014]. The Board reasoned, in part, that the supervisor "provoked" the employee's obscene post by giving out "harsh" work instructions, even though the supervisor's conduct did not constitute an unfair labor practice. The employee's Facebook post (edited):

*"[Supervisor] Bob is such a NASTY MOTHER F\*\*\*\*\* don't know how to talk to people!!!! F\*\*\* his mother and his entire f\*\*\*\*\* family!!!! What a LOSER!!!! Vote YES for the UNION!!!!!!"*

I wonder if he speaks to his own mother like that?

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