



A Fox Rothschild Podcast

Labor Law Lineup

Episode 2: Recent NLRB Decisions - A Unified Board Moving Cases

Featuring Mark Eskenazi and Katie Cohodes of Fox Rothschild

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Mark: Welcome to "Labor Law Lineup." I'm Mark Eskenazi.

Katie: And I'm Katie Cohodes.

Mark: We're labor and employment attorneys at Fox Rothschild breaking down how the current state of labor law affects your workplace.

Katie: Mark draws on deep experience shaping federal labor policy at both the White House and the National Labor Relations Board.

Mark: Katie offers sharp insight as former in-house counsel who's dealt firsthand with a broad range of workplace challenges.

Together, we break down labor law news for people leaders.

Katie: And we promise to keep it brief, because we know your time is valuable and your inbox is full.

Mark: Please reach out if you're a client of Fox Rothschild or a listener who wants to continue the conversation on anything we cover.

Katie: The newly constituted NLRB has been busy issuing decisions as of February 4, when we recorded this, it appears the Board has issued more than 30 decisions in contested cases since the new members took office on January 7, in less than a month.

Mark: At the end of the month, the Board issued three decisions regarding airport service contractors, all of whom had argued that they did not fall under the NLRB's jurisdiction. The board

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disagreed. If you're a contractor but not an actual airline, you're covered by the NLRA and the NLRB does have jurisdiction.

Katie: The Board also rejected a private settlement with one employee because the settlement left the rest of the workforce subject to unlawful employment contracts without any notice posting requirement. They also found it significant that the acting GC disagreed with the settlement.

Mark: Finally, we've noticed very few personal concurring or dissenting footnotes from Board members so far. Historically, Board members often added personal footnotes, even when agreeing with the majority, to stake out their own individual positions. It's only been a month into the new Board's tenure, and we haven't seen many controversial issues yet. However, the scarcity of personal footnotes in these first cases suggest that the Board is prioritizing efficiency and unity over individual commentary.

Katie: The lack of footnotes combined with the volume of decisions and the GCs prioritization of the case backlog means employers should be ready for things to move quickly.

Mark: One important caveat here: Employers should temper their expectations for quick reversal of Biden-era precedent. This is because the new Board members, Murphy and Mayer, have said in footnotes that they will not overrule precedent without a full three-member consensus, a longstanding tradition though not a legal requirement.

Funny enough, we also caught a Board footnote calling out an employer for citing cases that apparently don't exist.

Katie: It'll be interesting to watch these decisions continue to roll in. Thanks for listening.

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