



## A Fox Rothschild Podcast

### Labor Law Lineup

#### Episode 4: Cases on the Chopping Block

*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.

Welcome back to "Labor Law Lineup." We recorded this episode on January 27 2026. Today we're looking at some controversial board decisions from the past few years that the new board majority could reconsider.

**Katie:** Right now, we have a two-to-one Republican majority. We'll likely need to wait for another Republican member to be nominated and confirmed before major reversals happen since traditionally, the board requires three members to overrule precedent.

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**Mark:** That said, one of the first cases possibly on the chopping block is a decision that dramatically changed how unions could be recognized.

Now, if an employer commits an unfair labor practice during an election campaign, the board can skip the election entirely and order the employer to bargain.

**Katie:** Even minor missteps during a campaign could result in union recognition without employees ever voting. A reversal could restore the traditional election process.

**Mark:** Next, the so-called "captive audience" decision. The prior board ruled that mandatory meetings where employers share their views on unionization are unlawful. This reversed decades of precedent allowing employers to communicate with their workforce.

**Katie:** Many employers found this decision incredibly restrictive. If overturned, employers could regain the ability to hold company-wide meetings to discuss union-related matters.

**Mark:** And then there's the handbook case that presumed neutral workplace rules were unlawful if employees might interpret them as discouraging union activity. That made it harder to maintain common-sense policies on things like confidentiality or social media use. The new board could revert to a more balanced approach.

**Katie:** Other decisions which could be reconsidered include ones which expanded remedies and restricted severance agreement terms like confidentiality and nondisparagement clauses.

**Mark:** Regarding union elections, there's also current rules that shorten response times for employers when a union files an election petition. The board may seek to reverse these, but that takes time because the formal rulemaking process must be followed.

**Katie:** And here's the catch for HR: Prior decisions remain binding until they're overruled. That means you still need to comply with current precedent. You should monitor for updates, however; new board decisions could be coming within the year.

**Mark:** The more immediate impact will come through the General Counsel's enforcement memos. Think of these memos as the agency's marching orders to its regional offices since the GC supervises the regions.

**Katie:** We're expecting regional offices to have more flexibility to reach settlements, which could mean faster case resolutions and hopefully reducing lengthy backlogs for employers dealing with unfair labor practice charges. That'd be a practical benefit for anyone stuck in drawn out disputes.

**Mark:** Thank you for tuning in everyone. We'll keep you posted as developments unfold.

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