



## A Fox Rothschild Podcast

### Labor Law Lineup

#### Episode 6: Early February NLRB Decision Round-Up

*Featuring Mark Eskenazi and Katie Cohodes of Fox Rothschild*

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

**Katherine:** 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.

**Katherine:** 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.

**Katherine:** 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.

**Katherine:** The NLRB is moving through its case backlog, and we're spotting some trends for employers to watch. We recorded this on February 20.

**Mark:** Let's start with a couple of refusal-to-bargain cases. These are fairly standard cases where employers haven't bargained because they want to contest the board's election decision in the Courts of Appeals. Members Murphy and Mayer didn't participate in the original proceedings, but added footnotes saying summary judgment was still appropriate. That's a routine footnote we see from members of either party.

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**Katherine:** The board also tackled several requests for review of union election cases. Most got denied for raising no substantial issues warranting review. That's a tough standard to meet and the board regularly denies these.

**Mark:** In one case, the board denied an employer's claim that the region had no authority to rule because the board lacked a quorum. In a related case, the board noted it had a quorum now and ratified its decision.

**Katherine:** We also saw board members Murphy and Mayer staking out personal positions on the board's blocking charge policy. This policy lets Regional Directors pause decertification elections if a ULP charge is filed that could affect employees' free choice. This is sometimes used to delay elections for months or even years.

In this case, the two new members applied the Biden-era policy, but said they had no opinion on whether the policy was correctly determined.

**Mark:** That's a signal they're following existing precedent for now, but reserving judgment on whether it should be changed down the road. There aren't three votes to overturn case law right now. This is consistent with what Katie and I have said before. We don't expect immediate reversals of Biden-era precedent. On the other hand, Democratic holdover David Prouty has continued to argue for expanded remedies.

**Katherine:** We also saw a couple employers petition to revoke subpoenas. The board denied both, finding the subpoenas sought relevant information with enough specificity. That's a pretty common outcome.

**Mark:** So to sum it up, the board is granting summary judgment and straightforward refusal to bargain cases, denying appeals in union election cases that don't raise substantial issues and upholding subpoena enforcement. They're moving pretty fast. But board members Murphy and Mayer are carefully signaling through footnotes when they're applying precedent without necessarily endorsing it.

**Katherine:** Employers should be prepared for continued pace, but shouldn't expect dramatic policy shifts until the board signals otherwise. Thanks for listening.

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