



A Fox Rothschild Podcast

Labor Law Lineup

Episode 7: Mid-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.

Another NLRB round-up. The board continues to issue decisions. We recorded this on February 20, 2026.

Katherine: That's right, Mark. The new board dropped its first ULP decision on appeal from an ALJ, and it's an interesting one. The board reversed the ALJ ruling that the employer lawfully refused a union information request because it proved the documents simply didn't exist. A second allegation got remanded to the ALJ to sort out a credibility dispute over what was actually provided.

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The practical takeaway for HR? Document what you hand over to a union and keep clear records when requested information doesn't exist, because your credibility on these points can make or break the case. In a few weeks, we'll be doing a special episode on the importance of witness credibility.

Mark: In other recent cases, we're seeing employers continue to test union certifications.

In multiple cases, the board granted summary judgment against employers who refused to bargain after unions were certified. Some employers raised constitutional challenges, including claims about Seventh Amendment jury trials, and the board rejected these claims, citing Supreme Court precedent going all the way back to 1937.

Katherine: Now let's talk about the Merger Doctrine. In two cases, employees tried to hold deauthorization votes to remove union security clauses at their local facilities. The board dismissed both petitions.

Mark: And here's why it was pretty interesting: When a local unit has been merged into a larger national bargaining unit-- this could be through contract language, incorporating a master agreement-- you can't hold a deauthorization or a decertification vote just for that local group. The petition has to cover the entire merged unit.

Katherine: Exactly. And interestingly, board member Mayer said in a footnote he'd be open to revisiting the Merger Doctrine in a future case. So this could be an area to watch.

In another case, the board ended its COVID-era policy letting employers delay posting remedial notices until facilities fully reopened or staffing normalized. We're back to the standard 14-day posting requirement. So if you get hit with a ULP finding, that clock starts immediately.

Mark: And finally, the board set aside a consent order in one case, applying a Biden-era decision that ended the practice of resolving cases through consent orders. Members Murphy and Mayer noted that they didn't participate in that precedent and expressed no view on whether it was correctly decided, but they applied it anyway for institutional reasons.

This is the signal that we talked about earlier that they may be interested in overruling that precedent.

Katherine: That's all for now. See you next time.

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