



Online CLE

Nuts and Bolts of Labor Law: NLRB Overview

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Chapter 2

Nuts and Bolts of Labor Law: NLRB Overview

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National Labor Relations Board

Summary of Materials

- Who We Are – Description of the NLRB, mission, and structure
- Employee Rights – A summary of employees’ rights under the National Labor Relations Act, including union activity and protected concerted activity, as well as information on who is covered by the Act
- Employer/Union Rights and Obligations – Examples of employer conduct and labor organization conduct that violates the law, including information about rules for collective bargaining, union dues, and Right to Work states
- Jurisdictional Standards – Explanation of jurisdictional standards and statutory exclusions
- Investigate Charges – Information on how unfair labor practice charges are investigated, remedies in merit cases, temporary injunctions, and appeals of dismissal decisions
- Section 10(j) Categories – Types of cases where seeking Section 10(j) injunctive relief may be appropriate. Section 10(j) of the Act gives the Board the power to petition the United States District Court for injunctive relief or a restraining order.
- Facilitate Settlements – Explanation of Board settlement agreements and private non-Board resolutions
- Decide Cases – The post-complaint adjudicative process and information about the Alternative Dispute Resolution Program
- Enforce Orders – How the NLRB enforces Board Orders
- Charge Against Employer – Sample unfair labor practice charge form, template available at www.nlr.gov, may be filed in person, by mail, by fax, or via e-filing at www.nlr.gov
- Charge Against Labor Organization or its Agents - Sample unfair labor practice charge form, template available at www.nlr.gov, may be filed in person, by mail, by fax, or via e-filing at www.nlr.gov

- Sample Language for Basis of the Charge – Sample charge language including the section of the Act and examples of possible allegations
- Form NLRB-4541 – Procedures for parties involved in the investigation of an unfair labor practice charge
- Notice of Appearance – Sample Notice of Appearance form (for attorneys and non-attorneys)
- Questionnaire on Commerce Information – Form filled out by the employer involved in an unfair labor practice charge or representation proceeding, used to establish jurisdiction
- Conduct Elections – Overview of the representation petition and election process, information about voluntary recognition, and the Office of Representation Appeals
- Description of Representation Case Procedures in Certification and Decertification Cases – Explanation of procedures in RC, RD, and RM cases, pre-election hearing information, and voter list requirements
- Description of Election and Post-Election Representation Case Procedures – Explanation of election procedures, post-election challenges and objections, and post-election hearings
- RC Petition - Sample Certification of Representative petition, template available at www.nlr.gov, may be filed in person, by mail, by fax, or via e-filing at www.nlr.gov
- RD Petition - Sample Decertification (Removal of Representative) petition, template available at www.nlr.gov, may be filed in person, by mail, by fax, or via e-filing at www.nlr.gov
- Statement of Position Forms and Instructions – Form served with petition, must be completed prior to a pre-election hearing to identify the hearing issues and employees involved in the petition
- Certificate of Service – Form proving service of petition documents and forms by the petitioner on the other parties involved in the representation case proceeding
- NLRA and the Right to Strike – Fact sheet on the right to strike, lawful and unlawful strikes, economic vs. unfair labor practice strikers, strike misconduct, and the right to picket
- The NLRB and Social Media – Fact sheet on how employees’ rights under the Act and social media intersect, summaries of the General Counsel’s memos on social media, and summaries of several Board decisions

Who We Are

The National Labor Relations Board (NLRB) is comprised of a team of professionals who work to assure fair labor practices and workplace democracy nationwide. Since its creation by Congress in 1935, this small, highly respected, independent Federal agency has had daily impact on the way America's companies, industries and unions conduct business. Agency staff members investigate and remedy unfair labor practices by unions and employers.

The Board

The Board has five Members and primarily acts as a quasi-judicial body in deciding cases on the basis of formal records in administrative proceedings. Board Members are appointed by the President to 5-year terms, with Senate consent, the term of one Member expiring each year.

Division of Judges

The NLRB's Administrative Law Judges docket, hear, settle and decide unfair labor practice charges nationwide operating through offices in Washington, New York, and San Francisco.

General Counsel

The General Counsel, appointed by the President to a 4-year term, is independent from the Board and is responsible for the investigation and prosecution of unfair labor practice cases and for the general supervision of the NLRB field offices in the processing of cases.

Regional Offices

The National Labor Relations Board has 26 regional offices and is headquartered in Washington, DC.

Our History

The National Labor Relations Board is proud of its history of enforcing the National Labor Relations Act. Starting in the Great Depression and continuing through World War II and the economic growth and challenges that followed, the NLRB has worked to guarantee the rights of employees to bargain collectively, if they choose to do so.

Contact Us

General Inquiries: 1-844-762-NLRB

Employee Rights

Employees covered by the National Labor Relations Act are afforded certain rights to join together to improve their wages and working conditions, with or without a union.

Union Activity

Employees have the right to attempt to form a union where none currently exists, or to decertify a union that has lost the support of employees.

Examples of employee rights include:

- Forming, or attempting to form, a union in your workplace;
- Joining a union whether the union is recognized by your employer or not;
- Assisting a union in organizing your fellow employees;
- Refusing to do any or all of these things.
- To be fairly represented by a union

Activity Outside a Union

Employees who are not represented by a union also have rights under the NLRA. Specifically, the National Labor Relations Board protects the rights of employees to engage in “concerted activity”, which is when two or more employees take action for their mutual aid or protection regarding terms and conditions of employment. A single employee may also engage in protected concerted activity if he or she is acting on the authority of other employees, bringing group complaints to the employer’s attention, trying to induce group action, or seeking to prepare for group action.

A few examples of protected concerted activities are:

- Two or more employees addressing their employer about improving their pay.
- Two or more employees discussing work-related issues beyond pay, such as safety concerns, with each other.
- An employee speaking to an employer on behalf of one or more co-workers about improving workplace conditions.

Who is covered?

Most employees in the private sector are covered by the NLRA. However, the Act specifically excludes individuals who are:

- employed by Federal, state, or local government
- employed as agricultural laborers
- employed in the domestic service of any person or family in a home
- employed by a parent or spouse
- employed as an independent contractor
- employed as a supervisor (supervisors who have been discriminated against for refusing to violate the NLRA may be covered)
- employed by an employer subject to the Railway Labor Act, such as railroads and airlines
- employed by any other person who is not an employer as defined in the NLRA

Employer/Union Rights and Obligations

The National Labor Relations Act forbids employers from interfering with, restraining, or coercing employees in the exercise of rights relating to organizing, forming, joining or assisting a labor organization for collective bargaining purposes, or from working together to improve terms and conditions of employment, or refraining from any such activity. Similarly, labor organizations may not restrain or coerce employees in the exercise of these rights.

Examples of employer conduct that violates the law:

- Threatening employees with loss of jobs or benefits if they join or vote for a union or engage in protected concerted activity.
- Threatening to close the plant if employees select a union to represent them.
- Questioning employees about their union sympathies or activities in circumstances that tend to interfere with, restrain or coerce employees in the exercise of their rights under the Act.
- Promising benefits to employees to discourage their union support.
- Transferring, laying off, terminating, assigning employees more difficult work tasks, or otherwise punishing employees because they engaged in union or protected concerted activity.
- Transferring, laying off, terminating, assigning employees more difficult work tasks, or otherwise punishing employees because they filed unfair labor practice charges or participated in an investigation conducted by NLRB.

Examples of labor organization conduct that violates the law:

- Threats to employees that they will lose their jobs unless they support the union.
- Seeking the suspension, discharge or other punishment of an employee for not being a union member even if the employee has paid or offered to pay a lawful initiation fee and periodic fees thereafter.
- Refusing to process a grievance because an employee has criticized union officials or because an employee is not a member of the union in states where union security clauses are not permitted.
- Fining employees who have validly resigned from the union for engaging in protected concerted activities following their resignation or for crossing an unlawful picket line.
- Engaging in picket line misconduct, such as threatening, assaulting, or barring non-strikers from the employer's premises.
- Striking over issues unrelated to employment terms and conditions or coercively enmeshing neutrals into a labor dispute.

What rules govern collective bargaining for a contract?

After employees choose a union as a bargaining representative, the employer and union are required to meet at reasonable times to bargain in good faith about wages, hours, vacation time, insurance, safety practices and other mandatory subjects. Some managerial decisions such as subcontracting, relocation, and other operational changes may not be mandatory subjects of bargaining, but the employer must bargain about the decision's effects on unit employees.

It is an unfair labor practice for either party to refuse to bargain collectively with the other, but parties are not compelled to reach agreement or make concessions.

If after sufficient good faith efforts, no agreement can be reached, the employer may declare impasse, and then implement the last offer presented to the union. However, the union may disagree that true impasse has been reached and file a charge of an unfair labor practice for failure to bargain in good faith. The NLRB will determine whether true impasse was reached based on the history of negotiations and the understandings of both parties.

If the Agency finds that impasse was not reached, the employer will be asked to return to the bargaining table. In an extreme case, the NLRB may seek a federal court order to force the employer to bargain.

The parties' obligations do not end when the contract expires. They must bargain in good faith for a successor contract, or for the termination of the agreement, while terms of the expired contract continue.

A party wishing to end the contract must notify the other party in writing 60 days before the expiration date, or 60 days before the proposed termination. The party must offer to meet and confer with the other party and notify the Federal Mediation and Conciliation Service of the existence of a dispute if no agreement has been reached by that time.

How is "good faith" bargaining determined?

There are hundreds, perhaps thousands, of NLRB cases dealing with the issue of the duty to bargain in good faith. In determining whether a party is bargaining in good faith, the Board will look at the totality of the circumstances. The duty to bargain in good faith is an obligation to participate actively in the deliberations so as to indicate a present intention to find a basis for agreement. This implies both an open mind and a sincere desire to reach an agreement as well as a sincere effort to reach a common ground.

The additional requirement to bargain in "good faith" was incorporated to ensure that a party did not come to the bargaining table and simply go through the motions. There are objective criteria that the NLRB will review to determine if the parties are honoring their obligation to bargain in good faith, such as whether the party is willing to meet at reasonable times and intervals and whether the party is represented by someone who has the authority to make decisions at the table.

Conduct away from the bargaining table may also be relevant. For instance if an Employer were to make a unilateral change in the terms and conditions of employees employment without bargaining, that would be an indication of bad faith.

What are the rules about union dues?

The amount of dues collected from employees represented by unions is subject to federal and state laws and court rulings.

The NLRA allows employers and unions to enter into union-security agreements, which require all employees in a bargaining unit to become union members and begin paying union dues and fees within 30 days of being hired.

Even under a security agreement, employees who object to full union membership may continue as 'core' members and pay only that share of dues used directly for representation, such as collective bargaining and contract administration. Known as objectors, they are no longer full members but are still protected by the union contract. Unions are obligated to tell all covered employees about this option, which was created by a Supreme Court ruling and is known as the Beck right.

An employee may object to union membership on religious grounds, but in that case, must pay an amount equal to dues to a nonreligious charitable organization.

What about Right to Work states?

27 states have banned union-security agreements by passing so-called "right to work" laws. In these states, it is up to each employee at a workplace to decide whether or not to join the union and pay dues, even though all workers are protected by the collective bargaining agreement negotiated by the union.

Jurisdictional Standards

The Board has statutory jurisdiction over private sector employers whose activity in interstate commerce exceeds a minimal level. Over the years, it has established standards for asserting jurisdiction, which are described below. As a practical matter, the Board's jurisdiction is very broad and covers the great majority of non-government employers with a workplace in the United States, including non-profits, employee-owned businesses, labor organizations, non-union businesses, and businesses in states with "Right to Work" laws.

Retailers

Employers in retail businesses fall under the Board's jurisdiction if they have a gross annual volume of business of \$500,000 or more. This includes employers in the amusement industry, apartment houses and condominiums, cemeteries, casinos, home construction, hotels and motels, restaurants and private clubs, and taxi services. Shopping centers and office buildings have a lower threshold of \$100,000 per year.

Non-retailers

For non-retailers, jurisdiction is based on the amount of goods sold or services provided by the employer out of state ("outflow") or purchased by the employer from out of state ("inflow"). Outflow or inflow can be direct or 'indirect', passing through a third company such as a supplier. The Board takes jurisdiction when annual inflow or outflow is at least \$50,000.

Special categories

Channels of interstate commerce: For businesses providing essential links in the transportation of goods or passengers, including trucking and shipping companies, private bus companies, warehouses and packing houses, the minimum is \$50,000 in gross annual volume.

Health care and child care institutions: Hospitals, medical and dental offices, social services organizations, child care centers and residential care centers with a gross annual volume of at least \$250,000 are under NLRB jurisdiction; for nursing homes and visiting nurses associations, the minimum is \$100,000.

Law firms and legal service organizations: The minimum is \$250,000 in gross annual volume.

Cultural and educational centers: For private and non-profit colleges, universities, and other schools, art museums and symphony orchestras, the annual minimum is \$1 million.

Federal contractors: Private contractors who work for the federal government are under NLRB jurisdiction. In addition, all federal contractors are required by the Department of Labor to post a Notice of Employee Rights under the NLRA.

Religious organizations: The Board will not assert jurisdiction over employees of a religious organization who are involved in effectuating the religious purpose of the organization, such as teachers in church-operated schools. The Board has asserted jurisdiction over employees who work in the operations of a religious organization that did not have a religious character, such as a health care institution.

Indian tribes: The Board asserts jurisdiction over the commercial enterprises owned and operated by Indian tribes, even if they are located on a tribal reservation. But the Board does not assert jurisdiction over tribal enterprises that carry out traditional tribal or governmental functions.

The following employers are excluded from NLRB jurisdiction by statute or regulation:

- Federal, state and local governments, including public schools, libraries, and parks, Federal Reserve banks, and wholly-owned government corporations.
- Employers who employ only agricultural laborers, those engaged in farming operations that cultivate or harvest agricultural commodities or prepare commodities for delivery.
- Employers subject to the Railway Labor Act, such as interstate railroads and airlines.

Investigate Charges

The NLRB receives about 20,000 to 30,000 charges per year from employees, unions and employers covering a range of unfair labor practices described in Section 8 of the Act.

Each charge is investigated by Board agents who gather evidence and may take affidavits from parties and witnesses. Their findings are evaluated by the Regional Director, and in certain novel or significant cases, reviewed by NLRB attorneys at the Division of Advice in Washington DC. Typically, a decision is made about the merits of a charge within 7 to 14 weeks, although certain cases can take much longer. During this period, the majority of charges are settled by the parties, withdrawn by the charging party, or dismissed by the Regional Director.

When the NLRB investigation finds sufficient evidence to support the charge, every effort is made to facilitate a settlement between the parties. If no settlement is reached in a meritorious case, the agency issues a complaint. Common allegations against employers in complaints include threats, interrogations and unlawful disciplinary actions against employees for their union activity; promises of benefits to discourage unionization; and, in the context of collective bargaining relationships, refusals to provide information, refusals to bargain, and withdrawals of recognition. Common allegations against unions include failure to represent an employee and failure to bargain in good faith.

The issuance of a complaint leads to a hearing before an NLRB Administrative Law Judge (unless there is a settlement). After issuing a complaint, the NLRB becomes a representative for the charging party throughout settlement discussions and the Board process. Board attorneys help gather and prepare materials, and keep the parties apprised of case developments.

It is illegal for an employer or union to retaliate against employees for filing charges or participating in NLRB investigations or proceedings.

Remedies

Under its statute, the NLRB cannot assess penalties. The agency may seek make-whole remedies, such as reinstatement and backpay for discharged workers, and informational remedies, such as the posting of a notice by the employer promising to not violate the law.

Temporary Injunctions

While the case proceeds through the Board process, the Regional Director may petition the appropriate U.S. District Court for temporary injunction orders to restore the status quo where rights have been violated, under Section 10(j) of the Act. The General Counsel must first approve the petition and the Board must authorize it. If granted by the Court, an injunction may, among other things, require a party to return to bargaining, or reinstate unlawfully discharged employees, or stop the unlawful subcontracting of union jobs.

Office of Appeals

Decisions to dismiss a charge may be appealed to the Office of Appeals in Washington D.C. within two weeks of the dismissal. The Office handles about 2000 cases a year. Each appeal is assigned to an attorney and a supervisor for a review of all documents in the case, including new information submitted by the charging party. All cases in which it is proposed to reverse the Regional Director's determination are presented to the General Counsel for decision.

Significant cases may be presented for General Counsel review even where the recommendation is to uphold the Regional determination. The Office may also remand cases to the regions for further investigation where necessary. Because such decisions are not reviewable in court, there is no further recourse for parties who believe that a charge has been unfairly dismissed.

Section 10(j) Categories

1. Interference with organization campaign (no majority)
 - Includes traditional "nip in the bud" unfair labor practices, such as threats, coercive interrogations, surveillance of protected activities, improper grant of benefits, and unlawful employee discipline, including discriminatory discharges
 - If it includes shutdown or relocation of operations, subcontracting, or transfer of operations to alter ego or single or joint employer, see Category 3
 - If it includes minority union recognition, see Category 6
2. Interference with organizational campaign (majority)
 - Includes Gissel cases where union has obtained a majority of authorization cards and employer engaged in serious and egregious unfair labor practices (see Memorandum GC 99-8 Guideline Memorandum Concerning Gissel)
 - Will include unfair labor practices similar to Category 1
3. Subcontracting or other change to avoid bargaining obligation
 - These involve an employer's implementation of a major entrepreneurial-type decision which may include shutdown or relocation of operations, transfer of operations to alter ego or single or joint employer
 - Changes may be discriminatorily motivated in violation of Section 8(a)(3) and/or independently violative of Section 8(a)(5)
4. Withdrawal of recognition from incumbent
5. Undermining of bargaining representative
 - Includes implementation of important changes in working conditions, either discriminatorily or without bargaining with the union
 - May include any of the additional types of violations listed in Category 1
 - See also successor refusal to bargain (Category 7) or conduct during bargaining (Category 8)
6. Minority union recognition
 - Includes a variety of illegal assistance to and/or domination of a labor organization
7. Successor refusal to recognize and bargain
 - Includes discriminatory refusal to hire predecessor's employees
8. Conduct during bargaining
 - Includes refusal to provide relevant information, delay or refusal to meet, insistence to premature impasse or impasse on permissive or illegal subjects of bargaining, unlawful course of conduct in bargaining, or surface bargaining
9. Mass picketing and violence
 - Includes mass picketing which blocks ingress and egress to the plant or worksite, violence and threats thereof, and damage to property
10. Notice requirements for strikes or picketing under Section 8(d) and 8(g)
 - Includes strikes or picketing undertaken in contravention of the notice and waiting periods set forth in Section 8(d) (federal and state mediation) and 8(g) (notices to health care institutions)

11. Refusal to permit protected activity on property
 - May include employee picketing or handbilling arising from a labor dispute, or nonemployee efforts to disseminate organizational material to employees
 - May also include a unilateral change in past practice or contractual term granting access to an incumbent union
12. Union coercion to achieve unlawful objective
 - May involve union insistence to impasse or permissive of illegal subject of bargaining, or union conduct that amounts to restraint or coercion of the employer in its selection of representatives for the purposes of collective bargaining or grievance adjustment
13. Interference with access to Board processes
 - May involve employer or union retaliation against employees for having resorted to the processes of the Board
 - Retaliation may include threats, discharges, the imposition of internal union discipline or the institution of groundless lawsuits
14. Segregating assets
 - Includes an alienation of assets which may require a protective order to preserve respondent's assets for backpay
15. Miscellaneous
 - Includes injunction against certain lawsuits, employer violence, interference with employee activities for mutual aid and protection

Facilitate Settlements

The NLRB encourages parties to resolve cases by settlement rather than litigation whenever possible. In fact, more than 90% of meritorious unfair labor practice cases are settled by agreement at some point in the process, either through a Board settlement or a private agreement.

Board Settlement Agreements

When an investigation by a Regional Office finds merit to an unfair labor practice charge, the Regional Director routinely gives the charged party an opportunity to settle before issuing a complaint. Regional staff members draft a proposed settlement agreement which fully remedies all of the meritorious unfair labor practice allegations. The charged party can agree to the terms or suggest changes, subject to approval by the Regional Director.

The goal is always to reach a settlement that is acceptable to the charging party, the charged party and the Agency. On rare occasions, the Regional Director may approve a settlement that the charged party agrees with but the charging party is unwilling to sign. In these cases, it would be the Regional Director's position that the settlement substantially remedies the alleged unfair labor practices. The charging party may appeal the Director's approval of the settlement to the NLRB Office of Appeals.

If the charged party agrees and signs the settlement, no complaint will be issued and the case will be closed after full compliance with the terms of the settlement agreement. If there is no settlement, the Region will issue a complaint and a hearing will be scheduled before an Administrative Law Judge. Throughout this process, the Region will continue to pursue a settlement which substantially remedies all meritorious unfair labor practice allegations.

This type of settlement fashioned in the Region is known as an Informal Board Settlement.

Much less common is a Formal Board Settlement, which is a written stipulation approved by the Board and results in the issuance of a Board order and often a court judgment. Formal settlements are typically sought in cases where the charged party has a history of committing unfair labor practices, or where an informal settlement is otherwise not appropriate.

Private Non-Board Agreements

Unfair labor practice charges may also be resolved by private agreement between the parties. However, before allowing charges to be withdrawn, the Regional Director must review and approve of the private settlement agreement. Because the Board must enforce public interests, and not private rights, it may reject a non-Board adjustment that violates the National Labor Relations Act or Board policy.

These agreements are subject to a higher level of scrutiny in cases where a merit determination has already been made, and may not be appropriate in circumstances such as when the charged party has engaged in a history of violations of the Act or has breached previous settlement agreements. Non-Board adjustments do not have the Board's approval and are not policed by the Agency.

Decide Cases

When complaints of Unfair Labor Practices issued by regional directors do not lead to settlement, they typically result in a hearing before an NLRB Administrative Law Judge. As in any court proceeding, both parties prepare arguments and present evidence, witnesses, and experts. After evaluating the evidence, the judges issue initial decisions. ALJ decisions are subject to review by the Board in Washington D.C., composed of five Members nominated by the President and confirmed by the Senate. Any or all parties can appeal by filing exceptions.

In considering an appeal, the Board reviews the case record, including all all documents produced by the regional investigation. Often a panel of three Board Members will decide a case, but the full Board usually considers novel or potentially precedent changing cases. The Board issues several hundred decisions per year.

Board decisions may be appealed to an appropriate U.S. Court of Appeals, and ultimately to the U.S. Supreme Court.

Invitations to file briefs

When considering significant or potentially precedential cases, the Board may invite briefs from any interested parties to gather an array of viewpoints and experiences.

Alternative Dispute Resolution Program

Since December 2005, the National Labor Relations Board's alternative dispute resolution (ADR) program has assisted parties in settling unfair labor practice cases pending before the Board. For parties who have chosen to participate in the ADR program, mediators have assisted parties in reaching settlements in approximately 60% of the cases. The Board approved the parties' settlements in each of those cases.

Participation in the Board's ADR program is voluntary, and a party who enters into settlement discussions under the program may withdraw its participation at any time. There are no charged fees or expenses for using the program. The Board will provide the parties with an experienced mediator, either a mediator with the Federal Mediation and Conciliation Service or the ADR program director, to facilitate confidential settlement discussions and explore resolution options that serve the parties' interests.

The Board established the ADR program in response to the success experienced by other federal agencies and the federal courts in settling contested cases through ADR, as well as the success of the NLRB's own settlement judge program at the trial level. ADR programs provide the parties with several benefits, including savings in time and money, greater control over the outcome of their cases, and more creative, flexible, and customized resolutions of their disputes. Settlement discussions conducted with the assistance of an ADR mediator tend to broaden resolution options, often going beyond the legal issues in controversy, and can be particularly useful where traditional settlement negotiations are likely to be unsuccessful or have already been unsuccessful.

Enforce Orders

In reviewing cases, the Circuit Courts evaluate the factual and legal basis for the Board's Order and decide, after briefing or oral argument, whether to enter a judicial decree commanding obedience to the Order. The Court may also enter an Order on the grounds that the responding party failed to oppose or had no legal basis to oppose the Board's action.

In recent years, Circuit Courts have decided about 65 cases a year involving the NLRB. The majority - nearly 80% - have been decided in the Board's favor.

Securing monetary remedies and protecting assets:

Board attorneys conduct civil and criminal contempt litigation in the U.S. Courts of Appeals to secure monetary remedies such as back pay and to obtain protective orders to ensure that assets will not be dissipated in an effort to avoid obligations.

Final Review by U.S. Supreme Court:

Any Circuit Court decision can be subject to final review by the U.S. Supreme Court, if the parties or the Board seek it. Before presenting a petition asking the high court to consider a case, or grant certiorari, the Board must first receive permission from the U.S. Solicitor General.

Chapter 2—Nuts and Bolts of Labor Law: NLRB Overview

FORM NLRB-501
(3-21)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer	b. Tel. No.
	c. Cell No.
	f. Fax. No.
d. Address (<i>Street, city, state, and ZIP code</i>)	e. Employer Representative
	g. e-mail
	h. Number of workers employed
i. Type of Establishment (<i>factory, mine, wholesaler, etc.</i>)	j. Identify principal product or service
<p>The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.</p>	
<p>2. Basis of the Charge (<i>set forth a clear and concise statement of the facts constituting the alleged unfair labor practices</i>)</p>	
<p>3. Full name of party filing charge (<i>if labor organization, give full name, including local name and number</i>)</p>	
4a. Address (<i>Street and number, city, state, and ZIP code</i>)	4b. Tel. No.
	4c. Cell No.
	4d. Fax No.
	4e. e-mail
<p>5. Full name of national or international labor organization of which it is an affiliate or constituent unit (<i>to be filled in when charge is filed by a labor organization</i>)</p>	
<p style="text-align: center;">6. DECLARATION</p> <p style="text-align: center;">I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.</p> <p>_____</p> <p style="text-align: center;"><i>(signature of representative or person making charge)</i></p>	<p>Tel. No.</p>
<p>_____</p> <p style="text-align: center;"><i>(Print/type name and title or office, if any)</i></p>	<p>Office, if any, Cell No.</p>
<p>Address _____</p>	<p>Fax No.</p>
<p>Date _____</p>	<p>e-mail</p>

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

Chapter 2—Nuts and Bolts of Labor Law: NLRB Overview

FORM NLRB-508
(3-21)

FORM EXEMPT UNDER 44 U.S.C 3512

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
**CHARGE AGAINST LABOR ORGANIZATION
OR ITS AGENTS**

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT			
a. Name	b. Union Representative to contact		
c. Address (<i>Street, city, state, and ZIP code</i>)	d. Tel. No.	e. Cell No.	
	f. Fax No.		
	g. e-mail		
h. The above-named labor organization has engaged in and is engaging in unfair labor practices within the meaning of section 8(b) and (list subsections) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.			
2. Basis of the Charge (<i>set forth a clear and concise statement of the facts constituting the alleged unfair labor practices</i>)			
3. Name of Employer	4a. Tel. No.	b. Cell No.	c. Fax No.
d. e-mail			
5. Location of plant involved (<i>street, city, state and ZIP code</i>)		6. Employer representative to contact	
7. Type of establishment (<i>factory, mine, wholesaler, etc.</i>)	8. Identify principal product or service	9. Number of workers employed	
10. Full name of party filing charge			
11. Address of party filing charge (<i>street, city, state and ZIP code</i>)	11a. Tel. No.	b. Cell No.	c. Fax No.
d. e-mail			
12. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.			Tel. No.
_____ <i>(signature of representative or person making charge)</i>			Cell No.
_____ <i>(Print/type name and title or office, if any)</i>			Fax No.
Address _____ Date _____			e-mail

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

SAMPLE LANGUAGE FOR BASIS OF THE CHARGE

EMPLOYER UNFAIR LABOR PRACTICES

8(a)(1) Interference with employees' exercise of Section 7 rights.

Since on or about (date), the above named Employer has interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights by its actions including (specify type of action – e.g. threats, promises, interrogation, creation of the impression of surveillance, etc.).

On or about (date), the above named Employer discriminated (name(s) of employee(s) by (specify type of adverse action – e.g. discharging, suspending, laying off, refusing to hire, refusing to consider for hire, disciplining etc.) (him/her/them) because of (his/her/their) protected concerted activities, or in order to (discourage/encourage) such activities.

8(a)(2) Domination of or unlawful assistance to a union.

Since on or about (date), the above named Employer

- dominated or interfered with the formation or administration of (name of the union);
- or
- contributed financial or other support to (name of the union).

8(a)(3) Discrimination to encourage or discourage union activity.

On or about (date), the above named Employer discriminated against its employee(s) (name(s) of employee(s)) by (specify type of adverse action – e.g. discharging, suspending, laying off, refusing to hire, refusing to consider for hire, disciplining etc.) (him/her/them) because of (his/her/their) union activities (and/or protected concerted activities), or in order to discourage/encourage such activity.

8(a)(4) Discrimination because of NLRA charge or testimony.

On or about (date), the above named Employer discriminated against (name(s) of employee(s)) because (he/she/they) (e.g. filed charges or gave testimony) under the Act.

8(a)(5) Refusal to bargain.

Since on or about (date), the above named Employer has failed and refused to bargain in good faith with (name of Union) by:

- Refusing to meet at reasonable times and places;
- Refusing to reduce to writing and execute an agreed upon collective bargaining agreement;
- Insisting to impasse upon a permissive or illegal subject of bargaining engaging in surface bargaining;
- Engaging in surface bargaining;
- Making unilateral changes without affording the Union a meaningful opportunity to bargain;
- Refusing to provide requested information to the Union which relates to wages, hours, or working conditions of unit employees.

LABOR ORGANIZATION UNFAIR LABOR PRACTICES

8(b)(1)(A) Restraint or coercion of employee's exercise of Sec. 7 rights by a Union

On or about (date), the above named Union restrained and coerced (name(s) of employee(s)) in the exercise of (his/her/their) Section 7 rights by (describe the actions complained of)

For example:

- refusing to further process (his/her/their) grievances over (his/her/their discharge, lay off, discipline);
- refusing to refer (name(s) of employee(s)) out of the Union's exclusive hiring hall;
- failing to follow its procedures in the referral of (name(s) of employee(s)) out of its exclusive hiring hall out of order.

8(b)(1)(B) Union restraint or coercion of employer in selection of collective bargaining representatives.

Since on or about (date), the above named Union has restrained and coerced (name of Employer) in the selection of its collective bargaining or grievance representative(s).

8(b)(2) Union causing or attempting to cause employer to discriminate against employee(s) to encourage/discourage union activity.

On or about (date), the above named Union (caused or attempted to cause) (name of Employer) to (describe action against employee(s) sought by Union – e.g. discharge, discipline, etc.) (name(s) of employee(s)):

- in violation of Section 8(a)(3) of the Act.
- whose membership in the union was (denied or terminated) for reasons other than failure to tender periodic dues (and initiation fees) uniformly required as a condition of (acquiring or retaining) membership.

8(b)(3) Union’s refusal to bargain

Since on or about (date), the above named Union has refused to bargain in good faith with (name of the Employer) by:

- Refusing to meet at reasonable times and places;
- Refusing to reduce to writing and execute an agreed upon collective bargaining agreement;
- Insisting to impasse upon a permissive or illegal subject of bargaining;
- Refusing to provide requested information to the Employer which relates to wages, hours, or working conditions of unit employees.

8(b)(4) Secondary boycotts and jurisdictional disputes.

(i) Since on or about (date), the above named Union has induced or encouraged (individuals employed by (name of secondary employer) or (name of secondary employer) to (engage in a strike) or (to refuse to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities) with an object of ((A), (B), (C), and/or (D) below);

(ii) Since on or about (date), the above named Union has threatened, coerced or restrained (name of secondary employer) and other persons engaged in commerce with an object of ((A), (B), (C), and/ or (D) below);

(A) forcing or requiring (name of secondary employer) or (other self-employed person) to (join (name of Union)) or (enter into an agreement which is prohibited by Section 8(e)).

(B) forcing or requiring (name of person)

- to cease using, selling, handling, transporting or otherwise dealing in the products of (name of producer, processor, or manufacturer); or
- to cease doing business with (name of other person); or

(C) forcing or requiring (name of secondary employer) to recognize or bargain with (name of Union) as the representative of its employees notwithstanding that such union has not been certified as the representative of such employees under the provisions of Section 9.

(D) forcing or requiring (name of employer(s)) to recognize or bargain with (name of union) as the representative of its employees in (name of other union or other trade, craft, or class) notwithstanding that said employer is not failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work.

NOTE: Any 8(b)(4) charge must be filed separately (on a separate charge form) from any other charge. 8(b)(4)(A),(B), or (C) may be combined in the same charge. 8(b)(4)(D) must be put in a separate charge.

8(b)(5) Excessive union fees.

Since on or about (date), the above named Union has required, as a condition of union membership, the payment of an excessive and discriminatory fee by (name(s) of employees) who work as (classification of employees), and who are covered by a union security agreement authorized under Section 8(a)(3) of the Act.

8(b)(6) Exaction of payment by employer for services not performed.

Since on or about (date), the above named Union has (caused or attempted to cause) (name of Employer) to (pay or deliver) (money or other thing of value) in the nature of an exaction for services which are not performed or not to be performed.

8(b)(7) Picketing by non-certified union for organizational or recognitional purposes.

Since on or about (date), the above named Union has (picketed) or (caused to be picketed) or (threatened to picket or to cause to be picketed) (name of Employer), at (address or location of work site location in question), with an object of forcing or requiring (name of Employer) to recognize or bargain with (name of Union) as the representative of its employees or select (name of Union) as their collective bargaining representative, notwithstanding that (name of Union) is not currently certified as the representative of such employees, where

(A) (Name of Employer) has lawfully recognized (name of recognized other union) and a question concerning representation may not appropriately be raised under Section 9(c) of the Act.

(B) within the preceding 12 months a valid election under Section 9(c) has been conducted.

(C) such picketing has been conducted without a petition having been filed under Section 9(c) within a reasonable period of time from the commencement of such picketing.

NOTE: Any 8(b)(7) charge must be filed separately (on a separate charge form) from any other charge.

8(d) Mid-term modification by union or employer

On or about (date), during the term of a collective bargaining agreement, (name of charged party union or employer) engaged in a (strike or lockout) against (name of charging party union or employer) in an effort to modify or terminate that agreement.

8(d)(1), (3) Strike or lockout or implementation without giving required notice.

(1) On or about (date), (name of party who reopened the contract) (specify nature of the act -- whether strike, lockout, or implemented its offer) without timely providing notice of its intent to reopen the contract to (name of other party to the contract).

(3) On or about (date), (name of party who reopened the contract) (specify nature of the act -- whether strike, lockout, or implementation of its final offer), even though prior

written notice of the existence of the dispute between it and (name of other party to the contract) had not been served on and/or to the Federal Mediation and Conciliation Service (and (name of state mediation agency, if any)).

On or about (date), (name of party who reopened the contract), commenced (specify nature of the conduct – strike, lockout, or implementation of its offer), less than (60 days in non-health care cases, and 90 days for health care providers) from service on (name of other party to the contract) of the notices required by (Section 8(d)(1) and/or Section 8(d)(3)).

8(e) Hot cargo agreements.

On or about (date(s)), the above named Union entered into contract(s) or agreement(s), express or implied, with (name, city and state of Employer), (and various other employers), whereby such employer(s) have ceased or refrained, or agreed to cease or refrain, from handling, using, selling, or otherwise dealing in the products of (name of boycotted Employer), or to cease doing business with (name of boycotted Employer).

NOTE: This is the only charge that can be filed against both an Employer and a Union. Any 8(e) charge must be filed separately from any other charge. There are separate charge forms specific Section 8(e) charges that must be used.

8(g) Strike or picketing without giving required notice

On or about (date), the above named Union engaged in (strike or picketing) without giving the required ten day notice to (name of the health care institution) in violation of Section 8(g).

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE: PARTIES INVOLVED IN AN INVESTIGATION OF AN UNFAIR LABOR PRACTICE CHARGE SHOULD BE AWARE OF THE FOLLOWING PROCEDURES:

Right to be Represented - Any party has the right to be represented by an attorney or other representative in any proceeding before the National Labor Relations Board. If you wish to have a representative appear on your behalf, please have your attorney or other representative complete Form NLRB-4701, Notice of Appearance, and forward it to the respective Regional Office as soon as a representative is chosen.

Attorneys and Service of Documents - If your representative is an attorney, such attorney will receive exclusive service of all documents, except that you and your attorney will both receive those documents described in Sec. 11842.3(a) of the Casehandling Manual. However, your attorney may consent to have additional documents or correspondence served on you by making the appropriate designation on Form NLRB-4701, Notice of Appearance.

Non-Attorney Representatives and Service of Documents - If your representative is not an attorney, you and your representative may receive copies of all documents and correspondence.

Impartial Investigation - Upon receipt of a charge, the Regional Office will conduct an impartial investigation to obtain all material and relevant evidence. Your active cooperation in making witnesses available and stating your position will be most helpful to the Region in determining whether the charge has merit. The Region may also contact and interview other relevant witnesses and parties.

If only the charging party cooperates in the investigation, its evidence may warrant issuance of complaint in the absence of the charged party's defenses. Thus, the charged party is encouraged to fully cooperate and present all available evidence and its defenses. The Region seeks such relevant evidence from all parties to reach an informed determination and help resolve the matter, whether or not the case has merit, at the earliest possible time. .

Withdrawal/Dismissal - If the Regional Director determines that the charge lacks merit, the charging party is offered the opportunity to withdraw. Should the charging party not withdraw the charge, the Regional Director will dismiss the charge and advise the charging party of the right to appeal the dismissal to the General Counsel.

Pre-Complaint Voluntarily Adjustment - If the Regional Director determines that the charge has merit, all parties are afforded an opportunity to settle the matter by voluntary adjustment. It is our policy to explore and encourage voluntary adjustment before proceeding with costly and time-consuming litigation before the Board and courts.

Complaint and Voluntary Adjustment - If, following the investigation, the Regional Director determines that there is merit to the charge and a voluntary adjustment is not reached, the Regional Director will issue a complaint and notice of hearing. The hearing will be conducted before an administrative law judge who will issue a decision and recommendation to the Board in Washington, D.C. However, issuance of a complaint does not preclude voluntary adjustment by the parties. On the contrary, at any stage of the proceeding the Regional Director and staff will be available to provide any assistance in arriving at an appropriate settlement.

FORM NLRB-4701
(9-03)

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

and

CASE

REGIONAL DIRECTOR

EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF _____

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

REPRESENTATIVE IS AN ATTORNEY

IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: _____

MAILING ADDRESS: _____

E-MAIL ADDRESS: _____

OFFICE TELEPHONE NUMBER: _____

CELL PHONE NUMBER: _____ FAX: _____

SIGNATURE: _____
(Please sign in ink.)

DATE: _____

¹ IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

Conduct Elections

To start the election process, a petition and associated documents must be filed, preferably electronically, with the nearest NLRB Regional Office showing support for the petition from at least 30% of employees. NLRB agents will then investigate to make sure the Board has jurisdiction, the union is qualified, and there are no existing labor contracts or recent elections that would bar an election. Shortly after the petition is filed, the employer is required to post a Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted. If the employer customarily communicates with employees in the petitioned-for unit through electronic means, the employer must also distribute the Notice of Petition for Election electronically to those employees.

The NLRB agents will seek an election agreement between the employer, union, and other parties setting the date, time, and place for balloting, the ballot language(s), the appropriate unit, and a method to determine who is eligible to vote. Once an agreement is reached, the parties authorize the NLRB Regional Director to conduct the election. If no agreement is reached, the Regional Director will hold a hearing and then may order an election and set the conditions in accordance with the Board's rules and its decisions.

Typically, elections are held on the earliest practicable date after a Director's order or authorization, which will vary from case to case. However, an election may be postponed if a party requests to block the petition based on charges alleging conduct that would interfere with employee free choice in the election, such as threatening loss of jobs or benefits by an employer or a union, granting promotions, pay raises, or other benefits to influence the vote. When an election is scheduled, the Employer is required to post a Notice of Election which will replace the previously posted Notice of Petition for Election.

When a union is already in place, a competing union may file an election petition if the labor contract has expired or is about to expire, and it can show interest by at least 30% of the employees. This would normally result in a three-way election, with the choices being the incumbent labor union, the challenging one, and "none." If none of the three receives a majority vote, a runoff will be conducted between the top two vote-getters.

Elections to certify or decertify a union as the bargaining representative of a unit of employees are decided by a majority of votes cast. Observers from all parties may choose to be present when ballots are counted. Any party may file objections and an offer of proof in support of its objections with the appropriate Regional Director within 7 days of the vote count. In turn, except where the parties have agreed otherwise, the Regional Director's ruling on objections may be appealed to the

Board in Washington. Results of an election will be set aside if conduct by the employer or the union created an atmosphere of confusion or fear of reprisals and thus interfered with the employees' freedom of choice.

Otherwise, a union that receives a majority of the votes cast is certified as the employees' bargaining representative and is entitled to be recognized by the employer as the exclusive bargaining agent for the employees in the unit. Failure to bargain with the union at this point is an unfair labor practice.

Alternate path to union representation

In addition to NLRB-conducted elections, federal law provides employees a second path to choose a representative: They may persuade an employer to voluntarily recognize a union after showing majority support by signed authorization cards or other means. These agreements are made outside the NLRB process. If a union is voluntarily recognized, its status as bargaining representative cannot be challenged during a reasonable period for bargaining, which the Board defines as not less than six months (and not more than one year) after the parties' first bargaining session. In other words, during that reasonable period, the employer cannot withdraw recognition, and the Board will not process a petition for an election to remove the union or replace it with a different union. However, for the election-petition bar to apply, the employer and/or union must first notify a Board Regional Office that voluntary recognition has been granted; the employer must post and distribute to employees a notice informing employees that recognition has been granted and that they have a right to file a petition during a 45-day period beginning on the date the notice is posted; and no properly supported petition is filed within those 45 days.

Office of Representation Appeals

Reviews of election-related decisions, including dismissals of petitions and pre-election decisions by Regional Directors, are handled by the Office of Representation Appeals in Washington, D.C. Requests for review can be filed at any time up to 14 days after a certification of representation or the results of an election or a dismissal of the petition. Each case is assigned to an attorney and a supervisor for a review of the case, which is then presented to the Board. The Board may deny review or grant review of the decision. If the Board grants review, the parties may file additional briefs on review.

UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD DESCRIPTION OF REPRESENTATION CASE PROCEDURES IN CERTIFICATION AND DECERTIFICATION CASES

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

Right to be Represented - Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at www.nlr.gov or forward it to the NLRB Regional Office handling the petition as soon as possible.

Filing and Service of Petition - A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

Notice of Hearing - After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews the petition, certificate of service, and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 14 business days (excluding weekends and federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position and the Responsive Statement of Position(s). Included with the Notice of Representation Hearing are the following: (1) copy of the petition, (2) this form, (3) Statement of Position for non-petitioning parties, (4) petitioner's Responsive Statement of Position, (5) Notice of Petition for Election, and (6) letter advising how to contact the Board agent who will be handling the case and discussing those documents.

Hearing Postponement: Requests to postpone the hearing are not routinely granted, but the regional director may postpone the hearing for good cause. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request must be filed electronically ("E-Filed") on the Agency's website (www.nlr.gov) by following the instructions on the website. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Statement of Position Form and List(s) of Employees - The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. In an **RC** or **RD** case, as part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon 8 business days from the issuance of the Notice of Hearing. The regional director may postpone the due date for filing and serving the Statement of Position for good cause. The Statement of Position form must be E-Filed but, unlike other E-Filed documents, will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Responsive Statement of Position - Petitioner's Responsive Statement(s) of Position solicits a response to the Statement (s) of Position filed by the other parties and further facilitates entry into election agreements or streamlines the pre-election hearing. A petitioner must file a Responsive Statement of Position in response to each party's Statement of Position, addressing each issue in each Statement of Position(s), if desired. In the case of an **RM** petition, the employer-petitioner must also provide commerce information and file and serve a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. Ordinarily, the Responsive Statement of Position must be electronically filed with the Regional Office and served on the other parties such that it is received by noon 3 business days prior to the hearing. The regional director may postpone the due date for filing and serving the Responsive Statement of Position for good cause. The Responsive Statement of Position form must be E-Filed but, unlike other E-Filed documents, will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Responsive Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Responsive Statement of Position due date. If a party wishes to request both a postponement of the hearing and a Postponement of the Responsive Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Posting and Distribution of Notice of Petition for Election - Within 5 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically to the employees in the petitioned-for unit if the employer customarily communicates with these employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

Election Agreements - Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

Hearing Cancellation Based on Agreement of the Parties - The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

Hearing - A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

Purpose of Hearing: The primary purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative.

Issues at Hearing: Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; seasonal operation; potential mixed guard/non-guard unit; and eligibility formulas. At the hearing, the timely filed Statement of Position and Responsive Statement of Position(s) will be received into evidence. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

Preclusion: At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or Responsive Statement of Position(s) or to place in dispute in timely response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Conduct of Hearing: If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have disabilities falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

Official Record: An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (*Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.*) All statements made at the hearing will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

Motions and Objections: All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

Election Details: Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

Oral Argument and Briefs: Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be due within 5 business days of the close of the hearing. The hearing officer may allow up to 10 additional business days for such briefs prior to the close of hearing and for good cause. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. Briefs including electronic documents, filed with the Regional Director must be formatted as double-spaced in an 8½ by 11 inch format and must be e-filed through the Board's website, www.nlr.gov.

Regional Director Decision - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 10 business days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefor.

Voter List - The employer must provide to the regional director and the parties named in the election agreement or direction of election a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular ("cell") telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge. The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction. To be timely filed and served, the voter list must be *received* by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction of elections unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

Waiver of Time to Use Voter List - Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 calendar days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

FORM NLRB-4812
(12-20)

Election - Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

Withdrawal or Dismissal - If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

**DESCRIPTION OF ELECTION AND POST-ELECTION
REPRESENTATION CASE PROCEDURES**

Election -- A secret ballot election will be conducted by an agent of the National Labor Relations Board on the date and at the time(s) and location(s) specified in the Notice of Election. Unless the election is conducted by mail ballot, each party is usually represented by an equal number of observers at the polls during the election. When the election is conducted manually, each party may be represented by an observer of its own selection; whenever possible, a party shall select a current member of the voting unit as its observer, and when no such individual is available, a party should select a current nonsupervisory employee as its observer. When a voter appears at the poll to vote, the voter is asked to state his or her name and is given a ballot to take to a voting booth and mark in secret. The voter folds the marked ballot and then drops it into a ballot box without showing the marking to anyone. Parties or the Board agent may challenge for good cause the eligibility of a voter to participate in the election. A challenged voter will place his or her ballot in a special envelope before placing it in the ballot box. After the time for voting has concluded but before counting the ballots, the Board agent will see if the parties can agree to resolve some or all of the challenges. Where a request for review of a direction of election has been timely filed or upon specific direction by the Board, the ballot(s) that might be affected by the Board's decision on review will be segregated and all ballots will be impounded and remain unopened pending the Board's ruling or decision. Otherwise, the Board agent will count the ballots and prepare a Tally of Ballots and make that Tally available to the parties. If the unresolved challenged ballots will not determine the outcome of the election, the challenged ballots are never opened and no determination is made on the voters' eligibility. If the remaining challenged ballot or ballots are determinative of the results of the election, those challenged ballots will be sealed in a special envelope in front of the parties and stored in a safe in an NLRB office.

Challenged Ballots -- If the challenged ballot or ballots are determinative, the Regional Director will send a letter to the parties after the election, listing the challenged voters and asking the parties to submit a statement of position with respect to each of the determinative challenged ballots detailing why each of the challenged individuals is or is not eligible to vote. The Regional Director will then determine whether it is necessary to conduct an investigation or schedule a hearing to resolve the determinative challenges.

Objections -- Within 5 business days after the Tally of Ballots has been prepared, any party may file objections to the conduct of the election or to conduct affecting the results of the election. The objections must be submitted within this time frame, regardless of whether challenged ballots, if any, are sufficient in number to affect the results of the election. The objections must contain a short statement of the reasons for the objections and be accompanied by a written offer of proof identifying each witness the party would call to testify concerning the issue and summarizing the witness's testimony. Upon request of a party and showing of good cause, the Regional Director may extend the time for filing the offer of proof. The party filing the objections will serve a copy of the objections, but not the written offer of proof, on each of the other parties to the case, and include a certificate of service with the objections. The objections must be faxed or E-Filed through the Agency's E-Filing system (www.nlr.gov), absent a written statement explaining why electronic submission is not possible or feasible.

Certification in the Absence of Objections, Determinative Challenges, and Runoff Elections -- If no timely objections are filed, no runoff election is required to be held, and the challenged ballots are insufficient in number to affect the results of the election, the Regional Director will issue a certification of the results of the election, including certification of representative where appropriate. However, the Regional Director will not issue a certification if a request for review of the decision and direction of election is pending.

Regional Office Investigation and Decision without a Hearing -- A Board agent may be assigned to conduct an administrative investigation of determinative challenges and/or objections. If the Regional Director determines that the evidence described in the offer of proof in support of objections would not constitute grounds for setting aside the election if introduced at a hearing, and/or the Regional Director determines that any determinative challenges do not raise substantial and material factual issues, the Regional Director will issue a decision disposing of the objections and/or determinative challenges.

Notices of Hearing on Challenges and/or Objections -- The Regional Director will schedule the hearing on challenges and/or objections 15 business days after the preparation of the tally of ballots or as soon as practicable thereafter, unless the parties agree to an earlier date. In some cases, the Regional Director may consolidate the hearing concerning objections and challenges with an unfair labor practice proceeding before an Administrative Law Judge. In any proceeding involving a consent election where the representation case has been consolidated with an unfair labor practice proceeding for hearing, the Administrative Law Judge will, after issuing a decision, sever the representation case and transfer it to the Regional Director for further processing. If there was no consent election, the Administrative Law Judge's recommendations on objections and/or challenges that have been consolidated with an unfair labor practice proceeding will be ruled upon by the Board if exceptions are filed or adopted in the absence of exceptions.

Voluntary Resolution -- An objecting party may wish to withdraw its objections. The withdrawal may be oral or written. When objections are withdrawn, the Regional Director may issue the appropriate certification. If the parties agree to set aside the election and conduct a new one, the Board agent will prepare a written agreement for their signature and approval by the Regional Director. Agreement of the objecting party is not required.

Hearing on Challenges and/or Objections -- The hearing will continue from day to day until completed unless the Regional Director concludes that extraordinary circumstances warrant otherwise. Any party will have the right to appear at the hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the objections and/or determinative challenges that are the subject of the hearing. Post-hearing briefs may be filed within five business days after the close of the hearing, unless additional time is granted by the Hearing Officer prior to the close of hearing and upon showing of good cause.

Hearing Officer's Report and Exceptions -- After the hearing, the Hearing Officer will prepare and serve on the parties a report resolving questions of credibility and containing findings of fact and recommendations as to the disposition of the post-election issues. Within 10 business days from the issuance of that report, any party may file with the Regional Director exceptions to that report and a supporting brief if desired. A copy of the exceptions and any supporting brief must immediately be served on the other parties and a statement of service filed with the Regional Director. Within 5 business days from the last date on which exceptions and any supporting brief may be filed, or such further time as the Regional Director may allow, a party opposing the exceptions may file an answering brief. A copy of the answering brief must immediately be served on the other parties and a statement of service filed with the Regional Director. Thereafter, the Regional Director will decide the matter or make other disposition of the case. If no exceptions to the Hearing Officer's report are filed, the Regional Director may decide the matter upon the record or make other disposition of the case. The decision of the Regional Director will be final unless a request for review is granted by the Board.

Briefs in support of exceptions and answering briefs may not exceed 50 pages, excluding the subject index and table of cases and authorities, unless permission is obtained from the Regional Director by motion, setting forth the reasons for exceeding the limit, pursuant to the procedures set forth in § 102.2(c) of the Board's Rules and Regulations. If a brief exceeds 20 pages, it must contain a subject index with page references and an alphabetical table of cases and authorities. All documents, including electronic documents, filed with the Regional Director must be formatted as double-spaced and in an 8 ½ by 11-inch format.

Request For Review by the Board -- In stipulated and directed election cases, any party may request Board review of the Regional Director's post-election decision. The request for review must be filed with the Board within 10 business days of the Regional Director's post-election decision and must be served on the Regional Director and the other parties. This request for review of a Regional Director's post-election decision may be combined with a request for review of the Regional Director's pre-election decision and direction of election if the party has not previously filed a request for review of the decision and direction of election. A party may not, however, file more than one request for review of a particular action or decision by the Regional Director; repetitive requests will not be considered. A statement of service must also be filed with the Board. Any party opposing the request for review may file a statement in opposition within 5 business days after the last day for which the request for review must be filed. If the Board grants the request for review, the parties have 10 business days from the order granting review to file briefs with the Board. A party seeking review must identify a significant, prejudicial error or some other compelling reason for Board review.

Chapter 2—Nuts and Bolts of Labor Law: NLRB Overview

FORM NLRB-502 (RC)
(2-18)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
RC PETITION

DO NOT WRITE IN THIS SPACE	
Case No.	Date Filed

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. **The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.**

2a. Name of Employer:		2b. Address(es) of Establishment(s) involved (Street and number, City, State, ZIP code):	
3a. Employer Representative - Name and Title:		3b. Address (if same as 2b - state same):	
3c. Tel. No.	3d. Cell No.	3e. Fax No.	3f. E-Mail Address
4a. Type of Establishment (Factory, mine, wholesaler, etc.)		4b. Principal Product or Service	5a. City and State where unit is located:
5b. Description of Unit Involved: Included:		6a. Number of Employees in Unit:	
Excluded:		6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Check One: <input type="checkbox"/> 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (if no reply received, so state). <input type="checkbox"/> 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.			
8a. Name of Recognized or Certified Bargaining Agent (if none, so state)		8b. Address:	
8c. Tel. No.	8d. Cell No.	8e. Fax No.	8f. E-Mail Address
8g. Affiliation, if any:		8h. Date of Recognition or Certification	8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)
9. Is there now a strike or picketing at the Employer's establishment(s) involved? _____ If so, approximately how many employees are participating? _____ (Name of Labor Organization) _____, has picketed the Employer since (Month, Day, Year) _____			
10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (if none, so state)			
10a. Name		10b. Address	
10c. Tel. No.		10d. Cell No.	
10e. Fax No.		10f. E-Mail Address	
11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election:			11a. Election Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail
11b. Election Date(s):		11c. Election Time(s):	
11d. Election Location(s):			
12a. Full Name of Petitioner (including local name and number):		12b. Address (street and number, city, State and ZIP code):	
12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state):			
12d. Tel. No.	12e. Cell No.	12f. Fax No.	12g. E-Mail Address
13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.			
13a. Name and Title:		13b. Address (street and number, city, State and ZIP code):	
13c. Tel. No.	13d. Cell No.	13e. Fax No.	13f. E-Mail Address
I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.			
Name (Print)		Signature	
Title		Date	

**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

Chapter 2—Nuts and Bolts of Labor Law: NLRB Overview

FORM NLRB-502 (RD) (2-18)	UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD RD PETITION	DO NOT WRITE IN THIS SPACE	
		Case No.	Date Filed
INSTRUCTIONS: Unless e-Filed using the Agency's website, , submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 7 below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.			
1. PURPOSE OF THIS PETITION: RD- DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.			
2a. Name of Employer		2b. Address(es) of Establishment(s) involved (<i>Street and number, city, state, ZIP code</i>)	
3a. Employer Representative - Name and Title		3b. Address (If same as 2b - state same)	
3c. Tel. No.	3d. Fax No.	3e. Cell No.	3f. E-Mail Address
4a. Type of Establishment (<i>Factory, mine, wholesaler, etc.</i>)		4b. Principal product or service	
5a. Description of Unit Involved Included: Excluded:			5b. City and State where unit is located:
6. No. of Employees in Unit	7. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative? <input type="checkbox"/> Yes <input type="checkbox"/> No		
8a. Name of Recognized or Certified Bargaining Agent		8b. Affiliation, if any	
8c. Address		8d. Tel. No.	8e. Cell No.
		8f. Fax No.	8g. E-Mail Address
9. Date of Recognition or Certification		10. Expiration Date of Current or Most Recent Contract, if any (<i>Month, Day, Year</i>)	
11a. Is there now a strike or picketing at the Employer's establishment(s) involved? <input type="checkbox"/> Yes <input type="checkbox"/> No		11b. If so, approximately how many employees are participating?	
11c. The Employer has been picketed by or on behalf of (<i>Insert Name</i>)		a labor organization, of (<i>Insert Address</i>) since (<i>Month, Day, Year</i>)	
12. Organizations or individuals other than those named in items 8 and 11c, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5 above. (<i>If none, so state</i>)			
12a. Name	12b. Address	12c. Tel. No.	12d. Fax No.
		12e. Cell No.	12f. E-Mail Address
13. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.		13a. Election Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail	
13b. Election Date(s)	13c. Election Time(s)	13d. Election Location(s)	
14. Full Name of Petitioner			
14a. Address (<i>Street and number, city, state, ZIP code</i>)		14b. Tel. No.	14c. Fax No.
		14d. Cell No.	14e. E-Mail Address
14f. Affiliation, if any			
15. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.			
15a. Name		15b. Title	
15c. Address (<i>Street and number, city, state, ZIP code</i>)		15d. Tel. No.	15e. Fax No.
		15f. Cell No.	15g. E-Mail Address
I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.			
Name (Print)	Signature	Title	Date Filed

**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT**

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Chapter 2—Nuts and Bolts of Labor Law: NLRB Overview

FORM NLRB-505
(12-20)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE

Case No.

Date Filed

INSTRUCTIONS: *Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.*
Note: *Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7.*

1a. Full name of party filing Statement of Position:		1c. Business Phone:	1e. Fax No.:
1b. Address (<i>Street and number, city, state, and ZIP code</i>):		1d. Cell No.:	1f. e-Mail Address:
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>(A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)</i>			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>(If not, answer 3a and 3b.)</i>			
a. State the basis for your contention that the proposed unit is not appropriate. <i>(If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards.)</i>			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit. Added: _____ Excluded: _____			
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, state the basis for your position.</i>			
6. Describe all other issues you intend to raise at the pre-election hearing.			
7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at (a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) (b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be <i>added</i> to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be <i>excluded</i> from the proposed unit to make it an appropriate unit. (Attachment D).			
8a. State your position with respect to the details of any election that may be conducted in this matter. Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s):	8c. Time(s):	8d. Location(s):	
8e. Eligibility Period (e.g. special eligibility formula):	8f. Last Payroll Period Ending Date:	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (<i>specify length</i>) _____	
9. Representative who will accept service of all papers for purposes of the representation proceeding			
9a. Full name and title of authorized representative		9b. Signature of authorized representative	9c. Date
9d. Address (<i>Street and number, city, state, and ZIP code</i>)			9e. e-Mail Address
9f. Business Phone No.:		9g. Fax No.:	9h. Cell No.:

**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

**REVIEW THE FOLLOWING IMPORTANT INFORMATION
BEFORE FILLING OUT A STATEMENT OF POSITION FORM**

Completing and Filing this Form: The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must EFile your Statement of Position at [time and date], but unlike other e-Filed documents, it will not be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

Note: *Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7.*

Required Lists: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [link].

Consequences of Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the preelection hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Chapter 2—Nuts and Bolts of Labor Law: NLRB Overview

FORM NLRB-506
(12-20)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

RESPONSIVE STATEMENT OF POSITION - RC, RD or RM PETITION

DO NOT WRITE IN THIS SPACE

Case No.

Date Filed

INSTRUCTIONS: If a party has submitted and served on you a timely Statement of Position to an RC, RD or RM petition, the Petitioner must submit this Responsive Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and any attachments on each party named in the petition in this case such that it is received by noon local time, three business days prior to the hearing date specified in the Notice of Hearing. A separate form must be completed for each timely filed and properly served Statement of Position received by the Petitioner. The Petitioner-Employer in a RM case is required to file this Responsive Statement of Position and include an appropriate employee list without regard to whether another party has filed a Statement of Position.

This Responsive Statement of Position is filed by the Petitioner in response to a Statement of Position received from the following party:

The Employer

An Intervenor/Union

1a. Full Name of Party Filing Responsive Statement of Position

1c. Business Phone

1d. Cell No.

1e. Fax No.

1f. E-Mail Address

1b. Address (Street and Number, City, State and ZIP Code)

2. Identify all issues raised in the other party's Statement of Position that you dispute and describe the basis of your dispute:

a. EMPLOYER NAME/IDENTITY [Box 1a of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

No Dispute (no further response required) Dispute (response required below)

Response to Statement of Position:

b. JURISDICTION [Box 2 of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

No Dispute (no further response required) Dispute (response required below)

Response to Statement of Position:

c. APPROPRIATENESS OF UNIT [Boxes 3, 3a and 3b of Statement of Position Form NLRB-505]

No Dispute (no further response required) Dispute (response required below)

Response to Statement of Position:

d. INDIVIDUAL ELIGIBILITY [Box 4 of Statement of Position Form NLRB-505]

No Dispute (no further response required) Dispute (response required below)

Response to Statement of Position:

e. BARS TO ELECTION [Box 5 of Statement of Position Form NLRB-505]

No Dispute (no further response required) Dispute (response required below)

Response to Statement of Position:

f. ALL OTHER ISSUES [Box 6 of Statement of Position Form NLRB-505]

No Dispute (no further response required) Dispute (response required below)

Response to Statement of Position:

g. ELECTION DETAILS [Boxes 8a, 8b, 8c, 8d, 8e, 8f, and 8g of Statement of Position Form NLRB-505]

No Dispute (no further response required) Dispute (response required below)

Response to Statement of Position:

Full Name and Title of Authorized Representative

Signature of Authorized Representative

Date

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

**REVIEW THE FOLLOWING IMPORTANT INFORMATION
BEFORE FILLING OUT A RESPONSIVE STATEMENT OF POSITION FORM**

Completing and Filing this Form: For **RC and RD petitions**, the Petitioner is required to complete this form in response to each timely filed and served Statement of Position filed by another party. For **RM petitions**, the Employer-Petitioner must complete a Responsive Statement of Position form and submit the list described below. In accordance with Section 102.63(b) of the Board's Rules, if you are required to complete the form, you must have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition responding to the issues raised in another party's Statement of Position, such that it is received no later than noon three business days before the date of the hearing. A separate form must be completed for each timely filed and properly served Statement of Position you receive. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must E-File your Responsive Statement of Position at www.NLRB.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed. Note that if you are completing this form as a PDF downloaded from www.NLRB.gov, the form will lock upon signature and no further editing may be made.**

Required List: In addition to responding to the issues raised in another party's Statement of Position, if any, the Employer-Petitioner in an RM case is required to file and serve on the parties a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. This list must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the list in the required form, the list must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx

Consequences of Failure to Submit a Responsive Statement of Position: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Form NLRB-5544
(5-2015)

CERTIFICATE OF SERVICE

Employer Name:

Service on the Employer

I hereby certify that on _____ (date), a copy of the petition involving the Employer named above, a Statement of Position (Form NLRB-505), and a Description of Procedures (Form NLRB-4812) were served on the Employer by: (check whichever is applicable)

- e-mail to the email address shown on the petition.
- facsimile (with the permission of the Employer) to the facsimile number shown on the petition.
- overnight mail to the mailing address shown on the petition.
- hand-delivery to _____ (name of Employer's representative) at the following address: _____.

Service on the Other Party Named in the Petition

I hereby certify that on _____ (date), a copy of the petition involving the Employer named above, a Statement of Position (Form NLRB-505), and a Description of Procedures (Form NLRB-4812) were also served on _____ (name of party or parties) by: (check whichever is applicable)

- email to the email address shown on the petition.
- facsimile (with the permission of the party) to the facsimile number shown on the petition.
- overnight mail to the mailing address shown on the petition.
- hand-delivery to _____ (name of party's representative) at the following address: _____.

Service on the Other Party Named in the Petition

I hereby certify that on _____ (date), a copy of the petition involving the Employer named above, a Statement of Position (Form NLRB-505), and a Description of Procedures (Form NLRB-4812) were also served on _____ (name of party or parties) by: (check whichever is applicable)

- email to the email address shown on the petition.
- facsimile (with the permission of the party) to the facsimile number shown on the petition.
- overnight mail to the mailing address shown on the petition.
- hand-delivery to _____ (name of party's representative) at the following address: _____.

Signature

Name and Title

Date

NLRA and the Right to Strike

The Right to Strike. Section 7 of the Act states in part, “Employees shall have the right. . . to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.” Strikes are included among the concerted activities protected for employees by this section. Section 13 also concerns the right to strike. It reads as follows:

Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

It is clear from a reading of these two provisions that: the law not only guarantees the right of employees to strike, but also places limitations and qualifications on the exercise of that right.

Lawful and unlawful strikes. The lawfulness of a strike may depend on the object, or purpose, of the strike, on its timing, or on the conduct of the strikers. The object, or objects, of a strike and whether the objects are lawful are matters that are not always easy to determine. Such issues often have to be decided by the National Labor Relations Board. The consequences can be severe to striking employees and struck employers, involving as they do questions of reinstatement and backpay.

Strikes for a lawful object. Employees who strike for a lawful object fall into two classes: economic strikers and unfair labor practice strikers. Both classes continue as employees, but unfair labor practice strikers have greater rights of reinstatement to their jobs.

Economic strikers defined. If the object of a strike is to obtain from the employer some economic concession such as higher wages, shorter hours, or better working conditions, the striking employees are called economic strikers. They retain their status as employees and cannot be discharged, but they can be replaced by their employer. If the employer has hired bona fide permanent replacements who are filling the jobs of the economic strikers when the strikers apply unconditionally to go back to work, the strikers are not entitled to reinstatement at that time. However, if the strikers do not obtain regular and substantially equivalent employment, they are entitled to be recalled to jobs for which they are qualified when openings in such jobs occur if they, or their bargaining representative, have made an unconditional request for their reinstatement.

Unfair labor practice strikers defined. Employees who strike to protest an unfair labor practice committed by their employer are called unfair labor practice strikers. Such strikers can be neither discharged nor permanently replaced. When the strike ends, unfair labor practice strikers, absent serious misconduct on their part, are entitled to have their jobs back even if employees hired to do their work have to be discharged.

If the Board finds that economic strikers or unfair labor practice strikers who have made an unconditional request for reinstatement have been unlawfully denied reinstatement by their employer, the Board may award such strikers backpay starting at the time they should have been reinstated.

Strikes unlawful because of purpose. A strike may be unlawful because an object, or purpose, of the strike is unlawful. A strike in support of a union unfair labor practice, or one that would cause an employer to commit an unfair labor practice, may be a strike for an unlawful object. For example, it is an unfair labor practice for an employer to discharge an employee for failure to make certain lawful payments to the union when there is no union security agreement in effect (Section 8(a)(3)). A strike to compel an employer to do this would be a strike for an unlawful object and, therefore, an unlawful strike.

Furthermore, Section 8(b)(4) of the Act prohibits strikes for certain objects even though the objects are not necessarily unlawful if achieved by other means. An example of this would be a strike to compel Employer A to cease doing business with Employer B. It is not unlawful for Employer A voluntarily to stop doing business with Employer B, nor is it unlawful for a union merely to request that it do so. It is, however, unlawful for the union to strike with an object of forcing the employer to do so. In any event, employees who participate in an unlawful strike may be discharged and are not entitled to reinstatement.

Strikes unlawful because of timing—Effect of no-strike contract. A strike that violates a no-strike provision of a contract is not protected by the Act, and the striking employees can be discharged or otherwise disciplined, unless the strike is called to protest certain kinds of unfair labor practices committed by the employer. It should be noted that not all refusals to work are considered strikes and thus violations of no-strike provisions. A walkout because of conditions abnormally dangerous to health, such as a defective ventilation system in a spray-painting shop, has been held not to violate a no-strike provision.

Same—Strikes at end of contract period. Section 8(d) provides that when either party desires to terminate or change an existing contract, it must comply with certain conditions. If these requirements are not met, a strike to terminate or change a contract is unlawful and participating strikers lose their status as employees of the employer engaged in the labor dispute. If the strike was caused by the unfair labor practice of the employer, however, the strikers are classified as unfair labor practice strikers and their status is not affected by failure to follow the required procedure.

Strikes unlawful because of misconduct of strikers. Strikers who engage in serious misconduct in the course of a strike may be refused reinstatement to their former jobs. This applies to both economic strikers and unfair labor practice strikers. Serious misconduct has been held to include, among other things, violence and threats of violence. The U.S. Supreme Court has ruled that a “sitdown” strike, when employees simply stay in the plant and refuse to work, thus depriving the owner of property, is not protected by the law. Examples of serious misconduct that could cause the employees involved to lose their right to reinstatement are:

- Strikers physically blocking persons from entering or leaving a struck plant.
- Strikers threatening violence against nonstriking employees.
- Strikers attacking management representatives.

The Right to Picket. Likewise the right to picket is subject to limitations and qualifications. As with the right to strike, picketing can be prohibited because of its object or its timing, or misconduct on the picket line. In addition, Section 8(b)(7) declares it to be an unfair labor practice for a union to picket for certain objects whether the picketing accompanies a strike or not.

NOTE: It must be emphasized that this document is only a brief outline. A detailed analysis of the law concerning strikes, and application of the law to all the factual situations that can arise in connection with strikes, is beyond the scope of this material. Employees and employers who anticipate being involved in strike action should proceed cautiously and on the basis of competent advice.

The NLRB and Social Media

The National Labor Relations Act protects the rights of employees to act together to address conditions at work, with or without a union. This protection extends to certain work-related conversations conducted on social media, such as Facebook and Twitter.

In 2010, the National Labor Relations Board, an independent federal agency that enforces the Act, began receiving charges in its regional offices related to employer social media policies and to specific instances of discipline for Facebook postings. Following investigations, the agency found reasonable cause to believe that some policies and disciplinary actions violated federal labor law, and the NLRB Office of General Counsel issued complaints against employers alleging unlawful conduct. In other cases, investigations found that the communications were not protected and so disciplinary actions did not violate the Act.

General Counsel memos

To ensure consistent enforcement actions, and in response to requests from employers for guidance in this developing area, Acting General Counsel Lafe Solomon released three memos in 2011 and 2012 detailing the results of investigations in dozens of social media cases.

The first report, issued on August 18, 2011, described 14 cases. In four cases involving employees' use of Facebook, the Office of General Counsel found that the employees were engaged in "protected concerted activity" because they were discussing terms and conditions of employment with fellow employees. In five other cases involving Facebook or Twitter posts, the activity was found to be unprotected. In one case, it was determined that a union engaged in unlawful coercive conduct when it videotaped interviews with employees at a nonunion jobsite about their immigration status and posted an edited version on YouTube and the Local Union's Facebook page. In five cases, some provisions of employers' social media policies were found to be overly-broad. A final case involved an employer's lawful policy restricting its employees' contact with the media.

The second report, issued Jan 25, 2012, also looked at 14 cases, half of which involved questions about employer policies. Five of those policies were found to be unlawfully broad, one was lawful, and one was found to be lawful after it was revised. The remaining cases involved discharges of employees after they posted comments to Facebook. Several discharges were found to be unlawful because they flowed from unlawful policies. But in one case, the discharge was upheld despite an unlawful policy because the employee's posting was not work-related. The report underscored two main points regarding the NLRB and social media:

- Employer policies should not be so sweeping that they prohibit the kinds of activity protected by federal labor law, such as the discussion of wages or working conditions among employees.
- An employee's comments on social media are generally not protected if they are mere gripes not made in relation to group activity among employees.

The third report, issued May 30, 2012, examined seven employer policies governing the use of social media by employees. In six cases, the General Counsel's office found some provisions of the employer's social media policy to be lawful and others to be unlawful. In the seventh case, the entire policy was found to be lawful. Provisions were found to be unlawful when they interfered with the rights of employees under the National Labor Relations Act, such as the right to discuss wages and working conditions with co-workers.

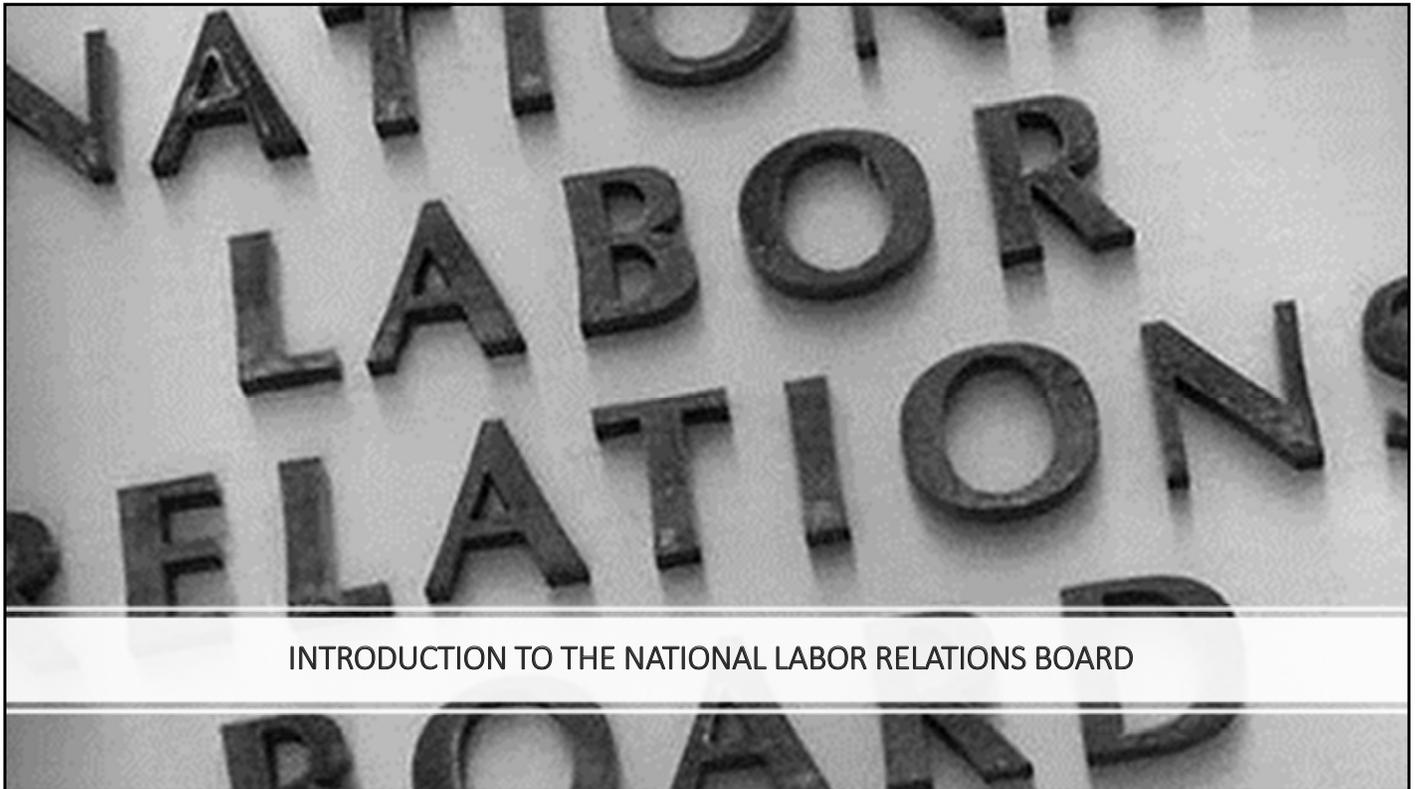
Some of the early social media cases were settled by agreement between the parties. Others proceeded to trial before the agency's Administrative Law Judges. Several parties then appealed those decisions to the Board in Washington D.C.

Board decisions

In the fall of 2012, the Board began to issue decisions in cases involving discipline for social media postings. Board decisions are significant because they establish precedent in novel cases such as these.

In the first such decision, issued on September 28, 2012, the Board found that the firing of a BMW salesman for photos and comments posted to his Facebook page did not violate federal labor law. The question came down to whether the salesman was fired exclusively for posting photos of an embarrassing accident at an adjacent Land Rover dealership, which did not involve fellow employees, or for posting mocking comments and photos with co-workers about serving hot dogs at a luxury BMW car event. Both sets of photos were posted to Facebook on the same day; a week later, the salesman was fired. The Board agreed with the Administrative Law Judge that the salesman was fired solely for the photos he posted of a Land Rover incident, which was not concerted activity and so was not protected.

In the second decision, issued December 14, 2012, the Board found that it was unlawful for a non-profit organization to fire five employees who participated in Facebook postings about a coworker who intended to complain to management about their work performance. In its analysis, the Board majority applied settled Board law to social media and found that the Facebook conversation was concerted activity and was protected by the National Labor Relations Act.



INTRODUCTION TO THE NATIONAL LABOR RELATIONS BOARD



What We Are

An independent federal Agency that protects the rights of private sector employees to join together, with or without a union, to improve their working conditions



National Labor Relations Board



What We Do

Protect employees' rights to:

- engage in group efforts to improve their wages and working conditions
- determine whether they want to be represented by a union
- engage in collective-bargaining
- refrain from any of these activities



3

Where We Work



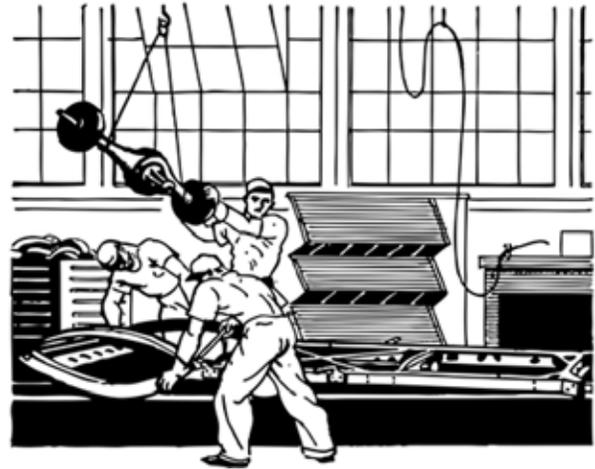
- Headquartered in Washington, DC
- 26 Regional Offices and numerous satellite offices in most major cities
- Location of nearest office can be found at [Regional Offices | National Labor Relations Board \(nlrb.gov\)](https://www.nlr.gov/regions)



Who We Protect

Employees of most private-sector employers in the United States

- Most small businesses
- Non-profits
- Businesses in States with “Right to Work” laws

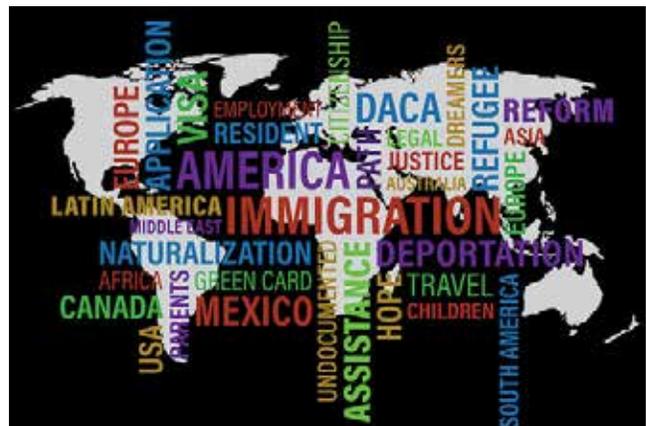


5

Immigrant and Undocumented Workers Are Protected

All employees have the same rights under the NLRA regardless of immigration status

- The Agency will not inquire about a person’s immigration status during its investigation to prove violations of the NLRA
- The Agency may take legal action against an employer if it unlawfully uses immigration status to retaliate against an employee because he/she exercised rights under the NLRA



6



Coverage Exceptions

Some groups are excluded:

- Managers and supervisors
- Government employees (except USPS)
- Agricultural workers
- Independent contractors
- Domestic workers
- Confidential employees



Right to Engage in Union Activity



Employees have the right to attempt to form a union where none currently exists, or to get rid of a union that has lost the support of employees

Right to Engage in Concerted Activity

- Two or more employees act together to improve their working conditions
- A single employee brings group complaints to an employer or tries to convince co-workers to act together as a group



Examples of Concerted Activity

- Talking with one or more co-workers about wages and benefits or other working conditions
- Circulating a petition asking for better hours
- Participating in a concerted refusal to work (strike) in unsafe conditions
- Joining with co-workers to talk directly to the boss, a government agency, or the media about problems in the workplace



Work Rules Can't Stop Concerted Activity

Sometimes employers have rules or policies in employee handbooks that conflict with employees' rights to engage in concerted activity. These rules are unlawful. For example:

- Rules prohibiting employees from talking about their wages
- Rules prohibiting employees from posting negative comments about the employer or supervisors on social media sites
- Rules prohibiting solicitation or distribution of materials during working hours or in non-work areas



Prohibited Acts



• In response to union or protected concerted activity, an employer is prohibited from taking any of these actions against an employee:

- Firing or demoting the employee
- Reducing Pay, hours, or benefits
- Making working conditions less desirable, e.g., altering work schedules, denying overtime, isolating the employee
- Transferring the employee to another location
- Contacting law enforcement, including ICE
- Imposing new paperwork requirements to maintain employment
- Threatening to do any of these things

Things to Know About Filing a Charge

- It's free
- It may be done in any of our offices or online
- If you need assistance, an NLRB agent will help a person fill out the charge correctly
- If needed, translation services will be made available
- You don't need a lawyer
- You must file a charge within 6 months of the alleged unlawful conduct
- You do not need to speak English

What to Expect After Filing a Charge

- Each charge is investigated by Board agents who gather evidence and may take affidavits from parties and witnesses
- During the investigation, we do not gather information about immigration status
- Investigations usually take between 7 to 14 weeks
- If the Agency finds sufficient evidence to support the charge, it will try to help the parties reach a settlement
- If no settlement is reached, the Agency will issue a complaint and prosecute the case before an Agency Administrative Law Judge
- There is no fee for this





Remedies

- No penalties or punitive damages
- The agency may seek make-whole remedies, such as:
 - reinstatement and backpay for discharged workers
 - informational remedies, such as the posting of a notice by the employer promising to not violate the law.
- Although undocumented workers are protected under the Act, the Supreme Court has held that their undocumented status precludes an award of backpay and reinstatement.
 - But if undocumented status is caused by a lapse in authorization or the worker is otherwise in the process of obtaining authorization, conditional reinstatement remedies may be available

Resources

- NLRB Website (<https://www.nlr.gov/>) (Spanish option available: <https://www.nlr.gov/espanol/>)
- NLRB Hotline 1-844-762-NLRB (Spanish language option available)
- NLRB Mobile App for IOS and Android
- Visit your NLRB local office: (<https://www.nlr.gov/about-nlr/who-we-are/regional-offices>)
- General Information on federal workplace protections: www.worker.gov/
- Twitter: [@NLRB](https://twitter.com/NLRB)/[@NLRBGC](https://twitter.com/NLRBGC)
- Twitter en Español: [@NLRBes](https://twitter.com/NLRBes)/[@NLRBGCes](https://twitter.com/NLRBGCes)

