The Work Week

Bassford Remele Employment Practice Group

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Understanding the Reconstituted NLRB in Times of Union Organizing Upticks: What Employers Should Know Now

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On December 3, 2025, the U.S. Senate Committee on Health, Education, Labor and Pensions advanced the nomination of Scott Mayer to a seat on the National Labor Relations Board (NLRB or Board), clearing the way for full Senate confirmation. Given the nomination of James Murphy, a retired NLRB attorney who spent many years as counsel to a variety of Republican Board members, was already advanced in October 2025, a Senate confirmation of Mayer and Murphy would re-establish a quorum at the Board. With a likely employer-friendly majority and an employer-friendly General Counsel, many employers may anticipate more predictable outcomes. However, the NLRB continues to investigate and prosecute alleged National Labor Relations Act (NLRA) violations, as illustrated by a November 20, 2025 complaint filed against STARR Restaurants concerning alleged union-busting at the St. Anselm steakhouse in Washington, D.C. Employers—large and small—should remain vigilant, proactively prepare for organizing activity, and engage counsel early to mitigate risk.

Background: Organizing Surges During Polarization and Economic Insecurity

Periods of political polarization, social upheaval, and economic insecurity have historically coincided with heightened union organizing. In such climates, employees scrutinize wages, scheduling stability, staffing levels, health and safety, and workplace voice, and many seek the protection and leverage of collective bargaining. Employers often encounter increased protected concerted activity, including social media advocacy, petitions, and workplace discussions about terms and conditions of employment. These dynamics tend to accelerate union campaigns and increase unfair labor practice (ULP) charges, which coincide with heightened risk for employers.

Regardless of the Board's partisan composition, organizing energy and employee activism can expand rapidly, increasing exposure to Section 8(a) allegations if management responses are not carefully calibrated.

The NLRB's Current Posture: Employer-Friendly Does Not Mean Non-Enforcement

Although the anticipated quorum with Scott Mayer's confirmation may yield an employer-leaning Board on certain doctrinal questions, core NLRA enforcement remains active. The NLRB's Regional Offices continue to issue complaints where investigations support a finding that violations occurred. Notably, on November 20, 2025, the NLRB's Region 5, which encompasses Washington, D.C., filed a complaint consolidating various ULP charges against Shemp LLC, d/b/a St. Anselm, a restaurant within the large, East-coast based STARR Restaurants group helmed by Stephen Starr. The issuance of complaint reflects the NLRB's ongoing willingness to litigate alleged organizing-related violations notwithstanding expectations of employer-favorable outcomes in some policy areas. Employers should not conflate macro-level policy direction with case-level tolerance; charge investigations, injunctive requests, remedial orders, and litigation will proceed where the NLRB determines evidence supports violations.

Allegations Against Starr and STARR Restaurants: St. Anselm, Washington, D.C.

According to the November 20, 2025 complaint, the NLRB has charged NLRA violations arising from alleged anti-union conduct at the St. Anselm steakhouse in Washington, D.C. Three separate STARR restaurants were involved in organizing campaigns at the start of 2025, but Unite Here Local 25, a DC-union representing more than 7,500 hospitality workers, was only successful at St. Anselm, with employees voting to unionize on February 21, 2025. Instead of recognizing the election results, STARR Restaurants filed objections, claiming that, because the Board lacks a quorum, the NLRB lacks authority to certify the union elections.

The November 20, 2025 complaint consolidates several ULP charges filed by Unite Here Local 25 in June 2025 and reportedly centers on alleged union-busting tactics during a union organizing campaign involving employees at the restaurant, including alleged conduct that the NLRB contends interfered with, restrained, or coerced employees in the exercise of their Section 7 rights. The complaint alleges Starr and a St. Anselm supervisor directly coerced employees by providing false information about the union, promising improved benefits if employees voted against the union, and threatening lost revenue if the employees voted for the union. Some of these allegations are based upon conduct that appears to have occurred at large group meetings as well as during one-on-one conversations between management and employees. Starr and STARR Restaurants have denied the allegations.

The complaint seeks traditional NLRA remedies consistent with the Board's remedial authority. The case is set for hearing before an NLRB Administrative Law Judge on February 24, 2026.

Practical Compliance Guidance: Preparing for Organizing and Avoiding NLRA Pitfalls

Employers should implement a readiness plan that emphasizes lawful communication, manager training, documentation discipline, and rapid legal triage when organizing emerges. Common pitfalls include:

1. Surveillance and "surveillance-like" conduct

    a. Assigning supervisors to monitor union meetings, social media, or off-duty gatherings.

    b. Following or photographing employees engaged in protected activity.

    c. Creating the impression of surveillance through remarks suggesting management is "watching" union supporters.

2. Unlawful statements about unions

    a. Threats: Implying layoffs, reduced hours, benefit losses, or facility closure if employees support or select a union.

    b. Promises: Offering raises, benefits, or preferential treatment to deter union support.

    c. Interrogation: Questioning employees about their union sympathies or others' support without safeguards.

    d. Misinformation: Overstating union dues or mischaracterizing bargaining obligations.

3. Adverse actions against union supporters

    a. Disciplining, reducing hours, reassigning, or terminating employees engaged in protected activity.

    b. Applying rules selectively against union supporters.

    c. Implementing policy changes timed to organizing that chill Section 7 rights.

4. Restrictive workplace rules and handbooks

    a. Overbroad social media, confidentiality, or civility rules that could reasonably chill protected concerted activity.

    b. No-solicitation/no-distribution rules applied inconsistently or announced during a campaign without business justification.

5. Captive audience and meeting practices

    a. Mandatory meetings timed to suppress organizing without providing compliant guidelines.

    b. Supervisor one-on-ones that drift into interrogation, implied threats, or promises associated with union avoidance.

6. Coordination across multi-location brands

    a. Centralized directives that create joint- or successor-employer exposure.

    b. Franchise or management agreements that inadvertently expand liability.

Remedies and Business Impact: Small vs. Large Employers

The NLRA authorizes remedies tailored to make employees whole and restore the status quo ante. Potential consequences include:

1. Monetary and affirmative remedies

    a. Backpay plus interest and make-whole relief for lost earnings and benefits.

    b. Reinstatement or front pay where appropriate.

    c. Rescission or revision of overbroad rules and policies.

    d. Notices posted and read to employees, including electronic distribution.

    e. Access remedies and bargaining orders in egregious cases.

2. Impact on small businesses

    a. Cash flow stress from backpay, reinstatement, and litigation costs.

    b. Operational strain from managerial time diverted to proceedings.

    c. Heightened risk where informal HR systems lack documentation to defend disciplinary decisions.

    d. The “closure and reopen” mistake: Shuttering and reopening under a different entity to avoid obligations can trigger alter-ego/successor findings, extending liability and remedies to the new operation.

3. Impact on large businesses

    a. Multi-facility exposure, including enterprise-wide remedies and compliance auditing burdens.

    b. Brand and investor scrutiny; amplified public relations risk.

    c. Complex joint-employer and contractor risks across subsidiaries and vendors.

4. Early case dynamics

    a. Regional Directors may seek interim injunctive relief under Section 10(j) in appropriate cases, accelerating timelines and increasing leverage.

    b. Settlement posture often improves when employers have strong contemporaneous documentation, trained supervisors, and pre-cleared communications.

Action Plan: Proactive Preparation and Early Legal Engagement

Employers should:

1. Conduct a preventive NLRA audit

    a. Assess handbooks, social media, confidentiality, solicitation, and investigative confidentiality rules.

    b. Identify high-risk disciplinary patterns and ensure consistent, documented enforcement.

    c. Review scheduling, wage adjustments, and incentive timing for neutrality during campaigns.

2. Train supervisors and managers

    a. Provide clear do's and do-not's for union campaign communications.

    b. Rehearse responses to employee questions to avoid interrogation, threats, or promises.

    c. Establish escalation protocols for union activity indicators.

3. Build a compliant communications framework

    a. Prepare fact-based, non-coercive messaging about the company's perspective on unionization.

b. Pre-clear meeting scripts and FAQs with counsel.

c. Implement a tracking system for campaign events and management contacts.

4. Strengthen investigation and discipline practices

   a. Separate protected activity from performance or conduct issues in documentation.

   b. Apply progressive discipline consistently with historical comparators.

   c. Vet sensitive actions with counsel before implementation.

5. Plan for remedial contingencies

   a. Model backpay exposure and potential reinstatement scenarios.

   b. Identify internal and external communications strategies.

   c. Centralize litigation hold and discovery readiness.

Conclusion

With the Senate committee's advancement of Scott Mayer's nomination and the likely restoration of an NLRB quorum with Mayer and Murphy's anticipated confirmations before the full Senate, employers should not assume a pass on compliance. The Board's continued prosecution of organizing-related charges—including the November 20, 2025 complaint against STARR Restaurants regarding alleged union-busting at St. Anselm in Washington, D.C.—underscores that enforcement remains active. Proactive preparation, robust supervisory training, compliant communications, and early engagement with labor counsel are essential to prevent NLRA violations, control risk, and maintain lawful, constructive employee relations across businesses of all sizes.

Bassford Remele's Employment group continues to monitor labor developments and trends during these politically charged and economically fragile times. We are available to help with proactively reviewing your company's policies and guidelines, as well as provide training to management, to ensure legal compliance and minimize risk should an organizing campaign occur. Please reach out with any questions or if you need assistance.

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