



## UNION UPDATE: TOPICS & TRENDS

---

Glenn R. Davis, Esq.

 LATSHA DAVIS YOHE  
& MCKENNA, P.C.  
ATTORNEYS AT LAW



## NLRB Tilts Toward Organized Labor

---

- President Obama used a recess appointment to place union attorney Craig Becker onto the National Labor Relations Board



## ***Eliaison and Knuth of Arizona, Inc.***

---

- Ruled that the posting of stationary pro-union banners at employers' sites not involved in a labor dispute was not coercive
- No chanting and without blocking the entrance or exit
- Did not constitute unlawful picketing

3



## ***J. Pinci Flooring, Inc***

---

- Set a new standard in requiring employers to post electronic notices for communicating with employees about union representation
- Previously, electronic posting had been considered an extraordinary remedy to resolve unfair labor practices

4



## ***Austal USA LLC***

---

- The Board ruled that allegations of unfair labor practices can be considered for setting aside or invalidating the results of a union election even if the practices were not cited in a claim to challenge election results

5




## **NLRB Proposes Required Notice of NLRA Rights**

---

- Board issued a proposed rule that would require employers subject to the National Labor Relations Act to post notices informing employees of their rights under the NLRA

6



## **NLRB Advises Attorneys General in Four States That Secret Ballot Amendments Are Preempted by Federal Law**

---

- Board advised Arizona, South Carolina, South Dakota and Utah that their recently approved state constitutional amendments governing the method by which employees choose union representation conflict with federal labor laws

7



## **Employee Free Choice Act – Card Check**

---

- Based upon the results of the mid-term election, it appears that EFCA is currently and possibly permanently stalled

8



## ***McCann v. Iroquois Memorial Hospital***

---

- Employer can be held liable under the Federal Wiretap Act for taping an employee's conversation
- Two co-workers at the hospital had a closed-door conversation in which they were highly critical of the CEO and the hospital's board

9



## ***McCann v. Iroquois Memorial Hospital***

---

- Based upon the conversation, the hospital revoked Lindberg's privileges and banned McCann from entering the hospital for anything other than health care being provided to herself and loved ones
- court dismissed the suit against the CEO and board, it allowed the suit to go forward against the hospital

10



## ***NLRB v. American Medical Response of Connecticut***

- Board issued a complaint alleging that the company committed an unfair labor practice by firing an EMT who had posted some unflattering words about her supervisor on **FACEBOOK**

11



## ***NLRB v. American Medical Response of Connecticut***

- The company's position was that the EMT was terminated because of complaints that she was rude to patients
- Postings were implemented by the use of her home computer
- Comments elicited supportive responses from co-workers and led to further negative comments from the employee herself

12



## ***NLRB v. American Medical Response of Connecticut***

- The company's reasons for wanting to settle
  - Cases can drag on for years
  - If one can escape years of litigation and attorney's fees by posting a notice and amending a social media policy, the employer has achieved a winning settlement

13



## ***NLRB v. American Medical Response of Connecticut***

- The great weight of public opinion was not in the EMT's favor
- Called a "career-limiting" gesture

14



## ***NLRB v. American Medical Response of Connecticut***

---

- Facebook criticisms will be more likely to be classified as “concerted protected activity” when they involve comments by several co-workers
- No such comments by co-workers may place a disparaging remark on shaky speech grounds

15



## ***Register-Guard***

---

- Employers right to restrict employee use of email for union-related solicitations

16



## ***Register-Guard***

---

- Case involves the lawfulness of a company policy prohibiting employee use of its email system for “non-job related solicitations” and the question of whether the company could lawfully discipline an employee under the policy for sending email messages telling employees about a union rally and soliciting support for union activities.

17



## ***Register-Guard***

---

- Majority found the company’s communications policy prohibiting “non-job-related solicitations” was lawful
- Board explained that email use is governed by its decisions dealing with an employer’s equipment

18



## ***Register-Guard***

---

- Board “has consistently held that there is no statutory right ... to use an employer’s equipment or media; as long as the restrictions are non discriminatory”

19



## ***St. Margret Mercy Healthcare Centers***

---

- Board held that a hospital violated Section 8(a)(1) by applying its no-solicitation/no-distribution rules to break rooms and by removing union literature from the break rooms

20



## ***St. Margret Mercy Healthcare Centers***

---

- Policy was overbroad because it prohibited solicitation in areas that were neither immediate patient care areas nor in close proximity to such areas
- Hospital violated Section 8(a)(3) by disciplining an employee for soliciting another employee to sign a union card while the other employee was working at a nurses' station

21



## ***St. Margret Mercy Healthcare Centers***

---

- Employee solicitation at the nurses' stations was a common practice and included a wide variety of solicitations, including Girl Scout cookies, March of Dimes, United Way, Secretary's Day and Boss Day, and other social occasions

22



## ***Avante at Wilson, Inc.,***

- Held that 8 RN and 11 LPN staff nurses in a nursing home were not supervisors
- Nurses did not have the authority to discipline CNAs or to adjust their grievances
- If the staff nurses were supervisors, there would be an improbably high ratio of 22 supervisors to 27 employees

23



## ***Berthold Nursing Care Center, Inc. d/b/a Oak Park Nursing Care Center***

- Board found that the LPNs were supervisors by virtue of their authority to discipline and effectively recommend discipline of employees

24



***Berthold Nursing Care Center, Inc.  
d/b/a Oak Park Nursing Care Center***

- LPNs had the authority to complete employee counseling forms and the forms were found to be a form of discipline because they laid a foundation under the progressive disciplinary system

25



***Berthold Nursing Care Center, Inc.  
d/b/a Oak Park Nursing Care Center***

- LPNs alone decided whether an employee's conduct warranted a verbal warning or written documentation
- Thus they exercised independent judgment

26



## ***Specialty Healthcare and Rehabilitation Center of Mobile***

---

- Board reassessing Park ManorCare Center case which has permitted employees to organize with reasonable ease and enabled unions and management to bargain collectively

27



## ***Specialty Healthcare and Rehabilitation Center of Mobile***

---

- Park Manor established community of interest standard
- Considered by experience to be a sound basis for unit determination

28



## ***Specialty Healthcare and Rehabilitation Center of Mobile***

- Board suggests it would adopt a single-unit determination
- Proliferation of units and fragmentation of workplaces

29



## ***Specialty Healthcare and Rehabilitation Center of Mobile***

- Health care has been found to differ from other industries
- Greater need for stable labor relations and the avoidance of workplace disruption

30



## ***BP Amoco Chemical- Chocolate Bayou***

---

- Board set aside a union's election loss because of the employer's campaign statements
- Supervisors told employees during mandatory meetings
- They "would begin with essentially zero" and negotiations would "start from zero -- a blank page"

31



## ***BP Amoco Chemical- Chocolate Bayou***

---

- Negotiations would start with a "clean sheet," a "blank sheet," "start from scratch."
- Flyers distributed by the employer repeated the same theme and stated that bonuses and wage increases would be lost

32



## ***BP Amoco Chemical- Chocolate Bayou***

---

- The Board emphasized that the employer conveyed two general messages
- The employees would actually lose benefits at the start of negotiations
- The negotiations would likely end as the with the employees worse off

33




## ***BP Amoco Chemical- Chocolate Bayou***

---

- The Board found employer did not tie these statements to economic realities or the give and take of bargaining

34



***Extendicare Homes, Inc., d/b/a Bon Harbor Nursing and Rehabilitation Center***

---

- Nursing home did not violate the Act when it fired two LPNs for participating in a concerted protest over staffing levels because they were found to be statutory supervisors based on their authority to discipline employees