

UT LAW

CLE

Continuing
Legal Education

Recent Developments and a Look Ahead Under the National Labor Relations Act

Rod Tanner
Robert Sheeder

28th Annual Labor and Employment Law Conference | May 6-7, 2021 | Live Webcast

1

Current Board Members



Lauren M.
McFerran



John F.
Ring



Marvin E.
Kaplan



William J.
Emanuel

President Biden named McFerran Chairman of the Board
on January 20, 2021

2

2

NLRB General Counsel Shakeup



Within hours of taking office, Biden removed General Counsel Peter Robb



Peter Sung Ohr named Acting General Counsel; Jennifer Abruzzo nominated to serve as General Counsel

3

3

Acting General Counsel Ohr Rescinded 10 GC Memos

- On February 1 and 2, 2021, Ohr rescinded 10 General Counsel Memorandums and 2 Operations-Management Memorandums that he determined were either inconsistent with Board policies/law or no longer necessary
- Notable rescissions:
 - GC 18-04: Instructed Regions on placing employer rules in *Boeing* categories.
 - First step toward overturning *Boeing*?
 - GC 19-04: Required Regions to urge the Board to require unions to provide reduced dues for dues objectors in initial *Beck* notice.
 - Reduces burden on unions with employees uninterested in union membership
 - GC 20-13: Required Regions to urge the Board to adopt the more than ministerial aid standard to charges involving neutrality agreements.
 - Prevents the Board from applying the standard to limit employer-union collaboration for agreements



4

4

Largest Back Pay Settlement in Board History



- CNN terminated a contract with TVS and hired new employees to perform the same work without recognizing or bargaining with its two unions
- D.C. Circuit adopted Board’s findings that CNN was motivated by anti-union animus
- After decades of litigation between CNN and NABET, CWA, the parties agreed to a settlement to pay 300 employees \$76 million in back pay

See *NLRB v. CNN, Am., Inc.*, 865 F.3d 740 (D.C. Cir. 2017) ⁵

5

Board issued Final Rule for Joint Employer Status



- Overturned standard announced in Board’s 2015 *Browning-Ferris* decision that held joint employer status could be found based solely on an entity’s indirect and/or reserved-but-unexercised control over the terms and conditions of employment of a separate entity’s workforce
- Returned to previous standard: entity is a joint employer if it exercises “substantial direct and immediate control” over the essential terms and conditions of employment of the other’s employees
- Essential terms and conditions are wages; benefits; hours of work; hiring; discharge; discipline; and supervision and direction

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Recent Developments and a Look Ahead Under the National Labor Relations Act

Also available as part of the eCourse

[2021 Labor and Employment Law eConference](#)

First appeared as part of the conference materials for the 28th Annual Labor and Employment Law Conference session "NRLB Update"