


NLRA Update

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I. The NLRB as a Political Body

- A. 3-2 decisions overturning precedent of prior administration
 - B. Issues that change with the politics of the White House
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II. Who are Employees under the Act?

- A. Graduate Students Working as Teaching or Research Assistants?
1. Is the Relationship between the school and the Graduate Assistants academic or economic?
 2. Clinton Administration:
New York Univ., 332 NLRB 1205 (2000):
Economic
 3. Bush Administration:
 - a. Overturned New York Univ. in Brown Univ., 342 NLRB No. 42 (2004)
 - b. predominantly academic, rather than economic
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II. Who are Employees under the Act?

B. Disabled Workers in Vocational Rehabilitation

1. Rehabilitative or Economic?
 2. Brevard Achievement Center, Inc.,
342 NLRB No. 101 (2004)
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III. Non-Union Settings

A. Weingarten Rights (NLRB v. J. Weingarten, Inc., 420 U.S. 251 (1975))

1. The Flip-Flop Board:
Do non-union employees have Weingarten rights?

Yes: Materials Research Corp., 262 NLRB 1010 (1982)



III. Non-Union Settings

No: Sears, Roebuck & Co., 274 NLRB
230 (1885); E.I. Dupont, 289 NLRB
627 (1988)

Yes: Epilepsy Foundation of Northeast
Ohio, 331 NLRB 676 (2000)

No: IBM Corp., 341 NLRB No. 148 (2004)



III. Non-Union Settings

- B. Temporary Employees and Regular Employees: Joined together for union representation election?
 1. Only with consent of both the temporary agency and “user employer.” Greenhoot, Inc., 205 NLRB 250 (1973); Lee Hospital, 300 NLRB 947 (1990)
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III. Non-Union Settings

2. Clinton Administration:
M. B. Sturgis, Inc., 331 NLRB
1298 (2000):
 - Consent not required
 - Community of interests test
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III. Non-Union Settings

3. Bush Administration:
Oakwood Care Center, 343 NLRB No. 76
(2004)
 - a. Must have consent of all employers
 - b. Sturgis rule unworkable:
 - i. Combined temporary employees who have two employers determining their wages, hours and working conditions with regular employees who have one employer determining their wages, hours and working conditions
 - ii. Inherent conflict between the two groups
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III. Non-Union Settings

- c. Contrary to NLRA, § 9(b):
 - i. Section 9(b) allows the Board to decide the unit for collective bargaining from the “employer unit, craft unit, plant unit, or subdivision thereof”
 - ii. Need consent for unit of employers
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III. Non-Union Settings

- C. Threats of Plant Closure – How does the threat spread (made to single employee)?
 1. Dissemination must be proved. Kokomo Tube Co., 280 NLRB 357 (1986)
 2. Dissemination of the threat will be presumed. Spring Industries, Inc., 332 NLRB 40 (2000)
 3. Dissemination must be proved. Crown Bolt, Inc., 341 NLRB No. 86 (2004)
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III. Non-Union Settings

- D. Supervisor's Pro-union Activity: Harborside Healthcare, Inc., 343 NLRB No. 100 (2004)
1. Does the supervisor have to make a threat or promise a benefit to set aside the election?

NO



III. Non-Union Settings

2. Laboratory conditions: “Fair” Election
 - a. Whether the supervisor’s pro-union conduct reasonably tended to coerce or interfere with the employees’ exercise of free choice in the election? and
 - b. Whether the conduct interfered with freedom of choice to the extent that it materially affected the election outcome?
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III. Non-Union Settings

- E. Neutrality Clauses and Card Check Recognition
 1. Dana and UAW
 2. Metaldyne and UAW
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III. Non-Union Settings

F. Other pending issues:

1. Definition of supervisor, interpreting Section 2(11).
Oakwood Healthcare Inc. No. 7-RC-22141
Golden Crest Healthcare Center, No. 18-RC-16415
Croft Metals, No. 15-RC-8393
 2. Remedies in “Salting” cases.
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III. Non-Union Settings

3. E-mail: Register Guard, No. 36-CA-8743
 4. Job-Targeting Programs:
Con-Am Plumbing, No. 32-CA-16097;
J. A. Croson, No. 9-CA-35163
 5. Employer's Withdrawal of Recognition:
Highlands Regional Medical Ctr., No. 9-CA-39186 "good-faith doubt" of majority status
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