



MN NEWS

SPECIAL REPORT

Labor Considerations

This is a fictional scenario that is entirely imagined and intended only to provide a context for discussions of current legal issues and potential workplace interactions. Any resemblance to actual persons, names, events or circumstances is entirely coincidental and not intentional. In addition, the information and related discussion is not intended as legal advice, and is for general informational and educational purposes only. While we hope it is informative, it also does not fully address the complexity of the issues or steps employers must take under applicable laws—which are also subject to change, even frequently, with or without prior notice. You should not act upon any information provided without seeking professional legal counsel tailored to your specific situation. For legal advice on these or related issues, please consult qualified legal counsel directly.

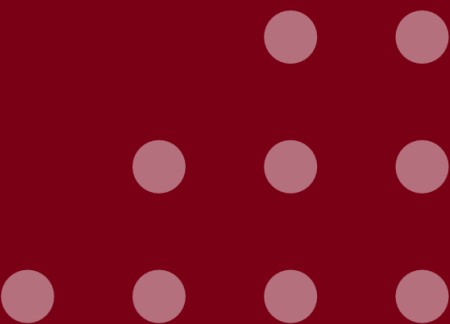
***The NLRA and NLRB:
Roles and Coverage***

Who Is Covered by the National Labor Relations Act?

- Nearly all private sector employees, including nonprofit employees

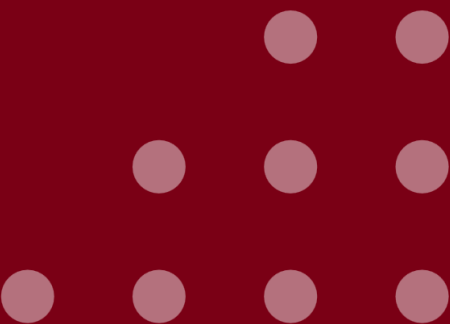
Examples:

- Restaurant workers
- Retail workers
- Nurses
- Engineers
- Employees at private schools and colleges
- Building trades workers



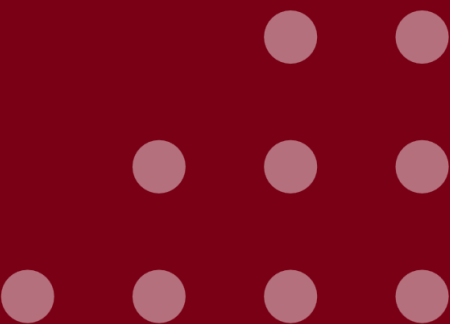
The NLRA Specifically Excludes:

- Agricultural laborers
- Domestic servants
- Persons employed by a parent or spouse
- Independent contractors
- Supervisors and managers
- Persons employed by an employer subject to the Railway Labor Act (railroads and airlines)
- Federal, state, or local government employees



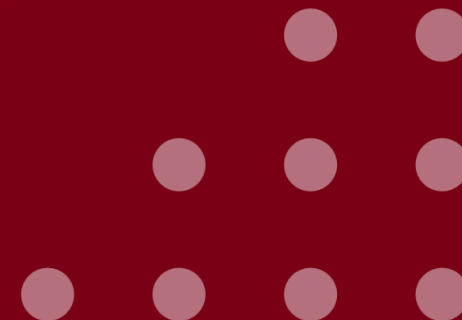
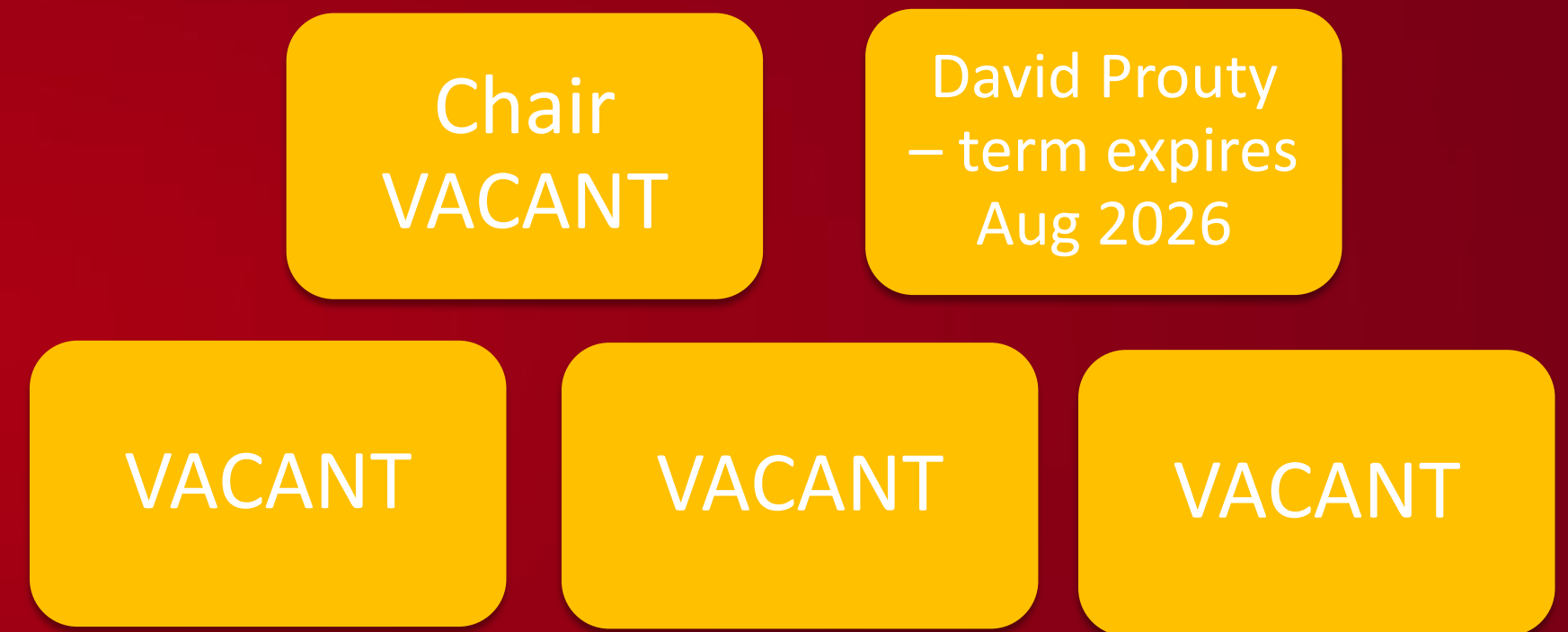
National Labor Relations Board Has Two Main Functions:

- Conducting elections to determine whether employees want a union.
- Investigating violations of the NLRA (Unfair Labor Practice (ULP) charges) and remedying violations. When necessary, this involves prosecuting violations.



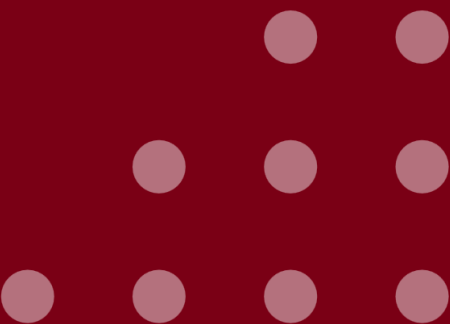
NLRB Structure—The Board

- Intended to be five members appointed by the President for 5-year terms
- Acts as quasi-judicial body
- Requires at least three sitting members to have quorum and conduct the work of the agency: to hear disputes and issue decisions.
- Only one current *confirmed* member:
 - David M. Prouty (term ends in August 2026)
 - Two have been nominated, neither confirmed at present.



NLRB Structure—The Regional Offices

- 32 Regional and sub-region offices across the country.
- Regional directors are appointed by, and report to, the NLRB's General Counsel.
- Primary duties—(1) Unfair Labor Practices (ULP); and (2) conduct representation elections.
- **Region 19—Seattle**
- **Sub-Region 36—Portland**





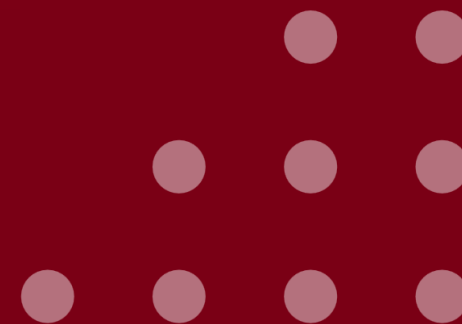
As a federal agency

The Board becomes involved only in those matters that have an impact on interstate commerce.



As a practical matter

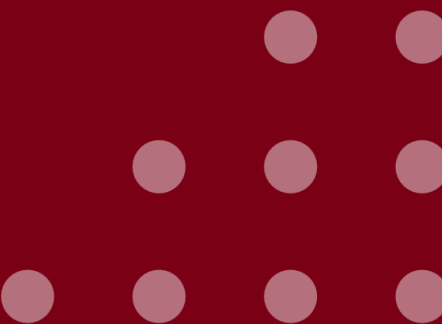
NLRB is likely to have jurisdiction over nearly all private sector employers.



NLRB Decisions: Shifting Perspectives

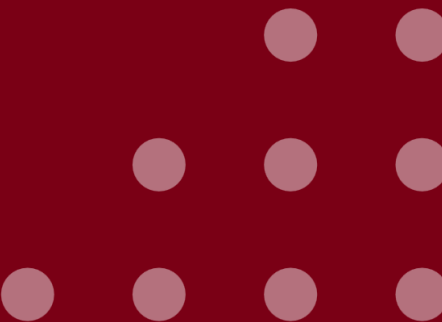
BREAKING NEWS

- Shifts in the NLRB member makeup result in shifts in views on issues of labor law with each change in the administration.
- However, new precedent cannot supersede old decisions until the Board can act—until a quorum exists.
 - Of course, with no Board, there is no authority to enforce the prior decisions either.
 - Some states are passing laws to allow State agencies to handle private sector labor disputes to remedy the vacuum (strong union lobbying the motivation).
 - Almost certainly preempted, and GC has already said as much.
- NLRB GC has issued guidance the current Board will reverse course on many major changes from the prior administration.
 - Prior law still applies, but Board may reverse course from the outset.



Other State Law Developments

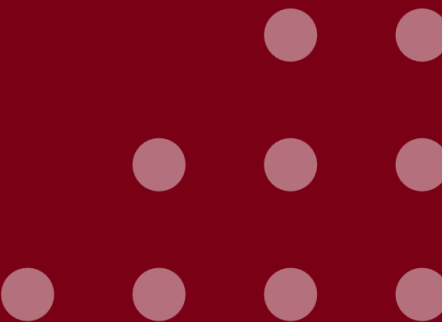
- Washington, Oregon join few other states providing unemployment insurance to striking workers.
 - Waiting periods and maximum benefits durations apply.
- Washington, Oregon join other states in passing prohibitions on so-called “captive audience meetings.”
 - State laws follow NLRB’s *Amazon* decision making captive audience meetings unlawful.
 - *Amazon* decision on appeal, State laws subject to legal challenges on both free speech and preemption grounds.
 - Smart money is on reversal...



From Biden to Trump: Change Is in the Air

BREAKING NEWS

- Like “captive audience meetings” rule legal challenges, employers are faced with questions of what the law is *currently as written*, and *currently as enforced*.
- Many consequential Biden-era rules have been critiqued and abandoned by the current GC.
 - Trump-appointed Board will likely follow suit in most cases, particularly of large Biden-era decisions that reversed longstanding precedent.
 - *Cemex*—Election rules and ULPs during elections.
 - *Stericycle*—Standard of evaluating workplace conduct rules.
 - Standard of Protected Concerted Activity.
 - Interplay of PCA and other workplace rules.
 - Full remedies in settlements, injunctions, dozens of others....



Reported By

LIVE ●



David Worley

Miller Nash LLP

David.Worley@MillerNash.com