UE STEWARD
FIRST LINE OF DEFENSE
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Changes to the Legal Landscape

Leanna, a Local 1886 steward, was handing out buttons to her fellow members on second shift, asking everyone to wear them to work tomorrow for the first day of contract negotiations. Peter told her, "The shift supervisor told me we weren't allowed to wear buttons at work anymore. I don't want to get in trouble."

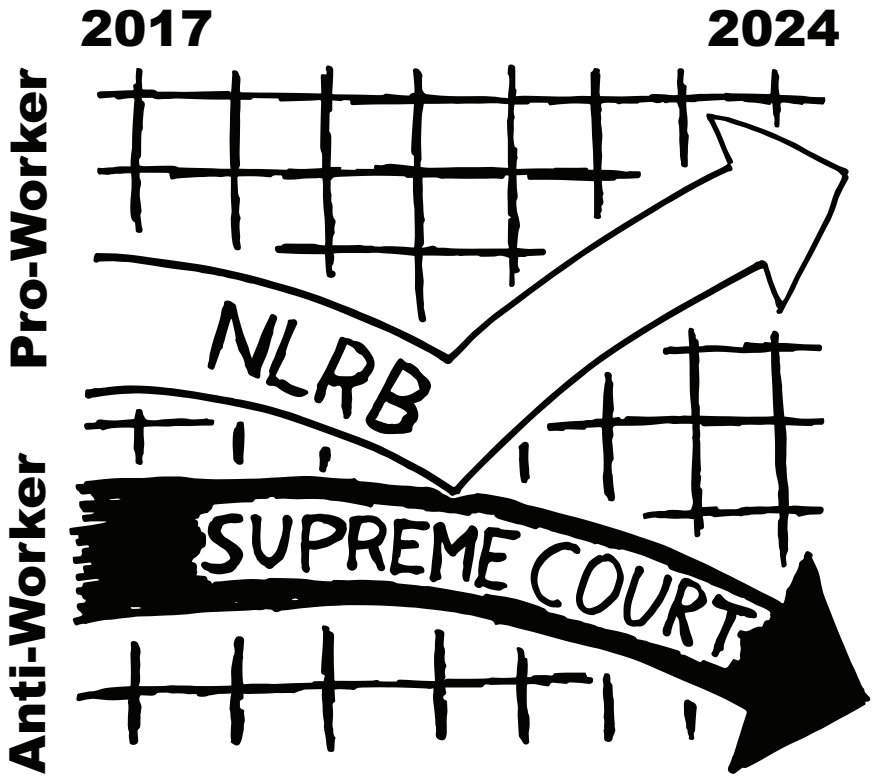
Leanna told Peter she was sure this wasn't true and would talk to the supervisor about it. She went to the supervisor to confront him.

Harrison, the supervisor, told her, "Look, the Labor Board said we don't have to let you wear buttons anymore, so they're not allowed. And if you try to talk back to me about this, I will write you up!"

Leanna was shocked. This went against her training as a steward. She called Chief Steward Albert on her lunch break to ask for clarification.

"Harrison is late to the game, per usual. The Labor Board has already reversed those rulings!" Albert explained. Leanna was still a little confused.

Enforcement of labor law changes, especially when political appointees get to make the final decisions.



UE members know that US labor law is stacked against workers–boss law, as some people call it. The best way to win what workers need is to organize together and put pressure on the boss. But it can still be good to know where we can use the law to our advantage. Stewards should understand how workplace rights have changed so they can talk with members about it if it comes up.

The NLRB

Enforcement of labor law changes, especially when political appointees get to make the final decisions. This is the case with the National Labor Relations Act (NLRA), which covers most (but not all) private sector workplaces in the US. This law is administered by the National Labor Relations Board (NLRB). Since Ronald Reagan's presidency, how worker- or boss-friendly the appointed five-member NLRB is has depended on whether the President is a Democrat or a Republican.

Whether organizing a new local, bargaining a contract, or marching on the boss, most private-sector locals rely on Section 7 of the NLRA, which guarantees employees "the right to self-organization, to form, join, or assist la-

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bor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." While majority-Democrat NLRB decisions frequently protect workers, even if they don't go far enough, majority-Republican decisions often give management new rights and are outright hostile to workers' interests.

The NLRB's blatantly partisan nature was starkly illustrated during Donald Trump's presidency. In 2017, Trump appointed Peter Robb to be the NLRB General Counsel, who controls the investigation and prosecution of unfair labor practice (ULP) charges and the processing of union election petitions. Robb was a right-wing attorney who infamously advised President Reagan to fire striking air traffic controllers in 1981.

Under Robb, the NLRB was starved of funding, leading to staffing shortages that resulted in a massive backlog of ULP cases that persists today. Robb also advocated for extreme restrictions on workers' rights to organize and engage in protected concerted activity. Among other pro-employer decisions, the Trump NLRB restricted workers' ability to wear union buttons and t-shirts and use their work email for union communications. They also made it easier for employers to make unilateral changes to terms and conditions of employment without bargaining and to discipline employees for conduct while acting as union stewards or on the picket line. The Trump NLRB also issued a rule which slowed down the union election process.

There's been a change in most of these rulings since President Joe Biden appointed Jennifer Abruzzo to be NLRB General Counsel. Abruzzo previously was an attorney for the Communications Workers of America (CWA), and has worked to undo the damage from the Trump NLRB and to create new worker-friendly rules.

Under Abruzzo, the NLRB reaffirmed workers' right to display union insignia like wearing buttons and t-shirts, and made employer attempts to restrict it unlawful unless there's a special circumstance. They got rid of the Trump-era rule regarding disciplining stewards and returned to protecting the activity of union stewards and strikers. They also reversed another Trump-era ruling and returned to making it harder for employers to make unilateral changes to work rules during negotiations for first contracts or after contracts have expired.

Here are some other pro-worker rulings that have come out of the Biden NLRB:

- Victims of ULPs can include a wide range of financial costs as part of their "make whole" remedies, like out-of-pocket medical expenses and credit card debt, in addition to standard wages and benefits.
- Contractors have the right to participate in protected concerted activities at the workplace.
- It is now illegal for employers to require workers to waive NLRA rights as part of severance agreements.
- Employers may not unilaterally stop union dues checkoff after a collective bargaining agreement expires.
- There is a new standard for deciding if an employer work rule has an unlawful "chilling" effect on workers rights under the NLRA. This means that if a rule reasonably could be interpreted as trying to discourage workers from collective action or other protected rights, it's no longer allowed. (Employers still have the right to try to prove a rule advances a legitimate and substantial business interest, but the burden is on them.)
- When workers are organizing a new union, they now have some new rights to get to contract bargaining faster. If the workers have majority support in their bargaining unit and they demand recognition from their employer, the employer has only two weeks to either recognize the union or file a petition for a union election. If an employer commits any unfair labor practice that would require setting aside the election, the petition for an election will be dismissed, and—rather than re-running the election—the NLRB will order the employer to recognize and bargain with the union!

For Local 1886 Steward Leanna, Chief Steward Albert is correct: their supervisor is relying on outdated Board rulings that have already changed. The workers have every right to wear their buttons for contract negotiations support, and Leanna has the right not to be disciplined for speaking up about this as a steward.

The Supreme Court

Politically appointed judges also influence enforcement of labor laws, and stewards should know about some of those changes too. Trump appointed right-wing judges Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett to the nine member Supreme Court, creating a 6-3 conservative majority that has rolled back protections for workers, women and underrepresented groups. In contrast, Biden appointed judge Ketanji Brown Jackson, who has a track record of pro-union decisions, to be the first African-American female Supreme Court justice. However, one person cannot outweigh three, and the Court has continued to make decisions that harm labor and progressive movements.

Since 2018, Court decisions have:

- Prohibited unions from collecting fair share fees from public-sector workers who do not want to join the union, making the entire public sector "right-to-work" and weakening public-sector unions.
- Allowed employers to force individual workers to waive their right to pursue collective and class action lawsuits for labor law violations (but unions can still bargain over this).
- Affirmed an employer's right to sue a striking union for intentional destruction of property and opened the door to whittling away more rights in the future (although employers generally can't sue unions for losses during a strike).
- Made it harder for the NLRB to obtain an injunction to stop an employer's egregious unfair labor practices.
- Weakened some administrative agency authority, paving the way for constitutional challenges to the NLRB.

The best defense from any changes to the legal landscape is a strong, united membership. When union members act with solidarity to demand what we need from our employers, we win more than we ever could through courts or federal rules.