

USING OUR POWER TO COUNTER AUTHORITARIANISM AND CURRENT NLRB LAW IN ORGANIZING, BARGAINING AND ADVOCACY

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STRENGTH IN NUMBERS

We are at a critical moment right now and have to maintain our hope and our strength in numbers. We know that we are at the lowest level of unionization in many decades, but we also know that public support for unionization is extremely high. We know that there are assaults that go well beyond targeted communities and the labor movement, to our very constitutional rights of free speech, association, and assembly and to our core right of equal opportunity for all, but we also know that people are taking action.

This is not the time to put our heads down, but rather it is our time to celebrate our accomplishments, imagine more, and push onward. We are not powerless, but rather, have the power to demand changes to the way we are governed and to the way we live our lives.

CURRENT NLRB LAW

As a reminder, while the PRO Act would certainly improve federal labor law, my fantastic team at the NLRB used the tools at our disposal to change the landscape for workers. We got the Biden Board to issue significant cases under the current NLRA that help workers, families and communities across America. These decisions are still the law today and we should be embracing that precedent in our organizing, bargaining, and advocating. For example, the Board issued:

ORGANIZING

Amazon: mandatory captive audience meetings were unlawful.

Cemex: employers could voluntarily recognize unions that demonstrate majority support or could file a petition for an election. But, if it files and commits unfair labor practices affecting voter choice, the Board will issue a bargaining order, not order another election. And, if the employer doesn't voluntarily recognize or file a petition for an election, then the union can file a charge complaining that the employer is failing to recognize and bargain in good faith.

Lion Elastomers: employees, including stewards, need to have some leeway for intemperate or bad behavior when engaging in union or other protected concerted activities without fearing discharge or discipline

BARGAINING

Wendt: no unilateral changes based on past practice during contractual hiatus or first contract bargaining, including past practices established before representation.

Tecnocap: no unilateral changes based on management rights clause in an expired contract.

ADVOCACY

Home Depot: social, racial, economic justice advocacy that has a connection to workplace issues is protected concerted activities.

Stericycle: broad handbook rules that chill union and other protected concerted activities are unlawful.

McLaren Macomb: broad confidentiality and non-disparagement clauses in severance agreements are unlawful.

Thryv: employees afforded the opportunity to get costs for all direct or foreseeable harms resulting from unlawful discharges, disciplines, or other adverse actions.

UNITY AND ACTION

Let's use all the tools that we have to advance workers' rights – organizing, litigating, legislation, the court of public opinion and so on. Let's amplify our voices and take to the streets, protesting over inadequate wages and working conditions and over economic, social and racial injustice; calling elected officials to task for not representing us; making sure laws are fully enforced; and getting out the vote. We have more in common than that which separates us. By acting together in solidarity over common issues and concerns we have in the past and will in the future create a country filled with opportunity and promise for all. Let's do our part to make sure we remain a country of the people, by the people, and for the people.