

Preface to the May 2026 Edition

Federal Labor Law: NLRB Practice, written by James Ottavio Castagnera, summarizes the rules, regulations, and decisions which have guided the National Labor Relations Board, courts, and labor lawyers through the years, including areas such as contract administration and enforcement, internal union affairs, and antitrust issues.

Among the materials updated in this May 2026 edition of *Federal Labor Law: NLRB Practice* are:

- **§ 1:1. Historical perspective:** Two “blue” states, California and New York, are attempting to shift jurisdiction over pivotal aspects of private-sector labor relations from the NLRB to their analogous state labor-relations agencies.
- **§ 2:4. Remedial authority:** In FY 2025, total recoveries by the NLRB were \$63.5 million in back pay, plus \$500,000 in dues, fines and fees.
- **§ 2:4. Remedial authority:** GC 25-05 rescinded a number of General Counsel Memoranda urging Regions to include specific remedies or types of remedies in settlement agreements and complaints.
- **§ 2:4. Remedial authority:** In assessing whether interim injunctive relief is appropriate, all Regions must now apply the standard the Supreme Court set out in *Starbucks Corp. v. McKinney*, which requires a clear showing of: (1) likelihood of success on the merits; (2) likelihood of irreparable harm in the absence of an injunction; (3) the balance of equities favoring injunctive relief; and (4) injunctive relief being in the public interest.
- **§ 3:5. Preemption—Garmon preemption: activities protected by Section 7 or prohibited by Section 8 of the NLRA:** Several private employers have initiated assaults that go to the very heart of the NLRB’s future, contending that the 90-year-old NLRA is, of all things, unconstitutional.
- **§ 4:1. Scope and overview of NLRB jurisdiction and coverage:** On December 26, 2025, a federal judge in California’s Eastern District granted the NLRB’s motion for a preliminary injunction, blocking enforcement of a new California law aimed at empowering the state’s Public Employment Relations Board to take over the regulation of certain private-sector labor relations.
- **§ 4:17. Managerial employees:** In the most recent appellate court case to consider managerial status, the Fourth

Circuit found that a firearms and tactics instructor was not a managerial employee under the NLRA.

- **§ 5:5. Free speech protections:** In 2025, an Eighth Circuit panel held that Home Depot demonstrated that special circumstances supported its decision to direct its employee to remove “BLM” from the required retail-floor uniform.
- **§ 7:6. Discharge:** In 2025, the Sixth Circuit held that the NLRB was not permitted under the NLRA to order, as a remedy, that an employer make an employee whole for any direct or foreseeable pecuniary harms suffered as a result of the discrimination against the employee.
- **§ 7:9. Refusal to hire, promote, or consider for employment:** In July 2025, Acting General Counsel William B. Cowan addressed the issue of salts, noting that employer may contest the genuineness of an potential employee’s application through evidence including, but not limited to the following: evidence that the individual refused similar employment with the respondent employer in the recent past; incorporated belligerent or offensive comments on his or her application; engaged in disruptive, insulting, or antagonistic behavior during the application process; or engaged in other conduct inconsistent with a genuine interest in employment.
- **§ 9:4. Concept of “good faith”:** In June 2025, Acting General Counsel William B. Cowen announced that surreptitiously recording collective bargaining sessions was per se violation of the NLRA.
- **§ 9:11. Mandatory subjects:** A hospital’s decision to inaugurate a Pandemic Pay Program was a mandatory subject of bargaining and could not legally be implemented without according the union an opportunity to bargain about it.
- **§ 10:3. Pre-arbitral deferral:** In August 2025, Acting General Counsel William B. Cowen made it clear that *Collyer* still sets the standard.
- Statutes and regulations in the **Appendices** have been updated.

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