Preface to the December 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 the December 2026 edition of *Federal Labor Law: NLRB Practice* are:

- § **1:1. Historical perspective**: While a ban on public-sector unions entirely has not happened yet, the current administration has withdrawn recognition and/or bargaining rights from unions representing about one million federal employees.
- § **2:1. NLRB structure**: President Trump nominated two new Members in December 2025, Chairman James R. Murphy and Member Scott A. Mayer, who were sworn in on January 7, 2026.
- § **2:1. NLRB structure**: Crystal Stowe Carey was sworn in as General Counsel on January 7, 2026.
- § **2:3. Unfair labor practice function**: The FTC has abandoned its nationwide noncompetition ban, and noncompetition agreements remain enforceable to the extent allowed by state law.
- § **2:4. Remedial authority**: Technically, the *Thryv* decision still applies to every case where the standard remedy includes make-whole relief.
- § **3:4. Preemption—Overview of labor law preemption doctrine**: In 2025 and 2026 the preemption question has been made more acute by new laws in California and New York.
- § **4:1. Scope and overview of NLRB jurisdiction and coverage**: The NLRB, as of July 2026, is comprised of three Members and during the first half of 2026 has issued some 200 decisions.
- § **4:12. Coverage of employers—Single employers, successors, alter egos, and joint employers**: Under the reinstated rule, a business must possess *and* exercise "substantial direct and immediate control" over at least one essential term or condition of employment of another employer's employees in order to be a joint employer.

- § **5:2. Concerted activity**: Employers, faced with NLRB efforts to enforce its orders at the appellate-court level, are almost routinely attempting to add a constitutional claim.
- § **5:4. Abnormally dangerous working conditions**: Even four years after most employees have returned to their workplaces after stints of remote working, COVID-19 cases continue to prowl the courtrooms.
- § **5:7. General prohibition on interference, restraint and coercion by employers**: While initially President Trump favored a laissez faire approach to AI, rescinding his predecessor's Executive Order and signaling a bright green light to the private sector, subsequently his administration has indicated a new-found interest in potentially regulating this powerful technology.
- § **5:11. Nonemployee access to employer property**: In 2019, the NLRB majority made a bold pro-employer statement when it ruled that it was not an unfair labor practice for a hospital to bar nonemployee union representatives from the hospital cafeteria, which was open to the public.
- § **7:6. Discharge**: In February 2026, the NLRB dropped the SpaceX case, relinquishing jurisdiction to the NMB, essentially conceding that the RLA—and not the NLRA—applies to SpaceX.
- § **7:6. Discharge**: On July 2, 2026, the NLRB announced its latest decision in the long-running ULP cases involving Amazon's JFK8 fulfillment center on Staten Island and the Amazon Labor Union.
- § **7:9. Refusal to hire, promote, or consider for employment**: The refusal-to-hire issue is complicated by organized labor's tactic of "salting" a target employer's workforce with union organizers
- § **8:2. Methods for obtaining recognition as an exclusive bargaining representative**: As of July 2026, the reconstituted Board, a bare quorum comprised of the two Trump appointees and a hold-over Democrat, has not reconsidered *Cemex*, though there are some signs that this precedent is on life support.
- § **8:5. Decertification petitions**: The Eighth Circuit essentially ruled "no harm, no foul" in a case where the ALJ, supported by the Board, had held that the employer prematurely withdrew recognition from the union.
- § **8:45. Remedial bargaining orders**: The Sixth Circuit in 2026 denied the Board's request for a preliminary injunction to force the employer to continue bargaining with the union, while the parties litigated the union's contested majority status.
- § **8:46. Non-majority bargaining orders**: In June 2026, the D.C. Circuit enforced the NLRB's bargaining order in the *Red Rock* case.
- § **9:1. Introduction to collective bargaining**: The Starbucks story is the leading 21st century illustration of

how a wealthy and powerful corporation, if determined, can thwart the will of its employees, despite the latter's NLRA rights and remedies.

- **§ 9:4. Concept of "good faith"**: An aspect of the "duration of duty" issue involves circumstances that unions encounter all too often, particularly where the employer is firmly determined never to sign a collective bargaining agreement *and* the company possesses the necessary resources to fund that determination.
- **§ 9:7. Duty to furnish information—Other considerations**: In April 2026, the Fifth Circuit ruled in a case in which the Board accused the employer of a ULP for having exercised its apparent right to request Board subpoenas of union information.
- **§ 10:6. Injunctions [Retitled]**: On February 9, 2026, the Board dropped its case against SpaceX on jurisdictional grounds, stating the agency had determined that the company comes under the Railway Labor Act's purview.
- **§ 11:3. Proscribed means [Retitled]**: In January 2026, the newly reconstituted Board quorum ruled in favor of a union that placed a 15-foot-tall inflated pig across the street from a job site prior to a mail-ballot election.
- **§ 14:5. Duty and standard of fair representation refined**: The six-month 10(b) period was tolled where the charging party's union representative repeatedly misled her about having grieved her emergency placement and termination and failed to provide her information about her grievances in violation of the union's duty of fair representation under Section 8(b)(1)(A).
- **§ 15:2. General principles of NLRA union security**: In 2026, the Board upheld an ALJ's finding that the employer violated Section 8(a)(5) and (1) by unilaterally ceasing collecting dues and remitting them to the union pursuant to contractual dues-checkoff provisions when the parties' CBA containing those provisions expired.
- **§ 16:7. Employment laws—Fair Labor Standards Act**: In April 2026, the DOL issued a Notice of Proposed Rulemaking to establish a uniform, nationwide test for determining joint employer status.
- **§ 16:12. Employment laws—Civil rights laws**: In 2026, the disparate impact theory—essentially that a neutral policy or procedure has an unintended, discriminatory impact on employees or applicants—is in disrepute under the Trump Administration.
- **Appendices B2 and B3** have been updated.

Thomson Reuters
December 2026