Employers Beware Of NLRB Changes On Bad Faith Bargaining [Law360]

Daniel Johns authored a Law360 article discussing the National Labor Relations Board's (NLRB) recent focus on holding employers accountable for bad faith bargaining. Under the National Labor Relations Act (NLRA), employers and unions are responsible for bargaining in good faith with one another. Despite the employer's argument that the pandemic hindered their ability to negotiate with the union, the NLRB rejected this defense in the recent case of *National Labor Relations Board v. Grill Concepts Services Inc.*

Dan defined bad faith bargaining as an unfair labor practice encompassing actions such as refusing to schedule negotiation meetings, avoiding discussing essential topics, and proposing regressive terms. Typically, a finding of bad faith bargaining results in a remedy involving cease-and-desist orders and notices to employees, but under the leadership of the NLRB's general counsel, Jennifer Abruzzo, the consequences for employers have intensified.

Abruzzo's directives aim to strengthen penalties against employers engaging in bad faith bargaining. Dan noted that Abruzzo seeks to challenge the 1970 *Ex-Cello-O Corp.* decision's limitations on imposing financial penalties. Abruzzo advocates for remedies like compensating affected employees with back pay based on unrealized wage increases and implementing stringent bargaining schedules and reporting requirements. Recent NLRB cases, such as *Noah's Ark Processors LLC* and *Hudson Institute of Process Research*, illustrate a shift towards imposing specific payments on employees as a remedy for employers' perceived bad faith bargaining. To avoid such charges, Dan advised employers to adhere to good faith negotiation practices, including consistent scheduling of bargaining sessions, thorough documentation, and diligent defense against accusations to mitigate potential financial consequences.

To read more, click here.

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