

The World According To Trump: Could The Obama NLRB's Pro-Union Rulings Be Undone?

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There is no shortage of buzz going around about what impact President-elect Donald Trump might have at the National Labor Relations Board. Does Trump's election mean the Board's controversial decisions (e.g. *Browning-Ferris*, *D.R. Horton*) of the past eight years will be undone? As my colleague [Jerry Lutkus blogged earlier this week](#), it is likely that Trump quickly will move to change the composition of the Board to a Republican—and thus more pro-employer—majority. However, a change in the composition of the Board does not equal a change in substantive law, and any prior Board rulings are not going to be automatically overturned simply because it has a different and more employer friendly composition. Disputes regarding specific NLRB rulings will have to work their way through the system and come before the newly-composed Board before it will have the ability to overturn previous cases. Thus, employers should sit tight: change to how substantive labor laws have been interpreted by the Board will come piecemeal over time. Over the past eight years, the Board has been aggressive in issuing several pro-union decisions which have had the effect of expanding the reach of the NLRA further than ever before. What are some of the decisions a majority-Republican Board would likely revisit? Here are a few to watch for:

- **Joint Employment:** The Board recently expanded the definition of “joint employer” so that companies using temporary workers in many cases may find themselves a joint employer along with the temp agency. As many readers are aware, the current General Counsel for the Board is pushing for a rule holding that franchisors are joint employers of the employees of their franchisees. The ultimate makeup of the Board will have a substantial impact on whether the General Counsel's dream becomes a reality.
- **Temporary Workers in Bargaining Unit With Full-Time Employees:** The current Board allows temporary workers to be in the same bargaining unit with an employer's full-time employees. A Trump Board may be eager to reverse this decision.
- **Class Action Waivers:** The current Board has held that agreements restricting employees from joining a class action against their employer violate the NLRA. Enforcement of this ruling has been the subject of several cases in the Federal Courts of Appeals - look for a Trump Board to quickly address this decision.
- **“Quickie” Elections:** Due to the Board's recent change in its election rules, the time from petition to the conduct of an election has been greatly reduced. The upshot is that employers have had less time in

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which to inform their employees after a campaign by the union. A Trump Board is likely to want to reverse this rule change.

- Micro Units: The current Board allows very small groups of employees to form a union. Previously, the Board had much stricter rules on the number of employees who could comprise a proposed bargaining unit. Now, these rules have been loosened making it more likely that a proposed unit can have majority union support. A Trump Board is almost certain to be less amenable to recognizing small bargaining units.

The above are just a few areas in which the Board has been aggressive in the past eight years and which are likely to be reconsidered (and revised or reversed) by a more pro-employer Trump Board. Obviously, none of these changes are a foregone conclusion and it's entirely possible a Trump Board may be more pro-employee than we expect considering that much of his electoral support came from blue-collar workers in the industrial mid-west. However, it is clear that any Board which sits during the Trump Administration is going to take a hard look at these rulings when provided the opportunity and will be eager to reverse many of them.