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We've seen a flurry of activity from the National Labor Relations Board (NLRB) over the last year. One area where the NLRB has been particularly active is [on the remedies front](#), both in terms of scope – setting out new remedies, such as reimbursing unions for bargaining expenses in bad faith bargaining cases, for example – and impact, such as [forcing some companies](#) to go as far to reopen their businesses. It appears the agency's focus on its remedial powers will continue, as we've seen the NLRB impose another novel remedy several times in recent months: requiring companies found to have bargained in bad faith to negotiate at prescribed times with their unions and then submit progress reports to the agency.

According to a recent [Bloomberg BNA](#) article, "In three cases within the last two months, the NLRB has mandated that employers found to have violated federal labor law bargain with their workers' unions on a strict schedule and submit regular progress reports to agency officials. This remedy originated from the *All Seasons Climate Control* decision in 2011, but has been used sparingly since: it was used twice in 2022 and 2021, then once in 2018 and in 2016."

Employers currently or soon bargaining with their unions should take note of this development. Both unions and companies have an obligation under the National Labor Relations Act to bargain in "good faith." This includes agreeing

to meet at “reasonable” times and locations regarding negotiations for a collective bargaining agreement. Companies who are found to have violated this requirement by, for example, declining to meet at all or with any frequency, may get hit with this same or a similar penalty.

To avoid being on the losing end of a case like this, companies can consider some best practices, such as:

- Reaching out to their unions to initiate bargaining when they know they have negotiations coming up and ensuring there is a record of those discussions
- Documenting, ideally in emails, attempts with the union to set bargaining schedules and noting dates that are unavailable for each party
- Maintaining accurate bargaining notes from all sessions, including discussions on future bargaining dates and the duration and substance of all meetings held
- Timely responding to union information requests related to bargaining

Bottom line: The potential penalties facing companies in NLRB proceedings look to keep getting steeper. Employers should keep this in mind as they navigate their labor relations.