



Labor & Employment Issues In Focus

Pitta LLP
For Clients and Friends
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NLRB FLOODS NOAH'S ARK PROCESSORS WITH A BROAD REMEDIAL ORDER

On April 20, 2023, the National Labor Relations Board (“NLRB” or “Board”) issued a decision outlining the types of sweeping remedies it will consider for cases involving repeat violators of the National Labor Relations Act (“Act”). See [Noah's Ark Processors LLC dba WR Reserve and United Food and Commercial Workers Local Union No. 293, 14-CA-255658 \(Apr. 20, 2023\)](#) (“Decision”). The NLRB panel majority stated that while certain remedies, such as detailed notices to employees, potentially read out loud in the presence of supervisors or managers, and allowing board agents to inspect facilities and records, are not new, Board administrative law judges (“ALJ”) should ensure said remedies are consistently implemented in cases involving employers who repeatedly violate the Act or have engaged in particularly serious misconduct.

NLRB Chair Lauren McFerran explained that the goal of this decision is to ensure that victims of unfair labor practices are made whole, while employees understand their rights and are not prevented or discouraged from exercising them in the future. While the Decision does not expand the Board’s power to remedy violations of the Act, NLRB General Counsel (“GC”) Jennifer Abruzzo has pushed for ALJs to seek broader and more aggressive remedies. Specifically, in a 2021 Board Guidance Memorandum titled “Seeking Full Remedies” ([link](#)), GC Abruzzo suggested that Regions should request from the Board “all available remedies to fully address unlawful conduct” in all appropriate cases. This includes, for example, compensation for consequential damages, front pay, and liquidated backpay in cases involving other remedies that would prevent an employer from being unjustly enriched by its unlawful treatment or firings of workers. In cases involving unlawful failures to bargain, GC Abruzzo recommended that Regions should seek remedies that include: “bargaining schedules, submission of progress reports to the Agency on the status of bargaining, reimbursement of collective-bargaining expenses, and broad cease-and-desist orders.”

The Decision involved Nebraska meat processing company Noah’s Ark Processors, which the Board held violated the Act by refusing to bargain in good faith with United Food and Commercial Workers Local 293 (“Union”) during contract negotiations that began in 2018. The NLRB panel unanimously agreed that the company violated the Act and considering that the NLRB has already issued orders against the company for previous violations, the Board majority also acknowledged that it may be appropriate to require a “responsible representative” of the violator to sign the notices and keep them posted for longer than the typical 60 days. The Board ultimately ordered Noah’s Ark to reimburse the Union for expenses incurred during its attempts to bargain, including backpay for workers who lost out while negotiating during regular work hours. Additionally, Noah’s Ark CEO Fischel Ziegelheim will be required to sign the notices that detail the

rights workers have under the Act, which will be posted in "conspicuous places" at the company's facility and be delivered to workers by email.

"Our aim is to ensure that in every case involving repeated or serious misconduct, the board will consistently consider and implement a full range of potential remedies, so that our actions will make victims of unfair labor practices whole, while ensuring that employees not only understand their rights under the act but also feel free to exercise them going forward," NLRB Chair Lauren McFerran said in a statement on the Decision.

HISTORIC RUTGERS FACULTY STRIKE LEADS TO TENTATIVE "FRAMEWORK DEAL" WITH POTENTIAL TO BECOME A GAMECHANGER FOR HIGHER EDUCATION

On Monday, April 10, 2023, a coalition of three unions representing educators, researchers, and clinicians ("Unions") at Rutgers University ("University") went on strike for the first time in the New Jersey's state university's 257-year history. Classes were suspended for five days on all three of Rutgers' campuses – New Brunswick, Camden, and Newark. On Friday April 14, the University and the Unions announced a tentative "framework deal," and the Unions suspended their strike. However, a "framework deal" is not a "tentative agreement," and after another week and a half of minimal progress, skeptical Union members remain ready to continue job actions, including the strike, if necessary.

Rutgers AAUP-AFT, which represents more than 5,000 full-time faculty, graduate workers, and postdoctoral associates teamed up with the Rutgers Adjunct Faculty Union and the AAUP-BHSNJ, which represents faculty members and librarians of the Biomedical and Health Sciences of New Jersey, to win fair contracts for all. The Unions are fighting for equal pay for equal work for adjunct faculty, guaranteed funding and a living wage for graduate workers, a fair salary increase that tracks inflation, and job security for all faculty. But the Unions are also looking beyond the needs of faculty alone, asking for affordable housing for students and members of the community, forgiveness for students' overdue fees and fines, affordable health insurance for all, and equity for the campuses in Camden and Newark. Also, the graduate workers are seeking movement on issues related to the pandemic, such as one-year extensions for researchers who had to put their projects on pause.

During the five-day strike, New Jersey Governor Phil Murphy got personally involved in the negotiations, inviting both parties to Trenton to help them get past their impasse. The framework deal that the parties' announced wrangles a 48% pay increase for adjuncts by 2025 and a 33% increase for graduate employees by 2025-26. It also includes a presumptive contract renewal for nontenured professors and a \$600,000 donation to a common-good fund for the needy. But, according to the Unions, when the parties returned to New Brunswick, the Rutgers administration resumed their "same tricks" of dragging their feet and failing to respond to demands. Specifically, medical

faculty from the AAUP-BHSNJ have yet to land a contract that establishes terms on par with contracts that tenured faculty at the university's other schools have had for decades.

The Rutgers deal is showing the potential to become a gamechanger for colleges and faculty unions across the country, many of which are facing labor disputes of their own. Noteworthy is the tentative agreement on non-tenured full-time faculty's presumptive contract renewal, which is likely a result of solidarity from full-time tenured faculty who will not accept a contract that leaves their lower-paid colleagues behind.

XFL PLAYERS SPIKE ON UNIONIZING

In April, players in the professional Spring football league XFL, a league consisting of eight teams located across the country, voted 124-73 against being represented by the United Football Players Association ("UFPA"), which is affiliated with the United Steelworkers ("USW").

The April vote came on the heels of a March announcement by USW that it had filed a petition to represent approximately 475 players in the XFL with the National Labor Relations Board regional office in Fort Worth, Texas ("Region 16"). USW has stated that it will file objections to the result based on changes made at two of six polling places that USW argues affected the outcome.

In June 2022, the UFPA won a representation election among players in another minor league Spring league, the United States Football League ("USFL"). The USFL and UFPA reached a contract in January 2023.

Some of the largest professional football sports leagues in the country are unionized including the National Football League, Major League Baseball, National Basketball Association, National Hockey League, and Major League Soccer, with each having a respective players association. Along with players in the USFL, UFPA represents players in the Canadian Football League and the Arena Football League.

APPLICATIONS FOR NYS AFL-CIO UNION L.E.A.D. SCHOLARSHIP DUE JUNE 1ST

Applications for the 2023-24 Union Leadership Equity and Development ("L.E.A.D.") Scholarship for the Union Leadership Institute are currently open.

The New York State AFL-CIO and Cornell University co-sponsor the Union Leadership Institute. The program "helps labor and worker justice leaders strengthen their organizations so that they are bold, innovative and able to adapt to a changing global economy and workforce." The 2022-34 brochure may be found [here](#).

The Schedule for the 2023-24 Union Leadership Institute is:

Opening Week: July 23-28, 2023 (ILR Conference Center, Ithaca NY)

Weekend 1: Oct 26-28, 2023 (ILR Conference Center, New York NY)
Weekend 2: Jan 11-13, 2024 (NYSUT HQ, Albany NY)
Weekend 3: March 21-23, 2024 (1199, Buffalo NY)
Closing Week: May 5-10, 2024 (IBEW Training Center, Cutchogue NY)

The application may be found at this [link](#).

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