



LABOR & EMPLOYMENT ISSUES

IN FOCUS

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AUGUST 15, 2025 EDITION

STARBUCKS THREATENED EMPLOYEES AT UNIONIZING STORES IN PACIFIC NORTHWEST, NLRB JUDGE FINDS

On August 11, 2025, an Administrative Law Judge (“ALJ”) for the National Labor Relations Board (“NLRB” or “Board”) ruled that Starbucks made illegal threats and misleading statements in letters posted in stores in Seattle, Washington and Eugene, Oregon during unionization drives. The case is *Starbucks Corp.*, N.L.R.B. A.L.J., No. 19-CA-295396, August 11, 2025.

The complaint issued by the General Counsel back in August 2022 alleged that the “Hi Partner” letters to employees from management violated Section 8(a)(1) of the National Labor Relations Act (“NLRA” or “Act”) based on two statements found in the letters: (1) “Negotiations can often take **more than a year** – if a contract is reached at all”; and (2) “If a union is certified, benefits and wages will essentially be frozen while the parties negotiate the contract” (emphasis in original). During an ongoing organizing campaign, employers are allowed to make statements about the merits of union membership, as long as the campaign propaganda is not linked to comments that cross the line set by Section 8(a)(1) and become coercive from employees’ objective standpoint; this is because it is recognized that an employer has a measure of economic power over employees. Moreover, predictions as to the outcome of bargaining must be “carefully phrased on the basis of objective fact to convey an employer’s belief as to demonstrably probable consequences beyond his control.” *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969).

Citing Board precedent, the ALJ found that the first statement regarding the length and potential outcome of negotiations was largely based in fact and thus not a violation of the Act in and of itself. As to the comment about wages being frozen, the ALJ found this to be coercive, especially in tandem with the length of negotiations comment, because “[t]hreats that the pay of unionized employees would be frozen in place during lengthy negotiations while nonunion employees receive regular increases and improvements is a violation of Section 8(a)(1).”

The decision adds to the pile of Starbucks’ violations that has been accumulating for years. Currently, Starbucks Workers United and the coffee giant are engaged in collective bargaining over a framework agreement that would be used to negotiate contracts for the hundreds of stores which are already unionized.

EIGHTH CIRCUIT HOLDS THAT LOCAL TAXPAYERS HAVE STANDING TO SUE OVER UNION LEAVE

On August 11th, the United States Court of Appeals for the Eighth Circuit (“Eighth Circuit” or “Court”) held that municipal taxpayers have standing to sue a school district and union over its CBA’s provision allowing teachers to take 100 days per year of paid leave for union work. The union reimburses the district’s cost for hiring substitute teachers during union leave; however, the Union does not reimburse the district for the high pro rata costs of salaries and benefits for the teachers taking union leave. Disagreeing with the union’s political advocacy, residents sued the union, alleging a free speech violation. The district court dismissed for lack of standing, and the residents appealed.

To have municipal taxpayer standing a plaintiff must (1) actually be a taxpayer of the municipality and (2) establish that the municipality has spent tax revenues on the allegedly illegal action. Two of the three plaintiffs lived in the school district, so they met the first factor. The third lacked standing.

As for the whether the municipality has spent tax revenues on the allegedly illegal action, plaintiffs have to show “that the district spends tax revenues on the activities complained of.” Even though the union reimburses for substitute teachers, “whether the policy increases or decreases total costs to the district does not matter.” The Court continued, “what matters is the ‘misuse’ of the municipality’s fund.” Because the union leave policy causes a direct expenditure of district funds, it has a direct interest to the taxpayers, the Court found. As such the plaintiffs had standing to sue. The case will now return to the district court for consideration of the merits.

The case is *Huizenga v. Indep. Sch. Dist. No. 1*, No. 24-1862 (8th Cir. Aug 11, 2025).

NLRB ACTING GENERAL COUNSEL ISSUES GUIDANCE DEFERRING UNFAIR LABOR PRACTICE CASES

On August 7, 2025, Acting National Labor Relations Board General Counsel William Cowen issued guidance related to the NLRB’s practices connected to deferring Unfair Labor Practice charges. Specifically, Cowen issued GC Memorandum 25-09. The memo provides revised guidance on the investigation procedures for unfair labor practice charges that may be deferred to the parties’ collectively bargained grievance and arbitration process.

In general, where possible, the NLRB has had a long-term practice and preference for deferring to arbitration as that is the chosen method of dispute resolution of the parties to the collective bargaining agreement. With this guidance, the NLRB has made clear

that in the *Steelworkers* Trilogy cases in 1960, the United States Supreme Court observed that the Act's statutory scheme is supported when parties to a collective-bargaining relationship avail themselves of their negotiated dispute resolution machinery to resolve their differences. Deferring unfair labor practice charges to the parties' grievance procedure gives credence to their contract and fosters stability in labor relations. Deferral not only upholds the Act's statutory scheme, but it also allows for the judicious use of Agency resources.

Thus, noting the agency's limited resources, the memo instructs NLRB regional offices to first consider at the outset of the investigation whether the allegations are appropriate for deferral under the standards established in *Dubo Manufacturing Corporation*, 142 NLRB 431 (1963). In *Dubo*, when a contractual grievance has been filed, deferral is appropriate where: (1) the allegations of the ULP charge are proper and timely on their face; and (2) the preliminary evidence indicates that the allegations of the ULP charge can be resolved through the CBA's grievance and arbitration procedure. The decision to defer a charge pursuant to *Dubo* is final and cannot be appealed; however, the charging party may decline to use the CBA's grievance and arbitration process without the charge being dismissed. In contrast, a deferral under *Collyer* is appealable, but the charge will be dismissed if the charging party declines to use the grievance and arbitration process.

If the criteria for *Dubo* deferral are not met, then regions should consider the appropriateness of deferral under *Collyer Insulated Wire*, 192 NLRB 837 (1971), which instructs that deferral is appropriate where: the conduct alleged to be a ULP also constitutes a grievance under the CBA; the CBA's grievance procedure culminates in final and binding arbitration; and the charged party waives any timeliness defenses that might prevent the processing of a grievance.

Further, regions will no longer contact parties on a quarterly basis to inquire about the status of the related grievance in deferred cases; instead, charging parties are obligated to provide a deferral status report to the Region on a biannual basis – March 15 and September 15. Failure to timely submit the biannual status report form may result in the charge being dismissed for lack of cooperation.

According to Cowen, "Given the limitations of our budget, the Agency needs to focus our resources on cases where the parties do not have mutually agreed dispute resolution mechanisms. Of course, the Agency retains jurisdiction over deferred cases and will review ultimate disposition if requested by the parties." The goal of this change is likely to encourage the NLRB to determine the appropriateness of deferral at the outset of an investigation which should lead to faster and more efficient resolution of disputes.

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