

UNDERSTANDING THE NATIONAL LABOR RELATIONS ACT

by

Scott Warrick, JD, MLHR, CEQC, SHRM-SCP
Scott Warrick Human Resource Consulting, Coaching & Training Services
&
Scott Warrick Employment Law Services

(614) 738-8317 ♣ scott@scottwarrick.com

WWW.SCOTTWARRICK.COM

Link Up With Scott On [LinkedIn](#)

I. OVERVIEW

- A. The NLRA And Its Amendments' Coverage**
- B. Representation Cases And Complaint Cases**
- C. Critical Sections Of The NLRA**

II. WHO IS A “SUPERVISOR” UNDER THE NLRA?

III. WHAT IS AN “UNFAIR LABOR PRACTICE”?

IV. SECTION 7: RIGHTS OF EMPLOYEES

- A. Rights Granted**
- B. Is An Individual Employee’s Activities A “Concerted” Activity?**

V. UNION’S “BILL OF RIGHTS”

VI. SECTION 8(a)(1): IT SHALL BE AN UNFAIR LABOR PRACTICE FOR AN EMPLOYER TO INTERFERE WITH, RESTRAIN, OR COERCE EMPLOYEES IN THE EXERCISE OF THEIR RIGHTS GUARANTEED UNDER SECTION 7 (RIGHT TO ORGANIZE).

- A. Solicitation And Distribution Of Materials By Non-Employees: Restricting Activities On Company Owned Property**
- B. No Access Policies For Off-Duty Employees**

- C. Employees May Re-Enter Company Property And Recruit For The Union**
- D. Solicitation By Employees**
- E. Can Employers Enforce A “No Solicitation” Rule While Conducting An Anti-Union Campaign Of Their Own?**
- F. Anti-Union Speech And Section 8(c)**
- G. Employees As Captive Audiences**
- H. Polling And Interrogating Employees**
- I. Investigatory Interviews And Concerted Activity**
- J. Economic Inducement And Coercion**
- K. Violence And Spying**
- L. Discussing Wages Is A Protected Activity...Union Or Not**
- M. Employee Walkout Is A Protected Activity...Union Or Not**

VII. NLRB SETS NEW PERSUADER RULE

- A. Public Disclosure of "Persuader Activity"**
- B. The History of Reportable "Persuader Activity" and the Advice Exemption**
- C. What's Reportable Now**
- D. Undefined "Labor Relations Services" Under Form LM-21**
- E. Attorney-Client Confidences**
- F. Problems for Small Business**
- G. One-Sided Application**
- H. What's Next?**
- I. The Texas District Court's Ruling**
- J. Impact of Decision**

VIII. SECTION 8(a)(1): EMPLOYEE FREEDOM OF SPEECH ISSUES

- A. NLRB Finds FACEBOOK Posting Termination Lawful**

- B. **NLRB, Social Media And “NEGATIVITY” Policies**
 - C. **NLRA Acting General Counsel (AGC) Releases Reports On Freedom Of Speech**
 - D. **HOWEVER ... The NLRB Says The F-WORD Is OK**
 - E. **NLRB Says Racial Slurs Are OK**
 - F. **NLRA Protects Workers Who Make False Statements To Customers**
 - G. **NLRB Finds “NO DISCUSSION OF INVESTIGATION” Rule To Be An ULP**
- IX. **SECTION 8(a)(1): NLRB ALLOWS EMPLOYEES TO USE EMPLOYER EMAILS TO ORGANIZE**
 - X. **SECTION 8(a)(1): EMPLOYER POLICY ISSUES: THE “WENDY’S” DECISION**
 - XI. **SECTION 8(a)(1): Will A “SAVINGS CLAUSE” Preserve An Employer’s Rights**
 - XII. **SECTION 8(a)(1): “EMPLOYMENT AT WILL” POLICIES ARE FOUND TO BE UNFAIR LABOR PRACTICES**
 - XIII. **SECTION 8(a)(2): IT SHALL BE AN UNFAIR LABOR PRACTICE FOR AN EMPLOYER TO DOMINATE OR INTERFERE WITH THE FORMATION OR ADMINISTRATION OF ANY LABOR ORGANIZATION OR CONTRIBUTE FINANCIAL SUPPORT TO IT.**
 - A. **Basic Test**
 - XIV. **SECTION 8(a)(3): IT SHALL BE AN UNFAIR LABOR PRACTICE FOR AN EMPLOYER TO DISCRIMINATE AGAINST EMPLOYEES IN ORDER TO EITHER ENCOURAGE OR DISCOURAGE UNION MEMBERSHIP OR ACTIVITY.**
 - A. **Proving Such Discrimination**
 - B. **Hiring Halls And Encouraging Union Membership**
 - C. **Closed Shops**
 - D. **Agency Shops**
 - E. **Checkoff**
 - F. **Fair Share Fees**

- G. **What Concerted Activities (§ 7) Are *Not* Protected By § 8(a)(3)**
 - H. **Legal Strikes Protected By § 8(a)(3)**
 - I. **Inherently Destructive Acts**
 - J. **Lockouts**
 - K. **Shutting Down Operations**
- XV. SECTION 8(a)(4): IT SHALL BE AN UNFAIR LABOR PRACTICE FOR AN EMPLOYER TO DISCHARGE OR OTHERWISE DISCRIMINATE AGAINST AN EMPLOYEE BECAUSE HE HAS FILED CHARGES OR GIVEN TESTIMONY UNDER THIS ACT.**
- XVI. SECTION 8(a)(5): IT SHALL BE AN UNFAIR LABOR PRACTICE FOR AN EMPLOYER TO REFUSE TO BARGAIN COLLECTIVELY WITH THE REPRESENTATIVE OF ITS EMPLOYEES, SUBJECT TO THE PROVISIONS OF SECTION 9(a).**
- XVII. MANAGEMENT’S “BILL OF RIGHTS”**
- XVIII. SECTION 8(b)(1)(A) and (B): IT SHALL BE AN UNFAIR LABOR PRACTICE FOR A LABOR ORGANIZATION OR ITS AGENTS TO RESTRAIN OR COERCE EMPLOYEES IN THE EXERCISE OF THE RIGHTS GUARANTEED IN SECTION 7 OR INTERFERE WITH AN EMPLOYER IN THE SELECTION OF ITS REPRESENTATIVES FOR THE PURPOSES OF COLLECTIVE BARGAINING OR THE ADJUSTMENT OF GRIEVANCES.**
- XIX. SECTION 8(b)(2): IT SHALL BE AN UNFAIR LABOR PRACTICE FOR A LABOR ORGANIZATION OR ITS AGENTS TO CAUSE OR ATTEMPT TO CAUSE AN EMPLOYER TO DISCRIMINATE AGAINST AN EMPLOYEE OR TO DISCRIMINATE AGAINST AN EMPLOYEE WITH RESPECT TO WHOM MEMBERSHIP IN SUCH AN ORGANIZATION HAS BEEN DENIED OR TERMINATED (FOR SOME REASON OTHER THAN FAILURE TO PAY DUES OR INITIATION FEE).**
- XX. SECTION 8(b)(3): IT SHALL BE AN UNFAIR LABOR PRACTICE FOR A LABOR ORGANIZATION OR ITS AGENTS TO REFUSE TO BARGAIN COLLECTIVELY WITH AN EMPLOYER.**
- XXI. PICKETING**
- A. **Forms Of Picketing**
 - B. **Picketing And The Constitution**

C. Remedies For Illegal Picketing

XXII. SECTION 8(b)(4): SECONDARY PRESSURE

A. Secondary Boycotts Defined

B. Moore Dry Dock Rule: Common Location Situation

C. Picketing An Entire Location

D. Separate Gates At A Construction Site

E. Secondary Employer Doing Primary Employer's Work

F. Section 8(b)4: Publicity Proviso

XXIII. SECTION 8(b)(5): EXCESSIVE INITIATION FEES AND SECTION 8(b)(6): FEATHERBEDDING

XXIV. SECTION 8(b)(7): RECOGNITIONAL AND ORGANIZATIONAL PICKETING

XXV. NLRB "SALTING" RULE

XXVI. SECTION 9: REPRESENTATION PETITIONS

A. Section 9(c)(1): Four Types Of Petitions

B. Section 9(b): Determining The Appropriate Bargaining Unit

C. Requirements for Petitions

D. Multi-Employer Units

E. Unions Challenging Other Unions

F. Obtaining A Union Without An Election

G. Professional Employees And Security Guards

XXVII. NLRB ADOPTS NEW "QUICKIE ELECTION" RULES

XXVIII. THE ELECTION PROCEDURE

XXIX. OTHER ELECTION ISSUES

A. Special Election Rules

B. Majority Of Employees And Eligibility To Vote

- C. **Whose Duty Is It To File A Petition?**
- D. **Withdrawing Petitions**
- E. **One-Year Period of Bargaining**
- F. **Permanent Replacement Workers And A Duty To Bargain**

XXX. COLLECTIVE BARGAINING

- A. **Individual Contracts With Employees Do Not Act As A Bar To Collective Bargaining**
- B. **Remedies For Bad Faith Negotiating**
- C. **Unilateral Actions**
- D. **Supplying Information To The Union**

XXXI. SUBJECTS OF COLLECTIVE BARGAINING

- A. **Compulsory Subjects**
- B. **Permissive Subjects**
- C. **No Duty To Bargain On Subjects Covered By Agreement**

XXXII. TEMPORARY WORKERS AND UNIONIZATION

- A. **Temporary Workers May Now Be Included In Bargaining Unit**
- B. **NLRB Sets Joint Employer Standard For Unionization**

XXXIII. REMEDIES

- A. **Types Of Remedies Available**
- B. **Reinstatement**
- C. **Back Pay**
- D. **Temporary Restraining Orders and Injunctions**



Scott Warrick, JD, MLHR, CEQC, SHRM-SCP
Scott Warrick Human Resource Consulting, Coaching & Training Services
&
Scott Warrick Employment Law Services

(614) 738-8317 ♣ scott@scottwarrick.com

WWW.SCOTTWARRICK.COM

Link Up With Scott On [LinkedIn](#)

Business First's 20 People To Know In HR

CEO Magazine's 2008 Human Resources "Superstar"

Nationally Certified Emotional Intelligence Instructor

2012, 2008, 2007, 2006 and 2003 SHRM National Diversity Conference Presenter

Scott Warrick combines the areas of law and human resources to assist organizations in **"Solving Employee Problems BEFORE They Happen."** Scott uses his unique background of **LAW** and **HUMAN RESOURCES** to help organizations get where they want to go, which includes coaching and training managers and employees in his own unique, practical and entertaining style.

[Scott Trains Managers and Employees ON-SITE in over 50 topics](#)

LET SCOTT DESIGN A PROGRAM FOR YOU!

Scott's **["Employment Law Videos"](#)** on the ADA, FMLA, FLSA and Harassment.

["The Human Resource Professional's Complete Guide To Federal Employment And Labor Law"](#) &

Scott's **["Do It Yourself HR Department"](#)**

are favorites for anyone wanting to learn Employment Law and run an HR Department.

Scott's academic background and awards include:

Capital University College of Law (Class Valedictorian (1st out of 233))

Master of Labor & Human Resources and B.A. in Organizational Communication: The Ohio State University

The Human Resource Association of Central Ohio's Linda Kerns Award for Outstanding Creativity in the Field of HR Management and the Ohio State HR Council's David Prize for Creativity in HR Management

For more information on Scott, just go to www.scottwarrick.com