



**FORDHARRISON**

# Loudon Monroe Seminar 2026

**NLRB Update**

**April 8, 2026**

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# NLRB Update

- ❖ NLRB is a five-member Board that sits in Washington.
- ❖ Appointed by President, confirmed by Senate.
- ❖ Traditionally three/two in favor of party of the President.



# NLRB Update

- ❖ Need three to act.
- ❖ For decisions, often a three-member panel.
- ❖ No quorum for almost a year.



# NLRB Update

As of January 26, 2026, there are three members.

- **James R. Murphy (Chairman - R):** Sworn in on January 7, 2026, with a term expiring in December 2027. He has over 47 years of service with the NLRB, previously serving as Chief Counsel to former Chairman Marvin Kaplan. He is a graduate of Princeton University and American University.
- **Scott A. Mayer (Member - R):** Sworn in on January 7, 2026, with a term expiring in December 2029. He was previously Chief Labor Counsel for a major aerospace and defense corporation.
- **David M. Prouty (Member - D):** Confirmed in July 2021, with a term expiring in August 2026. Formerly the General Counsel of Service Employee International Union (SEIU) Local 32BJ, he has extensive experience as a union attorney, including roles at the MLBPA and UNITE HERE.



# NLRB Update

In a March 6, 2026 decision, the Sixth Circuit Court of Appeals rejected the Cemex standard.

Cemex was a 2023 NLRB decision that made two huge changes.

First, if a union presents an employer with evidence of majority status and requests recognition, if the employer declines, the employer must go to the NLRB and seek an election.



# NLRB Update

Second, if the employer commits ULPs during the election period and the union loses the election, and if there was evidence of union majority status at any time, the Board will order the employer to recognize and bargain with the union.

This was a sea change from the Gissel standard, which required a showing of ULPs so serious as to make a fair election impossible to justify imposition of a bargaining order.



# NLRB Update

In Brown-Forman Corp. the employer gave employees a \$4 an hour raise (and a bottle of whiskey!) soon after learning of the organizing effort.

The company won the election handily.



# NLRB Update

Union filed charges alleging ULPs, which all agree were committed.

ALJ issued bargaining order under Gissel and Cemex.

Board affirmed but relied only on Cemex.



# NLRB Update

- ❖ Employer appealed to U.S. Court of Appeals for the Sixth Circuit.
- ❖ Sixth Circuit refused to enforce.
- ❖ Said Cemex was in essence rule making via adjudication.
- ❖ Cemex standard was not created to handle the claims at issue in that case, and instead created a forward looking rule for future matters.



# NLRB Update

Sixth Circuit expressed concern that the Board would so easily abandon the secret ballot election as the means of determining employee choice.

Also expressed concern that a bargaining order was an “extraordinary remedy” that should not be imposed based on a hard and fast standard.



# NLRB Update

Workplace rules.

Expect the new Board to have less focus on the terms of the rules themselves.

Expect the new Board to issue a decision that creates a more flexible and employer friendly standard for analyzing the legality of workplace rules.



# NLRB Update

Thryv, Inc. remedies. Greatly expanded remedies to include “direct and foreseeable” financial harms.

Employers have argued these remedies are not authorized under the Act and some circuit courts of appeal have been hostile to them.

Expect the new Board to back away from the remedy expansions.



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