

WISCONSIN

“CONSEQUENTIAL DAMAGES”

NOW AVAILABLE IN UNFAIR LABOR PRACTICES CASES



The National Labor Relations Board has ruled that employers can now face liability for consequential damages in unfair labor practice cases before the Board. On December 13, 2022, the Board, in a 3-2 ruling in the case entitled Thryv, Inc., NLRB Case No. 20-CA-250250, held that traditional remedies, such as back pay and reinstatement, are insufficient to actually make employees whole for unlawful employer actions. The case involved the employer laying off workers without first bargaining with the union.

As a result of the Board's ruling, costs like out-of-pocket medical expenses, late payment fees, overdraft charges, and other costs flowing from an unfair labor practice may be available to affected parties. Because the Board is unable to fine parties or award punitive damages, consequential damages provide it with additional leverage.

This ruling makes effective a stated goal of current Board General Counsel, Jennifer Abruzzo, to provide the Board more authority in making employees whole when employers run afoul of the NLRA. To this end, the Board had been requiring terms in settlement agreements that paid workers for the economic impact unfair labor practices have had on them. Such agreements have included reimbursement for interest payments on a loan taken out for living expenses, late payment fees for rents and cars, and costs associated with the loss of a breastfeeding station resulting in the need to purchase formula. See GC Memo 22-06, June 23, 2022.

These remedies are part of a larger Board goal of providing “full and effective relief” to victims of unfair labor practices. See GC Memo 21-07, Sept. 15, 2021. Such relief in settlement agreements has taken the form of letters of apology to reinstated workers, required training for management, mandated a statement of rights in job applications and recruitment advertisements, and covered a union's bargaining costs when employers were negotiating in bad faith.

Employers should be mindful of the risks associated with unfair labor practices, which now included potential added liability, and consult with labor counsel before taking action that may result in exposure to these added costs.

Lindner & Marsack, S.C. represents employers in all areas of labor and employment law. If you have any questions about the recent ruling by the National Labor Relations Board or any other labor or employment issue involving your business, please contact us at any time.

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