

EXHIBIT B
REVERSAL OF PRECEDENT BY OBAMA NLRB

Decision by Obama NLRB	Summary of Decision	NLRB Precedent Overruled	Duration of Precedent
2016 Cases			507 years
<i>Guardsmark, LLC</i> , 363 NLRB No. 103 (2016)	A 3-1 majority overruled the long-standing rule that the mass-meeting prohibition begins when the ballots are scheduled to be mailed by the Regional Office. Instead, the Board prohibited mass captive-audience speeches by parties within the 24-hour period prior to the mailing of the ballots.	<i>Oregon Washington Telephone</i> , 123 NLRB 339 (1959)	57 years
<i>Loomis Armored US, Inc.</i> , 364 NLRB No. 23 (2016)	A 3-1 majority found that an employer that voluntarily recognized a “mixed-guard” union as the representative of its employees could not withdraw recognition during a time when no collective bargaining agreement was in place without an actual loss of majority support for the union.	<i>Wells Fargo Corp.</i> , 270 NLRB 787 (1984)	32 years
<i>Graymont PA, Inc.</i> , 364 NLRB No. 37 (2016)	A 3-1 majority found that the Board may consider an employer’s failure to timely disclose requested information, even when the violation is not alleged in the complaint, if the issue is closely connected to the subject matter of the complaint and has been fully litigated.	<i>Raley’s Supermarkets & Drug Centers</i> , 349 NLRB 26 (2007)	9 years
<i>Miller & Anderson, Inc.</i> , 364 NLRB No. 39 (2016)	A 3-1 majority found that employer consent is not necessary for bargaining units that combine jointly employed and solely employed employees of a single user employer. The Board will apply traditional community of interest factors to determine whether such units are appropriate.	<i>Oakwood Care Center</i> , 343 NLRB No. 659 (2004)	12 years
<i>Trustees of Columbia University</i> , 364 NLRB	A 3-1 majority found that students who performed services at a	<i>Brown University</i> , 342 NLRB 483 (2004).	12 years

No. 90 (2016)	university in connection with their studies were statutory employees within the meaning of Section 2(3) of the Act.		
<i>King Soopers, Inc.</i> , 364 NLRB No. 93 (2016)	A 3-1 majority modified the Board's make-whole remedy regarding search-for-work expenses. Search-for-work and interim work expenses will be awarded as part of the remedy for discriminatory termination of employment regardless of interim earnings and will no longer be treated as an offset that reduces the amount of interim earnings deducted from back pay.	<i>Crosssett Lumber Co.</i> , 8 NLRB 440 (1938) <i>English Mica Co.</i> , 101 NLRB 1061 (1952) <i>West Texas Utilities Co.</i> , 109 NLRB 936 (1954) <i>Mastro Plastics Corp.</i> , 136 NLRB 1342 (1962) <i>North Slope Mechanical</i> , 286 NLRB 633 (1987)	78 years 64 years 62 years 54 years 29 years
<i>Total Security Management Illinois 1, LLC</i> , 364 NLRB No. 106 (2016)	A 3-1 majority found that the employer violated the Act by discharging three employees without bargaining with a union after it was certified. Discretionary discipline is a mandatory subject of bargaining, like other terms and conditions of employment, and employers may not impose that discipline unilaterally on employees represented by a union, but not yet covered by a collective-bargaining agreement.	<i>McClatchy Newspapers, Inc.</i> , 337 NLRB 1161 (2002)	14 years
<i>E.I. Du Pont de Nemours</i> , 364 NLRB No. 113 (2016)	On remand from the D.C. Circuit, a 3-1 majority found that the employer violated the Act by making unilateral changes to company-wide benefit plans after expiration of the collective bargaining agreement. Discretionary unilateral changes made pursuant to a past practice developed under an expired management rights clause are	<i>Beverly Health & Rehabilitation Services, Inc.</i> , 346 NLRB 1319 (2006) <i>Courier-Journal</i> , 342 NLRB 1093 (2004) <i>Capitol Ford</i> , 343 NLRB 1058 (2004)	10 years 12 years 12 years

	unlawful because the clause does not extend beyond expiration in the absence of evidence of the parties' contrary intention. The employer's changes during the life of the contract did not establish a status quo that the employer was permitted to continue after expiration.		
<i>United States Postal Service</i> , 364 NLRB No. 116 (2016)	A 3-1 majority found the Board will not approve settlements without full default language for future violations.	<i>Copper State Rubber</i> , 301 NLRB 138 (1991) <i>Food Lion, Inc.</i> , 304 NLRB 602 (1991)	25 years 25 years
2015 Cases			173 years
<i>American Baptist Homes dba Piedmont Gardens</i> , 362 NLRB No. 139 (2015)	A 3-2 majority overruled a blanket rule exempting witness statements from the general obligation to honor union requests for information. In future cases, when an employer argues that it has a confidentiality interest in protecting witness statements from disclosure, the Board will apply the <i>Detroit Edison v. NLRB</i> , 440 U.S. 301 (1979) test, which balances the union's need for requested information against any legitimate and substantial confidentiality interests established by the employer.	<i>Anheuser-Busch, Inc.</i> , 237 NLRB 982 (1978)	37 years
<i>Browning-Ferris Industries of California, Inc., d/b/a BFI Newby Island Recyclery</i> , 362 NLRB No. 186 (2015)	A 3-2 majority changed the standard for deciding whether two companies are joint employers. Two or more entities may be found joint employers of a single work force if they are (a) both employers within the common law meaning and (b) share or codetermine those matters governing the essential terms and conditions of employment. The majority will no longer require that a joint employer possess the	<i>TLI, Inc.</i> , 271 NLRB 798 (1984) <i>Laerco Transportation</i> , 269 NLRB 324 (1984) <i>AM Property Holding Corp.</i> , 350 NLRB 998, 1001 (2007) <i>Airborne Freight Co.</i> ,	31 years 31 years 8 years 13 years

	authority to control terms and conditions of employment, and also exercise that authority, or that it exercise that authority directly and immediately rather than in a limited and routine manner.	338 NLRB 597 (2002)	
<i>Lincoln Lutheran of Racine</i> , 362 NLRB No. 188 (2015) The Board originally overruled <i>Bethlehem Steel</i> in <i>WKYC-TV, Inc.</i> , 359 NLRB No. 30 (2012). However, that case was invalidated by the U.S. Supreme Court in <i>N.L.R.B. v. Noel Canning</i> , 134 S.Ct. 2550 (2014).	A 3-2 majority held that an employer's obligation to check off union dues continues after expiration of a collective bargaining agreement. The majority overruled Board law finding that this obligation ceases when the agreement expires because the Board never provided a coherent explanation.	<i>Bethlehem Steel Co.</i> , 136 NLRB 1500 (1962)	53 years
2014 Cases			123 years
<i>Fresh & Easy Neighborhood Market, Inc.</i> , 361 NLRB No. 12 (2014)	A 2-1 majority found that an employee was engaged in protected concerted activity for the purpose of mutual aid or protection when she sought assistance from her coworkers to raise a sexual harassment complaint to her employer.	<i>Holling Press, Inc.</i> , 343 NLRB 301 (2004)	10 years
<i>FedEx Home Delivery</i> , 361 NLRB No. 55 (2014) <i>Request for reconsideration denied</i> 362 NLRB No. 29 (2015)	A 3-1 majority overruled <i>St. Joseph News-Press</i> to the extent that decision mistakenly suggested that the Board cannot consider evidence that a putative employer has effectively imposed constraints on an individual's ability to render services as part of an independent business.	<i>St. Joseph News Press</i> , 345 NLRB 474 (2005)	9 years
<i>Pressroom Cleaners</i> , 361 NLRB No. 57 (2014)	A 3-2 majority overruled precedent on the appropriate remedy when a statutory successor employer refuses to hire the predecessor's employees. For a statutory successor, the predecessor's terms and conditions of employment	<i>Planned Building Services</i> , 347 NLRB 670 (2006)	8 years

	<p>continue until the parties bargain to agreement or impasse. An employer may no longer show in compliance proceedings that it would not have agreed to the monetary provisions of the predecessor's collective-bargaining agreement.</p> <p>Thus, when a successor employer unilaterally changes the predecessor's terms and conditions of employment, the remedy will include restoration of those terms and conditions until the parties bargain in good faith to agreement or impasse.</p>		
<p><i>Purple Communications, Inc.</i>, 361 NLRB No. 126 (2014)</p>	<p>A 3-2 majority found that an employer that gives its employees access to its email system must presumptively permit the employees to use that system for statutorily protected communications during nonworking time. An employer may rebut the presumption by showing that special circumstances make its restrictions necessary to maintain production and discipline.</p>	<p><i>Register Guard</i>, 351 NLRB 1110 (2007)</p>	<p>7 years</p>
<p><i>Babcock & Wilcox Construction Co., Inc.</i>, 361 NLRB No. 132 (2014)</p>	<p>A 3-2 Board majority modified the Board's standard for deferring to arbitration decisions. Deferral is solely a matter for the Board's discretion because Section 10(a) of the Act allows the Board to adjudicate unfair labor practice charges even though they might have been the subject of an arbitration proceeding and award. The new standard places the burden on the party urging deferral to show: 1) the arbitrator was explicitly authorized to decide the unfair labor practice issue; 2) the arbitrator was presented with and considered the statutory issue (or was prevented from doing so by the</p>	<p><i>Spielberg Mfg. Co.</i>, 112 NLRB 1080 (1955)</p> <p><i>Olin Corp.</i>, 268 NLRB 573 (1984)</p>	<p>59 years</p> <p>30 years</p>

	party opposing deferral); and 3) Board law reasonably supports the arbitral award.		
2013 Cases			29 years
<i>Albertson's, LLC</i> , 359 NLRB No. 147 (2013) This decision was reaffirmed after the Supreme Court's decision in <i>NLRB v. Noel Canning</i> , 134 S. Ct. 2550 (2014) in <i>Albertson's, LLC</i> , 361 NLRB No. 71 (2014).	The Board overruled earlier precedent to the extent that it holds that the solicitation of grievances cannot be found unlawful if the employee fails to raise a grievance in response to the solicitation. The legality of employer conduct does not turn on an employee's subjective reaction. The fact that an employee remained silent in response to a solicitation of grievances does not negate the coercive tendency of the solicitation.	<i>William T. Burnett & Co.</i> , 273 NLRB 1084 (1984)	29 years
2012 Cases			55 years
Cases Decided 1/4/12-7/30/13 are not included in this review unless reaffirmed by the Board, or enforced by the courts, because they were invalidated by the U.S. Supreme Court in <i>N.L.R.B. v. Noel Canning</i>, 134 S. Ct. 2550 (2014).			
<i>In Re Latino Express, Inc.</i> , 359 NLRB No. 44 (2012) This decision was reaffirmed after the Supreme Court's decision in <i>N.L.R.B. v. Noel Canning</i> , 134 S. Ct. 2550 (2014) in <i>Latino Express, Inc.</i> 361 NLRB No. 137 (2014). The Board continues to cite the original case	The Board imposed a new remedy requiring employers to compensate employees for the adverse tax consequences of receiving one or more lump-sum backpay awards covering periods longer than one year.	<i>Laborers Local 282</i> , 271 NLRB 878 (1984) <i>Hendrickson Bros. Inc.</i> , 272 NLRB 438 (1985)	28 years 27 years

and apply this remedy. <i>See e.g.</i> <i>Remington Lodging & Hosp., LLC d/b/a the Sheraton Anchorage</i> , 363 NLRB No. 6 (2015)			
2011 Cases			54 years
<i>Stericycle, Inc.</i> , 357 NLRB 582 (2011)	In a split decision, the Board found that a union engages in objectionable conduct warranting a second election by financing a lawsuit filed during the critical period that states employment claims on behalf of unit employees and notifying employees of the lawsuit. ¹	<i>Novotel New York</i> , 321 NLRB 624 (1996)	15 years
<i>Lamons Gasket Co.</i> , 357 NLRB 739 (2011)	A 3-1 majority overruled the Board's 2007 decision in <i>Dana Corp.</i> establishing a modified recognition bar and a 45-day "window period" after voluntary recognition when employees may file a decertification petition. The Board instituted a rule barring an election petition for a reasonable period of time after voluntary recognition of a representative designated by a majority of employees.	<i>Dana Corp.</i> , 351 NLRB 434 (2007)	4 years
<i>In Re Ugl-Unicco Serv. Co.</i> , 357 NLRB 801 (2011)	A 3-1 majority restored the successor bar doctrine. Under that doctrine, when a successor employer acts in accordance with its legal obligation to recognize an incumbent representative of its employees, the previously chosen representative is entitled to represent the employees in collective bargaining with their new employer for a reasonable period of	<i>MV Transportation</i> , 337 NLRB 770 (2002)	9 years

¹ In this case, Member Hayes joined Members Becker and Pearce in overruling *Novotel New York*, 321 NLRB 624 (1996), only to the extent of holding that the Union's involvement with and support for the lawsuit at issue during the critical period constitutes objectionable conduct sufficient to warrant setting aside the election. He disagreed with their decision to go beyond the facts of the case to create "essentially a road map for how unions can provide gratuitous benefits, in the form of legal services, to voting employees without running afoul of the Act."

	time without challenge to its representative status. The Board defined the reasonable bar period from 6 months to 1 year from the date of the first bargaining session between the union and the successor employer, depending on the situation.		
<i>Specialty Healthcare & Rehab. Ctr. of Mobile</i> , 357 NLRB 934 (2011)	A 3-1 majority fundamentally changed the standard for determining whether a petitioned-for unit is appropriate. When a petition is filed in a unit of employees who are readily identifiable as a group—based on job classifications, departments, functions, work locations, skills, or similar factors—and the Board finds that the employees in the group share a community of interest, the Board will find the petitioned-for unit to be an appropriate unit, unless the employer demonstrates that employees in a larger unit share an overwhelming community of interest with those in the petitioned-for unit.	<i>Park Manor Care Center, Inc.</i> , 305 NLRB 872 (1991)	20 years
<i>Goya Foods of Florida</i> , 356 NLRB 1461 (2011)	The Board issued a remedy making employees whole for any losses due to an employer's change to health insurance plans regardless of whether the Union requests rescission of the unlawful changes and restoration of the status quo plan. Remedy Case.	<i>Brooklyn Hospital Center</i> , 344 NLRB 404 (2005)	6 years
Total Years of Precedent Overruled			941 years