



Labor Law 101 Back to School



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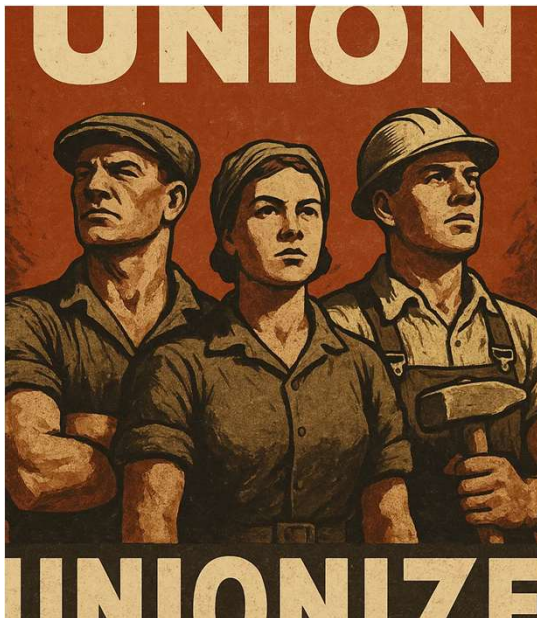


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The New Labor Law Curriculum

Introduction

- Labor risk is a C-Suite issue:
 - Cost
 - Workforce relations
 - Public relations
- Non-union employers cannot ignore organized labor
 - Record support
 - Record organizing
 - Doctrines impact all employers

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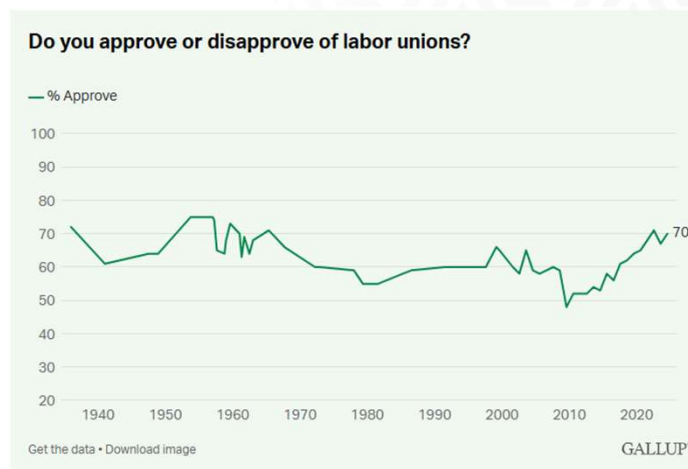
Labor will always be welcome. You know, you've heard me say many times: I intend to be the most pro-union President leading the most pro-union administration in American history.

- President Joe Biden
September 8, 2021

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Why are we here?

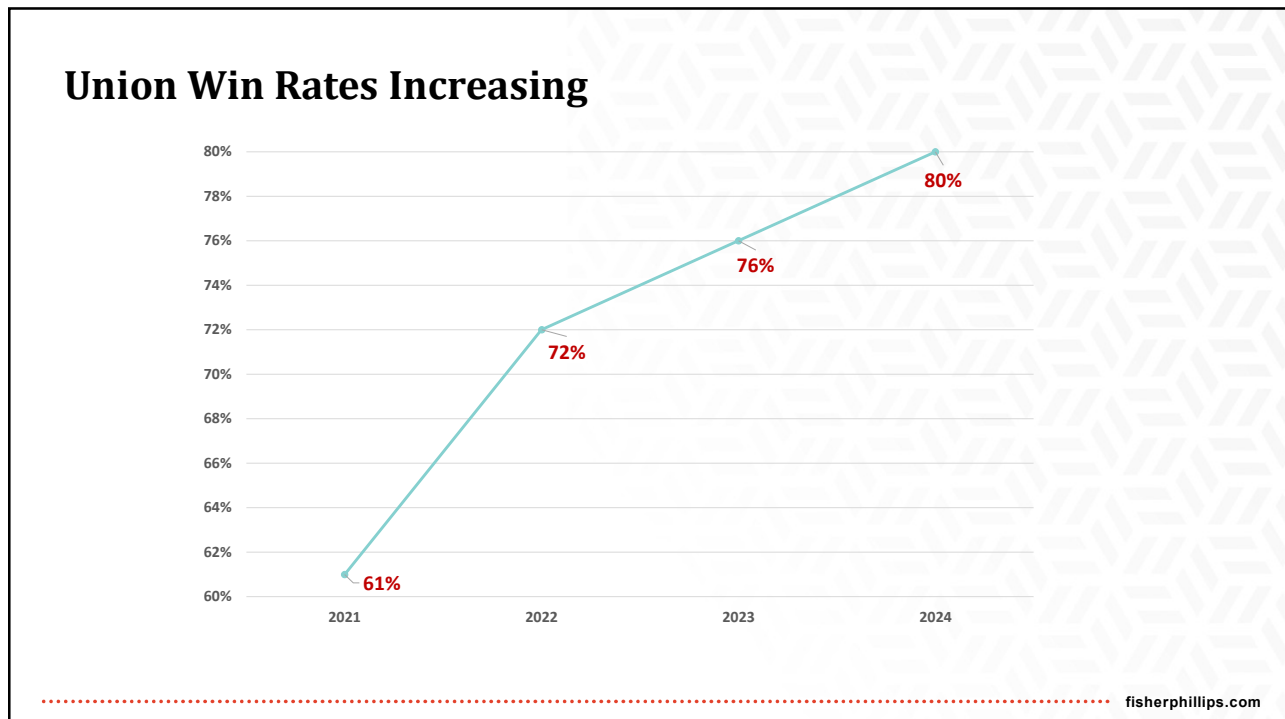


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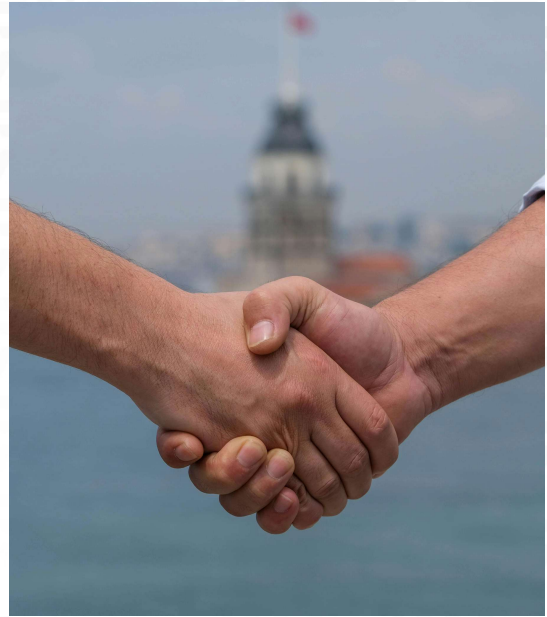


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Let's Review From Last Semester

Biden-Era Doctrines Still Good Law

- *Cemex*:
 - Fundamentally alters representation proceedings and bargaining orders
 - Authorization cards now central
- *Stericycle*:
 - The return of the "chilling effect" test for policies
- *McLaren Macomb*:
 - Limits confidentiality and non-disparagement in severance/settlement agreements
- *Miller Plastics*:
 - "Concerted" activity by lone employees



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Let's Review From Last Semester

Union Activity and Enforcement Trending

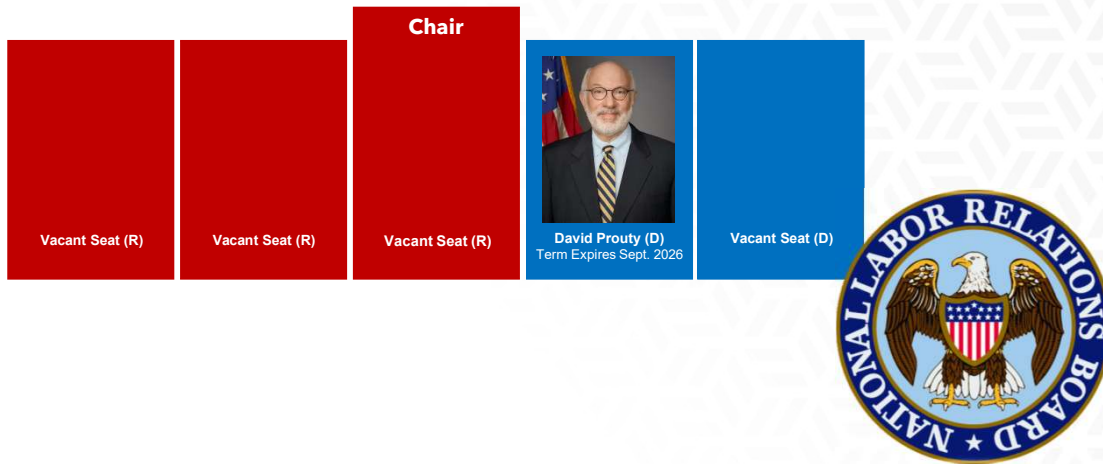
- Record-high union election petitions and win rates
- Record-high public support
- Beyond manufacturing—healthcare, education, life sciences, retail, quick-serve restaurants, and more
- Strikes/Pickets/Labor Disputes
- Expanding state laws to provide strikers with more support
- Expanding use of 10(j) injunctions and unfair labor practice litigation



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The National Labor Relations Board



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Future General Counsel

- On March 25th, President Trump nominated Crystal S. Carey to be NLRB General Counsel.
- Carey has been with Morgan Lewis for almost seven years, following eight years as an NLRB attorney.
- If confirmed, this move solidifies the NLRB's pendulum swing to a pro-employer agency.



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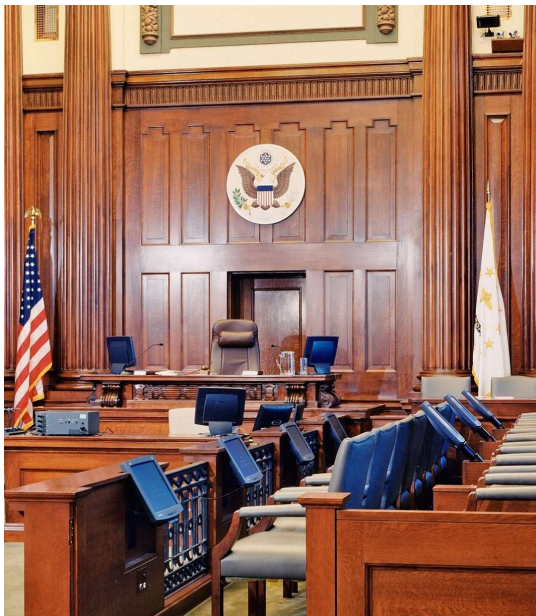
The Syllabus for 2026

Shifting Enforcement Priorities

- Trump 2.0
 - Where we are
 - Where we are heading
- Labor law moderation
 - GC memos revoked
- Impact of recent litigation outcomes and regulatory challenges

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The Syllabus for 2026

Legal Standards in Flux

- Will *Cemex* hold up in the higher courts?
- Potential rollback or clarification of *Stericycle* and *McLaren Macomb*
- Ongoing uncertainty over joint employment and independent contractor tests

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Hound (Fox) 4/5 Weak

The Syllabus for 2026

The Big Picture

- Expanding definition of “protected concerted activity”
- Expanding interpretation of the NLRA’s applicability
- Increasing tension between labor law and other compliance areas (e.g., DEI, harassment)

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Auditing the Class: Labor Law Without A Union

Section 7 Rights Without a Union

- Protected concerted activity in modern workplace
 - Individual support of social/political movements that may touch on workplace issues
 - “Venting” online
- Risk areas in employee discipline, even in the absence of a union
 - Discussing wages/terms of employment

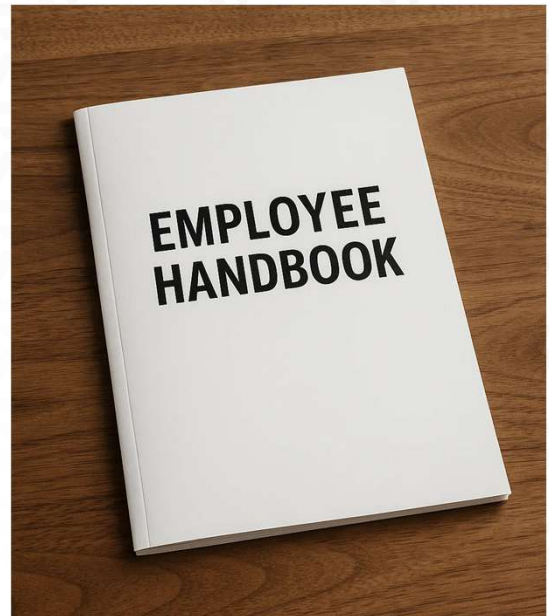
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Auditing the Class: Labor Law Without A Union

Policies and Handbooks

- Civility, confidentiality, and workplace conduct rules under fire
- Practical tips for surviving *Stericycle* scrutiny



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Auditing the Class: Labor Law Without A Union

Building a Compliance Culture

- Why now is the time for supervisor training
- Strategies to stay union-free without violating the NLRA



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SparkNotes: Practical Tips

The Big Picture

- Policy and agreement audits: what to revise, what to hold
- Educating frontline managers on new organizing tactics
- Positive employee relations strategies post-Cemex
- Preparing for and responding to union campaigns

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Scenario

You discover the following Facebook post written by one of your employees.

- What do you do?
- Can you discipline them?

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Scenario

An employee writes “BLM” or “MAGA” on work-issued clothing.

What do you do?

Can you discipline them?



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OFFICE HOURS (QUESTIONS?)



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