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What To Know As Rulings Limit NLRB's Expanded Remedies

By **Shay Billington and Mark Spring** (November 24, 2025, 5:26 PM EST)


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Traditionally, it has been understood that the National Labor Relations Board limits the remedies it issues to equitable forms of relief.

In practice, this meant that employees who lost their jobs due to violations of the National Labor Relations Act were typically entitled to only two types of remedies: reinstatement and back pay. That framework shifted in 2022, when the board decided Thryv Inc.

Two recent appellate decisions strongly rebuke the NLRB's expansion of remedies under Thryv, signaling increased judicial skepticism toward the board's broadened remedial authority.[1]

The Thryv Decision

In Thryv, President Joe Biden's NLRB broke from long-standing precedent, and held that it could, and should, compensate employees for all direct or foreseeable pecuniary harms resulting from violations of the NLRA.

Respondent Thryv operates a marketing agency that sells yellow pages advertising. Around July 2019, Thryv began implementing its proposal to lay off all new business advisers — who were responsible for soliciting new clients — in its Northern California region.

In this process, the board found that Thryv committed unfair labor practices by refusing to respond to the union's information requests, and by unilaterally implementing layoffs because it was presented as a fait accompli — i.e., the decision was already final.

Under the direct and foreseeable standard, the board ordered make-whole remedies. This not only included back pay, but also direct and foreseeable pecuniary harms, such as reasonable search-for-work and interim employment expenses, and tax consequences for lump-sum back pay.

Shortly thereafter, then-general counsel Jennifer Abruzzo issued guidance, which has since been partially rolled back by current acting general counsel William Cowen, asserting that Thryv authorized the board to award an extremely broad range of consequential damages.[2]

This included compensation for items such as credit card interest and late fees stemming from job loss, legal fees and costs incurred defending eviction actions, and other nontraditional forms of monetary relief.

Recent Opinions Limiting NLRB Remedies

Hiran Management v. NLRB

On Oct. 31, the U.S. Court of Appeals for the Fifth Circuit issued its decision in Hiran Management Inc. v. NLRB, holding that Thryv conflicted with nearly 90 years of past practice.

Hiran Management, which operates the Houston karaoke restaurant Hungry Like the Wolf, found itself before the NLRB after terminating several workers who walked out of a contentious staff meeting and later went on strike over workplace conditions.

The employees — who had raised concerns about scheduling practices, increased duties without additional pay and promises of shift supervisor compensation that never materialized — refused to return to work unless management addressed their demands.

When informal negotiations broke down, the company discharged the group, prompting an NLRB complaint that alleged unlawful retaliation for protected concerted activity.

In its November 2024 ruling, the board ordered reinstatement and make-whole remedies "for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms suffered as a result."

Now, the Fifth Circuit has concluded that while the NLRB retains authority to award equitable remedies, such as reinstatement and back pay, the NLRA does not authorize the board to grant broad consequential damages.

NLRB v. Starbucks

On Nov. 5, the U.S. Court of Appeals for the Sixth Circuit reached a similar conclusion in NLRB v. Starbucks Corp., finding that the NLRB exceeded its statutory authority when it awarded direct and foreseeable monetary damages beyond back pay in its August 2023 decision.

There, Starbucks fired shift supervisor Hannah Whitbeck amid a high-profile union campaign at a store in Ann Arbor, Michigan. Whitbeck, a lead organizer, publicly advocated for Workers United — emailing executives, appearing in the media, placing pro-union messages in the café and attending an NLRB representation hearing video conference.

Roughly 17 days after the hearing, Starbucks terminated her for a policy violation, alleging that she briefly left a co-worker in the store alone.

The board concluded that anti-union animus drove the decision and ordered traditional remedies, but it also directed Starbucks to compensate Whitbeck for any direct or foreseeable pecuniary harms.

Earlier this month, the Sixth Circuit vacated the board's prior decision, holding that the NLRA does not permit awards for items such as credit card interest or late fees, penalties on early retirement withdrawals, or the loss of a vehicle or home due to missed payments.

A Developing Circuit Split

These recent rulings align with the U.S. Court of Appeals for the Third Circuit's Dec. 27, 2024, decision in another Starbucks case, NLRB v. Starbucks Corp., which also rejected the board's expanded remedy approach.

However, all three of these decisions conflict with the U.S. Court of Appeals for the Ninth Circuit's Jan. 21 decision in International Union of Operating Engineers, Stationary Engineers, Local 39 v. NLRB, which was amended on Oct. 20 and reaffirmed the board's expanded make-whole remedies.

In the Ninth Circuit case, which involved Macy's locking out employees after a strike, the court issued a split decision that upheld the NLRB's authority to award broad consequential damages, holding such remedies to be permissible under the NLRA.

What This Means for Employers

Even though the government has reopened, and the NLRB is up and running, the board still remains without a quorum and cannot issue decisions until at least three board members are seated.

Employers that are litigating cases before the NLRB should cite the recent Fifth, Sixth and Third Circuit decisions to challenge any attempt to impose consequential or nonequitable damages, should the union or employee prevail.

Given the growing circuit split, there is a significant likelihood that this issue will ultimately reach the U.S. Supreme Court, which will then need to determine the scope of the board's remedial authority under the NLRA.

Another possible outcome is that once President Donald Trump's board has three members and regains a quorum, it could issue a decision that overturns Thyrv, thereby mooting the federal litigation. In the meantime, employers should assume that this area of law remains in flux.

Regional offices may continue to pursue expanded remedy theories until either the board, once reconstituted, or the Supreme Court definitively resolves the issue.

Employers should therefore take proactive steps to minimize the risk of being on the receiving end of an expanded make-whole remedy request.

Compliance Tips for Employers

Strengthen documentation and decision-making processes.

- Ensure that adverse actions can be supported with contemporaneous, objective evidence.
- Apply policy enforcement consistently across pro-union and nonunion employees.

Conduct labor-sensitive reviews of disciplinary decisions.

- Require human resources to review disciplinary decisions before imposing them on known union activists or employees who are engaged in protected concerted activity.

- Avoid timing traps; close proximity between protected activity and discipline remains a high-risk indicator.

Train frontline supervisors and managers.

- Supervisors are often the primary sources of statements and actions that are cited as animus.
- Reinforce expectations regarding neutrality and employees' rights to engage in protected activity.

Prepare for the board to seek consequential relief — even if it is ultimately barred.

- Unions may still present evidence of financial harms — e.g., evictions, lost vehicles and medical bills — as part of make-whole claims.
- Employers should be ready to challenge the legal basis, as well as the foreseeability or causation, of such harms.

Conclusion

Until the Supreme Court or a newly constituted board resolves the issue, employers should stay vigilant.

While the Fifth, Sixth and Third Circuits have checked the board's more aggressive remedial theories, the Ninth Circuit's contrary ruling — and the board's current stated policy preference — mean that the risk has not disappeared.

Maintaining strong compliance practices now remains the best protection against both traditional and still-developing categories of monetary exposure under the NLRA.

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[1] 372 NLRB No. 22 (2022).

[2] https://www.cdflaborlaw.com/_images/content/GC_24-04_Securing_Full_Remedies_for_All_Victims_of_Unlawful_Conduct_-_rescinded.pdf, https://www.cdflaborlaw.com/_images/content/GC_25-06_Seeking_Remedial_Relief_in_Settlement_Agreements.pdf.