



Consent Orders in NLRB Cases: Reversal Once Again

On August 22, 2024, the National Labor Relations Board (NLRB) issued a decision discontinuing the practice of using consent orders to settle labor disputes. The Board stated that it “should instead entirely end the practice of approving consent orders,” citing the ruling in [Metro Health, Inc. d/b/a Hospital Metropolitan Rio Piedras and Unidad Laboral de Enfermeras\(os\) y Empleados de la Salud, 372 NLRB No. 115 \(2024\)](#). This decision signals a significant departure from a longstanding mechanism used to expedite the resolution of disputes without prolonged litigation.

Historically, consent orders have provided a means for resolving labor disputes through negotiated agreements between unions, employers, and the NLRB, thus avoiding drawn out legal proceedings. Unlike settlement agreements, which require mutual consent and negotiation between both parties, consent orders are enforced by the NLRB with less negotiation, requiring compliance with terms to address violations swiftly. Over the years, however, the use of consent orders has been shaped by key judicial rulings, reflecting shifts in how labor disputes are handled.

The Early Use of Consent Orders

One of the earliest cases that solidified the use of consent orders was International Union of Electrical, Radio and Machine Workers, Local 201 (General Electric Co.), 141 NLRB 1086 (1963). This case involved the NLRB stepping in to resolve a labor dispute between General Electric and Local 201 of the International Union of Electrical Workers, which accused the company of failing to engage in good faith bargaining. To avoid a lengthy legal process, both parties agreed to settle through a consent order. The NLRB oversaw the enforcement of the agreement, which became a precedent for using consent orders to resolve disputes efficiently. This case underscored how consent orders could promote swift resolution and compliance, reducing the burden of litigation.

The Reversal of Consent Orders

Despite the initial success of consent orders, their use came into question in [United States Postal Service, 364 NLRB No. 116 \(2016\)](#). The Postal Service argued that the consent order imposed by the NLRB was overly broad and failed to provide adequate legal protection for employers. This NLRB decision marked a shift in policy, where the Board began to limit the circumstances under which consent orders could be used, citing the need for clearer legal boundaries.

The Restoration of Consent Orders

The practice of issuing consent orders was restored by the NLRB in [UPMC Presbyterian Shadyside, 366 NLRB No. 142 \(2018\)](#). This case involved UPMC Presbyterian Shadyside, where the hospital was accused of unfair labor practices, including restricting union activities. The NLRB reaffirmed the validity of using consent orders in this case, allowing the Board to resolve disputes efficiently while ensuring employers complied with labor law requirements. This decision marked the resurgence of consent orders as an effective tool for dispute resolution.

The End of Consent Orders

The use of consent orders ultimately came to an end with the NLRB's decision in [Metro Health, Inc. d/b/a Hospital Metropolitano Rio Piedras and Unidad Laboral de Enfermeras\(os\) y Empleados de la Salud, 372 NLRB No. 115 \(2024\)](#). The Board determined that consent orders undermined the prosecutorial role of the General Counsel and did not promote labor peace as intended. The decision concluded that the use of consent orders had overextended their original purpose, and the NLRB opted to discontinue their use in labor disputes, relying on traditional settlement or litigation methods.

Conclusion

The discontinuation of consent orders has significant implications for the unionized electrical contracting industry. With consent orders no longer a viable option, contractors involved in labor disputes may face drawn out legal proceedings, leading to higher costs or delayed resolutions to issues. This shift could require more reliance on traditional settlement processes, necessitating careful legal preparation to avoid prolonged litigation and its associated cost burdens.

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