

Preface

The preparation for writing the second edition of *Winning at the NLRB* began 40 years ago in National Labor Relations Board Regional Director Sam Kaynard's course at New York University entitled "NLRB Practice and Procedure." Interspersed among the jokes, toasts, and stories was sufficient substantive material to excite the young students in the seminar to seek to make a career at the NLRB. And so I did. I hope that this edition will convey some of the insight gained during my long career at the Agency and will assist those with interest in the Board, its law, and its procedures.

Outsiders often view organizations as reflections of their leadership. Certainly Board Members and the General Counsels have had a significant impact on substantive law. In Chapter 3, NLRB Law and Procedure, many recent changes are indexed for easy reference. However, the primary mission of this book is to help parties be successful in their practice before the Board within the context of the existing rules, irrespective of the identity or political inclinations of particular Board Members or General Counsels. The Board is not solely its presidential appointees. Career agents with nothing to gain or lose by the outcome of a case can be greatly influenced by their relationships with the parties. The extent of the agent's investigation and the way the agent reports the case influence the outcome of a case. It is therefore critical to know how to get the most out of that relationship.

This book will not give you propaganda to use in election campaigns or even winning arguments to make in the course of any Board case, but will give you steps to take to maximize your chances of winning before the Agency. For example, what should you do before filing a charge? What information should you provide the Board upon being served with a charge? What are the first things you should do immediately to prepare to defend your position? How can you make sure that your arguments are being heard by the appropriate Agency officials? How can you maximize your chances of a complete investigation of the issues you wish the Board to consider? How can you

mitigate a potential adverse ruling? How can you be most effective at NLRB hearings? This book is intended both to guide the novice and to provide some valuable insights to the more experienced.

This edition builds on the extremely thorough and incisive work done by Matt Franckiewicz in the original edition. I have endeavored to edit and update the material to be useful to current readers. I also thank him for his updates of chapters 14 and 15.

One of the other young students in Professor Kaynard's seminar was Gerald Kobell, retired Regional Director of the NLRB's Pittsburgh Regional Office. Gerry's scholarship, leadership, and impartiality exemplify why the NLRB career employees have never been the targets of political attack as is often seen in other governmental agencies. I thank him for his efforts in guiding my edits and updates of this book. Former Regional Director (Newark) Gary Kendellan, although trained as a Field Examiner, possesses knowledge of Board practice and procedure unmatched by any attorney. His outstanding leadership in Newark and his work in revising the *NLRB Representation Case Manual* gave him great knowledge and perspective, which he willingly shared with me in reviewing parts of this book. Region 2 Deputy Regional Attorney Donald Zavelo and former Supervisory Attorney Stephen E. Appell, both outstanding trial lawyers and great friends, were very helpful in correcting some of the material and suggesting improvements to it. I am indebted to them all for their invaluable assistance. Remaining errors are mine alone. My appreciation is also extended to Anne Scott, BNA Senior Editor, whose patience, support, and outstanding editing were instrumental in bringing this project to a successful conclusion.

Finally, the one who provided the most insightful suggestions and brilliant editing is the person to whom this book is dedicated. A former NLRB attorney in Region 1 (Boston) whom I met on assignment from General Counsel William Lubbers in 1980 to negotiate, along with Deputy General Counsel John E. Higgins, Jr., with the NLRB employees' union issues surrounding the opening of the Hartford Regional Office. The president of the NLRB Union Local One at the time, who later became a leading arbitrator and mediator in New York City and Chair of the New York State Employment Relations Board and, most significantly, my wife, best friend, and mother to our four children, was Barbara C. Deinhardt. A public statement of profound appreciation only begins to repay the debt.

Daniel Silverman
April 2009

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When BNA approached me in 1993 about writing this book, I had no notion how big a part of my life it would become. I spent much of the next two years recalling my experiences as a National Labor Relations Board agent; catching up with developments since I had left the agency by reading every NLRB document I could get my eyes on (including more old and new cases than I could count); and finally writing, rewriting, and rewriting again. I decided early on that I would not track the time I spent on the project, and in retrospect I am glad that I do not know.

Thereafter, to keep it current, I continued to go through every NLRB document that was not locked in a safe, and analyzed the implications for practitioners of changes in NLRB procedures. Through five cycles, I offered biennial supplements. If the book was my baby—a baby with a two-year gestation period—by now it has reached adulthood.

But now, more than 15 years after I began this project, and more than 20 years after leaving the Agency, I know that I no longer have that “insider’s” perspective that I think is valuable for outsiders practicing before the Agency. So I realized, somewhat wistfully, like a parent watching his offspring leave home, that I needed to turn over the project to someone else to keep it current. I could not be more delighted that my friend Dan Silverman agreed to do so. But I wanted to retain a relationship with the book, and so I retained the authorship of Chapter 14, Procedural Aspects of Backpay and Compliance, and Chapter 15, Substantive Backpay Law and Implications.

And now, I would like to add a personal note. Passing on primary authorship of *Winning at the NLRB* to Dan Silverman was not the only milestone in my life in 2008, nor even the most important one: On October 9, 2008, I asked Deborah Moncrieff to be my wife, and she agreed. She is the love of my life, and I dedicate my portion of this book to Debbie, with all my heart.

Matthew M. Franckiewicz
April 2009

