Blog Post

The Table Is Yours: NLRB Protects Bold Bargaining as New Majority Ramps Up

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The National Labor Relations Board's recent decision in *Inland Waters* is significant for employers not only for what it says about bargaining proposals, but also for what it signals about the direction of federal labor law under the Board's emerging management friendly majority. In *Inland Waters Pollution Control, Inc.*, 375 NLRB No. 15 (July 29, 2026), the Board held that the mere act of making a bargaining proposal at the table does not constitute an unlawful threat under Section 8(a)(1) of the National Labor Relations Act. While the case also involved unfair labor practice findings against the employer for unlawfully discharging two employees who participated in a strike, the Board's treatment of the bargaining-proposal issue represents a significant and favorable clarification of the law for management. The decision effectively establishes that employers retain broad latitude to propose contract language during negotiations without automatically exposing themselves to independent unfair labor practice liability based solely on the content of a proposal.

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The *Inland Waters* Decision: What Happened

The case arose from a labor dispute at Inland Waters Pollution Control, Inc., a Detroit-area company engaged in the construction, service, and repair of underground sewer lines. Its approximately 70 full-time hourly employees were represented by Teamsters Local 247. In December 2020, during negotiations for a successor collective-bargaining agreement, the employer proposed adding language to the grievance and arbitration procedure that would give it discretion to impose disciplinary actions, including suspension or termination, against employees who filed grievances the employer deemed baseless, malicious, or harassing.

At the bargaining table, the employer's fleet manager explained that the language was necessary because the volume of grievances had become unmanageable. The employer's attorney directly told the union's chief steward that his grievance-filing activity was excessive and problematic, and instructed him to reduce what counsel characterized as frivolous grievances. The employer later withdrew the proposal by the end of the December 2020 bargaining sessions, and the language was not discussed again.

Separately, in April 2021, unit employees voted to reject the employer's final contract offer and went on strike. The employer subsequently discharged two employees, one for allegedly sending a racially offensive text message during the strike and another by characterizing his departure as a permanent replacement. The NLRB's General Counsel charged that both discharges were unlawful and that the bargaining proposal and accompanying statements independently violated Section 8(a)(1) by threatening employees' grievance-filing rights.

The Board's Ruling: Proposals Are Not Threats

An ALJ found violations on all counts. But in a 2-1 decision, Chairman Murphy and Member Mayer reversed on the bargaining-proposal issue, holding that the proposal and accompanying statements did not independently violate Section 8(a)(1). The Board did affirm that the two employee discharges were unlawful, but the bargaining-proposal ruling is the real headline for employers.

From there, the majority built its reasoning on longstanding labor policy. The Act is supposed to allow hard, candid, even uncomfortable conversations at the bargaining table. Citing the Supreme Court's recognition in *Letter Carriers v. Austin*, 418 U.S. 264, 273 (1974), that labor law favors uninhibited, robust, and wide-open debate, the Board made clear that parties do not need to sanitize their positions or couch proposals in diplomatic language to avoid liability. The majority also cited *Linn v. Plant Guard Workers of America, Local 114*, 383 U.S. 53, 58-61 (1966), and *Bettcher Mfg. Corp.*, 76 NLRB 526, 527 (1948), reinforcing that a frank exchange of views is expected if collective bargaining is to be natural rather than stilted.

The majority then turned to the employer's blunt statements at the table. The fleet manager called the grievances totally out of hand. The attorney called the chief steward's filings excessive and problematic. Rather than treating these as threats, the Board found they were characterizations of a bargaining position, made in the course of explaining why the employer wanted the contract language. The key distinction: the employer was explaining *why* it wanted certain provisions, not threatening to take unilateral action against employees outside the bargaining process. That line between advocacy and threat is the critical takeaway.

Chairman Murphy did flag one important limitation. An unlawful or aggressive proposal could still serve as evidence of bad-faith bargaining under Section 8(a)(5), even if it does not independently violate Section 8(a)(1). No such claim was at issue here, but employers should understand that this decision does not insulate them from surface-bargaining allegations if their overall conduct at the table demonstrates bad faith.

What This Means for Employers

Employers can take away real comfort from this decision. You can propose aggressive contract language, explain your rationale in blunt terms, and not worry that the proposal itself will be treated as a standalone unfair labor practice. The decision reinforces the bargaining table as a protected space for hard conversations that labor law has historically recognized.

That said, the decision has limits, and employers need to understand where the protection ends. The critical line is between advocacy and threats. Advocating for contract language at the table, even language affecting protected activity, is now more distinguished from an independent Section 8(a)(1) threat. But threatening to take unilateral action outside the bargaining process if employees exercise their rights remains unlawful. If you tell the union you want contract language limiting grievance filings, that is a proposal. If you tell an employee you will fire him for filing too many grievances regardless of what the contract says, that is a threat. The distinction sounds simple, but in the heat of bargaining, the line can blur quickly.

Employers should also remember that this decision protects the act of proposing, not the act of enforcing. You cannot unilaterally implement disciplinary policies targeting protected activity outside the collective bargaining process. And an aggressive proposal remains fair game as evidence in a surface-bargaining case under Section 8(a)(5) if the employer's overall conduct suggests it was never bargaining in good faith to begin with.

The practical guidance is straightforward: document the legitimate business reasons behind your proposals, consult labor counsel before putting sensitive language on the table, and keep the line clear between explaining why you want something in the contract and threatening what you will do if you do not get it. To discuss how this decision affects your bargaining strategy, connect with Akerman's Traditional Labor Law Team.
