

# Northern New England

## MONDAY MORNING MINUTE

January 12, 2015

### NLRB Upholds Subpoena of Employee Handbook

Section 7 of the National Labor Relations Act (“the NLRA”) affords employees the right to engage “...in concerted activities for the purpose of collective bargaining or other mutual aid or protection.” Regular readers of *The Monday Morning Minute* are already aware that the National Labor Relations Board (“the NLRB”) has taken a keen interest in reviewing the contents of employee handbooks for possible violations of Section 7 – and related Section 8(a)(1) – of the NLRA.

By Order dated December 31, 2014, issued in the context of a pending unfair labor practice case, the NLRB held that a Massachusetts employer had to comply with a Regional Director’s investigative subpoena for a copy of its employee handbook. *Allied Waste Services of Massachusetts, LLC*, NLRB, No. I-CA-123082. The unfair labor practice case involves the alleged unlawful termination of an employee. Although the employee has apparently not alleged that any particular handbook provision is illegal, the Regional Director defended the subpoena by arguing that the handbook may provide information relating to the employee’s termination and/or the employer’s disciplinary procedures in general. The NLRB accepted the Regional Director’s “legitimate position” and rejected the employer’s characterization of the subpoena as a “fishing expedition” searching for an infringement on employee rights. Two members of the NLRB did, however, caution the Regional Director that such subpoenas may not be used for the purpose of initiating or expanding claims against an employer.

The NLRB’s decision reflects its continued interest in employee handbooks - in this case, as a potential source of evidence of an unfair labor practice. Employers are well advised to continue to review, and when necessary update, employee handbooks with this case, and other recent NLRB decisions, clearly in mind. *For further information regarding this case, or any other labor and employment law matters, please contact the attorneys in the Portsmouth, New Hampshire office of Jackson Lewis P.C.*

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