



Pennsylvania Conference of Teamsters

Strength in Numbers 95,000

LEGISLATIVE ACTION ALERT

William Hamilton, President & Eastern PA Legislative Coordinator – Carl Bailey, Secretary-Treasurer & Western PA Legislative Coordinator -Tim O'Neill, Consultant – Dan Grace, Trustee & Legislative Advisor - Tom Kohn, Esq. Legal Advisor - Thomas Felice, Staff



NATIONAL LABOR
RELATIONS BOARD

Board Revises Standard on Employers' Duty to Bargain Before Changing Terms and Conditions of Work

Office of Public Affairs- August 30, 2023

Today, the NLRB issued two full-Board decisions, [Wendt Corporation](#) and [Tecnocap, LLC](#), (both decided on August 26, 2023), addressing the statutory duty of employers to bargain with unions before making changes in terms and conditions of work.

In *Wendt*, the Board overruled *Raytheon Network Centric Systems* (2017), which had given employers greater latitude to make unilateral changes affecting a unionized workforce during a contractual hiatus or during negotiations for a first contract. The Board explained that allowing employers to justify discretionary unilateral changes during such time periods as a “past practice” was both inconsistent with the Supreme Court’s decision in *NLRB v. Katz*, 369 U.S. 736 (1962) and undermined the pro-bargaining policies of the National Labor Relations Act. The Board in *Wendt* also reaffirmed the longstanding principle that an employer may never rely on an asserted past practice of making unilateral changes *before* employees were represented by a union (when the employer had no duty to bargain) to justify unilateral changes after the workers select a bargaining representative.

In *Tecnocap*, the Board overruled a different aspect of *Raytheon* that had not been addressed in *Wendt*. The Board held that an employer’s past practice of unilateral changes that was developed under a management-rights clause in a collective-bargaining agreement cannot authorize unilateral changes made after the agreement expires and while bargaining for a new agreement is under way. The Board explained that the *Raytheon* holding harmed the collective-bargaining process in two ways: It forced unions to bargain to regain terms of employment lost to post-expiration unilateral changes, and it discouraged unions from agreeing to management-rights clauses in the first place.

“Our decision today returns to a more faithful application of Supreme Court precedent. By protecting employees who have chosen a union representative from being subject to discretionary unilateral changes in their terms and conditions of employment without bargaining, the policy we announce today better promotes the collective-bargaining process that lies at the core of the National Labor Relations Act,” said Chairman Lauren McFerran.