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NLRB Issues Updated "Bench Book" For Its Judges

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David J. Pryzbylski
Partner

The National Labor Relations Board (NLRB), like many federal agencies, has its own division of "administrative law judges" that preside over cases brought to the agency. In fact, the NLRB takes most of its actions through individual case adjudication versus administrative rulemaking. On Feb. 2., the NLRB announced that its Judges Division issued an updated "Bench Book," which provides guidance to the board's administrative law judges in terms of running unfair labor practice hearings. Unfair labor practice hearings are trials in which employers and unions defend themselves against alleged violations of the National Labor Relations Act. The NLRB's announcement describes the Bench Book as follows: "The Bench Book serves as an NLRB Trial Manual, and is designed to provide NLRB judges with a reference guide during unfair labor practice (ULP) hearings. It is also a tool for trial practitioners before the Board because it sets forth Board precedent and other rulings and authorities on certain recurring procedural and evidentiary issues that may arise during a hearing." The topics in the Bench Book are far reaching. They include guidance on everything from pleadings to subpoenas to evidentiary issues to settlement procedures. The agency's press release summarized the updates: "The basic sources that govern Board ULP hearings are the National Labor Relations Act (the Act), the Administrative Procedure Act (APA), the Board's Rules and Regulations and Statements of Procedure, and Board decisions. The Board also applies, so far as practicable, the Federal Rules of Evidence (FRE), and frequently seeks guidance from the Federal Rules of Civil Procedure (FRCP). All citations in the Bench Book to the Board's Rules and Regulations and Statements of Procedure, the FRE, and the FRCP have been updated to reflect the most recent amendments. This edition of the Bench Book incorporates changes made by the new procedural rules published by the Board in February and September 2017. It also incorporates the amendments to FRE 902 regarding the self-authentication of electronic records or data, which became effective December 1, 2017." Anyone who handles charges before the NLRB should consider reviewing the Bench Book prior to any proceedings before an administrative law judge to ensure they are up to date on this latest guidance. Reviewing the agency's manuals on case handling also is a best practice.

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