

## **NLRB Overrules Anheuser-Busch: Witness Statements Now Subject to Disclosure**

---

Feyi Obafemi • 215.665.5510 • [oobafemi@cozen.com](mailto:oobafemi@cozen.com)

Jeffrey I. Pasek • 215.665.2072 • [jpasek@cozen.com](mailto:jpasek@cozen.com)

Last year, we notified you [here](#) that the National Labor Relations Board will now consider a general employer rule requiring confidentiality during an internal investigation into an employee complaint to be an unfair labor practice. The Board has now taken things even further.

In *American Baptist Homes of the West d/b/a Piedmont Gardens*, the NLRB overruled a longstanding, bright-line rule that precluded union access to witness statements obtained by unionized employers during workplace investigations of employee misconduct. For approximately 34 years, the Board consistently held, pursuant to its decision in *Anheuser-Busch, Inc.*, that witness statements are automatically protected from disclosure. However, the present Board has shunned the *Anheuser-Busch* rule, adopting instead a balancing test that generally makes witness statements accessible to union leaders upon request.

In rejecting the *Anheuser-Busch* rule, NLRB Chairman Mark Gaston Pearce and Members Richard F. Griffin and Sharon Block held the rationale of *Anheuser-Busch* to be flawed. They stated that the Board is now “not persuaded that there is some fundamental difference between witness statements and other types of information that justifies a blanket rule exempting statements from disclosure.”

Accordingly, employers can no longer simply refuse to produce witness statements. If the statements are necessary and relevant to a union’s representational role, they must be disclosed. Any employer objecting to disclosure bears the burden of establishing “legitimate and substantial confidentiality

interests” that outweigh the union’s need for the relevant information. In addition, the employer has a duty to raise its concerns regarding confidentiality in a timely fashion and seek an accommodation from the union. This new rule is to be applied prospectively.

Member Brian E. Hayes dissented, noting that the Board’s decision will interfere with an employer’s ability to conduct thorough and effective workplace investigations. He highlighted the importance of protecting employee-witnesses from coercion and intimidation by preserving the confidentiality of their statements. He also predicted that the new rule will lead to an unnecessary increase in NLRB litigation.

A question that the Board is yet to address is whether the new *Piedmont Gardens* rule applies bilaterally to a union’s obligation to produce witness statements. In decisions issued prior to *Piedmont Gardens*, the Board stated that a union’s duty to furnish information is parallel to that of an employer. Therefore, an employer conducting workplace investigations may be able to use the new rule to its advantage by reversing the order and requesting from the union statements made by union witnesses.

---

*To discuss any questions you may have regarding the opinion discussed in this Alert, or how it may apply to your particular circumstances, please contact:*

Feyi Obafemi at [oobafemi@cozen.com](mailto:oobafemi@cozen.com) or 215.665.5510

Jeffrey I. Pasek at [jpasek@cozen.com](mailto:jpasek@cozen.com) or 215.665.2072

---

Atlanta • Charlotte • Cherry Hill • Chicago • Dallas • Denver • Harrisburg • Houston • London • Los Angeles • Miami  
New York • Philadelphia • San Diego • Seattle • Toronto • Washington, D.C. • West Conshohocken • Wilkes-Barre • Wilmington