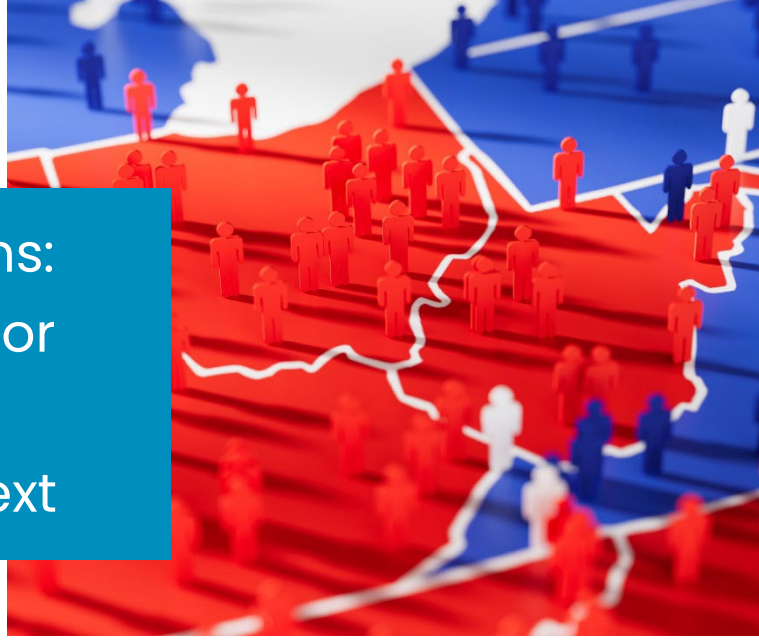
HAYNES BOONE



Labor and the 2026 Midterms: Impacts to the National Labor Relations Board and What Employers Should Expect Next

November 2026

Executive Summary

Democrats rode a blue wave to a decisive victory at the 2026 midterm elections. They won key races across the United States, including in states that had been viewed as safely Republican for decades. They gained control of both the House and the Senate and, when all the votes are counted, are expected to have a 55- to 56-seat majority in the Senate and at least a 255-seat majority in the House.

Labor unions were active participants in many of these Democratic campaigns and will read the results as an opportunity to expand their influence in traditionally non-union states where they saw electoral success (including Texas, South Carolina, Kansas, Mississippi, Georgia and North Carolina). Additionally, the newly elected legislators may attempt to overhaul federal labor policy by adopting portions of the PRO Act and/or the Faster Labor Contracts Act. Further, the midterms could provide an impetus for a bipartisan overhaul of the National Labor Relations Act whose constitutionality has come into question following several high-profile challenges.

The pendulum will not immediately swing towards union-friendly policy, though. The National Labor Relations Board still has a Republican majority and a Trump-appointed General Counsel, and President Trump has already reminded Congress of his veto power.

Key Takeaways

- **The Labor Board's window is closing:** The Republican-majority Labor Board is expected to overturn as many Biden-era precedents as it can before Chairman Murphy's term expires in December 2027. Any precedent not overruled by then will likely remain in place until at least 2029.
- **The full PRO Act is unlikely, but narrower bills have momentum:** The filibuster and the veto make the PRO Act a long shot as written. The bipartisan Faster Labor Contracts Act, which would impose bargaining deadlines and binding first-contract arbitration, is the proposal employers should watch most closely.
- **A bipartisan NLRA overhaul is possible:** Constitutional challenges to the NLRB's structure and a growing populist wing of the Republican Party could open the door to structural reform, such as specialized labor courts, that would reshape labor law for decades.
- **Expect more organizing, especially in the South:** Unions are poised to turn their election momentum and campaign infrastructure into organizing drives in traditionally non-union states. Employers should prepare now by auditing their facilities, training supervisors and engaging in the legislative process.

© 2026 Haynes and Boone, LLP

The Election

Republicans entered Election Day with narrow majorities in both the Senate and the House. Democrats have now won control of both chambers. They flipped eight Senate seats (Kansas, Iowa, Texas, Maine, Ohio, North Carolina, South Carolina, and Mississippi) for a projected 55[1]-44 Senate. The Alaska race with a Republican incumbent is still uncalled. In the House, Democrats had a net gain of at least 42 seats with several races still uncalled.

Analysts attributed the results largely to concerns about affordability, rising gas prices and voter dissatisfaction over the Iran war. Labor framed the election around similar themes. Following the election, AFL-CIO President Liz Shuler characterized the results as a clear mandate from working people, who she said want their elected leaders to raise wages, lower costs, expand access to health care and unions and hold corporate executives accountable.

Many of the elected candidates openly courted union members and received significant support from union organizations. For example, UAW President Shawn Fain went on the campaign trail with Abdul El-Sayed in Michigan, and the UAW's political action committee spent more than $3 million on elections. During an interview with Fain, El-Sayed gave voters a preview of his pro-union agenda, "Michigan's next United States senator needs to be fighting for unions, needs to be fighting for working people, needs to be fighting for guaranteed healthcare, needs to be fighting for childcare and senior care, needs to be fighting to hold corporations accountable."

In Texas, both Senator-elect James Talarico and Governor-elect Gina Hinojosa were members of the Texas State Employees Union, and the Texas AFL-CIO has openly touted its extensive work to get Talarico and Hinojosa elected:

> "Together we organized the largest midterm mobilization in Texas Union history. We hit the pavement and the phones across the state—knocking on over 50,000 doors, making over 233,000 calls, sending 510,000 texts, and mailing 280,000 local union letters to voters across the state."

Nationwide, the AFL-CIO mobilized its resources to elect union-friendly candidates. It invested heavily in paid advertisements targeting union members and claims that tens of thousands of its volunteers reached more than 16 million voters in the days leading up to the election. Across all races on the federal and state level at least 639 union members were elected this November.

AFL-CIO President Shuler summed up the election results stating, "This blue wave was union-made."

The Labor Board

The National Labor Relations Board is an independent federal agency that enforces the National Labor Relations Act. It is a bifurcated agency that is made up of a five-member Labor Board that acts as a quasi-judicial body in deciding cases and a General Counsel whose office is responsible for the investigation and prosecution of unfair labor practice cases and for the general supervision of NLRB field offices in processing cases. Labor Board decisions and policies are increasingly politicized, and the law can swing drastically from one administration to the next.

---

1 The Democratic total includes two independents.

© 2026 Haynes and Boone, LLP

The Labor Board Will Continue Overruling Pro-Union Precedent

The NLRB is currently in the process of undoing pro-union precedent issued by the Biden-era Labor Board.

The NLRB's General Counsel, Crystal Carey, recently issued a General Counsel Memorandum identifying the Biden-era decisions she is already asking the Labor Board to overrule or plans to challenge, including:

- ***Cemex*** (2023), the framework requiring an employer to recognize a union or promptly file its own election petition, with a bargaining order as the likely remedy for election-tainting unfair labor practices.
- ***Amazon*** (2024), which barred mandatory captive-audience meetings.
- ***Stericycle*** (2023), the work-rule standard governing handbook policies.
- ***McLaren Macomb*** (2023), which limited confidentiality and non-disparagement provisions in severance agreements.

A General Counsel memo, alone, does not overturn precedent or change the law. Until the Labor Board rules, the Biden-era standards remain binding, and regional offices continue to apply them.

The NLRB currently has a 3-1 Republican majority with one vacancy. The current members and terms are:

Member	Party	Term Expires
James R. Murphy (Chairman)	Republican	Dec. 16, 2027
Scott A. Mayer	Republican	Dec. 16, 2029
James Macy	Republican	Aug. 27, 2030
David Prouty	Democrat	Aug. 27, 2031
Vacant seat	—	—

While it only needs three members to operate, by long-standing practice, the Board does not overrule precedent without three affirmative votes. Chairman Murphy and Member Mayer committed to follow that practice during their confirmations. As a result, the 2-1 Republican Board that sat from January to August 2026 did not overrule any Biden-era precedent, although its members flagged in footnotes the decisions they wanted to revisit. James Macy's swearing-in on Aug. 17, 2026, supplied the third Republican vote needed to overturn precedent and Chairman Murphy recently stated that the process to reconsider Biden-era precedent is "already underway." However, in essence, in the nearly two years of the second Trump administration there has been little to no change to the Biden-era precedents and, for reasons discussed below, there may not be that much time left for the current Board to make many changes.

Impact of the Midterms

There is currently one open position on the Labor Board. President Trump could nominate someone to fill that position at any time, but, starting in January 2027 a newly Democratic Senate would be in charge of confirming his nominees. While it is possible for the lame-duck Republican Senate to confirm a new Labor

© 2026 Haynes and Boone, LLP

Board nominee in the next two months, this is unlikely given the Republicans' more pressing priorities, including their desire to confirm a backlog of federal judges.

This means that the Republicans will likely lose their three-member majority when James Murphy's term expires in December 2027. While the Labor Board can continue to function, it is unlikely to depart from tradition and overrule precedent. Conformation of a pro-business Labor Board nominee will be unlikely since the stagnation actively favors unions who do not want to see the current pro-union precedent overturned. Over the next year, employers should expect the Labor Board to overturn as many Biden-era decisions as possible while the 3-1 majority remains in place. If any Biden-era decisions are not overruled by December 2027, they will likely remain in place until at least 2029 (and possibly even longer depending on the outcome of the 2028 Presidential election).

Democratic control of the congressional committees with jurisdiction over labor policy will also potentially bring hearings on NLRB enforcement priorities, case-processing practices and the General Counsel's settlement initiatives. Appropriations negotiations will also give Congress leverage over the agency's budget and staffing.

Legislation

Democrats will control both chambers of Congress in January 2027, yet the Senate filibuster and the President's veto power remain significant obstacles to sweeping pro-union reform.

The PRO Act

For years, congressional Democrats have tried to pass the Richard L. Trumka Protecting the Right to Organize (PRO) Act, which was designed to expand workers' rights to form unions and collectively bargain. As written, the entire PRO Act has no realistic path to enactment even though its biggest champion Senator Bernie Sanders is now poised to take over as chairman of the Senate Health, Education, Labor and Pensions (HELP) Committee.

A 55- (or even a 56-) seat Democratic majority cannot overcome a filibuster without Republican votes, and the President would almost certainly veto the PRO Act. The bill bundles several provisions that Republicans have consistently opposed, including overriding state right-to-work laws, banning so-called captive-audience meetings, adopting the strict "ABC test" to determine employee/independent contractor status and expanding paths to certification without an election.

That does not mean that portions of the act will not have legs. Narrower, targeted amendments to the NLRA have drawn real Republican support, mainly from populist members and members with significant union constituencies such as Republican Senators Josh Hawley and Bernie Moreno who will both remain in office in the next Congress. These are the proposals employers should watch most closely. Additionally, while President Trump has said he expects to veto legislation he opposes, he has also suggested that, after an initial period of vetoes, Congress and the White House may ultimately negotiate and work together on legislation.

The Faster Labor Contracts Act

The Faster Labor Contracts Act would amend Section 8(d) of the NLRA to address delays in reaching a first contract. It would require the following:

© 2026 Haynes and Boone, LLP

- Bargaining must begin within 10 days after the employer receives a written request from a newly recognized or certified union.
- If no agreement is reached within 90 days, either party may request mediation through the Federal Mediation and Conciliation Service.
- If mediation fails after another 30 days (or a longer period the parties agree on), the dispute goes to binding arbitration before a three-member panel.
- The resulting contract binds the parties for two years unless they agree to amend it.

The bill's political profile sets it apart from the PRO Act. On June 9, 2026, the House passed it (H.R. 5408) by a vote of 230-193, with 20 Republicans joining every Democrat and 17 Republican cosponsors. In the Senate, Republican Josh Hawley (Mo.) introduced a companion measure alongside Democrats Cory Booker (N.J.) and Jeff Merkley (Or.) and Republicans Bernie Moreno (Ohio) and Roger Marshall (Kan.) as cosponsors. While the bill has already gained bipartisan support, it will still need to clear the 60 votes necessary to overcome a filibuster.

Why This Matters: For employers, the Faster Labor Contracts Act would be a significant shift. Strict bargaining deadlines would limit an employer's ability to control the pace of first-contract negotiations, and binding arbitration would allow a third-party panel to impose wages, benefits and other terms the employer never agreed to. Newly organized employers could face a two-year contract shaped largely by arbitrators. At the same time, the bill is not an unqualified win for unions. Interest arbitration takes the final outcome out of the union's hands as well, so a panel could impose terms weaker than what the union might have secured through bargaining or economic pressure, such as a strike. Arbitrated contracts may also leave members dissatisfied, weaken the perceived value of the union and set modest terms that become the baseline for future negotiations.

Complete NLRA Overhaul

Although the complete PRO Act is unlikely to pass, the new Congress could create an opening for a more fundamental, bipartisan overhaul of the NLRA. Two dynamics make this possibility more realistic than it has been in decades.

Republicans May Be Willing to Work Across the Aisle: A growing populist wing of the Republican Party has openly embraced parts of labor's agenda. Senator Josh Hawley is the most prominent example: he sponsors the Senate version of the Faster Labor Contracts Act and has been spotted on both UAW and Teamster picket lines in 2023 and 2024. Republicans have also been making increasingly public appeals to working class voters and their midterm losses have been characterized as a wake-up call to focus on the kitchen-table issues driving this voting bloc. Lastly, the Democrats' historic midterm gains mean that only a few Republican Senators would need to defect to enact a change, and they may be encouraged to do so in order to have a seat at the table when crafting potential legislation.

Democrats May Be Willing to Make Concessions: The constitutionality of the NLRB's structure is under serious challenge. Employers have argued in several high-profile cases that the removal protections for Board members and administrative law judges are unconstitutional and that the agency's combination of investigative, prosecutorial and adjudicative functions violates due process. If the courts continue to chip away at the current structure, Democrats and unions risk losing an effective enforcement mechanism altogether. That risk gives Democrats a strong incentive to accept structural compromises in exchange for a durable, constitutionally sound framework.

© 2026 Haynes and Boone, LLP

What an Overhaul Could Look Like: One option would be to move adjudication of unfair labor practice cases out of the NLRB and into specialized, independent labor courts. Those courts could be staffed by Article I judges who serve fixed, lengthy terms and are insulated from shifting political control. A dedicated labor court could address many of the constitutional objections to the current system, reduce the policy swings that occur with each new administration and give employers and unions more predictable, precedent-driven decisions. The NLRB's remaining functions, such as conducting representation elections and investigating charges, could continue in a more limited form.

Any overhaul of this scale would face difficult negotiations over substantive labor rights, the scope of the courts' jurisdiction and the selection of judges, and it would still need the President's signature. But because it would offer something to each side, stability and constitutional certainty for labor and Democrats and a neutral, less politicized forum for employers and Republicans, a structural overhaul may have a better chance of attracting bipartisan support than the PRO Act. Employers should monitor any discussions closely and work with their government affairs teams and/or various business associations (such as the U.S. Chamber) as they could reshape labor law for decades.

Implications for Organizing Activity

The 2026 midterms showed that Democrats could win in areas previously considered to be Republican firewalls. They did this even while candidates openly touted their union membership and support in states with low unionization rates, right-to-work laws and pro-business work environments.

For example, in Texas, James Talarico posted on X, "Before I was a politician, I was a proud union member. I'm honored to stand with my union brothers and sisters on Labor Day and every day." Similarly, in South Carolina, Annie Andrews said that she stands with the labor movement and joined with several union representatives to recognize Labor Day. Andrews' comments stand in stark contrast to ones made by South Carolina's former governor, Nikki Haley, in 2013 when she famously said, "I wear heels. And it's not for a fashion statement. It's because we kick. We kick those unions hard. And they will not step foot in the state of South Carolina."

Statewide wins by labor-backed candidates send unions and workers a message that organizing is viable and politically supported. Employers should expect unions to be empowered by these election results and double down on their plans to organize the South and other parts of the country. For years, polls have suggested increasingly positive general support for unions but that hasn't necessarily translated into an increase in the number of individuals who are unionized as just 5.9 percent of private sector employees belong to a union.

Unions can try to reverse that trend by leveraging their election campaign infrastructure into organizing tools. When working to get their preferred candidates elected, unions deliberately canvassed nonunion working-class voters, not just members. Contact lists, trained volunteers and worker-to-worker networks built for an election can be redirected to workplace campaigns.

In short, unions now have the momentum and much of the infrastructure in place to help them achieve the AFL-CIO's stated goal of organizing at least 2 million new members over the next five years.

© 2026 Haynes and Boone, LLP

Recommendations for Employers

1 Monitor Labor Board Decisions and Comply With Current Law:
Biden-era precedent remains binding until the Labor Board formally overrules it. Given the likely one-year window to reverse precedent, expect rapid-fire decisions over the next year followed by stagnation. It is possible that not everything will revert to a more employer-friendly precedent during this administration, so proceed with caution when changing policies.

2 Prepare for Increased Organizing Activity:
Conduct pre-campaign vulnerability audits for your facilities. Identify voter-list data sources and owners. Train supervisors and managers on lawful campaign conduct and communications. Prepare security and communications protocols for handbilling, demonstrations and social media. Assess temporary and staffing agency workforce issues and joint-employer exposure. Build relationships with community, business and civic leaders.

3 Prepare for Possible First-Contract Legislation:
Unionized employers and employers facing active campaigns should assess how bargaining deadlines and binding first-contract arbitration under the Faster Labor Contracts Act would affect their negotiating strategy and should monitor the bill when the new Congress convenes.

4 Work With Your Government Relations Teams and Business Associations:
If Congress seizes the moment and attempts to overhaul the NLRA, work with your government relations teams and business associations such as the U.S. Chamber to advocate your positions and interests.

Conclusion

The 2026 midterms have given organized labor a stronger political position. Over the next year, the Republican-majority Labor Board is expected to overturn as many Biden-era precedents as it can before Chairman Murphy's term expires in December 2027. The PRO Act is unlikely to become law as written, but narrower measures like the Faster Labor Contracts Act, and, potentially, a bipartisan overhaul of the NLRA, could reshape federal labor law. Meanwhile, unions are poised to turn their election momentum and campaign infrastructure into organizing drives. Employers that prepare now, by auditing their policies, preparing for increased organizing activity and engaging in the legislative process, will be best positioned to adapt to a shifting landscape.

If you have any questions about the developments covered in this article, please let us know.



DEREK LIPSCOMBE
Partner | Dallas
derek.lipscombe@haynesboone.com
T +1 214.651.5312



ALEX PRATT
Partner | Dallas
alex.pratt@haynesboone.com
T +1 214.651.5372

This paper is for informational purposes only. *It is not intended to be legal advice. Transmission is not intended to create and receipt does not establish an attorney-client relationship. Legal advice of any nature should be sought from legal counsel.*

© 2026 Haynes and Boone, LLP