

David B. Kern

Retired Partner

David Kern practiced in the area of labor and employment law. His practice included an emphasis on collective bargaining, grievance arbitration, discrimination litigation, and employer counseling. He represented clients in state and federal courts and before the National Labor Relations Board, the Wisconsin Equal Rights Division, the Equal Employment Opportunity Commission, and other state and federal agencies. Mr. Kern's experience includes:

- Successful negotiation of a multi-year collective bargaining agreement on behalf of a major Milwaukee manufacturer, which included the elimination of retiree insurance benefits and other significant changes.
- Representation of a large utility in a National Labor Relations Board proceeding, in which it was determined that a number of employees were supervisors and therefore ineligible to organize under the National Labor Relations Act.
-

Successful negotiation of a collective bargaining agreement containing significant concessions, which was a condition of the purchase of a manufacturing facility in Illinois.

•

Successful defense of a federal court action by a union seeking to compel grievance arbitration of disputes under an employer's retirement plan.

•

Successful representation of a multistate employer in connection with two union decertification elections at its Illinois and Wisconsin facilities.

Education and Honors

- University of Michigan Law School (J.D., *magna cum laude*, 1979)
- Marquette University (B.A., *summa cum laude*, 1976)
 - Phi Beta Kappa
 - Alpha Sigma Nu

Court Admissions

- U.S. District Court, Eastern District of Wisconsin
- U.S. District Court, Western District of Wisconsin
- U.S. Court of Appeals, 7th Circuit
- U.S. Court of Appeals, 10th Circuit



david.kern@quarles.com

Milwaukee Office

Tel: (414) 277-5653

Fax: (414) 978-8653

Mobile: (414) 690-5407

- U.S. Court of Appeals, District of Columbia Circuit
- U.S. Supreme Court

Professional and Civic Activities

- American Bar Association (Member, Labor Law Section)
- ABA Committee on Development of the Law under the National Labor Relations Act (Member)
- ABA Committee on Equal Employment Opportunity (Member)
- State Bar of Wisconsin (Member; Former Member, Board of Directors, Labor and Employment Law Section)
- Juvenile Diabetes Research Foundation – Southeastern Wisconsin Chapter (Board Member, 1993–1999, 2001–2005; President of the Board, 2002–2004; Nominating Committee Member, 2007, 2009, 2010, 2014)
- National Labor Relations Board, Sub-Region 30 (Member, Policies and Procedures Committee)
- City of Wauwatosa, Board of Zoning Appeals (Member).
- Marquette University Alumni Association Student Mentor Program (2014-2015)
- Marquette University Law School, Labor and Employment Law Society Mentor Program (2007-present)
- Milwaukee County Personnel Review Board (Member, 2018-present)


Professional Recognition

- Recognized as Best Lawyers® 2013, 2019 Milwaukee Labor Law – Management "Lawyer of the Year"
- Recognized as Best Lawyers® 2012, 2014 Milwaukee Employment Law – Management "Lawyer of the Year"
- Listed in The Best Lawyers in America® (1993–2016: Employment Law – Management; Labor Law – Management; Litigation – Labor & Employment)
- Listed in Chambers USA® (2003–2017: Band 1, Labor & Employment – Wisconsin)
- Selected for inclusion in the 2005–2016 Wisconsin Super Lawyers® lists (Employment & Labor)
- Martindale-Hubbell AV® Preeminent Peer Review Rated
- Fellow, The College of Labor and Employment Lawyers (2013-2018)

Success Stories

Negotiating Early Contract Extension for Major Defense Contractor

We successfully represented a major defense contractor in early contract extension negotiations tied to a major effort to win additional work for the employer's unionized facility in Wisconsin. We developed a strategy to



persuade the union to come to the table three years prior to contract expiration, and to consider significant concessions in return for a commitment to perform the work at that location. The union was naturally reluctant to commit to a long extension, and we assisted the client in exploring other incentives to create a true win-win opportunity for both sides. This involved not simply pitting a union location against a non-union location, but demonstrating that the concessions sought by the company were supported by comparables in the market. The client ultimately achieved a five-year contract extension, assuring it eight years of labor peace and a labor cost and benefit structure that would enable it to submit a competitive bid to the government.

Negotiating Changes to Local UAW Labor Agreement

We assisted a major Milwaukee-area manufacturer in negotiating significant changes to its labor agreement with the United Automobile Workers. These involved streamlining leave procedures, reducing overtime costs, and eliminating retiree insurance benefits, among others. Our work focused on developing the bargaining strategy, representing the company at the table, developing employee communications, and demonstrating through appropriate benchmarking that the changes sought by the company were consistent with prevailing wages and benefits in the market. We also developed and successfully negotiated new contract language to address and anticipate changes resulting from the Affordable Care Act. We ultimately succeeded in obtaining a five-year contract without a work stoppage, which has already paid dividends in the form of bringing additional work, which had been performed off shore, back to the Milwaukee area.

Publications and Presentations

08/30/16

New School Year Brings New Bargaining Units—NLRB Rules That Student Teaching Assistants Can Unionize

Labor & Employment Alert

07/26/16

"Your Agency Temps Can Now Form A Bargaining Unit With Your Own Employees"

TLNT

07/14/16

NLRB Gives Unions Another Win, Permitting Outside Temporary Employees to Vote in Union Elections

Labor & Employment Alert

04/11/16

Wisconsin's Right to Work Law Struck Down By Dane County Judge

Labor & Employment Alert

03/25/16

The Department of Labor Revises Its Rule Regarding "Persuader" Agreements - New Rule Likely to Draw Court Challenges

Labor & Employment Alert

03/09/16

Who Wants to Be a Whistleblower? OSHA's New Whistleblower Investigations Manual Makes It Easier to Be a Whistleblower

Labor & Employment Alert

01/28/16

The Department of Labor is at it Again: DOL's New Interpretation Makes Joint Employment "As Broad As Possible" Under FLSA

Labor & Employment Alert

01/28/16

Department of Labor Issues Guidance on Joint Employment Under the FLSA

Franchise & Distribution Law Alert

01/27/16

"Franchisors: Take Note of New Joint Employment Guidance"

Franchise Law Insider

11/11/15

"NLRB Finds No Joint Employment Relationship In First Test Since Browning-Ferris"

Franchise Law Insider

09/01/15

National Labor Relations Board Adopts New Joint Employer Standards - Broad New Test Likely to Draw Legal Challenges

Labor & Employment Law Alert

04/06/15

Wisconsin Supreme Court Denies Unpaid Meal Period Claims - Court Defers To DWD Ruling That "Technical" Violation Did Not Justify Relief

Labor & Employment Law Alert

03/25/15

Employers Take Note: NLRB Finds Common Handbook Policies Unlawful

Labor & Employment Law Alert

03/09/15

Wisconsin Enacts Right to Work Law: Practical Consequences for



Wisconsin Employers

Labor & Employment Law Alert

03/02/15

Wisconsin Poised to Adopt Right to Work Law: Practical Consequences for Wisconsin Employers

Labor & Employment Law Alert

02/12/15

"A Supersized Mess? How the NLRB's Recent Attempts to Deem McDonald's a Joint Employer Could Affect Franchising and Your Business"

Quarles & Brady Business Law Training

12/17/14

NLRB Issues Final Rules Allowing "Quickie Elections"

Labor & Employment Law Alert

12/16/14

NLRB Rules That Employers' Private Email Systems Aren't So Private Anymore

Labor & Employment Law Alert

06/27/14

The Supreme Court Invalidates President Obama's NLRB Recess Appointments

Labor & Employment Law Alert

05/06/14

"Recent Developments Under the National Labor Relations Act"

Midwest Utility Group

02/07/14

NLRB Reissues Rules Expediting Union Elections

Labor & Employment Law Update

12/02/13

Employer and Employee Rights and Responsibilities Regarding Social Media

2013 Employment Law Update, State Bar of Wisconsin

10/03/13

"Navigating Risk In The NLRA Minefield"

Quarles & Brady Annual Labor & Employment Symposium: Navigating The Straits of Employment Law

09/01/13

Navigating Risk in the NLRA Minefield

Quarles & Brady LLP Annual Labor and Employment Symposium

06/13/13

Conducting Effective Employment Investigations

Client Webinar

12/20/12

NLRB Reverses Longstanding Rule on Union Dues Checkoff

Labor & Employment Law Update

11/28/12

Social Media and the Workplace: Hidden Dangers for Employers

Wisconsin Hospital Association

10/09/12

Collective Bargaining and the Affordable Care Act

Labor & Employment Law Update

09/24/12

Common Employer Work Rules Found Unlawful

Labor & Employment Law Update

05/16/12

NLRB Temporarily Suspends New Union Election Rules

Labor & Employment Law Alert

05/01/12

NLRB's Rule Expediting Union Elections Becomes Effective

Labor & Employment Law Alert

04/17/12

April 30 NLRB Posting Rule on Hold - Court Delays Indefinitely

Labor & Employment Law Alert

03/05/12

Federal Court Partially Rejects Challenge to NLRB Posting Rule

Labor & Employment Law Alert

01/02/12

Successfully Negotiating Your Labor Agreement: Strategies that Work, and Traps to Avoid

Quarles & Brady LLP program

12/28/11

NLRB Issues Rules Expediting Union Elections and Again Postponing Notices

Labor & Employment Law Alert

10/13/11

The "New" NLRB and Its Impact on Wisconsin Employers

2011 Wisconsin State SHRM Conference

10/10/11

NLRB Postpones Implementation of Union Organizing and Rights Posting Rule

Labor & Employment Law Update

10/04/11

Update on NLRB Union Organizing and Rights Posting Requirement

Labor & Employment Alert

08/26/11

NLRB Issues Final Rule Requiring Employers To Post Notice of Union Organizing and Other Rights

Labor & Employment Law Update

06/28/11

"The 'New NLRB' and Changes in Labor Law"

Quarles & Brady Labor & Employment Seminar

06/23/11

New Rules Proposed for Faster Union Elections and Broader Coverage of "Persuader" Reporting Requirements

Labor & Employment Update

05/18/11

Watch Out: Here Comes the "New" NLRB

Labor & Employment Alert

04/25/11

Federal Court Recognizes Employer's Right to Modify Retiree Insurance Benefits

Labor & Employment Law Alert

12/23/10

NLRB Proposes Rule Requiring Employers to Post Notice of Union Organizing and Other Rights

Labor & Employment Law Alert

09/16/10

Living with a Nurses Union: Lessons Learned from the Twin Cities

Wisconsin Hospital Association Annual Convention presentation

05/19/10

WFEA Expands Again: Religious, Political and Union Rights Involved

Labor & Employment Alert

03/30/10

Obama Administration Appoints Two Union Lawyers to NLRB

Labor & Employment Update

02/11/10

Court of Appeals Recognizes Potential "Bad Faith" Claim Arising Out of At-Will Employee Termination

Labor & Employment Alert

12/14/09

Wisconsin Business Closing Law Amendments Require Additional Information to Affected Employees

Labor & Employment Law Update

08/20/09

Federal Contractors, Subcontractors and Suppliers Beware: Proposed Notice of Employee Unionization Rights Exceeds Expectations

Labor & Employment Update

07/09/09

Court Of Appeals Reverses NLRB On Union Email Solicitations

Labor and Employment Alert

06/12/09

Court Strikes Down Milwaukee Paid Sick Leave Ordinance

Labor & Employment Alert

04/06/09

Proposed Rules for Milwaukee Sick Leave Ordinance Issued While Injunction Remains In Effect

Labor & Employment Alert

02/09/09

Injunction Prevents Implementation Of Milwaukee Paid Sick Leave Ordinance

Labor & Employment Alert

01/02/95

Wisconsin Employment Law, Supplements/New Editions, Co-author

State Bar of Wisconsin

01/03/94

Wisconsin Employment Law, Co-author

State Bar of Wisconsin