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# United States Senate

COMMITTEE ON HEALTH, EDUCATION,  
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

September 24, 2025

## VIA ELECTRONIC TRANSMISSION

The Honorable Kathy Hochul  
Governor of New York State  
NYS State Capitol Building  
Albany, NY 12224

Dear Governor Hochul,

As Chairman of the Senate Committee on Health, Education, Labor, and Pensions (HELP), I am committed to ensuring that workers can rely on a predictable process when they are involved in an unfair labor practice dispute or want to organize to improve their working conditions.

You recently signed Senate Bill 8034A<sup>1</sup>, which expands the jurisdiction of the State of New York's Public Employment Relations Board (PERB) to that of the National Labor Relations Board (NLRB).<sup>2</sup> Infringing on NLRB's jurisdiction undermines processes enshrined in federal law that protect workers,<sup>3</sup> and falsely suggests to workers that PERB decisions can provide a legal resolution.<sup>4</sup>

I am concerned that Senate Bill 8034A will result in workers' good faith claims going unaddressed in the proper forum. The issue of the NLRB jurisdiction has been settled by the U.S. Supreme Court on several occasions: first, in *San Diego Building Trades Council v. Garmon*<sup>5</sup>,

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<sup>1</sup> N.Y. State S. 8034A, 2025 Leg., 2025-2026 Reg. Sess. (introduced Jan. 29, 2025); *see also* assembly version A8590.

<sup>2</sup> N.Y. S.B. S8034-A, 2025-2026 Reg. Sess. (N.Y. 2025), <https://legislation.nysenate.gov/pdf/bills/2025/S8034A>.

<sup>3</sup> Governor Kathy Hochul, *Governor Hochul Signs Legislation to Strengthen and Expand Worker and Labor Protections*, NEW YORK STATE (Sept. 6, 2025), <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-strengthen-and-expand-worker-and-labor-protections>.

<sup>4</sup> Governor Kathy Hochul, *Governor Hochul Signs Legislation to Strengthen and Expand Worker and Labor Protections*, NEW YORK STATE (Sept. 6, 2025), <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-strengthen-and-expand-worker-and-labor-protections>.

<sup>5</sup> *San Diego Bldg. Trades Council, Millmen's Union, Loc. 2020 v. Garmon*, 359 U.S. 236, 79 S. Ct. 773, 3 L. Ed. 2d 775 (1959).

and again in *Wis. Dept. of Indus., Labor & Human Relations v. Gould, Inc.*<sup>6</sup> In addition to affirming the jurisdiction of the NLRB in any matter related to the National Labor Relations Act (NLRA), the *Garmon* Court found that the absence of an assertion of jurisdiction by the NLRB does not create a jurisdictional vacuum leaving states free to act. The *Gould* Court was clear: “states may not regulate activity that the NLRA protects, prohibits, or arguably protects or prohibits.”<sup>7</sup>

Workers in New York, and across the United States, should be able to assert their rights without confusion or undue difficulty. They should not be expected to be labor law experts, parse jurisdictional questions, and file their grievances in every possible forum to preserve their claim. The practical impact of this law will be mistaken filings by well-meaning workers who desire to follow the law and orders from the PERB that imply a worker’s issue has been resolved when, in reality, the correct agency to hear their claim is not aware the claim exists. This law accomplishes the opposite of its purported goal, which is to help workers. To that end, I request answers to the following questions by October 8, 2025:

### Jurisdictional Basis

1. *San Diego Building Trades Council v. Garmon* stated that the NLRB has jurisdiction “over the multitude of activities regulated by § 7 and § 8 of the National Labor Relations Act.”<sup>8</sup> In *Wis. Dept. of Indus., Labor & Human Relations v. Gould, Inc.*, a unanimous Court stated that it is a “general rule” that “States may not regulate activity that the NLRA protects, prohibits, or arguably protects or prohibits.”<sup>9</sup>
  - a. Given these decisions by the U.S. Supreme Court, on what grounds does the State of New York believe S. 8034A provides certainty for workers regarding the permanent disposition of unfair labor practice disputes and certification of bargaining units?
  - b. How is S. 8034A not preempted by the NLRA?
2. In *San Diego Unions v. Garmon*, the Court stated that the failure of the NLRB to assert jurisdiction did not allow states “to regulate activities they would otherwise be precluded from regulating” and “to allow the States to control activities that are potentially subject to federal regulation involves too great a danger of conflict with national labor policy.”
  - a. Why did the State of New York disregard *Garmon*’s conclusions?

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<sup>6</sup> *Wisconsin Dep’t of Indus., Lab. & Hum. Rels. v. Gould Inc.*, 475 U.S. 282, 106 S. Ct. 1057, 89 L. Ed. 2d 223 (1986).

<sup>7</sup> *Id.* at 1061.

<sup>8</sup> *San Diego Bldg. Trades Council, Millmen’s Union, Loc. 2020 v. Garmon*, 359 U.S. 236, 79 S. Ct. 773, 3 L. Ed. 2d 775 (1959).

<sup>9</sup> *Wisconsin Dep’t of Indus., Lab. & Hum. Rels. v. Gould Inc.*, 475 U.S. 282, 106 S. Ct. 1057, 89 L. Ed. 2d 223 (1986).

- b. Does the State of New York believe S. 8034A operates outside of *Garmon*?
  - c. Was S. 8034A proposed and passed to challenge *Garmon* and seek its reversal?
- 3. What is the State of New York’s definition of “successfully asserts jurisdiction” in the context of S. 8034A?
  - a. What agency creates this definition?
- 4. S. 8034A states that the act shall not apply to “employees where the national labor relations board successfully asserts jurisdiction over any employer, employees, trades, or industries pursuant to an order by the federal district court established under article three of the United States constitution.”
  - a. Is it the State of New York’s position that the NLRB must seek an order from a court established under Article III of the U.S. Constitution to successfully assert jurisdiction over each matter filed in the State of New York under S. 8034A?
  - b. What federal law or U.S. Supreme Court precedent does the State of New York rely on to support this position?
- 5. Public statements have cited the NLRB’s inability to act due to a lack of quorum as a primary reason for S. 8034A. However, the NLRB continues to investigate charges and Acting General Counsel Bill Cowen recently issued a statement saying that the NLRB’s “Regional Offices continue to process unfair labor practice and representation cases, and the Acting General Counsel has been delegated litigation authority that would normally be exercised by the Board.”<sup>10</sup> Please explain how these actions do not constitute the assertion of jurisdiction by the NLRB over matters covered by the NLRA.
- 6. At what point in the process does the State of New York recognize the NLRB taking actions that successfully assert jurisdiction?
  - a. Would the State of New York agree that the NLRB taking any of the actions following a “charge” in the Process for Unfair Labor Practices section or “filing a petition” with an NLRB Regional Office in the Representational Election Process section of the NLRB’s website are examples of a successful assertion of jurisdiction by the NLRB?<sup>11</sup>
  - b. If not, why not? Please cite any applicable federal law or U.S. Supreme Court precedent.

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<sup>10</sup> NLRB Acting Gen. Couns., Statement on Potential State Legislation Regulating Private Sector Labor Relations (Aug. 15, 2025), *Nat’l Lab. Rels. Bd.*, <https://www.nlr.gov/news-outreach/news-story/acting-general-counsel-statement-on-potential-state-legislation-regulating>.

<sup>11</sup> The NLRB Process, *Nat’l Lab. Rels. Bd.* (last visited Sept. 10, 2025), <https://www.nlr.gov/resources/nlr-process>.

7. Please describe how the State of New York plans to inform the NLRB of the following actions when they occur at the PERB:
  - a. Receipt of unfair labor practice complaint or recognizing a bargaining unit,
  - b. Any investigatory action taken regarding an unfair labor practice complaint or recognizing a bargaining unit, and
  - c. Resolution of an unfair labor practice complaint or recognition of a bargaining unit.
8. Absent a court order, how will the State of New York work with the NLRB to ascertain whether the NLRB has asserted jurisdiction over a matter currently before the PERB?
9. Absent a court order, will the PERB and/or the State of New York surrender any supposed jurisdiction of a matter under S. 8034A that the NLRB asserts jurisdiction over via its normal investigatory processes?
10. Will the PERB and/or the State of New York cease enforcement of S. 8034A on the date that the NLRB reaches a quorum?
11. Will you send a message to New York's State Assembly and State Senate leadership urging immediate repeal of S. 8034A on the date that the NLRB reaches a quorum?

#### Cost and Reimbursement

1. Will the State of New York reimburse New Yorkers for any costs, including time away from work, related to refiling any claim with the NLRB that was originally filed with the PERB?
  - a. If not, what categories of costs or specific costs will you reimburse?
2. Will you or your administration promise not to seek any federal reimbursement in any form for costs associated with implementing S. 8034A or defending it from any litigation that may arise related to its preemption?
3. Will you promise not to raise taxes or implement any fee structure of any sort to pay for the expansion of or additional hiring at the PERB or any state agency for costs related to implementing S. 8034A not already provided for in the state budget?

#### Impact on Workers

1. How will the State of New York communicate to workers how to file an unfair labor practice claim or petition to certify a bargaining unit with the PERB?

- a. In those communications:
    - i. will the State of New York disclose that any unfair labor practice claim or petition to certify a bargaining unit adjudicated by the PERB only applies to state law?
    - ii. will the State of New York disclose that any unfair labor practice claim or petition to certify a bargaining unit should also be properly filed with the NLRB?
    - iii. will the State of New York disclose that anyone who files an unfair labor practice claim or petition to certify a bargaining unit with the PERB and NLRB may receive two different results, resulting in costs they must bear?
    - iv. will the State of New York disclose that any result reached by the PERB will have no bearing on any decision to investigate, charge, or other result reached by the NLRB?
2. How did the State of New York come to the conclusion that subjecting workers to at least two separate legal fora, one of which is preempted by the other, and processes help workers resolve their unfair labor practice claims or petitions to certify a bargaining unit with certainty?
3. How will the State of New York explain PERB's supposed jurisdiction and the NLRB's jurisdiction over unfair labor practice claims or petitions to certify a bargaining unit to New Yorkers?
  - a. Please include a copy of any talking points, forms, charts, or any other document that may be provided to filers.
4. How does the PERB plan to enforce its orders on employers that are not headquartered in but operate in the State of New York and in others states as well?
  - a. Does the PERB plan on asserting its jurisdiction outside of the State of New York?
5. Did the State of New York engage in any sort of analysis to determine what filing claims with both the PERB and NLRB would cost New Yorkers?
  - a. Please include a copy of any analysis.
6. What is the State of New York's projection of the number of cases that will be needlessly delayed and add to the total time it takes for a worker to resolve their case as a result of S. 8034A?
  - a. What is the average additional time this process will add on to each case?

7. How long, on average, does it take for the PERB to process unfair labor practice claims or petitions to certify a bargaining unit?

Sincerely,

Bill Cassidy, M.D.

Bill Cassidy, M.D.

Chairman

U.S. Senate Committee on Health,

Education, Labor, and Pensions