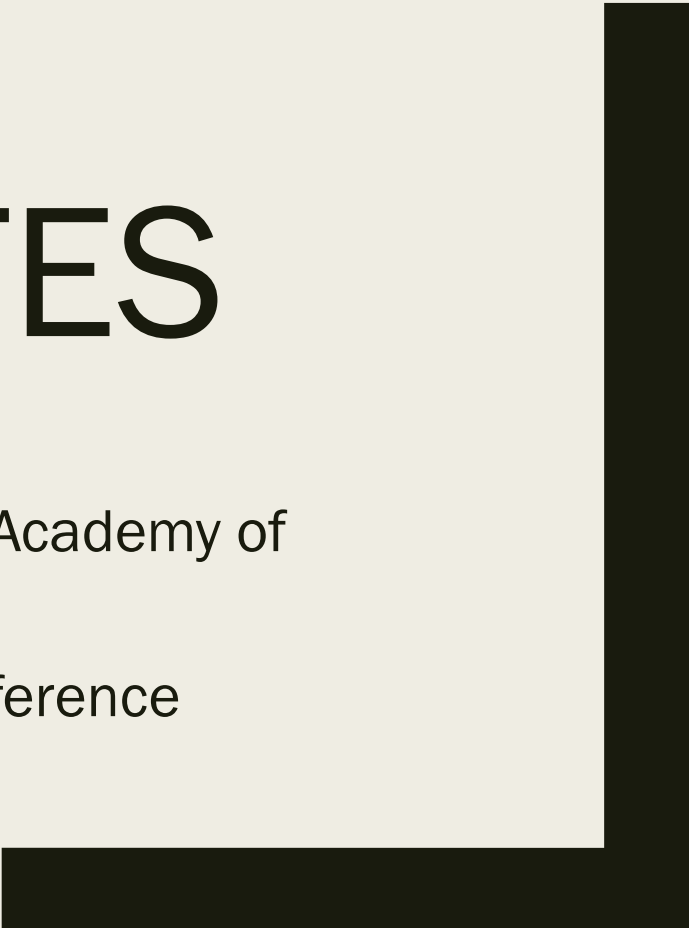




LEGAL UPDATES

University of Rhode Island & National Academy of
Arbitrators

26th Annual Labor Arbitration Conference

October 27, 2025

Moderator

Rosemary Pye

Panelists

Matt Parker

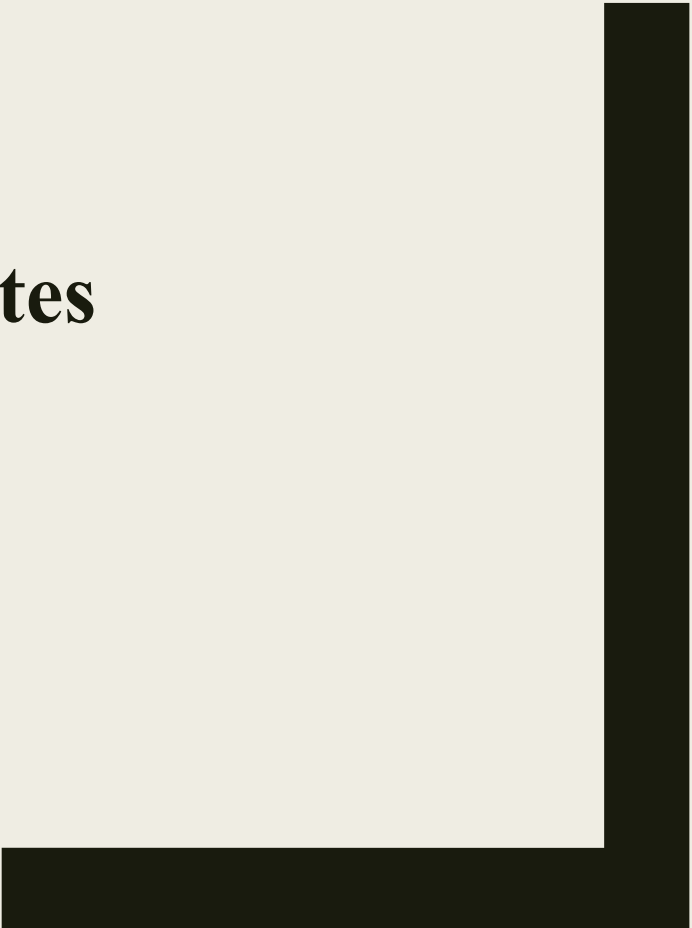


Catherine Terrell





RI State Labor Law Updates 2024-2025



Agenda

- *“Captive Audience” Law*
- *Barrington v. State – “Lifetime Contracts Law” Challenge*
- *State Court Appeals from SLRB Decisions*

“Captive Audience” Law – RIGL § 28-7-50

- “An Act Relating to Labor and Labor Relations – Labor Relations Act – Employee Free Speech Rights; 2025-H 5506 Sub A / 2025-S 0126 Sub A
- Adds Section 50 (“Employee rights of free speech in the workplace”) to the Labor Relations Act, Title 28, Chapter 7
- Prohibits adverse employment actions against employees who refuse to attend employer-sponsored meetings regarding the employer’s opinion on political or religious issues, or against employees who refuse to listen to or view communications regarding such opinions

“Captive Audience” Law – RIGL § 28-7-50

- “Political matters” = topics unrelated to employer’s business or business activities
- “Religious matters” = matters relating to religious affiliation and practice and the decision whether to join or support any religious organization or association
- Exemptions:
 - Communications required by law
 - Information necessary for performance of job duties
 - Meetings/communications w/ higher ed employees re coursework or symposia

“Captive Audience” Law – RIGL § 28-7-50

- Exemptions continued:
 - Casual and non-compulsory conversations
 - Religious organizations exempt from Title VII
- Allows private cause of action for employee
- Remedies:
 - Injunctive relief
 - Reinstatement
 - Back pay, benefits, and seniority
 - Attorneys’ fees for prevailing employee

Judicial Challenges to Captive Audience Laws

Cal. Chamber of Commerce v. Bonta, No. 2:24-cv-03798-DJC-, 2025 LX 482706 (E.D. Cal. Sep. 30, 2025):

- Court enjoined enforcement of a very similar statute in California
- *Garmon* preemption to the extent statute regulates employer speech about unionization, as such matters fall within the NLRB's exclusive jurisdiction
- *Machinists* preemption because it regulates non-coercive employer speech that Congress intended to leave unregulated
- Also failed First Amendment strict scrutiny

Judicial Challenges to Captive Audience Laws

Ill. Pol'y Inst. v. Flanagan, No. 24-cv-06976, 2025 LX 488765 (N.D. Ill. Sep. 30, 2025):

- First Amendment challenge to similar statute dismissed (with leave to amend) on 11th Amendment sovereign immunity grounds
- Judge held that the *Ex parte Young* exception to sovereign immunity (applicable when plaintiffs seek prospective relief against ongoing violations of federal law) did not apply because the Defendant (Illinois Director of Dept. of Labor) only had a “administrative and ministerial” role under the statute; not an enforcement role (i.e., sending a defendant a notice and a “right to sue” letter to plaintiffs)

Barrington v. State – “Lifetime Contracts Law” Challenge

- RIGL §§ 28-9.3-12 and 28-9.4.13 (passed in 2019)
(teachers and municipal employees)
 - “While the parties are engaged in negotiations and/or utilizing the dispute resolution process as required . . . , all terms and conditions in the collective bargaining agreement shall remain in effect.”
 - “Following the conclusion of the dispute resolution process . . . , should the parties still be unable to reach agreement, all contractual provisions related to wages and benefits . . . , except for any contractual provisions that limit layoffs, shall continue . . . until such time as a successor agreement has been reached”

Barrington v. State – “Lifetime Contracts Law” Challenge

- Plaintiffs challenged the law arguing that it violates the Contracts Clause and the Home Rule provisions of the RI Constitution
- In an earlier decision, the court determined that, on their face, the challenged statutes apply equally to all cities and towns and do not affect the Plaintiffs’ form of government. Accordingly, the Court ruled that the challenged statutes do not violate the Home Rule provisions. *Town of Barrington v. State of Rhode Island*, No. PC-2019-10870, (R.I. Super. Ct. Mar. 25, 2022).
- On September 30, 2025, Judge Lanphear granted summary judgment for the defendants holding that the law did not violate the Contracts Clause. *Town of Barrington v. State*, No. PC-2019-10870, 2025 LX 432834 (R.I. Super. Ct. Sep. 30, 2025)

Barrington v. State – “Lifetime Contracts Law” Challenge

- Contracts Clause (Article I, Section 12 of RI Constitution):
 - “No ex post facto law, or law impairing the obligation of contracts, shall be passed.”
- To establish a violation a plaintiff must establish (1) a contract exists, (2) the contested modification results in a substantial impairment of that contract, and (3) the impairment is not reasonable and necessary to fulfill an important public purpose
- Burden-shifting on the third prong...

Barrington v. State – “Lifetime Contracts Law” Challenge

- Court found contracts and impairment, but ruled that the impairment was not “substantial”
- “[T]he Court is not persuaded a basic right was altered by the amendments. Employees were already prevented from stopping work when negotiations had failed. Therefore, the Court cannot find the amendments substantially impaired a right because the amendments simply added an additional term that if negotiations were unsuccessful after the contracts expired, then the employees would be paid for work during this period.”
- “Plaintiffs provided no showing of impaired or abridged legitimate expectations upon which the parties reasonably and heavily relied upon in contracting.”

Barrington v. State – “Lifetime Contracts Law” Challenge

- Court also ruled for defendants on mootness grounds
- “Though the amendments had a potential to impact constitutional rights, all existing contracts have now expired. Plaintiffs’ constitutional right against ex post facto laws is no longer implicated.”

State Court Appeals from SLRB Decisions

Dep't of Corrections v. SLRB, 333 A.3d 83 (April 9, 2005)

- DOC unilaterally implemented changes to its absentee management program
 - Created a separate disciplinary track for absenteeism issues
 - More scrutiny around “patterns” of sick time use
- SLRB ruled it was an unfair labor practice
- Superior Court (Lanphear, J.) reversed
- Supreme Court affirmed Superior Court
- R.I. Gen. Laws § 42-56-10(2), (5), and (7) grant the DOC Director broad discretion to maintain security, manage operations, and discipline employees. The Court emphasized that the DOC cannot bargain away the Director’s statutory powers. (citing *Vose v. RI Brotherhood of Corr. Officers*, 587 A.2d 913 (R.I. 1991))

State Court Appeals from SLRB Decisions

Dep't of Corrections v. SLRB, PC-2024-01030 (Dec. 11, 2024)

- Affirmed SLRB decision that DOC committed an unfair labor practice by unilaterally ending a “paid administrative leave” COVID-19 policy for employees without bargaining
- Court distinguished *Vose* on the basis that the DOC had not claimed that the removal of paid administrative leave was necessary for safety, security, or staffing reasons
 - “DOC alleges it instituted the policy at the start of COVID-19 as a way to prevent officers from coming to work sick and infecting others, but DOC did not offer any similar security justification for removing the policy.”
- implementation v. removal

State Court Appeals from SLRB Decisions

R.I. Council 94 v. SLRB, PC-2023-06435 (June 5, 2025)

- Affirmed SLRB decision that the Community Program Liaison Worker position at DOH should remain w/ NEARI
- Council 94 represents DOH's non-professional employees
- NEARI represents professional employees
- SLRB concluded CPLW employees had more of a “community of interest” with the NEARI bargaining unit
 - NEARI had represented the employees for 15+ years
 - Employees wanted to stay w/ NEARI
 - Knowledge and independent judgment required for the job rendered the employees professionals

State Court Appeals from SLRB Decisions

RIDE Legal Counsel/Hearing Officer Prof. Union v. SLRB (June 5, 2025)

- Affirmed SLRB decision that RIDE had not committed an unfair labor practice when it terminated union's president, withheld the payout of his accrued sick leave, and withdrew work assignments from union's VP
- 16 hearings over the course of 2 years
- Filing a memorandum of law for the union was protected activity, but the union failed to show that this motivated the employer to discipline the employees

State Court Appeals from SLRB Decisions

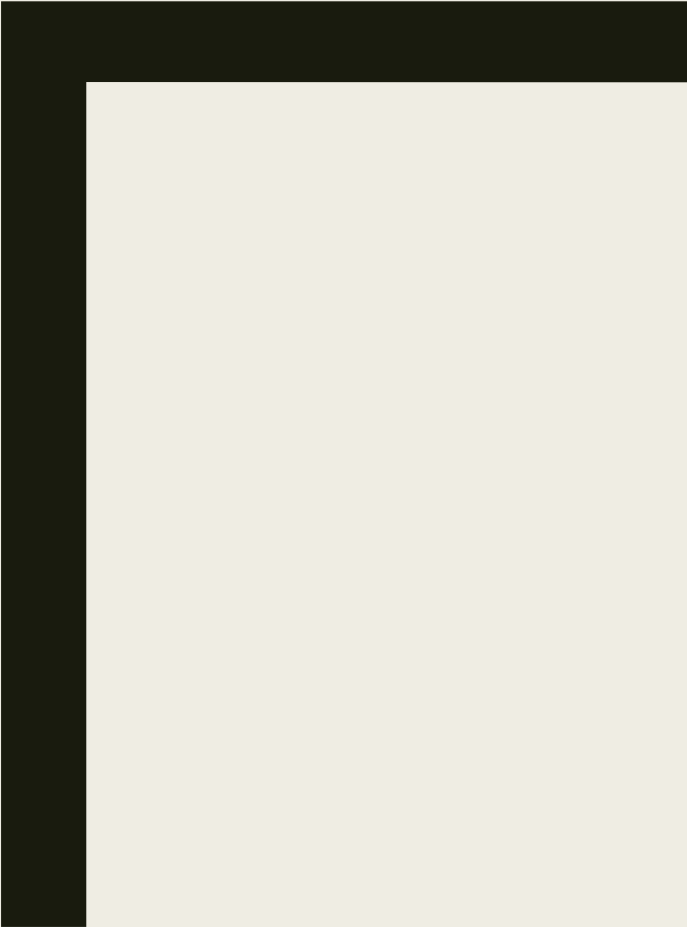
RIDE Legal Counsel/Hearing Officer Prof. Union v. SLRB (June 5, 2025)

- The Board and the Court applied the two-step causation test from *Wright Line* and its reaffirmation in *Intertape Polymer*
- The initial burden is on the party alleging discrimination to make a prima facie showing that protected conduct was a motivating factor in the employer's decision
- Three elements required to sustain the initial burden: “(1) union or other protected activity by the employee, (2) employer knowledge of that activity, and (3) animus against union or other protected activity on the part of the employer.”

State Court Appeals from SLRB Decisions

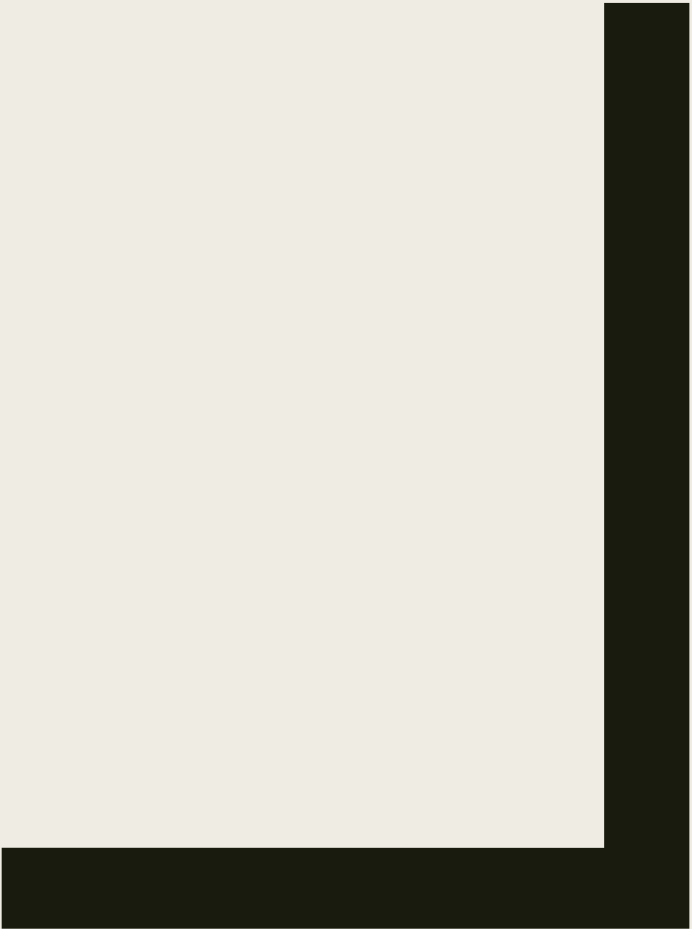
RIDE Legal Counsel/Hearing Officer Prof. Union v. SLRB (June 5, 2025)

- Only if the union makes its prima facie showing does the burden shift to the employer to establish that it would have taken the same action regardless of protected conduct
- Evidence supported that the union president's termination was due to documented job performance issues
- RIDE's policy only required payout of sick leave upon retirement; not termination
- VP's refusal to comply with her supervisor's directives is what led to the withdrawal of new assignments



QUESTIONS?

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NATIONAL LABOR RELATIONS BOARD



Board? What Board?

Current composition and the *New Process Steel* problem

- *Marvin Kaplan* – term expired August 2025
- *David Prouty* – term expires August 2026
- ***Gwynne Wilcox***
 - fired on January 28, 2025
 - reinstated by the D.C. District Court on March 6
 - reinstatement stayed by the D.C. Circuit on March 28
 - reinstated again by the *en banc* Circuit on April 7
 - reinstatement stayed by Chief Justice Roberts on April 9
 - Roberts's decision upheld on the emergency docket on May 22 – wherefore art thou *Humphrey*?
 - Term was set to expire August 2028
- *James Murphy* -Nominee
 - Voted out of committee on Oct. 9 by the Senate HELP Committee, confirmation by block vote in the Senate, expected soon.

What happens when the Board has no quorum?

Unfair Labor Practice proceedings

- *Regions investigate charges*
- *Complaints can still issue (under authority of Acting General Counsel)*
- *ALJs continue to issue decisions (see next slide)*
- *ALJ decisions are held up on exceptions to the Board*
- *The Acting GC can seek injunctive relief, but will he?*

Representation proceedings

- *Regions continue to process petitions and conduct elections*
- *Regional Directors have authority to issue certifications*
- *Certifications are not stayed pending request for review*
- *But will the Employer actually bargain?*

How has the government shutdown impacted the NLRB?

Unfair Labor Practice proceedings

- *Charges may be filed via fax or U.S. Mail and docketed upon re-opening*
 - Untested SOL question
- *No investigations*
- *No complaints*
- *No ALJs decisions*

Representation proceedings

- *Petitions may be filed via fax or U.S. Mail and docketed upon re-opening*
 - Deluge of processing upon return?
- *Pending mail ballot elections in limbo*
 - Unknown dates for count
- *No certifications*
- *Incentive for employer actually bargain?*

What happens when the Board does have a quorum?

Is the Board even Constitutional?

The attacks:

- Board members are insulated from removal in violation of Article II of the Constitution.
 - Legal concept will be heard by S.C. in December in *Slaughter (FCC)* case
 - Pending at 5th circuit (*Harris v. Bessent* (MSPB)) likely waiting for disposition of *Slaughter*
- Administrative Law Judges are insulated from removal in violation of Article II of the Constitution.
- Administrative Law Judges adjudicate private rights without a jury trial in violation of the Seventh Amendment to the Constitution.
- The Board wields executive, legislative and judicial authority in violation of the Fifth Amendment to the Constitution

What happens when the Board does have a quorum?

How can parties navigate the tornadic winds of change?

- What cases are likely to be reversed with the change of administration?
- How do you advise your client how to proceed?
- Can/should we avoid the Board entirely and put everything in arbitration?

Update of recent cases

Section 8(a)(1)

Interference, restraint or coercion with rights protected under the Act

Captive audience meetings

Amazon.com Services LLC, 373 NLRB No. 136 (Nov. 13, 2024)

- Captive audience meetings are now unlawful – overruling *Babcock & Wilcox* (1948)
- Employers may call such meetings but
 1. must inform employees in advance the subject of the meeting,
 2. must inform employees they won't suffer consequences for failing to attend, and
 3. must not keep records of who attends

Update of recent cases

Section 8(a)(1)

Interference, restraint or coercion with rights protected under the Act

Captive audience meetings

Twelve states have enacted laws prohibiting captive audience meetings

- Alaska
- California
- Connecticut
- Hawaii
- Illinois
- Maine
- Minnesota
- New Jersey
- New York
- Oregon
- Rhode Island
- Vermont
- Washington

Are these laws preempted?

Can state laws protect the rights of “unwilling listeners”?

Update of recent cases

Section 8(a)(1)

Interference, restraint or coercion with rights protected under the Act

Black Lives Matter activity without workplace connection

SFR, Inc. d/b/a Parkside Café, 373 NLRB No. 84 (Aug. 21, 2024)

- BLM protests in Birmingham led to curfew
- Bar owner was upset at loss of business and told employees that if they went to the protest they should resign
- Several employees resigned
- There was no ULP because no connection to workplace issues
- Distinguished from *Home Depot*

Update of recent cases

Section 8(a)(1)

Interference, restraint or coercion with rights protected under the Act

Statements about impact of unionization on employer-employee relationship

Siren Retail Corp. d/b/a Starbucks., 373 NLRB No. 135 (Nov. 8, 2024)

- Board overruled *Tri-Cast Inc.* (1985) which deemed lawful nearly all statements about the impact of organizing on the employer-employee relationship
- Statements will now be analyzed case-by-case based on content and context
- Statement about the need to end individualized treatment found unlawful

Update of recent cases

Section 8(a)(1)

Interference, restraint or coercion with rights protected under the Act

Statements during union campaign regarding delayed wage increases

Russell Reid Waste Hauling & Disposal Service Co., 373 NLRB No. 51 (May 2, 2024)

- Employer issued a memo that regularly scheduled wage increases would be delayed until after election to avoid appearance of “vote buying”
- Board found the memo unlawfully placed the onus for the delay on the union

Update of recent cases

Section 8(a)(3)

Discrimination related to protected, concerted activity

Withholding wage increases while challenging unit certification

Longmont United Hospital, 373 NLRB No. 97 (Sep. 18, 2024)

- Employer withheld wage increases to new nursing unit while challenging results at Board and D.C. Circuit
- Withholding wage increases found unlawful if they would have been given absent the union activity
- Employer also violated 8(a)(1) by announcing the policy to non-unionized employees

Update of recent cases

Section 8(a)(3)

Discrimination related to protected, concerted activity

Employee fired for testifying before state legislature

Oncor Electric Delivery Co., 373 NLRB No. 80 (July 6, 2024)

- Employee who identified himself as being with the Union testified contrary to employer's position about smart meters
- Employer fired him contending his testimony was "false"
- The testimony was related to an ongoing labor dispute, and Employer failed to prove testimony was "so disloyal, reckless or maliciously untrue" as to lose protection

Update of recent cases

Section 8(a)(5)

Failure to bargain in good faith

Board returns to “clear and unmistakable waiver” standard

Endurance Environmental Solutions, LLC,
373 NLRB No. 141 (Dec. 10, 2024)

- Board overruled Trump-era “contract coverage” test from *MV Transportation Inc.* (2019) to return to long-standing “clear and unmistakable waiver” standard
- Mid-term unilateral changes are unlawful unless the Union has clearly and unmistakably waived its right to bargain

Update of recent cases

Section 8(a)(5)

Failure to bargain in good faith

Proposals that would make employees worse off than if they had no union

District Hospital Partners, 373 NLRB No. 55 (May 8, 2024)

- Employer proposed to eliminate binding arbitration, retain no-strike clause and give itself unilateral discretion over wages
- Board found the proposals were evidence of bad-faith bargaining
- The case had previously been dismissed by the Trump Board but was overturned because Member Emanuel failed to recuse himself

Update of recent cases

Section 8(a)(5)

Failure to bargain in good faith

Healthcare rule does not apply as defense in ULP

St. Joseph Health System, Inc., 373 NLRB No. 78 (July 26, 2024)

- Hospital took over formerly contracted out food service and refused to bargain with union representing those workers because the unit didn't comply with healthcare unit rules
- Board held the rules do not apply in ULP proceedings and also wouldn't apply to this pre-existing non-conforming unit
- With the uptick in healthcare organizing, the rules will be a major focus

Update of recent cases

Section 8(b)(1)(A) & 8(b)(2)

Violation of duty of fair representation

Shop steward slapped union dissident who insulted her

Amalgamated Transit Union, Local 689, 373 NLRB No. 49 (Apr. 26, 2024)

- Union steward slapped dissident for hurling personal insults
- Union rep told Employer that if it fired one it would have to fire both
- Union did not violate duty because the slap was for personal insults not union activity
- Argument to employer was found to be an attempt to protect both not hurt the dissident

Update of recent cases

Representation

Historical practice of holding elections at employer's premises

Omnisource, LLC, 373 NLRB No. 134 (Nov. 7, 2024)

- Board (Wilcox and Kaplan) denied the Union's request for review of the Acting Regional Director's decision that the election would be conducted on the Employer's premises notwithstanding the Union's request that it be conducted at a neutral location
- Member Prouty dissented and would challenge the historic practice

Update of recent cases

Representation

Board agent conduct during rep. hearing not unlawful

Amazon.com Services LLC, 373 NLRB No. 92 (Aug. 29, 2024)

- Employer complained that, during rep. hearing, NLRB representative cross-examined witnesses, voiced objections, and excluded some of the employer's proffered evidence
- The Board majority found that such conduct was not improper though should be done with "self-restraint"

THANKS &
QUESTIONS

