The National Labor Relations Book

A Labor Law Introduction

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Introduction

When I was in college, a friend preparing for a trip to East Africa wanted to learn Swahili. Instead of using a textbook, he downloaded the entire Swahili-language Wikipedia and wrote a program to find every unique word, count their occurrences, and sort them by frequency. This approach allowed him to focus his studies on the most common words first. This strategy, while limited for in-depth language study, suited his practical goal: to quickly acquire the most useful Swahili for everyday conversation and immersion.

In this book, I use a similar method to provide an introduction to private sector labor law as governed by the National Labor Relations Act (NLRA) and administered by the National Labor Relations Board (NLRB). Using data from the NLRB Research database, I determined which NLRB and Supreme Court cases have been cited the most since the NLRA's enactment in 1935. By combining citation frequency with my own judgment as an experienced labor lawyer, I have created this text, which I hope can help individuals—especially law students, union staff, and rank-and-file workers—gain an initial footing in this area of law.

This book is also an experiment in applying artificial intelligence, specifically large language models (LLMs), to the creation of legal and technical reference materials. I have used LLMs throughout this project to write the code that analyzes the database, generate summaries of case law, and draft the text of the book. While I supervise and review all work, I have delegated as much work as possible to the most advanced LLMs available.

Chapter One explains the basic legal framework of the NLRA, as well as the significance of the decisions and other documents produced within the NLRB system. While the chapter centers on the NLRA, it also serves to illustrate how administrative law functions more generally.

Chapter Two explains the methods I used to produce the book, including how I used the LLMs to produce the case summaries.

Chapter Three contains the case summaries. The summaries are organized into six topical sections: unfair labor practices, protected activities, remedies, union representation, exemptions, and process.

The Appendix contains the statutory text of the NLRA, a history of changes to that text, a description of the NLRA regulations, and a list of the most-cited cases.

Chapter 1

Legal Framework

1.1 Understanding the NLRA's Legal Authority

Like all statutes, the National Labor Relations Act operates through two distinct but interrelated forms of authority: legal code and legal application.

The legal code, which consists of the Constitution, the NLRA statute, and the NLRA regulations, provides the authoritative words that serve as the starting point for all NLRA-related analysis. But written text is not self-enforcing. These words acquire practical meaning only through interpretation and application by courts and administrative agencies. These interpretive decisions determine when and how the government actually acts: what enforcement looks like in practice, which conduct gets penalized, and which rights get vindicated. The legal code establishes the language of NLRA law, while legal application determines the practical meaning of that language and how the law operates in the real world.

1.2 Legal Code

The legal code that is relevant to the NLRA operates hierarchically, with each level of legal code constrained by the levels above it.

1.2.1 Constitution

The Constitution sits at the apex of the legal hierarchy. The NLRA must operate within constitutional boundaries, including the Commerce Clause, which grants Congress the authority to regulate labor relations affecting interstate commerce, the First Amendment, which limits certain regulations on speech, association, and religious practice, and the Executive Power Clause, which may limit the amount of independence regulatory agencies can have.

1.2.2 Statute

Federal statutes are laws enacted by Congress. The National Labor Relations Act, codified at 29 USC 151-169, is the governing statute for most private-sector labor relations. Statutes must comply with constitutional requirements but otherwise represent the primary statement of the relevant legal code. The full text of the NLRA appears in Appendix A of this volume.

1.2.3 Regulations

Federal regulations are rules created by agencies under authority granted by statute. Regulations for the NLRA are found in 29 CFR Parts 100-103. Regulations must operate within the boundaries set by both the Constitution and the relevant statute. The NLRA regulations cannot expand the Board's jurisdiction or create substantive rights not found in the NLRA itself. The NLRA regulations are described in Appendix C.

1.3 Legal Application

Written legal code requires interpretation and application to specific factual situations. Multiple institutions perform this function, again in a hierarchical structure.

1.3.1 Court Decisions

Federal courts interpret and apply the NLRA when reviewing Board decisions or resolving questions of federal labor law.

Supreme Court. The Supreme Court's interpretations of the NLRA are binding on all lower courts and administrative agencies. Supreme Court decisions establish definitive interpretations of statutory language and constitutional limits on labor regulation.

Circuit Courts. The U.S. Courts of Appeals are bound by Supreme Court precedent when they review NLRB decisions. They also issue their own legal interpretations binding within their respective circuits. Because Board decisions are reviewed in the D.C. Circuit or the circuit where the unfair labor practice occurred, circuit courts sometimes diverge on particular questions of NLRA interpretation. The NLRB adheres to the doctrine of nonacquiescence, meaning it treats circuit court decisions as resolving each case but not as generating NLRA interpretions that bind the Board in future cases. This creates uncertainty and tension when the NLRB and a circuit court disagree about NLRA interpretation, with neither side willing to concede to the other's view in future cases.

1.3.2 Agency Adjudications

The NLRB resolves unfair labor practice charges and representation questions through several levels of decision-making.

Board Decisions. The five-member National Labor Relations Board issues final agency decisions in unfair labor practice and representation cases. These decisions interpret the

NLRA within the boundaries set by Supreme Court precedent. Board decisions are subject to review by the circuit courts, but as noted above, the Board does not treat circuit court decisions as creating binding precedent. Board Decisions establish the authoritative interpretations used by Regional Directors, Administrative Law Judges, and the Board itself, though the Board can overrule interpretations established in prior Board decisions.

Administrative Law Judge Decisions. Administrative Law Judges (ALJs) conduct hearings in unfair labor practice cases and issue decisions that become Board decisions if not appealed. ALJ decisions that are not reviewed by the Board do not establish precedent. However, they provide practical guidance about how the NLRA is being interpreted and applied.

Regional Director Decisions. Regional Directors decide representation questions (such as appropriate bargaining units and voter eligibility) in the first instance, subject to review by the Board. Regional Director decisions in representation cases may be reviewed by the Board through a request for review but do not establish binding precedent beyond the specific case. Like ALJ decisions, they provide practical guidance about NLRA interpretation and application.

1.3.3 Agency Guidance

Beyond formal adjudications, the NLRB issues various guidance documents that provide insight into how the agency will interpret and enforce the NLRA. While not binding law, these documents carry significant practical weight.

General Counsel Memoranda. The General Counsel of the NLRB, which is an agency position that operates separately from the five-member Board, issues memoranda addressing significant legal or procedural issues. These memos guide Regional Offices in investigating and prosecuting unfair labor practice charges. GC memos reflect the General Counsel's prosecutorial priorities and legal positions but do not bind the Board.

Advice Memoranda. The Division of Advice, part of the General Counsel's office, issues advice memoranda resolving novel or difficult questions submitted by Regional Directors. These memos provide detailed analysis of how the NLRA applies to specific fact patterns and influence case processing across regions. For unfair labor practice cases, advice memos typically either instruct the Region to find merit and issue a complaint (a "go" memo) or to not find merit and dismiss the case (a "no" memo). With some exceptions, only the "no" memos are made public, meaning that the advice memos available to those outside the agency provide only a limited picture of what guidance is actually being issued by the Division of Advice.

Operations-Management Memoranda. OM memoranda address operational and administrative matters, including case-handling procedures and regional office management.

Casehandling Manuals. The Board publishes casehandling manuals – one for unfair labor practice cases and another for union representation cases – that provide detailed procedural guidance to Regional Office staff. While these manuals mostly address procedure rather than substantive law, they offer valuable insight into how cases move through the NLRB system.

1.4 Summarizing the Legal Framework

When researching what the NLRA requires in any given situation, these sources must be considered in their proper hierarchical relationship:

1. Constitutional requirements constrain everything else.
2. The NLRA statute defines the scope of Board authority and establishes substantive rights.
3. The NLRA regulations provide procedural rules within statutory boundaries.
4. Supreme Court decisions definitively interpret the constitution, statute, and regulations.
5. Circuit Court decisions bind within their respective circuits, but the Board does not regard them as establishing precedent that binds the agency.
6. Board decisions establish agency precedent that binds Administrative Law Judges and Regional Directors.
7. ALJ and Regional Director decisions do not establish precedent but provide practical guidance about how precedent is being applied.
8. Agency guidance documents, including memos and manuals, reflect current agency positions on process and interpretation.

This hierarchy determines how conflicts between sources are resolved. A regulation inconsistent with the statute is invalid. A Board decision inconsistent with Supreme Court precedent is subject to reversal. Understanding this framework is essential to determining what the law of the NLRA actually is and informs the decisions I make in subsequent chapters about what legal sources to include in my analysis.

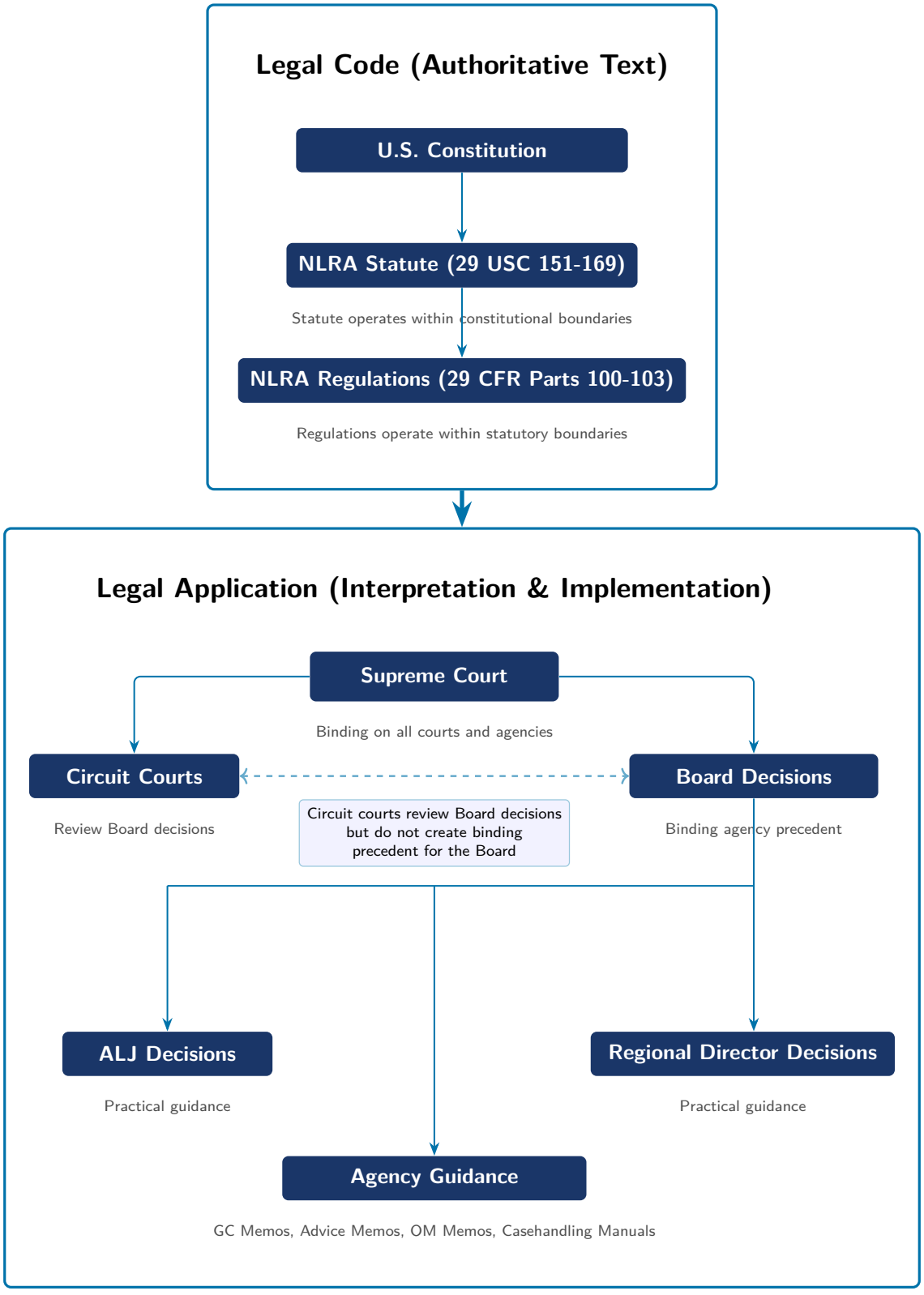

Figure 1.1: NLRA Legal Hierarchy

Chapter 2

Method of the Book

2.1 Overview

To construct a typical legal reference book, experts and practitioners in a given area of law come together and write down what they know in an organized and heavily-referenced way. This is often a monumental undertaking involving dozens or even hundreds of different lawyers and results in a volume for which publishers charge several hundred dollars or more.

There are books like this already for the National Labor Relations Act, including most prominently *The Developing Labor Law* and *How to Take a Case Before the NLRB*.

Until recently, this was the only way to write high-quality legal reference books. Nothing other than a huge amount of expert human labor could sift through all of the relevant legal material and distill it down into a usable outline.

The premise of this book is that this is no longer true. Large Language Models like GPT, Google Gemini, and Claude are capable of processing large volumes of text into useful legal summaries. If someone could collect all of the legal documents relevant to a particular area of law in one place and make them machine-readable, they could transmit select documents to an LLM and prompt it to produce high-quality legal summaries.

That is what I have done to write this book about the NLRA.

2.2 NLRB Research Database

To collect all of the NLRA-related legal documents in one place, I created the NLRB Research Database and made it freely available to the public at nlrbresearch.com. The NLRB Research Database, which automatically updates itself once a day, currently contains over 116,000 documents. These include:

1. Every NLRB decision that has ever been published since the agency was established in 1935, over 66,000 in total.

2. Every Supreme Court and Circuit Court decision that contains the phrase "National Labor Relations."
3. More than 13,000 Administrative Law Judge and Regional Election Decisions.
4. Over 5,000 GC, OM, and Advice Memos.
5. Almost 900 briefs filed by the NLRB in Circuit Court proceedings.
6. The NLRA statute, NLRA regulations, and every manual released by the NLRB.

The text of all of these documents is stored along with information about each document's type, date, name, and citation in a single SQLite database file. That file contains nearly the entire universe of NLRA law and provides the raw material for the LLMs to produce the legal summaries contained in this book.

2.3 Selecting Cases

One of the main functions of legal reference books is to identify the most important parts of a given area of law. This is normally achieved through expert judgment. This approach can yield valuable results, but it is not the approach I have used for this book.

Rather than select the cases or points of law that I think are the most important, I have opted to rely on citation frequency to make that judgment for me. The assumption underlying this choice is that the most frequently cited cases are, in some sense, the most important cases or, at least, the most practically useful cases to the largest number of people. This assumption seems especially promising when writing an introduction to the NLRA as opposed to writing an exhaustive outline of it.

To implement this method, I first created a list containing every Board decision and Supreme Court decision in the NLRB Research Database, which amounts to nearly 70,000 decisions in total. I then took the citation for each of those decisions and searched for it in the NLRB Research Database in order to determine how many documents cite to each decision. From there, I sorted the decisions in order from most cited to least cited.

The one hundred most frequently cited cases are listed in Appendix D.

2.4 Generating Summaries

To generate the legal summaries that make up the bulk of this book, I went through the list of the most frequently cited cases and performed the following three steps for each of them:

1. Using the target case's citation, I identified the 100 most recent cases that cited to the decision in the NLRB Research Database. The text and other information for those 100 most recent cases was then downloaded and stored in a JSON file.
2. One by one, I transmitted the text and other information for these 100 most recent citing cases to Google Gemini Flash and prompted Gemini to summarize the parts of

the citing case that explained and applied the target case using 100 words or less.

3. I compiled these 100 summaries into a JSON file and then transmitted that entire file to Claude Sonnet and prompted Claude to give an overall summary of the meaning and applications of the target case in a way that is suitable for a legal reference publication.

Notably, this approach attempts to summarize the significance of a target case solely by analyzing how subsequent cases interpreted and applied it. The text of the target case itself is never analyzed as part of this process.

These three steps were all automated using a Python script. Each target case summary took over ten minutes to produce using this process, but did not require any human labor. Once the summaries were produced, I checked them for any major mistakes, occasionally edited them, and then compiled them into this volume.

After reviewing the results of this, I used my own judgment to add three additional cases where I thought doing so was important for providing a more complete picture of a topic addressed by the other cases. The three cases were *Dubo Manufacturing* to complete the arbitration deferral topic, *Yeshiva University* to complete the managerial exemption topic, and *Stericycle* to complete the coercive rules topic. These cases were summarized using the same method described above.

2.5 Limitations

People who have some familiarity with Large Language Models often think that they are very prone to error in the form of "hallucinations," i.e. making things up. There have been many reports of lawyers using LLMs to write briefs only to find, after they submitted the briefs, that the LLMs had cited non-existent cases and invented fake points of law. But these kinds of errors typically result from individuals typing legal questions into general-purpose LLM chatbots. This is completely different from how I am using LLMs for this book.

Whenever I prompt Gemini or Claude to summarize specific cases, I also provide each LLM all of the text and information that it needs to do so. The prompt instructs the LLM to base its summary only on the text and information I have provided and to include citations with links back to the NLRB Research Database for each document it relies upon in the summary. Carefully prompting the LLM with all of the necessary context dramatically reduces the likelihood of a hallucination while forcing it to cite its sources with links makes it easy to double-check the output.

The most significant limitations to this method come from contradictions and irrelevancies that exist inside the NLRA case law. The 100 most recent cases citing to a target case may not all be consistent with one another. In some instances, the older cases may have even been overruled by more recent decisions. Sometimes decisions cite to target cases for irrelevant or even incorrect reasons. These sorts of complications are difficult for an LLM to successfully disentangle. I have used my own expert knowledge to attempt to spot these kinds of errors and correct them when they appear.

Of course, a legal reference book does not have to be 100 percent correct to be valuable. Lawyers certainly make errors, including when writing legal treatises. The law is not always clear and so treatise writers are forced to make judgment calls that may not prove true. Even a flawless legal treatise begins almost immediately accumulating errors because the underlying law changes.

What makes a legal reference book valuable is not that it is perfect, but rather that it contains useful and actionable information for its readers, including citations to primary legal sources that those readers can follow up with. This book provides these things.

2.6 Summarizing the Method

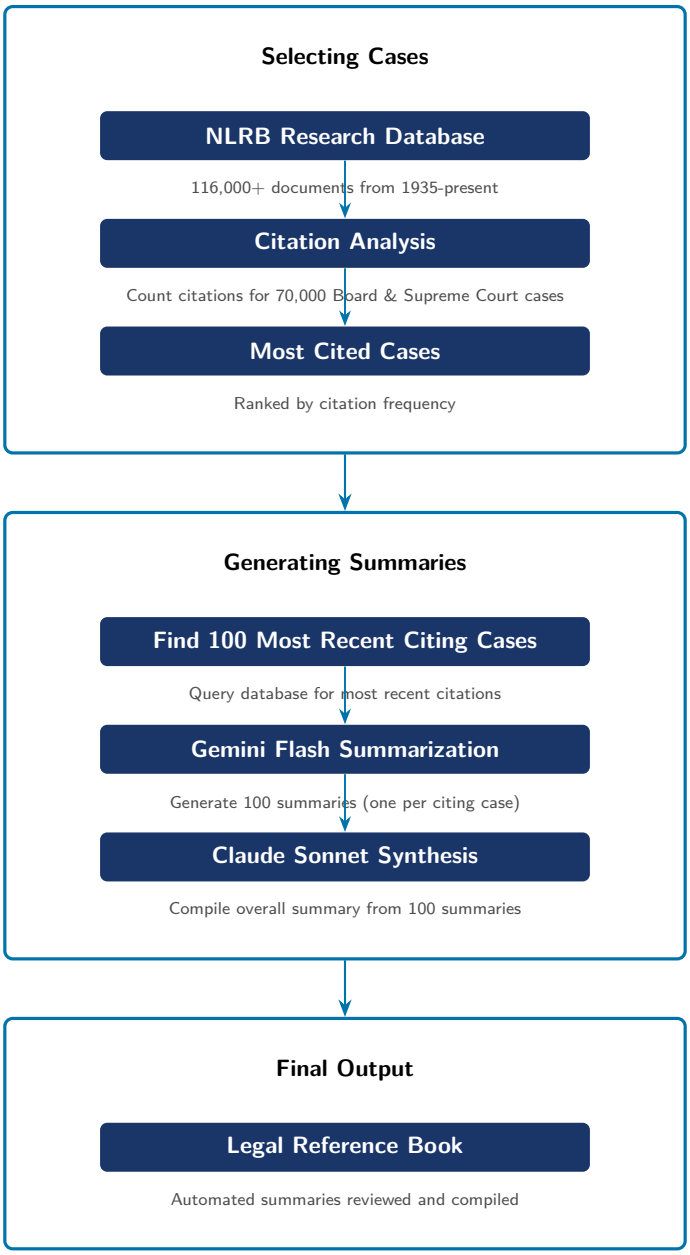

Figure 2.1: Book Generation Method

Chapter 3

Sample Case Briefs

3.0.1 *Wright Line* (Discrimination, Retaliation)

Wright Line, 251 NLRB 1083 (1980) (Published Board Decision), which was approved by the Supreme Court in *Transportation Management Corp.*, 462 U.S. 393 (1983), establishes a burden-shifting framework for determining whether an employer's adverse employment action was motivated by anti-union animus in violation of the NLRA. Under this framework, the General Counsel must first prove that the employee's protected activity was a motivating factor in the employer's decision. This initial burden requires showing that the employee engaged in protected activity, the employer had knowledge of that activity, and the employer acted with animus toward the protected conduct. Once the General Counsel satisfies this burden, it shifts to the employer to prove that it would have taken the same action even in the absence of the protected activity. *Poor v. Parking Systems Plus, Inc.*, No. 24-3324 (2025) (6th Circuit); *Starbucks Corporation*, JD-92-25 (2025) (ALJ Decision).

3.0.1.1 Proof of Animus

Animus may be established through direct or circumstantial evidence. Direct evidence includes explicit statements by management expressing hostility toward protected activity, such as stating that employees were fired for "wanting a union" or "making a scandal," or characterizing protected concerted activity as "toxic" or a "red-hot issue." *Preferred Building Services, Inc.*, 374 NLRB No. 11 (2024) (Published Board Decision); *National Labor Relations Board v. North Mountain Foothills Apartments, LLC*, No. 24-2223 (2025) (10th Circuit). Management statements that discipline was intended to "get rid of" perceived union supporters or admissions that a supervisor was "targeting" union adherents also constitute direct proof. *Starbucks Corporation*, JD-35-25 (2025) (ALJ Decision); *Starbucks Corporation*, 374 NLRB No. 8 (2024) (Published Board Decision).

Circumstantial evidence of animus includes several recurring factors. Suspicious timing between protected activity and adverse action is a significant indicator, such as discipline occurring days or hours after union activity, or discharges following immediately after employees join a strike or file grievances. *Bull Street the Movie, LLC*, JD-76-25 (2025) (ALJ

Decision); *Kirin Transportation Inc.*, 374 NLRB No. 4 (2024) (Published Board Decision). The commission of contemporaneous unfair labor practices, such as unlawful interrogations, threats, surveillance, or gag orders, supports an inference of animus. *New Vitae, Inc.*, JD-87-25 (2025) (ALJ Decision); *Altorfer Inc.*, JD-68-25 (2025) (ALJ Decision).

Departures from past practice or established procedures provide evidence of discriminatory motivation. These include suddenly enforcing previously lax or unenforced rules against union supporters, abandoning progressive discipline protocols, or deviating from standard scheduling or attendance lookback periods. *Catalina Hills Botanical Care, Inc.*, JD(SF)-17-25 (2025) (ALJ Decision); *Hearthside Food Solutions, LLC*, JD-78-25 (2025) (ALJ Decision). Disparate treatment of similarly situated employees—where union supporters are disciplined more severely than non-union employees for identical or worse conduct—demonstrates animus. *Trader Joe's East*, JD-89-25 (2025) (ALJ Decision); *Amazon.com Services LLC*, JD-02-25 (2025) (ALJ Decision).

Pretextual justifications are a key indicator of unlawful motivation. Pretext is shown through shifting or false explanations for adverse actions, exaggerated claims of misconduct, or justifications that are "baseless, unreasonable, or so contrived" as to lack credibility. *Starbucks Corporation*, JD-26-25 (2025) (ALJ Decision); *BERG DRYWALL, LLC*, JD(SF)-15-25 (2025) (ALJ Decision). Inadequate or one-sided investigations, such as failing to interview witnesses, relying on unverified rumors, or conducting predetermined or "sham" investigations, further demonstrate pretext. *United States Postal Service*, JD-88-25 (2025) (ALJ Decision); *Hearthside Food Solutions, LLC*, JD-78-25 (2025) (ALJ Decision).

Additional circumstantial evidence includes documenting stale or previously tolerated infractions immediately after protected activity, issuing harsher discipline than warranted by past practice, and management's failure to provide credible non-discriminatory explanations for their actions. *NLRB v. Constellis, LLC*, No. 23-1861 (2025) (4th Circuit); *Envision Hospice of Washington, LLC*, JD(SF)-18-25 (2025) (ALJ Decision).

3.0.1.2 Knowledge Requirement

To establish animus, the decisionmaker must have actual knowledge of the employee's protected activity at the time of the adverse action. Proof that the employer's reasons were pretextual does not establish causal animus if there is no evidence the decisionmaker knew of the protected conduct. *Capitol Street Surgery Center, LLC v. NLRB*, No. 22-3178 (2024) (DC Circuit). Similarly, animus held by a manager who did not influence the decisionmaker or communicate knowledge to the responsible official does not prove the employer's motivation. *Trader Joe's East, Inc.*, JD-68-24 (2024) (ALJ Decision).

3.0.1.3 Employer's Rebuttal Burden

Once the General Counsel establishes that protected activity was a motivating factor, the burden shifts to the employer to prove it would have taken the same action regardless of the protected conduct. The employer may satisfy this burden by demonstrating consistent application of legitimate policies, such as terminating employees for documented performance issues, workplace violence, or policy violations that were treated uniformly across protected

and non-protected employees. *Starbucks Corporation*, JD-92-25 (2025) (ALJ Decision); *Curaleaf Massachusetts, Inc.*, JD-75-25 (2025) (ALJ Decision). Evidence of pre-existing performance documentation, complaints from union stewards about the employee, or decisions made before knowledge of union activity can satisfy the employer's rebuttal burden. *American Bottling Company*, JD-44-25 (2025) (ALJ Decision).

3.0.1.4 Application to Various Violation Types

The *Wright Line* framework applies to a range of adverse employment actions, including discharges, suspensions, disciplinary warnings, refusals to hire, reductions in hours, changes in work assignments, mass layoffs, and constructive discharges. *Reliance Plumbing, Sewer and Drainage, Inc.*, JD-62-25 (2025) (ALJ Decision); *New Vitae, Inc.*, JD-87-25 (2025) (ALJ Decision). It also applies to refusals to hire predecessor staff to avoid successorship obligations and discriminatory referral delays by unions. *Parking Systems, Inc.*, JD-04-25 (2025) (ALJ Decision); *International Brotherhood of Teamsters, Local 657*, JD(SF)-05-25 (2025) (ALJ Decision).

3.0.2 *Meyers II* (Concertedness)

Meyers Industries, Inc., 281 NLRB 882 (1986) (Published Board Decision) establishes the fundamental standard for determining whether employee activity constitutes protected "concerted activity" under Section 7 of the National Labor Relations Act. The decision defines concerted activity as action engaged in with or on the authority of other employees, rather than solely by and on behalf of an individual. The framework encompasses individual employees who seek to initiate, induce, or prepare for group action, as well as those who bring truly group complaints to management's attention. Whether activity is concerted is a factual determination based on the totality of the record evidence.

3.0.2.1 Standard for Concerted Activity

Activity qualifies as concerted when an employee acts with or on behalf of other employees rather than pursuing purely personal interests. *Executive Press*, JD(SF)-34-24 (2024) (ALJ Decision) applied this standard to find that discussions of wage rates with colleagues at a work table constituted classic protected concerted activity. The rule excludes individual griping or personal grievances that lack connection to coworkers' shared concerns. *Amazon.com Services LLC*, JD(SF)-03-25 (2025) (ALJ Decision) determined that complaints originating from personal conflicts and raised for individual benefit without evidence of collective authorization failed to meet the standard for concertedness.

The standard requires an objective link to coworkers rather than merely subjective intent. *DISH Network LLC*, JD-84-25 (2025) (ALJ Decision) found that advocacy for remote work and flexible schedules was not protected where the employee acted alone, failed to coordinate with colleagues, and pursued personal interests rather than collective goals.

3.0.2.2 Group Complaints to Management

An individual employee engages in concerted activity by bringing truly group complaints to management's attention, even when acting alone. *Trader Joe's East*, JD-70-24 (2024) (ALJ Decision) found protected activity where an employee met with supervisors alone but acted as spokesperson for sign artists, communicating shared frustrations regarding job duties and schedules. *Starbucks Corporation*, 374 NLRB No. 10 (2024) (Published Board Decision) determined that sharing group complaints regarding health and safety protocols with high-ranking officials constituted protected concerted activity, making threats to discipline the employee for this activity unlawful.

The distinction between group complaints and individual grievances is central to the analysis. *Davis Defense Group, Inc.*, 373 NLRB No. 132 (2024) (Published Board Decision) concluded that scheduling complaints focused on personal childcare conflicts rather than shared workplace concerns, where the employee did not seek to represent others or induce group action, failed to meet the threshold for concerted activity.

3.0.2.3 Initiating or Preparing for Group Action

Individual employees who seek to initiate, induce, or prepare for group action engage in concerted activity even before achieving group participation. *American Federation for Children, Inc.*, 372 NLRB No. 137 (2023) (Published Board Decision) found that lobbying coworkers during a conference to join in pressuring management to rehire a former colleague constituted concerted activity, regardless of whether the solicited coworkers ultimately participated. *Motorola Solutions, Inc.*, JD-94-25 (2025) (ALJ Decision) determined that conversations involving plans to approach a supervisor about raises were concerted, while discussions lacking intent to initiate group action or bring group complaints to management were characterized as mere talk or personal griping.

Activity serving as an indispensable preliminary step to employee self-organization qualifies as concerted. *R&J Group LLC D/B/a Sushi Masa*, JD-65-24 (2024) (ALJ Decision) concluded that discussions of earnings and section assignments with coworkers were concerted because they were necessary precursors to collective efforts to improve working conditions. *Tipsy Foods Inc.*, JD-44-24 (2024) (ALJ Decision) found that a conversation between two employees about hours and pay served as a foundational step for potential collective action, meeting the legal standard despite involving only two individuals.

3.0.2.4 Logical Outgrowth Doctrine

Individual action constitutes concerted activity when it stems from or is a logical outgrowth of prior group activity. *Catalina Hills Botanical Care, Inc. D/B/a Curaleaf Midtown*, JD(SF)-17-25 (2025) (ALJ Decision) applied this standard to evaluate whether individual communications with management grew out of previous group discussions about management and working conditions. *Home Depot Usa, Inc.*, 373 NLRB No. 25 (2024) (Published Board Decision) characterized an individual's refusal to remove a "BLM" marking as a logical outgrowth of prior group protests against racial discrimination, rendering the individual conduct sufficiently linked to collective activity to merit Section 7 protection.

Miller Plastic Products Inc v. NLRB, 23-2689 (2025) (3rd Circuit) applied a holistic totality-of-the-evidence approach to determine that COVID-19 safety protests were protected where the employee raised shared concerns during an all-hands meeting and encouraged a coworker to voice similar grievances, constituting group complaints to management rather than individual griping.

3.0.2.5 Wage and Hour Discussions

Discussions of wages, hours, and other terms of employment are frequently deemed inherently concerted because they concern matters of collective interest. *Vermont Information Processing, Inc. (VIP)*, 373 NLRB No. 131 (2024) (Published Board Decision) found that creating and disseminating a salary spreadsheet was protected concerted activity because employees collaborated to share wage information and assist a coworker in seeking a raise, constituting an indispensable step toward mutual aid and group action. *North Mountain Foothills Apartments, LLC*, 373 NLRB No. 26 (2024) (Published Board Decision) affirmed that discussions regarding wages and housing subsidies are inherently concerted as wages are a vital term of employment, making discharge for such activities unlawful.

Gt Security Services, JD-05-25 (2025) (ALJ Decision) determined that discussion of wage rates with a coworker was inherently concerted because it served as a preliminary step toward group action, rendering the employer's interrogation, threats, and subsequent discharge unlawful. *B & L, Inc., D/B/a Boyds Drug Mart*, 373 NLRB No. 143 (2024) (Published Board Decision) classified wage discussions with coworkers, including seeking a raise for a colleague and discussing pay disparities, as collective efforts for mutual aid and protection rather than unprotected individual grievances.

3.0.2.6 Joint Grievances and Collective Petitions

When multiple employees act together to present shared concerns, their activity is clearly concerted. *Reynolds Clinic*, JD-91-25 (2025) (ALJ Decision) found that participation in drafting and signing a collective grievance letter with three other employees qualified as protected concerted activity. *Kirin Transportation Inc. D/B/a Kirin Transportation*, 374 NLRB No. 4 (2024) (Published Board Decision) affirmed that filing a joint wage-and-hour lawsuit and discussing collective wage concerns with management were protected concerted activities, making subsequent retaliation including interrogations, threats, and discharges violations of the Act.

Hiran Management, Inc. D/B/a Hungry Like the Wolf, 373 NLRB No. 130 (2024) (Published Board Decision) found that a group walkout and strike were protected because employees acted together to protest mutual grievances including management's disrespect, wage issues, and training. *Lancaster Coffee Company*, JD-11-24 (2024) (ALJ Decision) confirmed that employees who met as a group to discuss workplace concerns, drafted a joint email of demands, and coordinated a collective work stoppage engaged in protected group activity rather than a series of individual grievances.

3.0.2.7 Safety and Working Conditions

Complaints regarding health, safety, and working conditions are concerted when they reflect shared employee concerns. *Constellis, LLC D/B/a Academi Training Center, LLC*, 372 NLRB No. 81 (2023) (Published Board Decision) determined that safety complaints were protected where an employee signed a joint letter with thirteen instructors and protested at group meetings regarding COVID-19 and ricochet hazards, making the actions a logical outgrowth of group concerns. *Brynn Marr Hospital, Inc.*, JD-72-25 (2025) (ALJ Decision) found that social media posts and texts regarding workplace bullying and retaliation were concerted because they expressed shared concerns of multiple staff members and represented a logical outgrowth of a previous collective complaint.

United States Postal Service, JD-59-23 (2023) (ALJ Decision) determined that posting flyers regarding workplace safety concerns constituted protected concerted activity because the flyers addressed shared hazards and invited coworkers to report unresolved issues, thereby enlisting fellow employees for mutual aid and protection.

3.0.2.8 Social Media and Electronic Communications

Communications through social media, text messages, and group chats can constitute concerted activity when they involve discussions of shared workplace concerns. *List Industries, Inc.*, 373 NLRB No. 146 (2024) (Published Board Decision) found that an off-duty group text message regarding management's anti-union propaganda constituted protected activity because it involved interaction among coworkers regarding shared concerns, satisfying the requirement for group action instead of a purely personal grievance. *Aqua Dental*, JD(SF)-23-24 (2024) (ALJ Decision) determined that an anonymous email regarding workplace conditions was protected because it was developed through discussions with coworkers about shared grievances such as work-life balance and bonus structures, representing collective interests rather than a purely personal complaint.

However, electronic communications must still meet the concertedness requirement. *Apple Inc.*, JD(SF)-01-25 (2025) (ALJ Decision) found that mass emails and Slack messages were not protected where the employee acted unilaterally to air personal gripes and technical disagreements regarding her own career, as the conduct was not intended to induce group action or address shared workplace concerns.

3.0.2.9 Individual Grievances vs. Group Concerns

The standard excludes purely individual grievances that lack connection to coworkers' interests. *Trinity Health Corporation and Trinity Health-Michigan D/B/a Trinity Health Ann Arbor Hospital*, JD-74-24 (2024) (ALJ Decision) concluded that an outburst regarding a denied shift switch was not concerted because the employee was acting alone to address her own leave request and was not seeking redress for others. *TransPerfect Remote Interpreting, Inc.*, JD(SF)-24-24 (2024) (ALJ Decision) found that complaints regarding overtime and breaks were not concerted where the employee acted for sole personal benefit, worked in isolation, and failed to demonstrate acting with the authority or support of any coworkers.

Vision Battery USA, Inc., 371 NLRB No. 133 (2022) (Published Board Decision) concluded that a demand for a personal apology was not concerted because the conduct was purely personal and did not seek to induce group action or address mutual concerns.

3.0.2.10 Authorization from Coworkers

An individual may engage in concerted activity when acting on the authority of other employees. *Bebo's and Kathy's Cafe*, JD-39-22 (2022) (ALJ Decision) found that complaints were concerted because the employee discussed shared workload concerns with coworkers beforehand and was authorized by the group to raise those issues at a staff meeting, making her actions a continuation of group activity. *Bar at 66 Greenpoint, LLC*, JD(NY)-19-24 (2024) (ALJ Decision) concluded that discussions regarding wage reductions and tip allocation were concerted because the employee discussed these issues with coworkers to address mutual concerns and advocated for a group meeting.

3.0.2.11 Unlawful Employer Responses

Employers violate Section 8(a)(1) when they take adverse action against employees for engaging in concerted activity. *Starbucks Coffee Company*, 372 NLRB No. 50 (2023) (Published Board Decision) found that warning a coworker about potential termination is protected concerted activity because it concerns job security and involves an effort to join together with a colleague for mutual aid or protection against adverse employment actions. *Trader Joe's*, 373 NLRB No. 73 (2024) (Published Board Decision) found that discussing 401(k) plan fees with a coworker to enlist help regarding ongoing group concerns over employment terms met the standard, rendering subsequent suspension and discharge unlawful.

Phillips 66 Company, 373 NLRB No. 1 (2023) (Published Board Decision) determined that two employees engaged in protected concerted activity when they acted together to photograph contractor vehicles in employee-designated parking spaces to ensure available parking and avoid potential discipline, making the employer's use of no-camera policies to discipline them a violation.

3.0.3 *Excelsior Underwear Inc.* (Voter List)

Excelsior Underwear Inc., 156 NLRB 1236 (1966) (Published Board Decision) establishes that employers must provide a list of names and addresses of all eligible voters to the Regional Director within seven days of a directed election or approved election agreement. This list, known as the "Excelsior list," is then shared with all parties to ensure employees can be informed of the issues before exercising their right to vote in a representation election. The rule recognizes that employees must have an effective opportunity to hear arguments concerning representation to ensure a free and reasoned choice, and that a lack of information prevents workers from making informed decisions. *CEMEX Construction Materials Pacific LLC*, 372 NLRB No. 130 (2023) (Published Board Decision).

3.0.3.1 Contents of the List

The eligibility list must contain the full names and home addresses of all eligible voters. *Transit Connection, Inc. v. National Labor Relations Board*, 887 F.3d 1097 (2018) (11th Circuit). The Board has expanded the disclosure requirements beyond the original rule to include personal email addresses and telephone numbers in addition to home addresses, reflecting modern communication methods. *RadNet Management, Inc. v. NLRB*, 19-1180 (2021) (DC Circuit). Courts have upheld these expanded disclosure requirements as reasonable applications of the *Excelsior* doctrine to facilitate fair union organizing campaigns. *Associated Builders & Contractors of Texas, Inc. v. National Labor Relations Board*, 826 F.3d 215 (2016) (5th Circuit). The list may also include additional information such as work locations, shifts, and job classifications. *Wismettac Asian Foods, Inc.*, 370 NLRB No. 35 (2020) (Published Board Decision).

3.0.3.2 Rationale and Purpose

The *Excelsior* list serves to equalize access between employers and unions by providing unions with contact information for employees that employers already possess. The requirement ensures all parties have equal opportunity to communicate with the electorate during the critical preelection period. *American Federation of Labor and Congress of Industrial Organizations v. NLRB*, 20-5223 (2023) (DC Circuit). The rule recognizes that management has inherent access to employees through the employment relationship, while unions require contact information to reach potential bargaining unit members.

3.0.3.3 Timing and Procedure

The employer must file the list with the Regional Director within seven days of the direction of election or approval of an election agreement. The Regional Director then makes the list available to all parties to the election. *Starbucks Corporation*, 374 NLRB No. 9 (2024) (Published Board Decision). The seven-day deadline is calculated from either the election direction or the approval of a consent election agreement. *DHSC, LLC d/b/a Affinity Medical Center*, 362 NLRB No. 78 (2015) (Published Board Decision).

Under the Board's election rules, the employer must also directly serve the list on the petitioner. Failure to provide direct service to the petitioner is a mandatory ground for setting aside the election, leaving regional directors no discretion to excuse this failure even if the union ultimately received the list from the Regional Office. *URS Federal Services, Inc.*, 365 NLRB 1 or 365 NLRB No. 1 (2016) (Published Board Decision).

3.0.3.4 Standard for Compliance

3.0.3.4.1 Substantial Compliance Test The Board applies a "substantial compliance" standard rather than a mechanical test when evaluating whether an employer has met its obligations under *Excelsior*. *MVM Inc.*, 372 NLRB No. 32 (2022) (Published Board Decision). Under this flexible approach, the Board considers the percentage of omissions or errors, their potential impact on the election outcome, and whether the employer acted in bad faith

or with gross negligence. *Concrete Express of NY, LLC*, 02-RC-218783 (2018) (Regional Election Decision).

Minor errors or omissions that do not significantly impair union communication efforts may constitute substantial compliance. For example, omitting five home phone numbers was deemed substantial compliance where the error was non-determinative and lacked bad faith. *MVM Inc.*, 372 NLRB No. 32 (2022) (Published Board Decision). Similarly, a 7.69% omission rate was found acceptable where the omissions were not determinative of results and no bad faith was proven. *Inwood Material Terminal LLC*, 29-RD-206581 (2018) (Regional Election Decision).

3.0.3.4.2 Accuracy Requirements The list must be accurate as well as complete. Providing incorrect contact information constitutes a violation of the rule. An employer that provided a list where nearly all addresses were incorrect committed a blatant violation warranting the setting aside of election results. *Kumho Tires Georgia*, 370 NLRB No. 32 (2020) (Published Board Decision). Similarly, where 46% of union mailings were returned as undeliverable because the employer withheld known P.O. Box addresses, the employer failed its duty to provide accurate information. *Transit Connection, Inc. v. National Labor Relations Board*, 887 F.3d 1097 (2018) (11th Circuit).

An employer provided a substantially erroneous list violating the rule where 80 of 84 addresses were incorrect and the list improperly omitted employee phone numbers, email addresses, and eligible former employees. *RHCG Safety Corp.*, 365 NLRB No. 88 (2017) (Published Board Decision).

3.0.3.4.3 Completeness Requirements Omitting eligible voters from the list constitutes objectionable conduct. Where three eligible employees were omitted from the list and the election ended in a tie, the Board determined that even a single omission influenced the outcome and warranted setting aside the election. *Advanced Masonry Associates, LLC d/b/a Advanced Masonry Systems*, 366 NLRB No. 57 (2018) (Published Board Decision). Omitting eligible voters is particularly problematic when the number of omissions is sufficient to affect the results or when the election is closely contested.

3.0.3.5 Consequences of Non-Compliance

Failure to provide a timely, complete, and accurate voter list constitutes grounds for setting aside election results if proper objections are filed. *Washington Connections Academy*, 19-RC-366958 (2025) (Regional Election Decision). The Board will order a new election when substantial non-compliance with the *Excelsior* requirement has been established. *Kumho Tires Georgia*, 370 NLRB No. 32 (2020) (Published Board Decision).

The deficiencies in the list must be evaluated to determine whether they warrant setting aside the election. Even if a list is deficient, the election result may stand if the election outcome was decisive and the alleged non-compliance affected competing parties equally. *Paragon Systems, Inc.*, 03-RC-336208 (2024) (Regional Election Decision). The Board will not set aside an election where evidence fails to establish that the specific list used for the election

was inaccurate. *Wismettac Asian Foods, Inc.*, 370 NLRB No. 35 (2020) (Published Board Decision).

3.0.3.6 Application in Second Elections

When the Board sets aside an election and directs a second election, whether due to *Excelsior* violations or other unfair labor practices, the employer must file a new eligibility list within seven days of the Notice of Second Election. *Starbucks Corporation*, 374 NLRB No. 9 (2024) (Published Board Decision). This requirement applies regardless of whether the first election was set aside due to the employer's discriminatory conduct, material breaches of election agreements, or substantial non-compliance with the original *Excelsior* requirement itself. *Longwood Security Services, Inc.*, 364 NLRB No. 50 (2016) (Published Board Decision).

3.0.3.7 Relationship to Other Requirements

The *Excelsior* list requirement is distinct from special remedial orders that may require an employer to provide employee contact information to a union outside the election context. When the Board orders an employer guilty of unfair labor practices to provide current employee names, addresses, and contact details to a union as a remedy, this specific remedial requirement exists in addition to the union's standard right to an *Excelsior* list should a new representation election occur. *Novelis Corporation*, 367 NLRB No. 47 (2018) (Published Board Decision).

The *Excelsior* list also serves an administrative function in determining unit size and composition. The list submitted by an employer for an election may be used to establish the number of employees in the proposed bargaining unit for purposes of assessing union majority status in unfair labor practice proceedings. *W.B. Mason Co., Inc.*, JD-105-16 (2016) (ALJ Decision).

3.0.4 *Spielberg Manufacturing Co.* (Arbitration)

Spielberg Manufacturing Co., 112 NLRB 1080 (1955) (Published Board Decision) establishes the National Labor Relations Board's policy of deferring to arbitration awards that resolve disputes also alleging unfair labor practices. Under this doctrine, the Board will defer to an arbitrator's decision if certain conditions are met: the arbitration proceedings were fair and regular, all parties agreed to be bound by the award, and the decision is not clearly repugnant to the purposes and policies of the National Labor Relations Act. The standard promotes the federal policy favoring arbitration and private dispute resolution in labor relations while preserving the Board's ultimate authority to ensure statutory compliance.

3.0.4.1 Criteria for Deferral

The Board applies a multi-part test to determine whether deferral is appropriate. The arbitration proceedings must have been fair and regular, meaning free from procedural defects, bias, or hostility. *United Parcel Service, Inc.*, 372 NLRB No. 158 (2023) (Published Board Decision); *International Longshore and Warehouse Union (Pacific Maritime Assoc.)*, 365

NLRB No. 149 (2017) (Published Board Decision). All parties must have agreed to be bound by the arbitration outcome. *Ardsley Bus Corporation, Inc.*, 357 NLRB No. 85 (2011) (Published Board Decision). The contractual issue resolved by the arbitrator must be factually parallel to the unfair labor practice issue, and the arbitrator must have adequately considered the unfair labor practice or presented facts relevant to it. *Phillips 66 Company*, 373 NLRB No. 1 (2023) (Published Board Decision).

The most frequently litigated criterion is whether the arbitrator's decision is clearly repugnant to the Act. A decision is clearly repugnant if it is palpably wrong or not susceptible to an interpretation consistent with the Act. *United Parcel Service, Inc.*, 369 NLRB No. 1 (2019) (Published Board Decision). The Board will find an award repugnant when the arbitrator fails to consider whether employee conduct constituted protected concerted activity or applies a standard contrary to established Board precedent. *Phillips 66 Company*, JD-55-22 (2022) (ALJ Decision); *Cooper Tire & Rubber Company*, 363 NLRB No. 194 (2016) (Published Board Decision).

3.0.4.2 Application to Different Contexts

The standard applies to various arbitral forums, including traditional labor arbitration awards and decisions by joint grievance committees or panels. *Babcock & Wilcox Construction Company*, (SF)-15-12 (2012) (ALJ Decision). The Board also applies similar criteria to grievance settlements, treating them analogously to arbitration awards when determining whether to defer. *BCI Coca-Cola Bottling Company of Los Angeles*, 359 NLRB No. 110 (2013) (Published Board Decision); *Durham School Services, L.P.*, JD-30-14 (2014) (ALJ Decision).

Deferral may be denied when the employer unlawfully withholds information relevant to the arbitration from the union, thus failing the fairness requirement. *New York-Presbyterian Hudson Valley Hospital*, JD(NY)-15-24 (2024) (ALJ Decision). Similarly, deferral is inappropriate when conflicts of interest involving union dissident activity compromise the fairness of proceedings. *United Parcel Service, Inc.*, 372 NLRB No. 158 (2023) (Published Board Decision).

The Board will not defer when the arbitrator explicitly limits review to contractual just cause and prohibits evidence of protected activity or employer animus, thereby failing to consider the unfair labor practice issue. *Volvo Group North America, LLC*, 372 NLRB No. 27 (2022) (Published Board Decision). Deferral is also denied when the arbitrator did not consider all relevant unfair labor practice issues presented or when the statutory and contractual issues are not factually parallel. *C2G Ltd. Co.*, JD(SF)-21-18 (2018) (ALJ Decision); *Heartland - Plymouth Court MI, LLC*, 359 NLRB No. 155 (2013) (Published Board Decision).

3.0.4.3 Remedial Issues and Repugnancy

An arbitrator's award may be found repugnant when it imposes remedies that trench on protected activity. The Board declined deferral where an arbitrator's remedy barred an employee from engaging in any conduct that could undermine the employer's overtime system, as this impermissibly restricted protected concerted activity. *Constellium Rolled Products*

Ravenswood, LLC, 366 NLRB No. 131 (2018) (Published Board Decision). However, an award excluding overtime backpay based on lack of evidence is not clearly repugnant, as this factual determination is susceptible to an interpretation consistent with the Act. *United States Postal Service*, JD(ATL)-25-13 (2013) (ALJ Decision).

Similarly, an arbitrator's decision to deny backpay based on employee dishonesty during investigation and arbitration proceedings is not clearly repugnant to the Act. *Shands Jacksonville*, 359 NLRB No. 104 (2013) (Published Board Decision). The Board may also grant partial or "piecemeal" deferral, deferring to an arbitrator's findings on liability while declining to defer on remedy when the arbitrator's awarded remedy is inadequate under current Board law. *American Federation of Teachers*, JD(SF)-44-19 (2019) (ALJ Decision).

3.0.4.4 Board Discretion and Independent Review

The Board is not legally bound by an arbitrator's decision and may exercise its discretion to conduct an independent review of the issues. *Mikesell's Snack Food Company*, 368 NLRB No. 145 (2019) (Published Board Decision); *Regency Grande Nursing & Rehabilitation Center*, 347 NLRB No. 106 (2006) (Published Board Decision). The Board retains jurisdiction to review arbitral decisions to ensure they meet the deferral criteria and are consistent with the Act. *Kelly Services, Inc.*, 368 NLRB No. 130 (2019) (Published Board Decision); *Certainteed Corporation*, 08-CA-073922 (2013) (Unpublished Board Decision).

3.0.4.5 Limitations on Deferral

Certain categories of unfair labor practices are generally not subject to deferral. Board policies typically preclude deferral for Section 8(a)(4) violations involving discrimination for filing charges or giving testimony and Section 8(a)(5) violations concerning failure to provide information, as these protect core statutory rights. *Postal Service*, 352 NLRB No. 115 (2008) (Published Board Decision); *Usps*, JD(ATL)-17-07 (2007) (ALJ Decision). The Board will also decline deferral when the dispute concerns statutory interpretation rather than contract application, such as the duty to bargain over mandatory subjects or post-contract expiration conduct. *Chapin Hill at Red Bank*, 359 NLRB No. 125 (2013) (Published Board Decision); *Regency Heritage Nursing & Rehabilitation Center*, 360 NLRB No. 98 (2014) (Published Board Decision).

Deferral is inappropriate when a union breaches its duty of fair representation through bad-faith conduct in the arbitral proceedings, as this violates the requirement that proceedings be fair and regular. *Roadway Express, Inc.*, 355 NLRB No. 23 (2010) (Published Board Decision). Additionally, when the party seeking deferral has repudiated the arbitration process by refusing to comply with the arbitrator's rulings or unilaterally terminating the arbitrator, the "agreed to be bound" criterion is not met. *Ardsley Bus Corporation, Inc.*, 357 NLRB No. 85 (2011) (Published Board Decision).

3.0.4.6 Distinction from Other Doctrines

The standard applies to post-arbitral deferral, where the Board evaluates whether to defer to an already-issued arbitration award. This differs from pre-arbitral deferral under *Collyer*

Insulated Wire, which addresses whether to defer a dispute to arbitration before an award is rendered. *United Hoisting and Scaffolding, Inc.*, 360 NLRB No. 137 (2014) (Published Board Decision); *St. Francis Regional Medical Center*, 363 NLRB No. 69 (2015) (Published Board Decision). The doctrine is also distinguished from mandatory individual arbitration agreements that interfere with employees' initial right to file charges with the Board, as the standard presumes employees can invoke Board processes before any deferral is considered. *GC Services Limited Partnership*, 369 NLRB No. 133 (2020) (Published Board Decision); *D.R. Horton, Inc.*, 357 NLRB No. 184 (2012) (Published Board Decision).