

2024 Arbitrators & Advocates Symposium
Columbus, Ohio, September 5, 2024
Legal Update on Labor Relations: 2023-2024
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SUPREME COURT

1. ***Bissonnette v LePage Bakeries Park St, LLC*, 601 US 246; 144 S Ct 905; 218 L Ed 2d 204 (2024)**: Transportation workers do not need to work for a company in the transportation industry to be exempt from the Federal Arbitration Act.

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2. ***Muldrow v City of St Louis*, 601 US 346; 144 S Ct 967; 218 L Ed 2d 322 (2024)**: in which the Court redefined the harm that plaintiffs must prove in order to make a Title VII claim.

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3. ***Starbucks Corp v McKinney*, ___ US ___, 144 S Ct 1570; 219 L Ed 2d 99 (2024)**: reversed the lower courts and imposed a more demanding standard when the NLRB seeks a preliminary injunction against an employer.

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4. ***Murray v UBS Securities, LLC*, 601 US 23; 144 S Ct 445; 217 L Ed 2d 343 (2024)**: sets forth what a Sarbanes Oxley whistleblower must prove when bringing a retaliation claim.

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5. ***Loper Bright Enterprises v Raimondo*, ___ US ___, 144 S Ct 2244; 219 L Ed 2d 832 (2024)**: struck down the Chevron doctrine and the deference given to federal agencies.

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SIXTH CIRCUIT

1. ***Odell v Kalitta Air, LLC, 107 F.4th 523 (CA 6, 2024)***: claim was properly framed as a "minor dispute" under the RLA, and thus subject to the terms of the CBA.

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2. ***NLRB v Bannum Place of Saginaw, LLC, 97 F.4th 351 (CA 6, 2024)***: an appellate court will uphold the National Labor Relations Board's single employer finding if it is supported by substantial evidence in the record.

NATIONAL LABOR RELATIONS BOARD (NLRB)

1. **Home Depot USA, Inc. and Antonio Morales Jr. Case 18–CA–273796 February 21, 2024**: "Black Lives Matter" Insignia on Employee Uniform Constitutes Protected Activity Under Circumstances.

OHIO

1. ***Fairfield v. Internatl. Union of Operating Engs., Local 20, 2024-Ohio-2850***: Arbitrator's award on duty to provide information is upheld.

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2. ***Harris v Vision Energy, LLC, ___ Ohio App 3d___; 2024-Ohio-2878***: Ohio resident working in Illinois can proceed under Illinois' Wage Payment and Collection Act.

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3. ***Harmon v City of Cincinnati, ___ Ohio St 3d___; 2024-Ohio-2889***: Employees were entitled to a hearing on whether they were on leave or laid off.

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4. ***O'Malley v Laborers' Int'l Union of North America Local 860***, ___ Ohio App 3d ___; **2024-Ohio-3103**: An allegation of a failed contract does not negate the contract's arbitration provision.

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5. ***Ohio Patrolman's Benevolent Ass'n v City of Cleveland***, ___ Ohio St 3d ___; **2024-Ohio-2651**: Initiating vacatur of an arbitration award must be by motion and not by complaint.

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6. ***Cuyahoga Co v Ohio Patrolmen's Benevolent, Ass'n***, ___ Ohio App 3d ___; **2024-Ohio-1055**: Arbitrator did not exceed his authority in determining a unilateral recoupment of overpayments did not comport with terms of the CBA.

7. ***Youngstown Pro Firefighters, IAFF Local 312 v City of Youngstown***, ___ Ohio App 3d ___; **2024-Ohio-940**: City failed to overcome the presumption in favor of arbitration regarding union's grievance.

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8. ***State ex rel Staple v State Employment Rels Bd***, ___ Ohio App 3d ___; **2024-Ohio-140; 234 NE3d 1077 (Ohio Ct App 01/16/2024)**: Employment Relations Board ordered to proceed with unfair labor practice charges against employer and union.

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9. ***Biotricity, Inc v DeJohn***, ___ Ohio App 3d ___; **2024-Ohio-1593**: A motion to stay discovery and further proceedings pending resolution of their motion to compel arbitration was improperly denied.

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10. ***Colerain Twp v AFSCME Ohio Council 8, AFL-CIO, Local 3553***, ___ Ohio App 3d ___; **2024-Ohio-1352**: Arbitrator's award for back pay does not exceed authority, as making an employee whole is reasonably part of reinstatement.

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11. ***Grimm v Pro Dental Alliance, LLC*, ___ Ohio App 3d___; 2024-Ohio-637**: Claim of unconscionability against an arbitration clause must be resolved before arbitration can be compelled.

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12. ***Int'l Ass'n of Fire Fighters, Local 67 v City of Columbus*, ___ Ohio App 3d___; 2023-Ohio-4625; 231 NE3d 1276**: Arbitration award denying a promotion drew its essence from the CBA.

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13. ***Amalgamated Transit Union v Greater Dayton Regional Transit Auth*, ___ Ohio App 3d___; 2023-Ohio-4330 (Ohio Ct App 12/01/2023)**: Only the union, not the employees, can ratify arbitration awards.

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14. ***Ohio Council 8, AFSCME, AFL-CIO v City of Lakewood*, ___ Ohio App 3d___; 2023-Ohio-4212; 229 NE3d 1242**: State board has exclusive jurisdiction to decide whether city must arbitrate with union (2-1).

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15. ***Horne v GE Aviation Sys LLC*, ___ Ohio App 3d___; 2024-Ohio-3171**: Arbitration cannot be compelled under an agreement specifically excluding disputes covered by the Franken Amendment.

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MICHIGAN

1. ***Batista v Office of Retirement Servs*, ___ NW3d___; 2024 Mich. LEXIS 1443 (July 30, 2024)**: "Normal salary schedule" for retired public school superintendents and administrators is defined.

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2. ***Stegall v Resource Technology Corp*, ___NW3d___; 2024 Mich. LEXIS 1396 (July 22, 2024):** Remedies provided by statute must be sufficient redress when it is an exclusive remedy.

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3. ***Mich Dep't of State Police v Mich State Police Troopers Ass'n*, ___NW2d___; 2023 Mich. App. LEXIS 9644:** Arbitration award upheld that reformed discipline.

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4. ***Mich AFSCME Council 25 v Co of Wayne*, ___Mich___; 5 NW3d 333 (2024):** challenges the standard to be applied when a court has been asked to review, and enforce or vacate, a labor arbitration decision under a Michigan public employee collective bargaining agreement covered by the Public Employment Relations Act (PERA).

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5. ***Mich AFSCME Council 25 v Co of Wayne*, ___NW2d___; 2024 Mich. App. LEXIS 6145 (Ct App, Aug. 8, 2024):** affirmed the order granting the motion to enforce the parties' arbitration award

PENNSYLVANIA

1. ***Schwartz v Kelly Servs, Inc*, 2024 Pa Super 62; 313 A3d 453 (Pennsylvania Super Ct 03/28/2024):** Meaning of ambiguous clause defining claims covered by arbitration agreement must be determined by extrinsic evidence.

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2. ***Allegheny Co Prison Employees Indep Union (ACPEIU) v Allegheny Co*, 313 A3d 358 (Pa Commw Ct, 2024):** Employer need not pay arbitrator awarded back wages when wrongfully terminated employee failed to mitigate damages by working during the interim.

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3. ***City of Philadelphia v FOP*, 307 A3d 1263 (Pa Commw Ct, 2024):** Reinstatement of police lieutenant did not exceed the arbitrator's authority.

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4. ***Co of Berks v Teamsters Local 429*, 305 A3d 1243 (Pa Commw Ct, 2023)**
(Pennsylvania Cwt 12/01/2023): Interest arbitration award of COVID paid leave did not interfere with managerial prerogatives.

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5. ***Lehigh Co v Lehigh Co Deputy Sheriffs' Ass'n*, 304 A3d 97 (Pa Commw Ct, 2023)**
10/19/2023: Arbitrator's award within the essence of the CBA.

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6. ***Borough of State College v Borough of State College Police Ass'n*, 303 A3d 248 (Pa Commw Ct, 2023):** Violations added without review board oversight were not authorized.

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KENTUCKY

1. ***Louisville/Jefferson Co Metro Gov't v Moore*, ___ SW3d ___; 2024 Ky. LEXIS 236 (Aug. 22, 2024):** Ruling on allowable evidence.

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2. ***Hicks v Ky Employers' Mut Ins Co*, 686 SW3d 215 (Ky, 2024):** finding no error when reversing a decision of the Workers' Compensation Board because although appellant was working under a Kentucky employment contract, when his employment was principally localized in another state.

WEST VIRGINIA

1. ***Worland v Kitsap Co*, ___ P3d ___; 2024 Wash. App. LEXIS 750 (Ct App, Apr. 16, 2024):** Collateral estoppel precludes wrongful termination suit where facts alleged have already been determined in employer's favor by arbitrator.

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2. ***Ampler Burgers Ohio LLC v Bishop*, ___W Va___; 902 SE2d 818 (2024)**: A delay in moving to arbitration is not, by itself, sufficient to prove waiver of an arbitration agreement.

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3. ***Brown v. W. Va. Univ.*, 2024 W. Va. App. LEXIS 217**: The notice, not the actual termination started the clock for timeliness.

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TENNESSEE

1. ***Grimsley v Patterson Co, LLC*, ___SW3d___; 2023 Tenn. App. LEXIS 462 (Ct App, Nov. 7, 2023)**: Claims prior to the effective date of the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act may be exempt from mandatory arbitration.

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2. ***Boyd v City of Memphis*, ___SW3d___; 2024 Tenn. App. LEXIS 380 (Ct App, Aug. 29, 2024)**: Discipline must be fair and consistent.

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INDIANA

1. ***Pro Constr, Inc v Historic Walnut Square, LLC*, 224 NE3d 352 (Ind Ct App, 2023)**: the question of waiver through litigation conduct or delay is presumptively for a court and not an arbitrator to decide.