



# LABOR & EMPLOYMENT ISSUES

IN FOCUS

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## **DEPARTMENT OF LABOR ANNOUNCES RETURN TO 1975-ERA REGULATION OF HOME HEALTH AIDE COMPENSATION**

In a Field Assistance Bulletin dated July 25, 2025, the United States Department of Labor (“DOL”) announced that it will no longer enforce a 2013 Obama-era rule (“2013 Rule”) which had extended minimum wage and overtime protections to certain home health aides. The announcement follows a rule proposal issued by the DOL on July 2, 2025, which would rescind the 2013 Rule entirely, and which may be read in its entirety [here](#).

Prior to 1974, the Fair Labor Standards Act (“FLSA”) did not apply to most domestic service workers, with an exception for those employed by certain covered large enterprises. Congress amended the FLSA in 1974 to extend coverage to domestic service workers, including those employed by small companies and private households. However, there were two exemptions: (1) the FLSA’s minimum wage and overtime compensation requirements would not apply to employees employed on a casual basis to provide babysitting or “companionship services for individuals who, (because of age or infirmity) are unable to care for themselves. . .” and (2) the FLSA’s overtime requirement would not apply to “any employee who is employed in domestic service in a household and who resides in such household.” In 1975, the DOL promulgated regulations to clarify “companionship services” as “fellowship, care, and protection for a person who. . . cannot care for his or her own needs,” which included “household work related to the person’s care such as meal preparation, bed making, washing of clothes, and other similar services” and could include other general household work not exceeding “20 percent of the total weekly hours worked.” The 1975 regulations also allowed third-party employers to claim both exemptions.

In 2013, the DOL narrowed what could be considered exempt “companionship services” to include: the provision of “fellowship” (such as social, physical, and mental activities), “protection” (meaning to be present with the person to monitor their well-being), and “care” (meaning assisting with activities of daily living, such as dressing, grooming, feeding, bathing, toileting, and transferring, and instrumental activities of daily living, such as meal preparation, light housework, managing finances, assistance with daily taking of medications, and arranging medical care), but only if such “care” does not exceed 20 percent of the total hours worked per person and per workweek. The 2013 Rule also precluded third-party employers from claiming the exemptions. United States Court of Appeals for the D.C. Circuit upheld the 2013 Rule against third-party home care agencies’ challenge in *Home Care Association of America v. Weil*, 799 F.3d 1084, 1090–96 (D.C. Cir. 2015).

Now, the DOL seeks to rescind the 2013 Rule and return to the 1975 regulations in order to “significantly reduce regulatory burden” on home care services “which in turn

could help to expand access to home care services.” The DOL is accepting comments, which may be submitted [here](#).

### **FOURTH CIRCUIT TELLS EMPLOYER TO HOLD ITS HORSES BEFORE RUNNING TO COURT TO VACATE AN ARBITRATOR’S AWARD**

On July 25<sup>th</sup>, the United States Court of Appeals for the Fourth Circuit (“Court” or “Fourth Circuit”) found that an employer’s attempt to vacate an arbitrator’s award was premature. The case is *Wheeling Power Company v. Local 492, Utility Workers Union of America, AFL-CIO*. No. 23-1157 (4<sup>th</sup> Cir. July 25, 2025).

Wheeling Power Company (“Company” or “Employer”) operates the Mitchell Plant, a power plant whose employees are represented by Local 492, Utility Workers Union of America, AFL-CIO (“Local 492” or “Union”). When another one of the Company’s plants was shut down due to fire, the Employer assigned eight of those employees to work at the Mitchell Plant. Those eight workers did the same work as Local 492 members and were supervised by the same people, but were not subject to the parties’ collective bargaining agreement (“CBA”). The Union brought a grievance, invoking the CBA’s recognition of Local 492 as the sole collective bargaining representative for all Mitchell Plant employees, and demanding the Employer cease and desist from assigning those workers until they joined Local 492 and became covered by the CBA. The arbitrator sided with the union on liability grounds, the “easy part,” but found it “impossible” to fashion a remedy. He ordered the parties to negotiate a remedy but retained jurisdiction on the matter.

Instead of listening to the arbitrator, the Company ran to federal court to vacate the award, and the Union cross-petitioned to confirm. The district court upheld the arbitrator’s award, and the Company appealed. The Fourth Circuit, however, ordered the case dismissed as premature until the complete arbitration award was rendered. While federal courts have jurisdiction over an award arising out of a CBA, “before a court may review the award, it must be determined that the award is final and binding. . . . If it isn’t, a federal court asked to review an arbitrator’s decision should refrain from doing so until the arbitrator has decided all facets of the dispute.”

To be final, not only does the arbitrator have to decide the remedy but the arbitrator must intend the award to be his or her complete determination of the dispute. Regardless of what a party to the CBA might think, “an arbitrator’s ruling is not final if there is a substantive task left for the arbitrator to perform in the proceeding, even if not all the parties agree that such further action is warranted.”

Therefore, when a labor arbitrator first decides liability questions and reserves jurisdiction on the remedy, a party cannot rush to court to sue on the award. A district court is bound to dismiss the case if a party timely raises the complete arbitration rule. Local 492 never raised the complete arbitrator rule, but the Fourth Circuit ordered dismissal on those grounds anyway for the sake of judicial economy and to facilitate “the efficient adjudication of arbitration disputes.” However, failure to assert the doctrine at the outset of litigation can be considered a waiver.

**D.C. CIRCUIT RULES 2:1 IN FAVOR OF UNION  
IN DUTY OF FAIR REPRESENTATION CASE**

In the recent decision, *McLamb v. NLRB*, No. 24-1218, 2025 U.S. App. LEXIS 16114 (D.C. Cir. July 1, 2025), the United States Court of Appeals for the District of Columbia Circuit reviewed a case involving a physical altercation between a union dissident, Thomas McLamb, and an incumbent Union official, Tiyaka Boone. While the 2-1 panel majority affirmed the decision of the U.S. National Labor Relations Board (the “NLRB” or “Board”) finding no violation of the Union’s duty of fair representation, the vigorous dissent may portend a wave of the future.

The involved Union is Amalgamated Transit Union (ATU), Local 689, AFL-CIO. McLamb had been a dissident Union member for nearly a decade and was represented by the National Right to Work Legal Defense Foundation. He unsuccessfully filed a decertification petition to remove the Union’s representation in 2014. He was also a fee objector and filed, to no avail, additional petitions to de-authorize Union security provisions. Such efforts created an allegedly adversarial relationship between McLamb and Union leadership.

In 2021, McLamb campaigned for election as executive board member and shop steward against an incumbent slate. While Boone was not running for election, she campaigned for the incumbent slate. At the employer Transdev’s facility, McLamb arrived to campaign and began to make loud comments accusing the Union of embezzlement. He then began to make a series of comments which Boone understood to be referring to her personal hardships. McLamb made comments about Maryland residents using Virginia license plates to avoid Maryland’s higher registration and insurance costs. Boone had Virginia plates but lived in Maryland. McLamb also made comments about unnamed people not paying their bills. Boone connected this comment to the recent passing of her husband, where she was forced to raise money for his funeral. McLamb commented “some people need to focus on their kids rather than the union,” and Boone believed this to be about her son who narrowly survived a stabbing a few days prior.

The confrontation escalated from the two yelling at each other to Boone eventually striking McLamb in the face. After the physical altercation, another Union official, Alma Williams, argued that if Boone were to be fired, then McLamb should also be fired. Ultimately, Transdev suspended McLamb for ten (10) days and fired Boone following the altercation.

McLamb brought charges under Sections 8(b)(1)(A), 8(b)(2), and 7 of the National Labor Relations Act (“NLRA”), arguing that the Union breached its duty of fair representation. The D.C. Circuit court, in an opinion authored by George H.W. Bush appointee, Judge Karen LeCraft Henderson, who was joined by Joe Biden appointed Judge Florence Y. Pan, gave substantial deference to the NLRB’s prior decision in this case finding no violation. The Circuit Court held that “beyond Williams’ single conditional remark, the record is devoid of any evidence that suggest an intent [of the Union] to seek McLamb’s discharge.” Further, the Circuit Court agreed with the NLRB that “no reasonable employee would have understood Boone’s actions as being related to his union activities” and that Boone’s actions were rather motivated by “personal animosity.”

Trump appointee, Judge Justin Walker, dissented arguing instead that the duty of fair representation was breached because “a union shop steward told an employer to fire a union member who had frequently criticized the Union.” He reasoned that the duty of fair representation, which requires “good faith, based on rational considerations” was violated by Williams who “had a strong bias against McLamb and a clear motive to request that he be punished.”

The duty of fair representation is a high standard that is only breached when a union engages in arbitrary, discriminatory, or bad faith conduct toward a member. The dissent in the case demonstrates a desire to potentially make it easier to successfully bring such a claim. As newly appointed judges who are not as deferential to unions handle these cases, the dissent in *McLamb* may portend a shift in the standard for breaching the Union duty of fair representation in the future.

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