PITTA LLP
Labor, Employment & Employee Benefits Law Firm

LABOR & EMPLOYMENT ISSUES

IN FOCUS

FOR CLIENTS & FRIENDS OCTOBER 30, 2025 EDITION

UNION GIVEN GREEN LIGHT TO INTERVENE IN AMAZON'S CHALLENGE TO STATE JURISDICTION OVER PRIVATE-SECTOR LABOR MATTERS

On October 22, 2025, a federal judge in the District Court for the Eastern District of New York approved the Amazon Labor Union's ("Union") motion to intervene in a case to help defend a recently enacted New York labor law granting the state broad jurisdiction over private-sector labor matters. The case is *Amazon.com Services LLC v. NY Public Emp. Rels. Bd., E.D.N.Y.*, No. 1:25-cv-05311 (filed Sept. 22, 2025).

Governor Kathy Hochul signed S.8034A into law on September 5, 2025. The statute amends Section 715 of the New York State Labor Relations Act, N.Y. Lab. Law § 715 (2025) by bringing private-sector employees within its scope unless the National Labor Relations Board ("NLRB" or "Board") "successfully asserts jurisdiction" via federal court order over "any employees, employer, trades, or industries." Thus, the statute gives the Public Employment Relations Board ("PERB")—the state's agency primarily responsible for overseeing labor relations between public employers and employees—the power to enforce collective bargaining agreements and handle labor disputes for private-sector employees when the Board lacks a quorum to do so itself.

Online retail giant Amazon is suing PERB, arguing that the statute is preempted by federal law. The suit was filed after the Union filed an unfair labor practice charge against Amazon with PERB. Specifically, Amazon is arguing that PERB has no jurisdiction to hear that complaint, as it falls under the purview of the NLRB. The Union has moved to intervene in a separate case in the Northern District of New York where the NLRB is also challenging the law, but the Northern District has yet to rule on that motion.

If the law survives legal challenges, it could open the door to additional, similar state laws. California recently enacted an analogous law, and Massachusetts has proposed a similar bill. Backers of these laws cite the NLRB's weakened state in the absence of a quorum—since President Trump removed Gwynne Wilcox from the NLRB in January—as necessitating these state measures.

NLRB'S STRUCTURE SURVIVES IN THE NINTH CIRCUIT

On October 28th, the United States Court of Appeals for the Ninth Circuit ("Court" or "Ninth Circuit") held that the structure of the National Labor Relations Board ("Board" or "NLRB") was constitutional. In an appeal of the NLRB's finding they violated the National Labor Relations Act, North Mountain Foothills Apartments ("Employer" or "NMFA") challenged the constitutionality of the NLRB alleging that the removal protections of administrative law judges ("ALJs"), the lack of jury trials for Board cases, and the combined investigatory and adjudicatory functions of the NLRB were unconstitutional. The Court disagreed on all three.

Firstly, ALJs' removal protections fall within the job protections upheld by the Supreme Court in *Humphrey's Executor v. US* in 1935. ALJs can only be removed for good cause as determined by the Merit Systems Protection Board. While the Employer argued that Article II of the Constitution gives the President sole removal power of agency officers, under *Humphrey's Executor* and its progeny, principal officers in multimember expert bodies that perform quasi-legislative or quasi-judicial functions and inferior officers can be protected from removal. Moreover, the Employer failed to show any harm, as the President never sought to remove the ALJ in the underlying unfair labor practice case.

Second, the Seventh Amendment to the United States Constitution provides that "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." The Supreme Court in 1937 in *NLRB v. Jones & Laughlin Steel Corp.* squarely held that an NLRB unfair labor practice proceeding is not a "suit in common law" for purposes of the Seventh Amendment. The Board's *Thryv* remedies, which address "all direct or foreseeable pecuniary harms" that "employees suffer as a result of an employer's unfair labor practice," do not require a jury trial either. When it comes to whether remedies require jury trials, "[t]he determinative question is whether the remedy is designed to punish or deter the wrongdoer, or, on the other hand, solely to restore the *status quo*." Here, *Thryv* remedies are designed to restore victims of unfair labor practices to where they would have been but for the unlawful conduct. As such, they are not meant to punish and do not require a jury trial.

Third, "[t]he combination of investigative and judicial functions within an agency does not, of itself, violate due process." To prove a due process violation, the Employer had to show that a single individual both investigates unfair labor charges and adjudicates them or that the NLRB's general counsel who supervises the investigations was biased. The Employer failed on both fronts. NMFA never argued bias. As to the dual function argument, the NLRB general counsel investigates and prosecutes, while the Board adjudicates.

After denying the Employer's constitutional arguments, the Court enforced the NLRB's finding that the Employer violated the National Labor Relations Act. The case is *NLRB v. North Mountain Foothills Apartments, LLC*, Docket No. 24-2223 (9th Cir. Oct. 28, 2025).

PRESIDENTIAL EMERGENCY BOARD 253 ISSUES DECISION IN LIRR LABOR DISPUTE

On Friday, October 17, 2025, a Presidential Emergency Board ("PEB"), titled PEB No. 253, released their recommendations to resolve the dispute between the Long Island Rail Road and its employees represented by the Brotherhood of Locomotive Engineers and Trainmen ("BLET"), the Brotherhood of Railroad Signalmen ("BRS"), the International Association of Machinists and Aerospace Workers ("IAM"), the International Brotherhood of Electrical Workers ("IBEW"), and the Transportation Communications Union ("TCU") (collectively, "Unions"). This dispute has been ongoing with the National Mediation Board since February of 2024. The PEB was assigned after the parties were released from mediation on August 18, 2025, for a 30-day cool-off period which ended with the PEB being assigned to the matter to make recommendations.

Under Section 10 of the Railway Labor Act, a Presidential Emergency Board is created when a labor dispute threatens to "substantially interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service." These boards are formed to try to prevent any strike or stoppage of work by giving their opinion on what they believe would be a fair resolution to the dispute. For a commuter rail system as large as the LIRR, President Donald Trump felt the formation of a PEB was warranted here.

The PEB recommended that the LIRR give raises and retroactive pay for rail workers of 3.0% effective June 16, 2023, 3.0% effective June 16, 2024, 3.5% effective June 16, 2025, and 4.5% effective July 15, 2026. Additionally, the PEB recommended a $3,000 lump sum payment payable after ratification and payment of retroactive back pay to all eligible employees. These raises come after the LIRR's unionized workers have gone without a pay raise since April 2022.

Following these recommendations, the Unions involved issued a statement saying that they do not accept the recommendations as they were given, however, they stated that this was "a step in the right direction" and that they wanted to "use this report as guidance, get back to the bargaining table and agree to a fair settlement." The Unions also stated that they want to settle this dispute and prevent any sort of disruption of service if possible.

---

accurate, complete, useful or current. Accordingly, Pitta LLP is not responsible for any claimed damages resulting from any alleged error, inaccuracy, or omission. This communication may be considered an advertisement or solicitation.

To Our Clients: If you have any questions regarding any of the matters addressed in this newsletter, or any other labor or employment related issues in general, please contact the Pitta LLP attorney with whom you usually work.

To Our Clients and Friends: To request that copies of this publication be sent to a new address or fax number, to unsubscribe, or to comment on its contents, please contact Aseneth Wheeler-Russell at arussell@pittalaw.com or (212) 652-3797.