



United States Government
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE Washington, DC 20570

July 23, 2026

The Honorable Rep. Rick W. Allen
Chairman, Subcommittee on Health, Employment, Labor and Pensions
Committee on Education and the Workforce
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Allen,

Thank you for inviting Chairman Murphy to testify before the Subcommittee on Health, Employment, Labor and Pensions.

Enclosed are responses to the committee's questions for the record. If you or your staff have additional questions, please contact me at (202) 679-9392 or via email Sylvester.Giustino@nlrb.gov.

Sincerely,

Sylvester A. Giustino
Director
Office of Congressional and Public Affairs

**Questions for the Record Committee on Education and Workforce
Subcommittee on Health, Employment, Labor, and Pensions hearing titled:
“Examining the Policies and Priorities of the NLRB”**

Thursday, June 4, 2026

10:15 A.M.

Questions for Chairman James R. Murphy

Chairman Tim Walberg (R-MI)

1. The U.S. Court of Appeals for the Sixth Circuit struck down the *Cemex* standard, holding that the Board exceeded its adjudicatory authority by using a single-case decision to create what amounted to a sweeping new regulatory framework. Does the current Board agree with that assessment? Does the Sixth Circuit’s ruling inform how the Board will approach the use of adjudication versus formal rulemaking going forward?

Answer: Your question refers to the Sixth Circuit’s decision in *Brown Forman Corp. v. NLRB*, 169 F.4th 646 (6th Cir. 2026). The Court remanded that case to the Board for further proceedings, and it is currently pending. *Id.* at 672. For many decades, courts have recognized that agency adjudicators can create an unconstitutional appearance of prejudgment that denies parties their right to due process by making public statements about pending cases.¹ Respectfully, I must therefore refrain from commenting on *Brown Forman*.

The General Counsel’s [petition for rehearing en banc](#) in *Brown Forman*, however, may assist in highlighting potential implications of the Court’s decision on the Agency’s adjudication. I have attached a copy of the petition for your review.

2. In cases such as the *Amazon* captive audience case, where there is cause to believe that the Constitution conflicts with existing precedent, is it your view that the Constitution should override the tradition of requiring three votes to overturn precedent?

Answer: As explained in response to question 1, it would be improper for me to make public statements on questions currently pending before the Board. I must respectfully decline to answer this question.

¹ See *Cinderella Career & Finishing Schs., Inc. v. FTC*, 425 F.2d 583, 590-92 (D.C. Cir. 1970) (discussing the risk of unconstitutional prejudgment that denies parties a fair hearing when agency adjudicators publicly comment on pending cases); *Pillsbury Co. v. FTC*, 354 F.2d 952, 964 (5th Cir. 1966) (noting the danger to due process from certain congressional inquiries into active administrative agency litigation).

Representative Robert C. “Bobby” Scott (D-VA)

1. Mr. Murphy, you mentioned in your written testimony that the Board will continue to honor the traditional three vote threshold to overturn standing NLRB precedent. As much as I will disagree with the decisions you may eventually overturn, the Board does have discretion to choose whether to apply new rulings prospectively or retrospectively.
 - a. If your Board does overrule *Cemex*, will you commit to doing so only prospectively? A retroactive holding would pull the rug out from under thousands of workers who followed the law to reach remedies to bargaining disputes that they were entitled to.

Answer: Respectfully, I cannot commit to any position in potential cases before the Board. Doing so would constitute unlawful prejudgment that denies parties their rights to due process.