

Part II, Section 1: Protecting The Right Of Self-Organization

- *Midland National Life Insurance Co.* (N.L.R.B. 1982)
 - Issue: regulation of factual misrepresentations
- The Board's changing positions on the truth or falsity of campaign propaganda [pp. 160-61]
- The return to *Shopping Kart*: the Board will not “probe into the truth or falsity of the parties’ campaign statements” and “will not set aside elections on the basis of misleading campaign statements” [p. 164]

Midland National (cont.)

- Employees are “mature individuals who are capable of recognizing campaign propaganda for what it is and discounting it.” [p. 163]
- Note: elections will be set aside when “a party has used forged documents which render the voter unable to recognize propaganda for what it is” [p. 164]
- Threats, promises, and other conduct interfering with employee free choice are prohibited [p. 164]
- Two Board members have stated that they are open to reconsidering *Midland National*. See *St. Luke’s Hospital*, 368 N.L.R.B. No. 49 (2019)

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- Inflammatory appeals [p. 169]
- *Sewell Mfg. Co.* (1962): statements with racial overtones are permitted if they are:
 - (1) temperate in tone, (2) germane, and (3) correct factually [p. 170]
- The party making the allegedly inflammatory statement bears the burden of proof

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- *Struksnes Construction Co.* (N.L.R.B. 1967)
 - Employer polling of employees
- The *Blue Flash* criteria [p. 177]
- *Blue Flash* revised: five elements [p. 177]
- Note: a poll taken while an NLRB election petition is pending violates Section 8(a)(1) [p. 178]
- Held: no remedial order was warranted

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- *NLRB v. Exchange Parts Co.* (1964)
 - Facts; issue
- Employee choice of a bargaining representative may be affected by an employer's favors as well as by threats or domination [p. 180]
- “The danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove.” [p. 180]
- Held: the employer's conferral of benefits shortly before the election violated Sec. 8(a)(1)