



## Kirk M. Wall

Partner  
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Kirk's practice focuses on traditional labor law. He has extensive employment, and general and commercial litigation experience. Kirk has appeared in federal and state courts throughout Ohio and in federal courts in Illinois, Florida, Massachusetts, New Mexico, and Louisiana. He also represents clients before the National Labor Relations Board, EEOC, Ohio Civil Rights Commission, and State Employment Relations Board for Ohio.

He is a member of the firm's Recruiting and Professional Development committees.

### Services

- Employment
- Employment Discrimination Litigation
- Wage/Hour Law
- Wrongful Discharge
- Labor Arbitrations
- Collective Bargaining Negotiations
- NLRB Issues
- RICO Actions
- Strike Preparation/Litigation
- Litigation
- Labor
- Audits, Counseling & Training

### Education

- Capital University School of Law (J.D., *magna cum laude*, 1993)
  - Capital University Law Review, publishing editor

- The Ohio State University (B.A., 1989)

## **Bar Admissions**

- Colorado
- Ohio
- Pennsylvania

## **Court Admissions**

- U.S. Court of Appeals for the Sixth Circuit
- U.S. Court of Appeals for the Seventh Circuit
- U.S. District Court for the Southern District of Ohio
- U.S. District Court for the Northern District of Ohio

## **Affiliations/Memberships**

- Project EAR, board member
- American Bar Association
- Ohio State Bar Association
- Columbus Bar Association

## **Distinctions**

- Ohio *Rising Star*<sup>®</sup>

## **Experience**

### **Counseled Leading ULT Freezer Company through Merger**

We counseled our client, Stirling Ultracold, an innovative developer and manufacturer of ultra-low temperature (ULT) freezers for life science and biopharma research, through its merger with BioLife Solutions, Inc., a developer focused on bioproduction devices used in cell and gene therapies. The all-stock mergers was in excess of \$230 million.

Stirling's CEO saw the potential for increased demand for the company's freezers during the COVID-19 pandemic as the freezers were a direct competitor to dry ice used in storing the COVID-19 vaccine. Merging with BioLife enabled Stirling to execute an aggressive strategic plan marketing and selling its freezers. Dinsmore served as the company's general counsel since 2019, and our team of attorneys brought experience in mergers and acquisitions, labor, insurance, and life sciences, all of which was necessary to fully understand and address the company's specialized needs. We counseled our client through the merger while simultaneously defusing challenges. Our team's collective experience enabled Stirling's executives to address the company's short-term needs while also achieving its long-term goal.

“The entire team at Dinsmore was, by far, the best engagement I have had in the 15-plus strategic transactions I have done throughout my career,” said previous Stirling Ultracold CEO Dusty Tenney, now COO and president at BioLife. “Their responsiveness, engagement, availability and deal leadership were extraordinary from LOI to closing.”

### **Arbitration Transport Workers Union of America, Local No. 208 v. COTA Security Gate**

This case involved the addition of job duties to a bargaining unit position and whether management could make the assignment without negotiating with the Union. The Arbitrator confirmed that this was within management's right.

### **Arbitration, Oil Refinery and United Steel Workers, Duped Wages**

Union sought 2 years of back pay over alleged misrepresentation regarding the changes to method of calculation of wages under a 12 hour shift agreement. Based on the Union's calculations, the Company owed the Union in excess of \$1 million dollars in unpaid overtime. The arbitrator's decision denied the grievance in its entirety.

### **Arbitration, Oil Refinery and United Steel Workers, Employee Discharge**

Grievant was discharged for failing to pass qualifications testing. The arbitration was significant because it established that the testing process is reasonable, fair, and calculated to determine the qualifications of the individual. Moreover, the grading process was also determined to be fair. The decision is significant in that challenges to the process are unlikely.

### **Arbitration, Oil Refinery and United Steel Workers, HAZOP**

This case involved the Company's decision not to follow a participative program provision in the contract, where the Union had unilateral veto rights over the Union's participation in the program. The Company instead assigned employees under management's rights to work on process safety management. The arbitrator upheld the Company's right to make the work assignment, even though it was not a typical job duty of the assigned employee.

### **Arbitration, Oil Refinery and United Steel Workers, Maintenance Bid**

This case involved the Company's right to post jobs and fill positions based upon qualifications, instead of straight seniority. The Company had never exercised the right in over 50 years at the facility. The arbitrator held that "deciding when a position is open, at what level to fill an open position, establishing and determining position qualifications and determining who is qualified are all traditional and recognized functions of management. \* \* \* Mere non-use of a right does not entail a loss of it."

### **Arbitration, Oil Refinery and United Steel Workers, Paragraph 131 Wages**

In this case, the Union challenged the wage rate for new position created when the Company installed a Gasoline Desulphurization Unit. The installation caused a restructuring in the line up. This was a case of first impression under the contract. The Company's restructuring of the department and wage rate set for the new position was upheld, and the arbitrator adopted the Company's proposed standard of review for new wage rates. The decision paved the way for further restructuring.

### **Arbitration, Oil Refinery and United Steel Workers, Scheduling**

In this case, the Union grieved the rotation of workers through different assignments at the Lima facility, contending that the definition of schedule under the contract included days and hours of work, as well as the work

assignment. The Union's position was that a two-week rotation had to be followed, which meant that the Company would have to call in workers on overtime to cover shifts if the rotation put an employee in a position for which they were not yet qualified (eg. boilerhouse). The Arbitrator confirmed the Company's position and held that the schedule is limited to the days and hours of work. The Company's management rights clause allowed the Company to change employees' rotation through assignments, which significantly reduced the Company's overtime costs.

### **Arbitration, Oil Refinery and United Steel Workers, Use of Contractors**

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### **Baron v. Watson Pharms., Inc.**

Breach of Employment Contract, Wrongful Discharge in Violation of Public Policy, and Age and Disability Discrimination. The total amount at issue was in excess of \$100,000. The district court dismissed Plaintiff Complaint on summary judgment finding that plaintiff failed to establish he had an employment contract and failed to establish that he reasonably and detrimentally relied on any promises by Watson that his employment would be for a specific duration. The court also found that Plaintiff was not disabled even though he had a heart attack.

### **Carla Cornicelli v. Large National Insurance Company**

Plaintiff brought an employment intentional tort claim after she was jailed on contempt charges by a judge for failing to attend a settlement conference as an insurance adjuster.

### **Doe v. Archdiocese of Cincinnati**

Plaintiff brought suit against the Archdiocese of Cincinnati for breach of fiduciary duty, negligence, engaging in a pattern of corrupt activities, and respondeat superior. The trial court granted the Archdiocese's motion to dismiss because the claims were not timely and plaintiff failed to properly plead a claim arising under Ohio's corrupt practices act, which mirrors RICO. The Third District Court of Appeals for the State of Ohio reversed and the Supreme Court of Ohio granted cert and an appeal as of right because of a conflict in jurisdiction and constitutional issues presented in the case. The Supreme Court affirmed the dismissal, which resulted in the dismissal of numerous lawsuits pending in Southern Ohio, saving the client millions of dollars in defense costs. The case was also significant because it is the first ruling by the Ohio Supreme Court regarding the requirements for Ohio's corrupt practices act.

### **Donald Perkins v. Chemed Corporation, Franklin County Court of Common Pleas**

Represented client in a case against executives violating a covenant not to compete. Successfully obtained restraining order and royalty payments from competing business.

### **Graessle v. Nationwide Credit, Inc., et al, S.D. Ohio**

Plaintiff brought an age and religious discrimination suit and breach of contract suit against Nationwide Credit Inc., following a reduction in force. Plaintiff brought a second suit against client for fraudulent inducement in state court to circumvent failure to amend complaint in original federal action. The total amount at issue was \$300,000. The first suit was dismissed on summary judgment in favor of NCI and settled on appeal to the Sixth Circuit. The

second suit was removed from state court to federal court and the case was dismissed under the first to file rule. The second lawsuit was dismissed without the client having to expend significant resources in discovery.

**John Kelly v. Westbrook Country Club, et al., Richland County Court of Common Pleas**

Successfully defended Country Club where Plaintiff alleged wrongful termination, violation of contract, wrongful discharge, conversion and intentional infliction of emotional distress.

**Joseph Boyd v. Enerfab Corporation, et al., Jefferson County Court of Common Pleas**

Plaintiff brought class action intentional tort claims and product liability claims. Successfully negotiated dismissal of claims against client without payment by client.

**Katherine J. Phillips v. Plan Administrator Delphi Hourly-Rate Employees Pension Plan, N.D. Ohio**

Plaintiff alleged violation of ERISA notice requirements. Matter was dismissed for consideration by Plan Administrator.

**Lead Negotiator in Collective Bargaining**

The City of Blue Ash has 4 bargaining units in its police, fire and maintenance departments. Every 3 years, I am the lead negotiator in the contract negotiations. I am in negotiations every year for the City because of the rotation of the contracts. The Units are as follows: International Association of Fire Fighters, Local 4380, Fraternal Order of Police, Ohio Labor Council, Blue Ash Patrol Officers Benevolent Association, International Association of Fire Fighters, Local 3203, Ohio Council 8, AFSCME, LOCAL 1092-F

**Lead Negotiator in Collective Bargaining, Strike Preparation/Litigation**

In 2009, I concluded several months of negotiations with the United Steel Workers. I was successful in achieving 76 percent of the Company's agenda items. In particular, we negotiated an attendance policy, short term disability program that was more restrictive, a past practices clause that allows the company to unilaterally terminate any past practices upon 30 days written notice, as well as negotiated the restructuring of 3 departments that resulted in the withdrawal of 5 arbitrations. The negotiations process included strike preparation and defending numerous ULP charges.

**McDowell v. GE Pension Plan, S.D. Ohio**

Breach of Employment Contract, Wrongful Discharge in Violation of Public Policy, and Age and Disability Discrimination. The total amount at issue was in excess of \$100,000. Dismissed upon motion for summary judgment. In granting GE summary judgment, the court concluded that the pension board was not arbitrary or capricious in its determination that the injured party was capable of performing her occupation as a value engineer. The injured party carried the burden of establishing that she was permanently incapacitated for work as a value engineer. The overwhelming evidence before the pension board indicated that the injured party was able to resume work as a value engineer and specified that she was not permanently disabled. The court also concluded that, contrary to the injured party's contention, the pension board was not obligated to follow the Social Security Administration's decision to award the injured party total and permanent disability benefits.

**Northwestern Ohio Building & Construction Trades Council v. City of Toledo, et al., Lucas County Court of Common Pleas**

Plaintiff Union claimed violation of prevailing wage and hour laws under Ohio Revised Code. Successfully negotiated a settlement at less than 50% of full value of case and avoided attorneys fees.

## **Oil Refinery v. Anonymous Defendant, N.D. Ohio**

Successfully protected case over breach of warranty in specially manufactured goods.

## **Property Sale**

Represented The Wallick Companies and its affiliates in the sale of a \$12,500,000 nursing facility and independent living facility located in Springfield, Ohio.

## **Richard Rector, et al. v. Lincoln Electric Company, et al., Cuyahoga County Court of Common Pleas**

Plaintiff brought class action intentional tort claims and product liability claims. Successfully negotiated dismissal of claims against client without payment by client.

## **ULP Teamsters Local 42, 1-CA-42760; 1-CA 42832**

Successfully defended ULP over refusal to execute CBA and whether agreement was reached.

## **ULP, Oil Refinery v. United Steelworkers**

Successfully defended ULP regarding changes to 12 hour shift agreement.

## **ULP, Oil Refinery v. United Steelworkers**

Successfully defended ULP charge alleging unilateral changes to CBA where Union alleged failure to bargain changes.

## **ULP, Oil Refinery v. United Steelworkers**

Successfully defended ULP over Company's decision requiring employees bidding on jobs to meet certain qualifications and not awarding positions based solely on seniority.

## **ULP, Oil Refinery v. United Steelworkers**

Successfully defended company against ULP charge stemming from work rule changes.

## **ULP, Oil Refinery v. United Steelworkers**

Successfully defended company against ULP charge alleging retaliation against Union president, refusal to hear arbitrations, and job qualifications.

## **ULP, Oil Refinery v. United Steelworkers**

Successfully defended company against ULP charge alleging unilateral change to short term disability plan and attendance policy.

## **Walsh v. Emery Worldwide Airlines, S.D. Ohio**

Plaintiff, who was a pilot for Emery World wide Airlines, alleged he was terminated in violation of the Americans with Disabilities Act. The total amount at issue was in excess of \$100,000. The case was tried to a jury, which returned a defense verdict dismissing the entire case.

## **Zumbiel v. Reichold, Hamilton County Appellate Court**

We represented Plaintiff C.W. Zumbiel in a suit brought for breach of contract and warranty under the UCC. The trial court granted summary judgment dismissing the claims brought by Zumbiel regarding the failure of adhesive on cartons to hold, which made packaging of products impossible. On appeal, the First District Court of Appeals reversed and allowed the matter to go to trial.

