

***Charles Robinson and General Motors*, 369 NLRB No. 127 (July 2020)**

**Chapter 4, Section 2.A, pages 210-211. Add the following at end of section, on page 211:**

Recently, the NLRB created an exception to the principle that motive is not required to find a violation of Section 8(a)(1). In *Charles Robinson and General Motors*, 369 NLRB No. 127 (July 2020)—a case involving alleged offensive statements made by an employee during protected activity—the Board said that it would apply the motive-based Section 8(a)(3) *Wright Line* analysis [which is explored in the next section of the book] to a wide variety of Section 8(a)(1) discharge cases. The decision is in tension with the Supreme Court’s opinion in *NLRB v. Burnup & Sims*, 379 U.S. 21, 22-23 (1964) (upholding a Section 8(a)(1) violation despite employer’s arguable good faith) and, more generally, with the idea that motive is not relevant to whether an employer has violated Section 8(a)(1). The traditional analysis is that if an employer engages in conduct that would reasonably tend to interfere with, restrain, or coerce employees in the exercise of Section 7 rights, a Section 8(a)(1) violation is found—irrespective of motive—unless the employer can supply a business justification for its conduct. That analysis still applies to most Section 8(a)(1) cases, with the exception now for offensive “outburst” cases. Under *Charles Robinson’s* modification of the previous *Atlantic Steel* analysis, offensive outburst cases now use the motive-based *Wright Analysis*.