

# Substantial Evidence Review

GOVPL 952: Administrative Law

Penn State Dickinson Law

March 26, 2026

## Universal Camera: the backstory

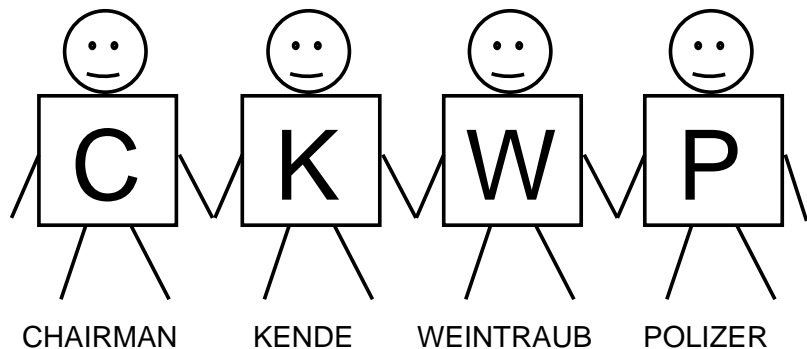


Figure 1: The cast of characters

## Universal Camera: the backstory

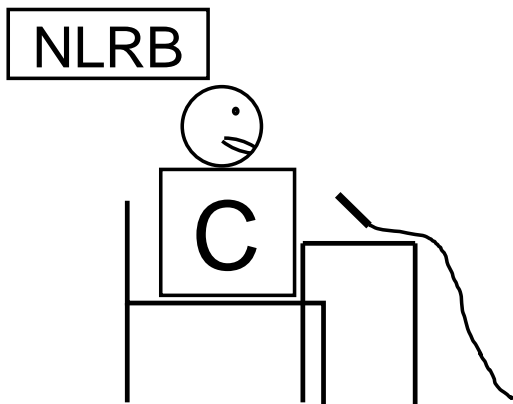
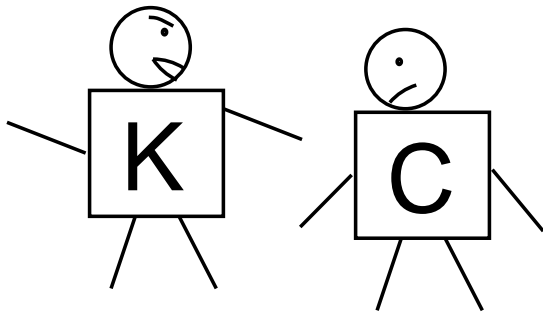


Figure 2: Imre Chairman, an employee of Universal Camera, testifies against the company before the NLRB

## Universal Camera: the backstory



**Figure 3:** His boss, George Kende, reproves Chairman sharply for giving what Kende claims was false testimony

## Universal Camera: the backstory

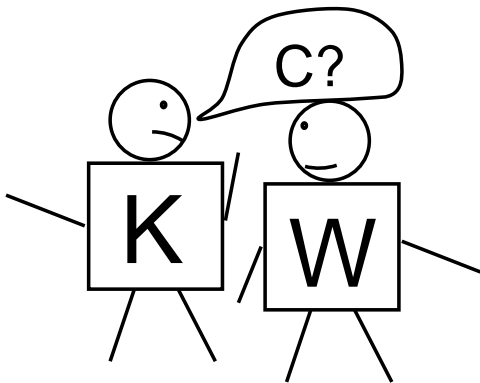


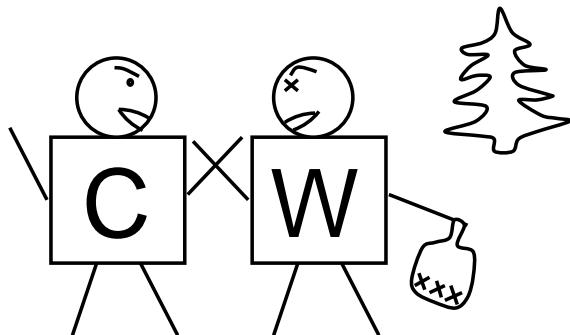
Figure 4: Kende asks personnel manager Irving Weintraub to investigate Chairman

## Universal Camera: the backstory

DEC. 1943						
X	X	X	X	X	X	X
X	X	X	X	X	X	X
X	X	X	X	X	X	X
X	X	X	X	X		

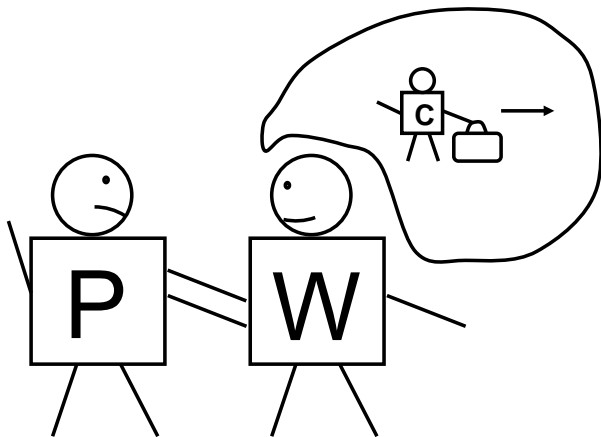
Figure 5: A month passes

## Universal Camera: the backstory



**Figure 6:** Chairman and Weintraub get into a heated exchange on the evening of December 30

## Universal Camera: the backstory



**Figure 7:** The next day, Weintraub tells Chairman's immediate supervisor, Benjamin Polizer, that Chairman should be fired for his behavior on December 30

# Universal Camera: the backstory

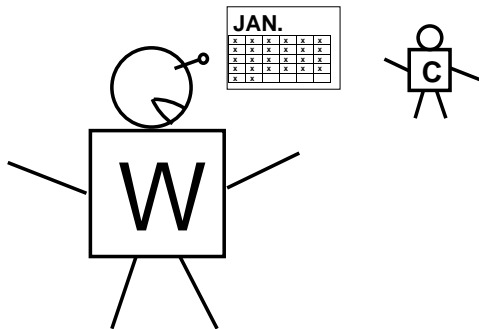


Figure 8: Weintraub is shocked to see Chairman still at work nearly a month later

## Universal Camera: the backstory

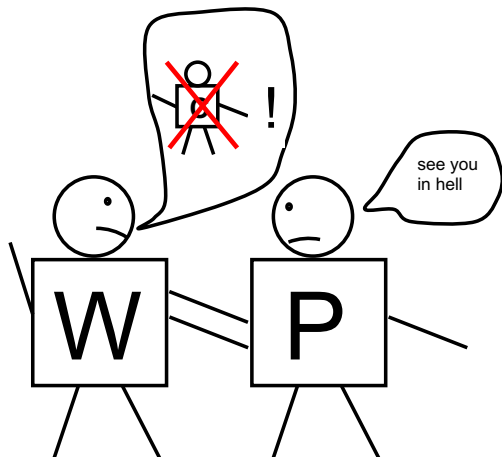


Figure 9: Weintraub again asks Polizer to fire Chairman; Polizer refuses

## Universal Camera: the backstory

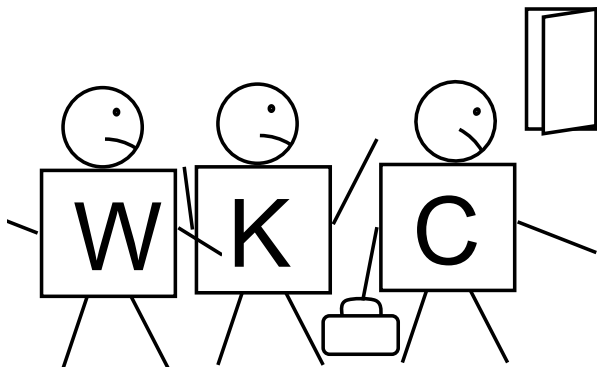


Figure 10: Weintraub takes the dispute to Kende, who concurs that Chairman should be fired

# Universal Camera: the big question

## Why was Chairman fired?

Was his firing retaliation for testifying against Universal Camera?

- The hearing examiner thinks it was not.
- The N.L.R.B. thinks it was.

# University Camera: Scope of Review provision

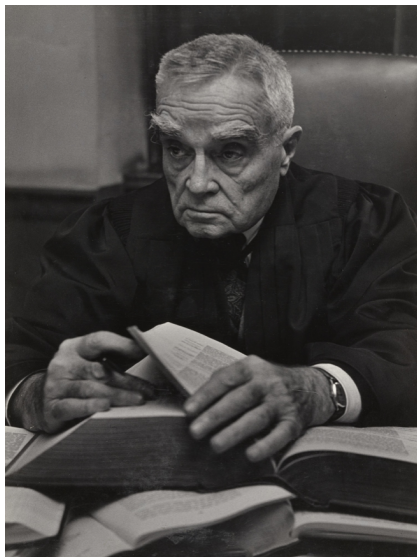
## Taft-Hartley Act, § 10(e)

The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.

The Supreme Court indicates in Universal Camera that this is the same as the substantial evidence standard in the APA.

# Universal Camera

Judge Learned Hand



# Universal Camera

## The main issues

- 1 The 1947 Taft-Hartley Act amended National Labor Relations Act (Wagner Act). How did this amendment change the substantial evidence standard?
- 2 In applying substantial evidence review, may the court look only at record evidence supporting the agency's position?
- 3 What weight should court give to findings by the hearing examiner that were rejected by the agency?

# Universal Camera

## The main issues

- Q The 1947 Taft-Hartley Act amended National Labor Relations Act (Wagner Act). How did this amendment change the substantial evidence standard?
- A The amendments require courts to apply some more scrutiny to agency decisions.

*[T]he Administrative Procedure Act and the Taft-Hartley Act direct that courts must now assume more responsibility for the reasonableness and fairness of Labor Board decisions than some courts have shown in the past. Reviewing courts must be influenced by a feeling that they are not to abdicate the conventional judicial function. Congress has imposed on them responsibility for assuring that the Board keeps within reasonable grounds.*

# Substantial Evidence Review

## The “on the record as a whole” requirement

Q In applying substantial evidence review, may the court look only at record evidence supporting the agency’s position?

A No.

*The Taft-Hartley Act provides that “The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.” Surely an examiner’s report is as much a part of the record as the complaint or the testimony. . . . It is therefore difficult to escape the conclusion that the plain language of the statutes directs a reviewing court to determine the substantiality of evidence on the record including the examiner’s report.*

# Universal Camera

## The main issues

Q What weight should court give to findings by the hearing examiner that were rejected by the agency?

A The weight they deserve.

*We do not require that the examiner's findings be given more weight than, in reason and in the light of judicial experience, they deserve. . . . We intend only to recognize that evidence supporting a conclusion may be less substantial when an impartial, experienced examiner who has observed the witnesses and lived with the case has drawn conclusions different from the Board's than when he has reached the same conclusion. The findings of the examiner are to be considered along with the consistency and inherent probability of testimony. The significance of his report, of course, depends largely on the importance of credibility in the particular case.*

# Substantial Evidence Review v. Arbitrary & Capricious Review

Which is more stringent?

*Ass'n of Data Processing v. Bd. of Governors*, 745 F.2d 677, 683 (D.C. Cir. 1984)

[I]n their application to the requirement of factual support the substantial evidence test and the arbitrary or capricious test are one and the same. The former is only a specific application of the latter, separately recited in the APA not to establish a more rigorous standard of factual support but to emphasize that in the case of formal proceedings the factual support must be found in the closed record as opposed to elsewhere. We shall elaborate upon this point because it is not uncommon for parties to expend great effort in appeals before us to establish which of the two standards is applicable where in fact their operation is precisely the same.

- Scalia, J.