NLRB, Region 20 Roundup

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THE 2008 CONFERENCE ON LABOR AND EMPLOYMENT LAW TO BE HELD FEBRUARY 8, AT THE HYATT REGENCY, SAN FRANCISCO

---There is still time to reserve your space---

San Francisco, CA – On February 8, 2008, Regions 20 and 32 of the National Labor Relations Board, along with the Industrial Relations Research Association's (IRRA) San Francisco Bay Area Chapter, and the Bar Association of San Francisco's Labor and Employment Law Section, will hold their annual Conference on Labor and Employment Law. The Conference is a day-long event, and will be held at the Hyatt Regency San Francisco. This year's Conference will be one of the most dynamic in years, with a very interesting panel debate on proposals for labor law reform led by Former NLRB Chairman William B. Gould IV; a lively panel discussion of some of the many recent developments in Board law; a presentation by Ellen Farrell, Deputy Associate General Counsel of the Division of Advice, concerning the General Counsel's initiatives in initial organizing and first contract negotiation cases; a lunchtime speech by Region 20 Regional Director Joseph P. Norelli on the law concerning permanent replacements; and a panel discussion on interest arbitration in San Francisco, moderated by FMCS Commissioner David Weinberg, with panelists Josie Mooney of the SEIU, Arbitrator Christopher D. Burdick, and Mayor Newsom's Chief of Staff Phil Ginsburg.

The Panel on Recent Developments in Board Law will be moderated by Region 20 Regional Attorney Olivia Garcia, with attorney panelists John Skonberg, Littler Mendelson; Antonio Ruiz, Weinberg, Roger & Rosenfeld; Jane Lawhon, California Nurses Association; and Jerrold C. Schaffer, Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP. The discussion will cover issues affecting the modern electronic workplace (including the impact of the Board's *Register Guard* decision); developments in the area of voluntary recognition and card check (including the Board's decision in *Dana Corp.*); withdrawal of recognition; contract coverage versus the Board's clear and unmistakable waiver standard; as well as developments in the area of representation and salting cases. Approval is pending for 6 hours of MCLE Credit by the State Bar of California. Region 20's Labor Conference Planning Committee (Regional Director Norelli, Regional Attorney Garcia, Deputy Regional Attorney Jill Coffman, and Field Attorneys Kathleen Schneider, Cecily Vix and Micah Berul), along with representatives of the IRRA, have been working hard on this year's conference. As readers of this newsletter know, this is one of the preeminent labor and employment conferences in the nation.

Registration fee is $99 per person, which includes luncheon and materials, or $75 for 3 or more persons from the same organization. Call Field Attorney Kathleen Schneider at 415-356-5157 to reserve your space.

Section 7 of the National Labor Relations Act (NLRA) gives employees the rights to:

- Form, join, or assist a union
- Choose representatives to bargain with your employer on your behalf
- Act together with other employees for their benefit and protection
- Choose not to engage in any of these protected activities

Non-Union Protected Concerted Activity

Q: Does the NLRA protect activity with other employees for mutual aid or protection, even if you don't currently have a union?

A: Yes. For instance, employees not represented by a union, who walked off a job to protest working in the winter without a heater were held by the Supreme Court to have engaged in concerted activity that was protected by the NLRA.

Administrative Law Judge to Decide Whether Stevens Creek Chrysler Jeep Dodge Unlawfully Responded to Employees' Union Organizing Campaign

San Francisco, CA – In November 2007, Region 20 litigated a bargaining order case against Stevens Creek Chrysler Jeep Dodge based on a complaint issued by Regional Director Joseph P. Norelli.

The issues now before the Administrative Law Judge who heard the case are whether Stevens Creek Chrysler Jeep Dodge, in the context of a union organizing drive, committed approximately 35 separate violations of Section 8(a)(1) of the National Labor Relations Act by four supervisors, including threatening plant closure, creating an impression of surveillance, promising benefits, threatening to reduce pay, promising pay increases, granting pay increases, soliciting grievances and interrogating employees regarding their union activities. The Administrative Law Judge will also be deciding whether the company violated Section 8(a)(3) by refusing to hire a technician who was the union organizer's cousin, and by discharging a mechanic because of his union activities. In light of company's alleged egregious unfair labor practices during the course of the Union organizing campaign, the Counsel for the General Counsel of the NLRB is seeking a *Gissel* bargaining order. *NLRB v. Gissel Packing Co.*, 395, U.S. 575 (1969). Thus, the Complaint also alleged that Respondent violated Section 8(a)(5) by refusing to recognize and bargain with Machinists District Lodge 190, Machinists Automotive Local # 1101, International Association of Machinists and Aerospace Workers of America, AFL-CIO, by refusing to provide presumptively relevant information requested by the Union, and by refusing to bargain over the decision and effects of its decision to eliminate a bargaining unit position. This case was investigated by Field Attorney Don Rendall. David B. Reeves and Cecily Vix, serve as Counsel for the General Counsel of the NLRB in this case.

Horizon Contract Glazing Agrees to Reinstate Discharged Employee in Settlement of Complaint

West Sacramento, CA – On September 28, 2007, the Region issued a complaint alleging that Horizon Contract Glazing terminated a glazer, who doubled as a business representative and organizer for the District Council of Painters No. 16, International Union of Painters and Allied Trades, and was participating in the Union's "salting" program, for engaging in activities protected by Section 7 of the National Labor Relations Act. The Employer terminated the employee for allegedly placing a union banner on what the Employer believed to be private property, but which turned out to be public property. The termination occurred just weeks after the Employer had reinstated the employee in order to toll back pay, pending its appeal to the Board of an Administrative Law Judge's October 4, 2006 decision and order in which the judge found that in the preceding year the Employer had unlawfully terminated the same employee because of his Union affiliation. The Region's complaint alleged that the second termination amounted to both unlawful interference with protected activity in violation of Section 8(a)(1), and to union discrimination in violation of Section 8(a)(3). On January 15, 2008, Regional Director Joseph P. Norelli approved a bilateral settlement agreement, under which the Employer agreed to offer the employee full and immediate reinstatement, to make him whole for any loss of earnings or benefits to which he is legally entitled, to remove the

discharge from the employee's records, and to post a notice concerning employees' rights under the NLRA. Field Examiner Craig Wilson investigated the case, Field Attorney Paula Katz performed significant legal research, and Counsel for the General Counsel Matthew Peterson and David B. Reeves negotiated the settlement.

Unfair Labor Practice Charge Procedures

Anyone may file an unfair labor practice charge with the NLRB. To do so, they must submit a charge form to any Regional Office. The form must be completed to identify the parties to the charge as well as a brief statement of the basis for the charge. The charging party must also sign and date the charge.

Once a charge is filed the Regional Office begins its investigation. The charging party is responsible for promptly presenting evidence in support of the charge, which often consists of sworn statements and key documents.

The charged party is then required to respond to the allegations, and will be provided an opportunity to furnish evidence in support of its position.

After a full investigation, the Regional Office will determine if the charge has merit. If there is no merit to the charge, the Region will issue a letter dismissing the charge. The charging party has a right to appeal that decision. If the Region determines there is merit to the charge, it will issue complaint and seek an NLRB Order requiring a remedy of the violations, unless the charged party agrees to a settlement.

Board Denies Sutter Regional Medical Foundation's Motion for Partial Summary Judgment

Washington, D.C. – On January 4, 2008, the National Labor Relations Board, by Members Liebman and Schaumber, denied Sutter Regional Medical Foundation's Motion for Partial Summary Judgment concerning multiple complaint allegations against the northern California health care provider. The complaint, issued on September 28, 2007, alleges that the Employer, in opposition to a campaign to organize its employees by the Office and Professional Employees International Union, Local 29, unlawfully maintained and enforced an email rule in response to employees' Union activity; interrogated employees about their support for the Union; threatened employees with reprisals for supporting the Union; unlawfully discriminated against employees because of their Union activity; and unlawfully enforced its solicitation and distribution rules in response to employees' Union activity. An administrative law trial will be held after the Agency's Division of Advice resolves issues concerning the Employer's email rule, in light of the Board's recent decision in *The Guard Publishing Co. d/b/a/ The Register Guard*, 351 NLRB No. 70 (2007). Field Attorneys Micah Berul and Carmen Leon opposed the Employer's Motion for Partial Summary Judgment and will appear as Counsel for the General Counsel in the pending administrative law trial.

Board Orders The Bohemian Club to Rescind Unlawfully implemented Assignment of Stewards' Duties to Cooks

Washington, D.C. – On November 19, 2007, a three-member Panel of the National Labor Relations Board (Members Liebman, Kirsanow and Walsh) found that The Bohemian Club, San Francisco, California, breached its duty to bargain in good faith by assigning cooks to perform cleaning duties previously performed by stewards without first giving UNITE HERE! Local two, the exclusive representative of those employees, notice and an opportunity to bargain over those changes. The Board concluded that the assignment of cleaning duties was a material, substantial and significant change in the cooks' terms and conditions of employment and that this change was presented as a fait accompli and as such made any demand for bargaining futile. Therefore The Bohemian Club violated Section 8(a)(5) of the Act. This case was investigated by Region 20 Field Attorney Don Rendall and litigated by Counsel for the General Counsel of the NLRB Shelley Brenner. Pursuant to the Board Order, the Bohemian Club has rescinded the changes it made to the cooks' terms and conditions of employment, has posted an NLRB notice advising employees of their rights under the NLRA, and is in the course of complying with other terms of the Board's Order.

Board Modifies Longstanding Recognition Bar Doctrine

Washington, D.C. – In *Dana Corp.*, 351 NLRB No. 28 (September 29, 2007), the Board modified its longstanding recognition-bar doctrine. The Board majority held that henceforth, for a period of 45 days after bargaining unit employees receive notice about their employer's voluntary recognition of a labor organization as the employees' collective-bargaining representative,

To learn more about the National Labor Relations Board and the National Labor Relations Act, please visit the Agency's website at:

http://www.nlrb.gov

To arrange for a presentation about the NLRB in the Bay Area and throughout Northern California, contact Region 20's Outreach Coordinator, Regional Attorney Olivia Garcia or Field Attorney Cecily Vix at:

415-356-5130

or visit us online at the Internet address above and click on the speakers link.

For questions about *NLRB, Region 20 Roundup*, contact Newsletter Editor, Field Attorney Micah Berul at:

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such recognition will not bar the processing of either a decertification petition filed by an employee or a representation petition filed by a rival union. Until *Dana*, for at least four decades a union newly recognized voluntarily by an employer had been insulated from such petitions for a "reasonable period of time," typically from at least six months to one year. The rationale for this insulated period was the promotion of stability in labor relations while the parties negotiated terms for an initial contract. The *Dana* Board concluded that stability continues to justify an insulated period, but that employees' right to free choice requires that imposition of the insulated period be delayed until they have had an opportunity to contest the fact or identity of their collective-bargaining representative.

Under the *Dana* procedure, in order to initiate the requisite 45-day notice period, the employer and/or union must notify the corresponding Regional Office in writing about the grant of recognition, including the recognition agreement, unit recognized, and date of recognition. The Regional Office then prepares and sends to the employer a *Notice to Employees* that the employer must post for 45 days wherever it customarily places communications to its employees. The Regional Office requests that at the end of the 45-day posting, the employer complete and return a *Certification of Posting* detailing precisely when and where it displayed the *Notice*. Unless the Region has received a decertification petition filed by an employee and/or a representation petition filed by a rival labor organization, supported by at least 30% of unit employees, by the close of the posting period, the insulated period will then begin to run for a reasonable period of time.

As of January 17, 2008, Region 20 had issued *Notices to Employees* in four voluntary recognition (VR) cases. The 45-day posting period has not yet closed in any of them, and the Region has so far docketed a decertification petition with adequate employee support in one of those matters. The processing of that petition is currently blocked by an unfair labor practice charge that the voluntarily recognized union filed against the employer. Nationwide, more than 60 *Dana* notices have issued. *Dana* will no doubt spawn further developments as the Board addresses cases that arise pursuant to its new notice requirement.

Region 20 Gives Generously in Combined Federal Campaign

According to a January 15, 2008, progress report on the 2007 Combined Federal Campaign, Region 20 is near the top of federal agencies in the Bay Area in terms of charitable giving. Out of 61 federal offices in the geographic area, Region 20 was third for average employee gift, with a high overall participation rate. Together, the Region 20 staff raised just under $15,000 during the 2007 Combined Federal Campaign (CFC). As noted by the U.S. Office of Personnel Management: "The mission of the CFC is to promote and support philanthropy through a program that is employee focused, cost-efficient, and effective in providing all federal employees the opportunity to improve the quality of life for all. CFC is the world's largest and most successful annual workplace charity campaign, with more than 300 CFC campaigns throughout the country and internationally to help to raise millions of dollars each year. Pledges made by Federal civilian, postal and military donors during the campaign season (September 1st to December 15th) support eligible non-profit organizations that provide health and human service benefits throughout the world."