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Regional Insight

AN OUTREACH NEWSLETTER TO INFORM THE PUBLIC ABOUT WORKPLACE RIGHTS & ISSUES

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Region 25 Secures 10(j) Injunctions

U.S. District Court Judges have recently granted the Region's petitions for injunctive relief filed in two separate cases.

The underlying unfair labor practice charges in Spurlino Materials arose from its disputes with Coal, Ice, Building Material and Supply Drivers, Heavy Haulers, Warehousemen, and Helpers, Local Union No. 716, a/w International Brotherhood of Teamsters. The Region issued complaint alleging, among other things, that Spurlino had made unilateral changes to the employees' terms and conditions without bargaining with the newly certified Union and discriminated against pro-union employees in making job assignments. While Administrative Law Judge (ALJ) Ira Sandron heard the underlying unfair labor practice issues, the Region also sought a temporary injunction in U.S. District Court pending final adjudication of the unfair labor practices. The Honorable David F. Hamilton of the U.S. District Court, Southern District of Indiana, granted the Region's petition on November 8, 2007, and issued a preliminary injunction prohibiting Spurlino from retaliating against leaders and members of the Union because of their involvement with the Union and acting unilaterally to change terms and conditions of employees without bargaining with the Union. In issuing his decision, Judge Hamilton found that there was substantial evidence that Spurlino's anti-union effort had already had a chilling, discouraging effect on the employees' union efforts and that Spurlino's treatment of union leaders and its unilateral changes to the employees' terms and conditions of work had a demoralizing effect on the employees. In granting the preliminary injunction, Judge Hamilton wrote, "In this case, especially because the union is new and vulnerable to the tactics of Spurlino and its consultants, there is a substantial risk that Spurlino's unfair labor practices will inflict irreparable and possibly even fatal harm to the union before the Board can act." Subsequently, ALJ Sandron issued his decision in the unfair labor practice case on December 17, 2007, in which he found that Spurlino Materials violated section 8(a)(1)(3) and (5) of the Act. ALJ Sandron's *(story continued on page 4)*

Board Processes for Voluntary Recognition

In *Dana Corp. and Metaldyne Corp.*, 351 NLRB No. 28 (2007), the Board, in a 3-2 decision, modified its recognition-bar doctrine and held that an employer's voluntary recognition of a labor organization does not bar a decertification or rival union petition that is filed within 45 days of the notice of recognition. In deciding this case, the Board considered the positions of the parties and amicus submissions from various companies, organizations and individuals, as well as Members of the U.S. Senate and U.S. House of Representatives.

Under the Board's former policy, established in *Keller Plastics Eastern, Inc.*, 157 NLRB 583 (1966), an employer's voluntary recognition of a union, based on a showing of the *(story continued on page 6)*

The 29th Annual Labor-Management Relations Seminar :

Making the Law Work for You

Friday, May 9, 2008

IU School of Law – Indianapolis

Downtown Indianapolis

- 6.75 hours of CLE credit (pending approval)
- Registration Fee is $200.00

Enrollment in the seminar is open to attorneys and labor and management officials. The fee includes all seminar materials and a boxed lunch. Fees will not be refunded after April 30, 2008.

- Contact Shaun Ingram

  Tel: (317) 278-4789 Email: slingram@iupui.edu

Have you ever wondered what goes into the decision-making process between the time an unfair labor practice charge is filed and the Regional Director's determination is announced? This year's Labor-Management Relations Seminar, co-sponsored by the Indiana University School of Law – Indianapolis and the National Labor Relations Board (NLRB) Region 25, will provide a unique opportunity for participants to gain insights into the investigatory and decision-making process. Region 25's Regional Director, Rik Lineback, along with other Regional employees and representatives from labor and management, will present a special session dealing with unfair labor practice investigations, the various types of evidence sought and presented, logical inferences to be drawn from such evidence and the weight it should be given. Regional Director Lineback said: "We trust that the joint presentation will provide real-life examples of how best to present evidence and arguments as well as better insight into how we decide whether a case has merit or should be dismissed."

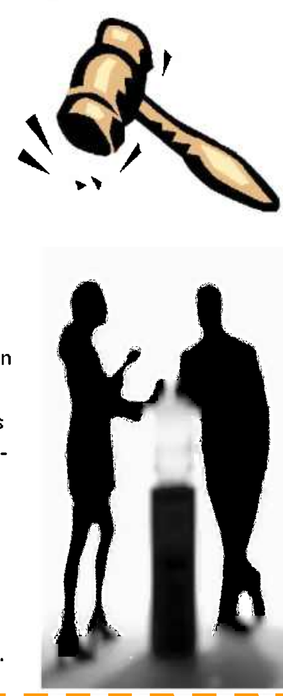
This year's seminar, entitled "Making the Law Work for You," is scheduled for May 9th and will take place at IU's Inlow Hall in downtown Indianapolis. In addition to the special session with the NLRB, this year's seminar features an arbitrators' panel who will share their experiences and offer suggestions about how participants can improve their presentations in their own arbitrations.

The quick pick topics will include separate sessions for union and management participants with a focus on their legal rights in certain situations, such as handling information requests, grievances and salting. Other quick pick offerings include Recent Developments in the Law, How to Take a Case Before the NLRB and Arbitration. The one-day seminar is designed to educate both labor and management representatives about the legal aspects of common work-related issues. Proceeds from the seminar are awarded as scholarships to law students with an interest in labor law. In 2007, five deserving students received scholarships.

The NLRA protects the rights of employees to discuss their terms and conditions of employment.

Know Your Workplace Rights

⇒ Don't Tell Me I Can't Talk About My Wages!



The National Labor Relations Act (NLRA) protects the rights of both unionized and non-unionized employees. The NLRA protects employee rights to join and support unions where they work, to participate in protected concerted activities with other employees, and to refrain from participating in such activities. Under the NLRA, two or more employees have the right to act together to raise workplace issues with their employer or to press for changes in wages or other working conditions. Such employee actions are known as protected concerted activities.

Employer rules which have a tendency to chill employees in the exercise of these rights violate the NLRA. In this regard, the Board has held, among other things, that employers may not prohibit employees from discussing their own wages or attempting to determine what other employees are paid. The mere maintenance and announcing of these rules is a violation, even if these rules are not enforced. Juniper Medical Center Pavilion, 346 NLRB No. 61 (2006).

E-Filing with the NLRB

Last year, the Agency's website (www.nlrb.gov) was recognized as one of the five best out of 158 in the Federal Government. This accolade came from the National Security Archive (NSA), a nongovernmental research institute and library located at George Washington University. The other four outstanding websites are those of the Department of Justice, the Department of Education, the Federal Trade Commission, and the National Aeronautics and Space Administration. NSA noted that the NLRB site contains a wealth of information and an "excellent navigation scheme."

The site allows users to transact business online with the Agency. Several important enhancements include (1) "My NLRB," a feature, using portal technology, that allows users who E-file documents to establish their own accounts in order for the system to automatically fill in data fields on E-filing forms and (2) an expanded E-filing program for filing documents electronically with the General Counsel's Office of Appeals, Regional, Subregional, and Resident Offices, and the Division of Judges.

Most documents to be filed in a Regional Office can be filed at this site.

DOCUMENTS THAT MAY BE FILED WITH THE REGIONAL OFFICE ELECTRONICALLY THROUGH THE AGENCY'S WEBSITE:

- Position Statements
- Notices of Appearance
- Requests for an Extension of Time for Filing Of Documents Due to be Filed With a Regional Director or Hearing Officer
- Requests for Postponement of a Hearing Due to be Filed With a Regional Director or Hearing Officer
- Excelsior Lists
- Observer Designations
- Requests To Proceed
- Withdrawal Requests
- Disclaimers of Interest
- Election Objections and Evidence in Support
- Representation Case Briefs to the Regional Director/ Hearing Officer
- Documents Addressed to Administrative Law Judges and to be served on Counsel for the General Counsel:
- Unfair Labor Practice Exceptions and Briefs to the Board to be served on Counsel for the General Counsel
- Answers to Complaints or Compliance Specifications
- Motions for Summary Judgment and responses to such motions to be filed with the Regional Director or Counsel for the General Counsel
- Petitions to Revoke Subpoenas and responses to such petitions to be filed with the Regional Director or Counsel for the General Counsel

ELECTRONIC FILINGS MUST BE TIMELY

Please note that date-sensitive electronic filings must be submitted so that transmission through the Agency's website is accomplished by the time of close of business in the receiving office. A failure to timely file or serve a document will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason.

DOCUMENTS WHICH ARE NOT ACCEPTED ELECTRONICALLY

- Charges
- Petitions
- Voluntary-Recognition Notifications

More information is available at www.nlrb.gov or from our Information Officer at 317-226-7430.

The Board has an expanded E-filing program which allows you to easily file documents electronically through the agency's website.

Region 25 Unfair Labor Practice Case Statistics

The following statistics highlight Region 25's unfair labor practice case processing during Fiscal Year 2007 (October 1, 2006—September 30, 2007):

- 458 unfair labor practices cases were filed.
- 35.7% of the cases reviewed were found to have merit.
- 93.2% of meritorious cases were settled.
- 100% litigation success rate in the 8 Administrative Law Judge and Board decisions issued, encompassing 32 cases arising out of Region 25.

Settlements and compliance with Board Orders resulted in:

- $844,804 in backpay being awarded.
- $10,853 in fees, dues, and fines reimbursed.
- 45 discriminatees being offered reinstatement (24 accepting, 21 rejecting).

Region 25 had a 100% litigation success rate for ALJ and Board decisions issued during Fiscal Year 2007

Region 25 Injunctions (Story continued from page 1)

decision has been appealed to the Board.

In the case of Frye Electric, Inc., the investigation by Region 25 showed that Frye Electric, during the very early stages of an organizing campaign conducted by the International Brotherhood of Electrical Workers, Local 481, unlawfully interrogated and subsequently discharged two of its employees because they engaged in organizational efforts on behalf of the Union. Region 25 further found that Frye's misconduct caused irreparable harm to the Union's organizing campaign, essentially bringing it to a halt. On July 23, 2007, the underlying unfair labor practice charge was litigated before ALJ Paul Buxbaum. On October 19, 2007, Judge Buxbaum issued his decision concluding that Frye Electric unlawfully interrogated and discharged the two Union supporters in violation of the Act. Frye Electric appealed ALJ Buxbaum's decision to the Board, where it is currently pending. At the same time as the administrative proceedings were taking place, the Region filed for a temporary injunction in District Court. On November 19, 2007, U. S. Magistrate Judge Magnus-Stinson determined that Region 25 is likely to prevail on the merits and that the Union's organizing efforts would be irreparably harmed absent the injunction. In discussing the necessity for injunctive relief in this case, Magistrate Judge Stinson stated that "the passage of time absent an injunction will decrease the union's ability to organize, as the employees' fears become further ingrained." The Honorable Richard Young subsequently adopted Magistrate Judge Stinson's decision and recommendation in its entirety and granted the Region's petition for injunction. Pursuant to Judge Young's decision, Frye has been enjoined and restrained from interrogating employees regarding their union membership, activities, and sympathies and from discharging its employees because of their union membership. The order further requires that Frye offer interim reinstatement to the two discharged employees pending the outcome of the Board's administrative proceedings.

Section 10(j) of the Act allows the Region to request an injunction in District Court pending the conclusion of the Board proceedings.

NLRB Speakers are Available for Your Group

Interested in having a representative of the Regional Office address your group?

Members of the Regional Office staff are available to make presentations before any group, including classroom groups, legal services clinics or service agency staffs, as well as those members of the public that they serve. Speakers are available to cover a variety of topics, including presentations describing what the Act's protections cover, how the Region investigates unfair labor practice charges, the NLRB's representation case procedures, or any other NLRB topic of interest.

To arrange for a speaker and to discuss possible topics, please contact the Assistant to the Regional Director Patricia Nachand at (317) 226-7404. You may also request a speaker through a link on the NLRB's Web site: http://www.nlrb.gov/about_us/speakers.aspx

Update

Updates from Last Issue

- TEAMSTERS LOCAL 414 (AGGREGATE INDUSTRIES), 25-CP-209 / JD-66-07

Our Summer 2007 issue advised readers that Region 25 sought, and was granted, a temporary injunction in U.S. District Court (Northern District of Indiana), under the authority of Section 10(l) of the Act. The injunction prohibited Teamsters Local 414 (Fort Wayne) from picketing of Aggregate Industries beyond thirty days in an effort to force the employer to recognize the Union as the exclusive bargaining representative of the employees of Aggregate's newly acquired subsidiary, Klink Concrete. On September 28, 2007, Administrative Law Judge Michael A. Rosas issued his decision concluding that the union violated Section 8(b)(7)(C) of the Act and must cease and desist its unlawful recognitional picketing of Aggregate Industries. Judge Rosas' decision can be found on the Board's website (www.nlrb.gov) at http://www.nlrb.gov/shared_files/ALJ%20Decisions/2007/JD-66-07.pdf

- REGISTER GUARD, 351 NLRB No. 70

The Summer 2007 newsletter also advised our readers about the Board granting oral arguments in *Register Guard* over employees' use of their employer's email networks to communicate about union activities. Since that newsletter issue published, the Board issued its decision in the case, holding that an employer does not violate the NLRA by prohibiting employees from using employer-provided email systems for union-related communications with other employees, so long as the employer does so in a non-discriminatory manner. The decision issued on December 16, 2007, and can be found on the Board's website (www.nlrb.gov) at http://www.nlrb.gov/shared_files/Board%

The Regional Attorney's Corner

By Dick Simon

Section 10(j) of the Act authorizes the Board to seek injunctive relief in U.S. District Court in situations where, due to the passage of time, the normal adjudicative processes of the Board likely will be inadequate to effectively remedy the alleged violations. Congress created Section 10(j) relief as a means to preserve or restore the lawful status quo ante, so that the purposes of the Act are not frustrated and the final order of the Board is not rendered meaningless by the passage of time. Congress recognized that a respondent's illegal acts could, in some cases, permanently alter the situation and prevent the Board from effectively remedying the violations by its final order.

The Board may seek Section 10(j) injunctions for any alleged violation of the Act, other than those enumerated in Section 10(l) of the Act. Several categories of cases, however, are particularly likely to warrant consideration of 10(j) relief such as conduct that interferes with an organizational campaign, withdrawal of recognition from an incumbent union, mass picketing and violence where local authorities are unwilling or unable to control the situation, and interference with access to the Board's processes. Such injunctive relief may be sought as soon as an unfair labor practice complaint is issued by the General Counsel and remains in effect until the unfair labor practice case is finally disposed of before the Board.

When the Regional Office determines that a case may be appropriate for injunctive relief, the parties are notified of this fact and invited to submit evidence and argument regarding the appropriateness of 10(j) relief in the case. If the Region concludes that 10(j) relief is warranted in a particular matter, the Region submits a recommendation to the General Counsel seeking authorization to request injunctive relief from the appropriate U.S. District Court. If the General Counsel agrees that 10(j) relief is warranted, the General Counsel submits a recommendation to the Board seeking authorization from the Board to pursue 10(j) relief unless the Board, as is presently the case, has delegated such decision-making authority to the General Counsel. If the Board authorizes the General Counsel to seek Section 10(j) injunctive relief, the Region will promptly file a petition for such relief absent a settlement of the matter by the parties.

As I noted in the last issue of Regional Insight, the Region aggressively pursues Section 10(j) relief in cases where such relief is appropriate. During the year ending October 1, 2007, the Region considered 10(j) relief in 21 situations involving 57 cases. The Region recommended to the General Counsel that 10(j) relief be authorized in 4 of these situations. The General Counsel recommended to the Board and the Board authorized seeking 10(j) relief in 3 of the 4 situations and the remaining matter settled prior to any action by the General Counsel. After Board authorization the Region promptly filed appropriate petitions for injunctive relief and thereafter obtained injunctive relief in the Spurlino & Frye cases discussed in this newsletter and settled the third situation prior to a decision by the court.

Local Unions are Obligated to Provide Financial Information about their Affiliates

On September 7, 2007, the Board ruled, in a 3-2 decision, that local unions that pay a portion of their income from dues to national organizations and other affiliates must disclose to nonmembers how the affiliates spend that money when the nonmembers object to paying agency fees for nonrepresentational purposes. The Board also concluded that unions may not wait until a nonmember challenges the local's calculation of the reduced fee before being required to produce the information about the affiliates' expenditures. (*Teamsters Local 579 (Chambers & Owen Inc.)*, 350 NLRB No. 87 (2007). In so doing the Board, overruling previous precedent, found that "basic considerations of fairness" require that *Beck* objectors be given sufficient information before deciding whether to challenge the union's calculation of the agency fee. The dissent, however, would find that unions have no legal duty of fair representation to provide such information before objecting nonmembers challenge the local union's reduced fee calculations and that previous precedent appropriately balances the unions' interests in administrative economy and the *Beck* objectors need for information concerning the expenditures of the unions' affiliates.

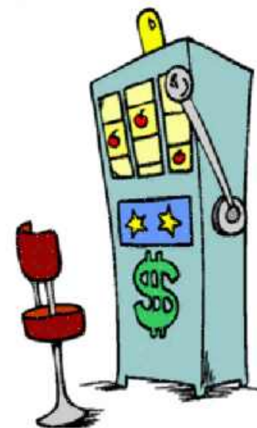
The Board's complete decision can be found on the Board's website at www.nlrb.gov/shared_files/Board Decisions/350/v35087.htm

Test of Certification: Casino Aztar

A "test of certification case" is a situation where an employer openly refuses to recognize its employees' certified bargaining representative with the intent of having the Board's certification reviewed by a federal circuit court. The Board's expedited procedures require that a complaint issue within 14 days of filing of such a charge. The employer then has up to 14 days to respond to the complaint and a motion for summary judgment is filed by the regional office within 7 days of the receipt of the answer.

This uncommon situation recently arose in Region 25. The International Union, United Automobile, Aerospace and Agricultural Implement Workers, UAW was certified on November 28, 2007,as the bargaining representative of a unit of employees at Aztar Indiana Gaming Co. LLC, d/b/a Casino Aztar in Evansville, Indiana with the job titles of dealers, dealers/floor supervisors, and floor supervisors. Prior to the issuance of the certification of representative, Casino Aztar requested that the Board review the Regional Director's determination that employees were appropriately in the same unit, and the Board denied the request.

On December 21, 2007, the UAW filed a charge alleging that Casino Aztar was refusing to recognize it as the representative of the unit employees. Casino Aztar informed Region 25 that it was contesting the regional determination concerning the appropriateness of the unit composition and, therefore, was refusing to recognize the UAW. Region 25 issued complaint on January 4, 2008, and Casino Aztar's answer admitting that it was refusing to recognize the UAW was filed on January 16, 2008. Region 25 subsequently filed a motion for summary judgment with the Board on January 17, 2008. On March 19, 2008, the Board issued its decision (352 NLRB No. 41) upholding the UAW's certification. Casino Aztar refused to comply with the Board Order and Region 25 has transferred the case to the Board's Enforcement Litigation Branch to seek enforcement in federal court. As of this printing, the date for that proceeding has not been scheduled. The Board's decision may be found at http://www.nlrb.gov/shared_files/Board%20Decisions/352/v35241.pdf



A company's voluntary recognition of a union no longer bars an election petition that is filed within 45 days of a notice of recognition.

Voluntary Recognition (Story continued from page 1)

union's majority status, barred a decertification petition filed by employees or a rival union's petition for a "reasonable period" of time. The Board had reasoned that labor-relations stability was promoted by a rule under which a voluntarily recognized union was insulated from challenge while negotiating for a first collective-bargaining agreement.

In *Dana*, the Board majority concluded that although the basic justifications for providing an insulated period are sound, they do not warrant *immediate* imposition of an election bar following voluntary recognition. The Board held that the uncertainty surrounding voluntary recognition based on an authorization card majority, as opposed to union certification through a Board election, justifies delaying the election bar for a brief period during which unit employees can decide whether they prefer a Board-conducted election. Under the Board's new policy, an employee or rival union may file a petition during a 45-day period following notice that a union has been voluntarily recognized. The petition will be processed if, like other petitions, it is supported by 30 percent of the bargaining unit.

Since *Dana*, five employers or unions have notified Region 25 that the employer was voluntarily recognizing the union to represent a specific unit of employees. When this occurs, the Region immediately sends the parties a Notice to Employees which is then posted in the facility for 45 days. The Notice advises the employees of the voluntary recognition in the specified unit and advises that anyone may file a petition for an election within that time period. If no petition is filed within 45 days from the date of posting of the Notice, then the union's status as collective-bargaining representative may not be challenged for a reasonable period of time to allow the parties an opportunity to negotiate a collective-bargaining agreement. The employer is required to complete a certification of posting and return it to the Regional Office after the 45-day posting period expires.

In Region 25, one of the five voluntary recognition cases has resulted in a decertification petition being filed; however, it is too early to tell whether petitions will be filed within the requisite 45-day period for the other four recognition cases. The Board's *Dana* decision can be found at http://www.nlrb.gov/shared_files/Board%20Decisions/351/v35128.pdf

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Regional Insight **is an outreach newsletter published by Region 25 of the National Labor Relations Board to inform the public about workplace rights & issues.**

Winter 2007/Spring 2008 Issue Contributors: Rik Lineback, Joanne Mages, Colleen Maples, Mary Jane Mitchell, Patricia Nachand, Dick Simon, Kim Sorg Graves, & Raifael Williams.

*** Please contact the Region if you wish to be added to or deleted from our newsletter distribution list.*

The National Labor Relations Board is an independent federal agency created by Congress in 1935 to administer the National Labor Relations Act, the primary law governing relations between unions and employers in the private sector. The statute guarantees the right of employees to organize and to bargain collectively with their employers, and to engage in other protected concerted activity with or without a union, or to refrain from all such activity. The NLRA extends rights to most private sector employees, to their employers, and to unions/labor organizations. The NLRA protects workers who form, join, support or assist unions, also known as labor organizations, and protects groups of workers (two or more employees) who engage in protected concerted activities without a union concerning their wages or working conditions. The Act protects non-union and union employees against employer and union discrimination based on union-related activities or other protected concerted activities.

Employees, who wish to pursue workplace organization issues or allegations of unfair labor practices may seek assistance from the nearest regional NLRB office. Employers and Unions who wish to pursue allegations of unfair labor practices may do the same. The Agency has 51 regional, subregional, or resident offices to serve the public.

We're on the Web!
www.nlrb.gov

From the Desk of the Regional Director

Regional Director,
Rik Lineback

"I've learned that you shouldn't go through life with a catcher's mitt on both hands. You need to be able to throw something back." - *Maya Angelou*

I enjoy Maya Angelou's baseball image that addresses service to others. As public servants, the staff of Region 25 strives to investigate representation petitions and charges of unfair labor practices in an honest, effective, and efficient way. Not surprisingly, Region 25 employees also generously participate in all kinds of outreach to the public. From NLRB informational booths at both Black Expo and Fiesta to our leading the Minton-Capehart Federal Building's January Pajama Project for Wheeler Mission to our participation in "Paint the Town Pink", our Board Agents willingly share their talents, treasure, and experience in the service of others. We have also visited IPS high schools to speak with these future employees about their rights under the National Labor Relations Act as well as a possible future in government service as attorneys, investigators, support staff, etc. Within the last year, we enjoyed a visitation from a Crispus Attucks Latin class eager to learn about legal terms as well as government service. Accordingly, please keep us in mind as a resource for providing speakers to address your supervisors/managers, your civic group, or your union agents concerning timely labor law topics and how we conduct investigations and elections.

[***Note:*** Neither a *Google* search nor a cheap *Wikipedia* glance yield any real connection (besides her quotation) between baseball and the fascinating life lived by one of our beloved poets and authors.]

Cordially, Rik Lineback