



NLRB NEWS:

CONNECTICUT

NLRB REGION 34



January 2008

First Edition

280 Trumbull St.,
21st Floor
Hartford, CT. 06103

Phone: (860) 240-3522
Fax: (860) 240-3564
E-mail: Region34@nlrb.gov

Website: www.nlrb.gov

In This Issue:

- **Did you know ?**
Rights protected by the National Labor Relations Act
- **Unfair Labor Practice News**
- **Representation Case News**
- **Compliance News**
- **How to file an Unfair Labor Practice Charge**
- **How to file a Representation Petition**
- **Remedies for Violations**

FROM THE DESK OF THE REGIONAL DIRECTOR

I am pleased to present this inaugural issue of *NLRB NEWS: CONNECTICUT*. This newsletter is part of the Region's ongoing outreach program to inform the public of our efforts to enforce the National Labor Relations Act (the Act), and to raise public awareness of the NLRB and its mandate to further workplace democracy. Regional staff members are available and welcome the opportunity to speak to any group or organization about the NLRB, the Act and the protections it offers. If you want to learn more about our outreach program, or are interested in having us provide a speaker to your organization or event, please contact our outreach coordinator, Assistant Regional Director John Cotter, at 860-240-3003, or by e-mail at John.Cotter@nlrb.gov.

Peter B. Hoffman, Regional Director

Learn More:

The NLRB website, www.nlrb.gov, contains a great deal of information about the protections of the Act, NLRB policies and procedures, and how to contact any Regional Office.

Contact the Region:

There is always an information officer available between 8:30 am and 5:00 pm at the Hartford Regional office, by phone or in person, to answer general inquiries or to discuss a specific workplace problem or question. The information officer can offer information about the Act and advice as to whether it appears to be appropriate to file an unfair labor practice charge or a petition. If filing a charge or petition does appear to be appropriate, the information officer will assist in completing the charge or petition form.

How to File an Unfair Labor Practice (ULP) Charge:

- Anyone may file a ULP charge with the NLRB by submitting a charge form to any Regional Office. The form identifies the parties to the charge and includes a brief statement of the basis for the charge, and must be signed by the charging party.
- Forms are available on the NLRB website, or may be obtained from any NLRB regional office. NLRB regional offices have information officers available to assist with the filing of charges.
- You must file the charge within 6 months of the unfair labor practice.

When a Charge is Filed:

- The NLRB Regional Office will investigate. The charging party is responsible for promptly presenting evidence in support of the charge, which usually consists of a sworn statement and documentation of key events.
- The Region will ask the charged party to present a response to the charge, and will further investigate the charge to establish all facts.
- After a full investigation, the Region will determine whether or not the charge has merit.

Did you Know?

Workplace rights protected by the NLRB

As many people know, the NLRB protects employee rights to join and support unions where they work.

However, the NLRB also protects other employee rights. Employees have the right to join together to raise workplace issues with their employer or to press for changes in wages or working conditions. Such employee actions are known as protected concerted activities.

Unlawful employer actions that are prohibited by the Act include:

- Threatening, disciplining, terminating, or otherwise retaliating against an employee for having engaged in protected concerted activities.
- Prohibiting employees from discussing or sharing information about their wages or working conditions.
- Prohibiting employees from talking about workplace issues on their own time.

Employers who violate the Act generally must cease their unlawful actions, assure employees of their rights, and pay backpay for losses suffered as a result of unlawful actions.

The NLRB also protects an employee's right to not participate in unions or in other protected concerted activities. The Act does not require an employer to grant any specific employee or union demands.

But there are limits to the Act's protections!

Although the Act protects employees in joining together to raise workplace issues, employees are *not* protected by the Act when they make complaints or demands for themselves alone.

The Act does *not* protect employees who engage in misconduct, even when the misconduct is intended to support concerted employee action. Threats, violence, or product defamation are among actions generally considered to be misconduct warranting discipline.

After the Region Makes a ULP Determination:

- If the Region determines that a charge has no merit—that the charged party has not violated the Act—it will dismiss the charge after giving the charging party the opportunity to withdraw. The charging party has the right to appeal a dismissal.
- If the Region determines that a charge has merit—that the charged party has violated the Act—it will attempt to settle the case. Unless there is a settlement, the Region will proceed to trial to obtain a finding of a violation and an order directing the charged party to undertake remedial actions. The charged party has appeal rights, including a right to a hearing, with a final decision subject to appeal to a federal court.

Unfair Labor Practice News

An important function performed by the Hartford Regional Office is the investigation and litigation of unfair labor practice (ULP) charges alleging that an employer or a union has violated the Act. Fortunately, the overwhelming percentage of ULP charges that are found to have merit by the Hartford Regional Office are not litigated, and instead are resolved through a settlement. Over the past two calendar years, the Hartford Regional Office has settled approximately 270 ULP cases. Several of those settlements involved novel approaches to resolving highly contested issues.

Key Lincoln Mercury and Russ Brown Associates

In *Key Lincoln Mercury*, Case Nos. 34-CA-11329 et al, and *Russ Brown Associates*, Case No. 34-CA-11516, the United Auto Workers union (UAW) sought to represent the employees at Key, an automobile dealership located in Bridgeport, Connecticut. The Hartford Regional Office determined that Key had committed numerous violations of the Act, including threats to close its facility if the employees selected the UAW to represent them; maintaining rules that improperly restricted employees from engaging in union activities; promising and granting improved benefits to discourage employees from supporting the UAW; and denying other benefits to employees and disciplining them because of their union activities. Many of these violations were committed by a representative of Russ Brown Associates, a consulting firm that Key hired to convince employees that they did not need the UAW to represent them.

In addition to the normal remedies for such violations, including the posting by Key of a Notice to Employees, payment of backpay, and removal of the disciplinary actions taken against employees, the Hartford Regional Office secured certain additional “special remedies” because of the negative impact that Key’s unlawful actions had on the UAW’s organizing campaign. Thus, Key agreed to read the Notice to Employees at a meeting with all employees present; for a two year period, provide the UAW with the names and addresses of its employees, provide the UAW with equal time and facilities to respond to any address made by Key regarding the question of union representation; provide the UAW with access to its bulletin boards; and provide the UAW the right to deliver a 30-minute speech to employees on working time prior to any scheduled NLRB election.

Region 34 Unfair Labor Practice Statistics - FY 2007:

- 308 unfair labor practice charges were filed.
- 46% of the charges were found by the Hartford Regional Office to be meritorious.
- 100% of the meritorious cases were settled prior to hearing.
- 90% of litigated cases were won before either an administrative law judge or the NLRB.

In addition to the settlement agreement with Key, the Hartford Regional Office secured a separate settlement agreement with Russ Brown Associates, which had independently violated the Act by asking employees about their union activities, threatening that Key would be closed or relocated if the employees selected the UAW to represent them, threatening employees with physical harm if they supported the UAW; and promising and granting benefits to employees in order to discourage them from supporting the UAW. This separate settlement agreement with its broad cease and desist provisions, was deemed essential in order to deter Russ Brown Associates from committing similar violations while representing other employers during union organizing campaigns.

Success Village Apartments

Another settlement agreement with an unusual remedy involved *Success Village Apartments*, Case No. 34-CA-10718. In that case, the Hartford Regional Office determined that Success Village, a co-op apartment complex located in Stratford, Connecticut, had violated the Act by filing a lawsuit against two former members of its Board of Directors because those members had testified at an NLRB hearing in support of the union that represents its maintenance employees. To remedy this violation, Success Village agreed to withdraw the lawsuit and reimburse the affected individuals for all legal fees and expenses they incurred in defending against the lawsuit.

American Medical Response

Another settlement agreement with a novel remedy involved *American Medical Response*, Case No. 34-CA-10574. In that case, the employer implemented “Action Teams” at its Bridgeport facility pursuant to a nationwide policy. The Hartford Regional Office determined that the “Action Teams” violated the Act because it was the equivalent of an employer-dominated labor organization, i.e., a “company union”. Because the “Action Team” policy was nationwide in scope, the Hartford Regional Office sought and obtained a settlement requiring the employer to disestablish and cease giving any assistance or support to all “Action Teams” located at its 53 facilities throughout the United States.

Yale New Haven Hospital

The settlement agreement involving Yale New Haven Hospital, 34-CA-11713, demonstrated the ability of the Hartford Regional Office to secure settlements that are enforceable in Federal court. For the past several years, New England Health Care Employees Union, District 1199 (District 1199) has been engaged in a campaign to organize the Hospital's service and maintenance workers. As a result of several unfair labor practice charges arising during the campaign, the Hospital has entered into a series of settlement agreements with the Hartford Regional Office.

In 2006, following another series of unfair labor practice charges, the Hospital agreed to enter into a Formal Settlement Agreement that provided for "broad" remedial language prohibiting the Hospital from "in any other manner interfering with, restraining or coercing employees in the exercise of their rights under Section 7 of the National Labor Relations Act." Under such a prohibition, the Hospital will be subject to contempt proceedings in Federal Court should it engage in any conduct that violates the Act. The Formal Settlement Agreement was approved by the NLRB in September 2007, and is currently pending enforcement in the United States Court of Appeals for the Second Circuit.

How to File a Representation Petition:

An NLRB Information Officer can assist you in completing a petition form. Our contact information is on page one. If you complete the petition yourself, keep in mind these helpful tips:

- Prepare your petition on our website at: www.nlr.gov (filing instructions detailed).
- Know the job titles used by the Employer and the employee shift schedules.
- Provide the Region with authorization/membership cards (or other proof of interest) signed and dated by at least 30 percent of the employees in the petitioned-for unit.
- Be prepared for a hearing by knowing: (1) the employer's operations; (2) the community of interests of various employee job categories; and (3) who the "supervisors" are. Hearings are typically held 10 days from date of filing.
- Be prepared for the election to be conducted within 42 days from the date of filing.

Representation Case News

Another important function performed by the Hartford Regional Office is the processing of Representation petitions, where employees seek to be represented by a union. The processing of such petitions is subject to procedural guidelines designed to insure that an election is held as quickly as possible.

Foxwoods Resort Casino

Among the more notable representation cases processed by the Hartford Regional Office in 2007 involved Foxwoods Resort Casino. That case provides an excellent example of the timely and efficient manner by which the Hartford Regional Office processes representation cases.

The case began when the United Auto Workers (UAW) filed a petition on September 28, 2007 seeking to represent a unit of approximately 2600 licensed poker, table game, and dual rate dealers. In the overwhelming majority of representation cases, the parties agree to a date for holding an election without the necessity for any formal hearing or decision. However, Foxwoods took the position that it is not subject to the jurisdiction of the Act because it is owned by the Mashantucket (Western) Pequot Tribe and is located entirely on the Tribe's reservation in Ledyard, Connecticut. As a result of the significant jurisdictional issue raised by Foxwoods, a hearing was held on October 12, 2007 before a hearing officer from the Hartford Regional Office. The hearing closed on October 15, 2007, after which the parties filed briefs regarding the jurisdictional issue.

On October 24, 2007, Hartford Regional Director Peter B. Hoffman issued a Decision and Direction of Election in which he applied the NLRB's previous decision in *San Manuel Indian Bingo & Casino*, 341 NLRB 1055 (2004), aff'd, 475 F.3d 1306 (D.C. Cir. 2007) and concluded that Foxwoods was subject to the Act's jurisdiction. In reaching this conclusion, Regional Director Hoffman noted that Foxwoods is an exclusively commercial venture generating huge income from the general public who are not tribal members, that Foxwoods overwhelmingly employs non-tribal members, and actively markets its gaming, hotels, restaurants, entertainment, and other retail ventures to the general public.

On November 7, 2007, Foxwoods filed a Request for Review of the Regional Director's Decision and Direction of Election with the NLRB in Washington. On November 21, 2007, the NLRB in Washington denied Foxwoods' Request for Review of the Regional Director's decision, permitting the election to go forward as scheduled on November 24.

**Region 34 Representation
Statistics - FY 2007:**

- Representation elections were conducted in 34 cases.
- 89% of elections were achieved by way of an election agreement between the parties.
- 94% of elections were held within 56 days from the filing of the petition.
- Initial elections were conducted in a median of 41 days from the filing of the petition.

The November 24 election was conducted by a team of 16 NLRB agents from the Hartford and Boston Regional Offices. At the conclusion of the voting at 11:00 p.m., the ballots were tallied by the NLRB agents, under the watchful eyes of election observers and representatives of each party. The final tally revealed that of the 2619 eligible voters, 2141 voted (82%), with 1289 ballots cast for the UAW and 852 ballots cast against the UAW.

Thus, despite the large number of employees involved and the complexity of the issues, in a period of just 57 days, the dealers at Foxwoods decided through a secret ballot election that they wished to be represented by the UAW as their exclusive collective bargaining representative. The timely processing of this case is not unusual, as it reflects the typical processing of a representation case in Region 34 (see side panel for FY 2007 Representation statistics).

The final chapter of the Foxwoods vote has not been written, as the Hartford Regional Office has been called upon to process Objections to the Election filed by Foxwoods following the election.

Marriott Hartford Downtown Hotel

Another significant representation case processed by the Hartford Regional Office in 2007 involved the issue of “neutrality agreements”. The case arose at the Marriott Hartford Downtown Hotel, which is adjacent to the Connecticut Convention Center. Since the Marriott and the Convention Center began operations in 2005, UNITE HERE, Local 217 (the Union), has sought to organize the workers at those locations, and in connection with that campaign has pressured the Marriott to enter into a “Labor Peace” agreement pursuant to the City of Hartford’s “Living Wage and Labor Peace Ordinance”. Marriott refused to enter into such an agreement, so the Union sought community support for its organizing campaign. As a result of the Union’s campaign, the Marriott filed a petition with the Hartford Regional Office seeking an election to determine whether its employees wished to be represented by the Union.

Following an investigation, Hartford Regional Director Peter B. Hoffman dismissed the petition. Applying well established NLRB law, the Regional Director determined that the Union’s efforts to obtain a “neutrality agreement” does not constitute evidence of a present demand for recognition, which is required under NLRA Section 9(c)(1)(B). In so doing, the Regional Director noted that the Union’s reliance on Hartford’s Living Wage Ordinance does not constitute a demand for recognition because the ordinance only applies where a union is “seeking to represent employees”, conduct which does not constitute a demand for recognition. Although the NLRB granted the Marriott’s Request for Review of the dismissal, it ultimately affirmed the Regional Director’s dismissal.

Remedies for Violations:

- When there has been a violation, the Act does not impose fines or other direct penalties. Rather, it requires remedial action to correct the violation and its effects.
- **NLRB** remedies require those who have violated the Act to cease the violation, to inform employees that they will respect their rights, to reinstate employees who have been unlawfully fired, and to pay compensation for lost earnings.

Region 34 Compliance Statistics - FY 2007:

- Almost \$1,000,000 in backpay was distributed to employees.
- 13 employees were reinstated to their previous jobs, and 12 employees declined reinstatement.

Compliance News

The Compliance function in the Hartford Regional Office is responsible for ensuring that parties satisfy voluntary or NLRB-imposed obligations to resolve cases. One of Compliance's most basic functions is to insure that individuals receive the money that is coming to them as a result of settlement agreements or Board decisions.

Recently, in *C.P. Associates*, Case No. 34-CA-8123, the Hartford Regional Office worked with the Boston Regional Office to secure compliance with the monetary aspects of a settlement agreement. The employer is a Massachusetts construction company that was found to have unlawfully laid off several employees due to their union activities at a construction project in Connecticut. The employer had agreed to pay the laid off employees a total of \$18,000 in six equal installments, but failed to make the last \$3000 payment. After repeated unsuccessful efforts by the Hartford Regional Office to secure the final payment, a Court judgment was secured for the final \$3000 payment. Because the employer no longer maintained any presence in the State of Connecticut, it was necessary for compliance representatives from the Boston Regional Office to institute a legal action against the employer under Massachusetts law to collect the \$3000 judgment. Shortly after the lawsuit was initiated, the employer finally paid the \$3000 judgment, thereby successfully resolving a case that had been pending for almost ten years.

C.P. Associates provides a perfect example of the lengths to which the Hartford Regional Office will go to insure compliance with all obligations undertaken in settlement agreements, as well as those obligations imposed by the NLRB and the Courts.