



NLRB CONNECTIONS

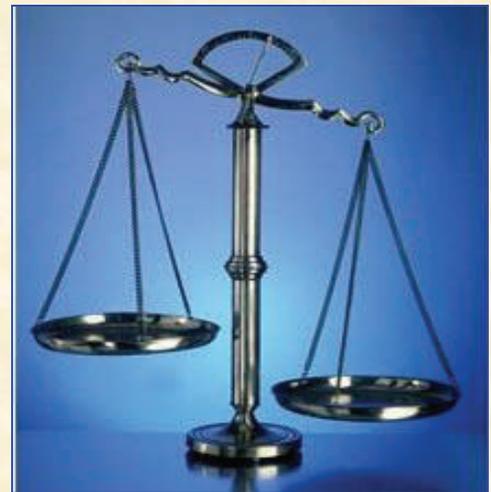
REGION PREVAILS BEFORE JUDGES AND BOARD Earns Litigation Victories in Three Cases

Region 29 successfully prevailed before the Board on three cases recently.

In *Special Touch Home Care Services, Inc.*, 351 NLRB No. 46 (Sep. 29, 2007), the Board found that the Employer failed to properly reinstate nearly 50 economic strikers in violation of Section 8(a)(3) and (1) of the Act. After their union, 1199/SEIU United Healthcare Workers East, notified the Employer that the strike would take place, the Employer contacted employees and asked whether they would work during the stoppage. While many confirmed they would not work, others who failed to do so and did not work were later refused reinstatement, upon their unconditional

offer to return. The Board found the failure to reinstate that group unlawful and ordered they be made whole.

In *Local 333 UMD, Int; 'l Longshoremen's Assn. (Circle Line Sightseeing)*, the Board in late July 2007, adopted the Judge's decision (JD(NY) 23-07), *pro forma*, after no exceptions were filed. There, the Region proved that a union discriminated against its former president, Jay Dady, who had lost a bid for re-election, by refusing to refer him to work at a sightseeing cruise line and by failing to process his grievance on the issue. The Judge rejected the Union's defense that it failed to refer Dady because his hiring hall registration lapsed, based on evidence the Union did not regularly enforce the



The scales of justice tipped Region 29's way in *Special Touch*, *Circle Line*, and *Metro* cases.

registration requirement. The case is now being processed by Region 29's (cont. at P 2)

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REGION COLLECTS OVER \$1.8 MILLION IN BACKPAY FOR FISCAL YEAR '07

Fiscal year 2007, which ended on September 30, 2007, saw Region 29 collect and distribute \$1,853,522 in backpay, to the victims of various unfair labor practices, either settled or litigated. The Region collected and distributed an additional \$188,812 in dues reimburse-

ments to those to whom those monies were owed.

In addition to the monetary remedies it obtained, the Region's efforts also resulted in offers of reinstatement being made to more than 200 victims of unfair labor practices, with 134 of those individuals accept-

ing those offers, and returning to their former positions of employment.

REGION'S DECISION TO REVOKE CERTIFICATION UPHELD BY D.C. CIRCUIT

In an October 30, 2007, decision, the United States Court of Appeals for the District Columbia Circuit upheld the Region's decision to revoke a Certification of Representative issued to Local 300s UFCW, and hold a second election.

In *N.Y. Rehab. Care Mngmt. LLC v NLRB*, ___ F.3d ___ (Oct. 30, 2007), the employer closed its nursing home facility where unit employees had long been represented by 1199 SEIU, United Healthcare Workers East, and

opened a new one only a few blocks away. However, before the new facility had even begun operations, another union, Local 300S UFCW, filed a petition with the Region seeking an election among the 41 employees who had begun working there. Neither party informed the Region that 1199 represented employees of the closed facility, such that it could be notified that the petition had been filed. Significantly, of the 41 employees Local 300S sought, only 14 held positions involving patient care, and all but 14 ceased working at the new facility a week before its first patient arrived. Despite

this, the Employer and Local 300s reached a collective bargaining agreement.

After Local 300S was certified, the Region learned of 1199's interest in the matter, revoked the earlier Certification and directed a second election, which 1199 won. When the Employer tested the new Certification and refused to bargain, 1199 filed a Section 8(a)(5) charge in Case No. 29-CA-26678. The Region issued a Complaint and moved for summary judgment, which motion the Board granted at 344 NLRB No. 148 (July 29, 2005).



REGION PREVAILS (From Page One)

Compliance Division.

Finally, in a September 2007 decision, the Board affirmed Judge Steven Fish in *Metro Demolition, et al.* (JD(NY)-31-07), *pro forma*, in a case involving four alter egos, which unlawfully discharged two employees and withdrew recognition from their union. The Employer failed to comply with either the Judge's decision or the subsequent Board Order. The case is currently being processed further by the Board's Enforcement Litigation Branch, which may seek a court order before the United States Court of Appeals for the Second Circuit.

PROTECTED CONCERTED CASES GO FORWARD

Region 29 has moved forward on two cases, alleging that employers unlawfully retaliated against employees for collectively seeking to enforce their rights under state wage and hour laws.

In *Handy Fat Trading*, 29-CA-28181, reported in this newsletter in August, the Region has now obtained a favorable

Judge's decision, JD(NY) 39-07, finding the employer's terminations of nine employees unlawful, and specifically finding that their group action in filing a civil suit was protected. The case is now before the Board.

In *Sunrise Plus*, 29-CA-28115, the Region litigated a substantially similar issue before an NLRB Judge, and is awaiting the decision. In addition,

the Region filed a petition in Federal District Court seeking injunctive relief under Section 10(j) of the Act. Oral argument before District Court Judge Townes took place and a decision is expected in the near future.



BOARD MODIFIES RULES AFFECTING VOLUNTARY RECOGNITION

In a landmark decision calling for new and unprecedented Regional procedures, the National Labor Relations Board altered the rules affecting situations in which employers voluntarily recognize labor organizations upon a representation of majority status.

Historically, such voluntary recognitions ordinarily would serve as a bar to the NLRB processing decertification petitions, or those of rival unions seeking representative status, for a reasonable period of time after the voluntary recognition had been conferred.

However, in *Dana Corp.*, 351 NLRB No. 28 (Sep. 29, 2007), the Board held that such voluntary recognitions will not bar a decertification or rival union petition unless and until affected unit employees have received notification of the recognition in the form of an official NLRB Notice, which must be posted in conspicuous places by the Employer for 45 days. The Board held that decertification or rival union petitions filed during the 45 day Notice-posting period would ordinarily be processed to election. Until the Notice is posted for 45 days, any collective bargaining agreement reached between the parties will not serve as a bar to a subsequently filed decertifi-

cation or rival union petition. Only after the Notice is posted for 45 days, will the voluntary recognition agreement serve as a bar to a decertification or rival union petition — for a reasonable period of time. The decision is prospective only — affecting voluntary recognitions which took place after September 29, 2007. The Board majority concluded that a finer balance between employee freedom of choice and bargaining relationship stability warranted delaying the imposition of a recognition bar for the 45-day window period, during which employees could decide whether they wanted to seek a Board conducted election.

Thus, in order to assert the presence of a recognition or a contract bar at some later date, it is incumbent on the parties to the voluntary recognition to promptly notify the Regional office covering the geographic area in which the Employer is located, that recognition has been conferred and to request the Notice.

In response to the decision, Regional offices have begun implementation of new procedures. Requests for such Notices are assigned a Case Number with a VR designa-

tion, and delegated to a Regional Board Agent to investigate and process.

Once assigned, Agents are directed to contact either one or both parties, and to obtain a copy of the voluntary recognition agreement at issue, and to determine the presence of other issues, such as the need for multiple language Notices, and the number of Notices needed.

The Notices advise employees of the date on which their Employer voluntarily recognized the Union and of the unit affected. In addition, the Notice informs employees of their right to a secret ballot election on petitions filed within 45 days of the date of posting, and that if no such petition is filed, the recognized union's status as exclusive collective bargaining representative will not be subject to challenge for a reasonable period of time.

The Notices are sent directly to the Employer or the locale at which employees will see them. In addition, the Notices are accompanied by a cover letter explaining the procedure, as well as a Certification of Posting. (Cont. on P. 4)

REPRESENTATION ROUNDUP

The Board recently upheld the Region's direction of a second election in *Town Bus, LLC.*, 350 NLRB No. 91 (Sep. 12, 2007).

There, the Employer was found to have distributed, for the first time, an employee manual containing terms and conditions

of employment identical to those at another of its facilities, which was unionized. The Board upheld the Region in concluding that the Employer engaged in objectionable conduct by attempting to influence the outcome of the vote.

* * *

In *Maggie's Paratransit Corp.*, 29-RC-11443, the Board upheld the Regional Director's decision to dismiss the petition on grounds that inclusion of cashiers in a unit of dispatchers and liaisons was inappropriate. The Petitioner refused to indicate whether it was willing to proceed

to an election in an alternative unit. Thus, the issue of whether the dispatchers were supervisors under the Act was not reached.

* * *

Of Note . . .

In *Ryder Memorial Hospital*, 351 NLRB No. 26 (Sep. 28, 2007), the Board announced changes to its official election ballots. Ballots will now include language reiterating the Board's neutrality in the election process and disavowing its involvement in any defacement or alteration of sample ballots.

In *Toering Electric Co.*, 351 NLRB No. 18 (Sep. 29, 2007), the Board clarified the definition of an applicant seeking employment as one who has a genuine good faith interest in establishing an employment relationship.

NATIONAL LABOR RELATIONS BOARD WHO WE ARE; WHAT WE DO

- *The National Labor Relations Act is the Nation's primary labor law, governing relations between unions, employees and employers in the private sector. It protects employees' rights to organize and to bargain collectively with their employers, or to refrain from doing so. The law also protects employees' rights to get together among themselves to seek improved wages and/or working conditions — so called "protected concerted activities."*
- *Employers are also afforded rights under the NLRA, protecting them from unlawful activities, including certain kinds of union strikes and picketing.*
- *The National Labor Relations Board (NLRB) administers the NLRA. It has two primary functions: first, to prevent and remedy unfair labor practices, committed by either unions or employers interfering with the rights the Act guarantees, and; second, to establish whether groups of employees wish to be represented by a union for collective bargaining purposes, through the administration of supervised elections.*
- *The NLRB is organized into two major components: a five-member governing Board, which decides unfair labor practice cases and representational issues; and the Office of the General Counsel, which investigates and prosecutes unfair labor practice cases.*
- *The NLRB is headquartered in Washington, D.C., and maintains field offices in 51 locations throughout the United States.*

Protecting Workplace Democracy



Dana Corp. Changes Recognition Bar Rules (cont.)

The Certification of Posting is similar to those issued after settlement agreements or Board Orders in unfair labor practice proceedings. Specifically, the Certification in *Dana* type cases is to be filled out and signed by a responsible agent of the Employer. The form certifies that the Notices have been conspicuously posted, the date on which they were posted, and the locations at which they were posted.

As of the date of publication, Region 29 had received 6 requests for *Dana* Notices. Each was processed in the manner described above, with packages issued to the Employers along with the Certifications of Posting.

The *Dana* decision is likely to result in a wide array of issues and, as with other aspects of case handling, the Agency will address such issues on a case-by-case basis.

Further questions may be directed to the Region's information office at (718)330-7713. Requests for *Dana* notices may be sent to the attention of the Regional Director, Two MetroTech Center, 5th Floor, Brooklyn, NY 11201.

**REGION 29 REPRESENTATIVES
ARE AVAILABLE TO SPEAK TO
YOUR GROUP. CONTACT OUT-
REACH COORDINATOR
RICHARD BOCK, 718/330-7725
FOR MORE INFORMATION.**