NLRB Region 6 Outreach

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National Labor Relations Board, Region 6

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In This Issue:

Regional Director's Corner

Welcome to the First Edition of NLRB Region 6 Outreach

Although the Region has been in existence for almost as long as the National Labor Relations Act itself - passed in 1935, and declared constitutional in 1937 in the Jones & Laughlin Corp. case that originated here - there are many newcomers who do not know about our Regional Office, or the functions that we perform. This issue, and those to come, will discuss some recent cases and highlight some of our activities which hopefully will be of interest. It is part of our nation-wide outreach program, launched by General Counsel Ronald Meisburg to emphasize that the statute has withstood the test of time, and continues to serve the legitimate interests of the labor movement, management, employees, and the public interest.

Much has been written and said about the NLRB in recent years, and some of the decisions of the Board have been criticized by representatives of labor and management alike. The criticism ignores the fact that over ninety-five percent of the cases brought to the NLRB are decided at the

regional level, and never reach Washington at all. They are decided upon the basic principles of the Act, which have not changed, and are almost always resolved by settlement, without the necessity of hearings which inevitably result in both costs and delay.

Region 6 staff members are among the most experienced in the nation. All of our attorneys have over 18 years of experience, and our Field Examiners, many of whom have been with us for over thirty years, have a treasure trove of both training and experience. We are often called upon to assist other Regions and we are responsible for coordinating several groups of cases nationwide.

As always, we are ready to carefully and expeditiously process the cases brought to us, and to effectuate the objectives of the National Labor Relations Act.

Labor Law 101

Employer Obligation to Bargain in Good Faith

A cornerstone of the National Labor Relations Act is the obligation of an employer to bargain in good faith with a labor organization that represents a majority of the employer's employees in an appropriate collective bargaining unit. The Board law in this area has developed from the statutory mandates of Sections 8(a)(5) and 8(d) of the Act.

Section 8(a)(5) makes it illegal for an employer to refuse to bargain in good faith about wages, hours, and other conditions of employment with the representative selected by a majority of the employees in a unit appropriate for collective bargaining.

The duty to bargain covers matters concerning rates of pay, wages, hours of employment, or other conditions of employment. These are called "mandatory" subjects of bargaining about which the employer, as well as the employees' representative, must bargain in good faith, although the law does not require "either party to agree to a proposal or require the making of a concession." In addition to wages and hours of work, these mandatory subjects of bargaining include but are not limited to such matters as pensions for present employees, bonuses, group insurance, grievance procedures, safety practices, seniority, procedures for discharge, layoff, recall, or discipline, and union security. Certain managerial decisions such as subcontracting, relocation, and other operational changes may not be mandatory subjects of bargaining, even though they affect employees' job security and working conditions. The issue of whether these decisions are mandatory subjects of bargaining depends on the employer's reasons for taking action. Even if the employer is not required to bargain about the decision itself, it must bargain about the decision's effects on unit employees. On "nonmandatory" subjects, that is, matters that are lawful but not related to "wages, hours, and other conditions of employment," the parties are free to bargain and to agree, but neither party may insist on bargaining on such subjects over the objection of the other party.

Filing Information

How to file an unfair labor practice charge and representation petition with the NLRB

How to File an Unfair Labor Practice Charge

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 the charge.

Forms are available for download from the NLRB website. They may also be obtained from an NLRB office. NLRB offices have information officers available to discuss charges in person or by phone, to assist filling out charge forms, and to mail forms.

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. Usually evidence will consist 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

An employer who is required to bargain under this section must, as stated in Section 8(d), "meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party."

An employer, therefore, will be found to have violated Section 8(a)(5) if its conduct in bargaining, viewed in its entirety, indicates that the employer did not negotiate with a good faith intention to reach agreement. However, the employer's good faith is not at issue when its conduct constitutes an out-and-out refusal to bargain on a mandatory subject. For example, it is a violation for an employer, regardless of good faith, to refuse to bargain about a subject that it believes is not a mandatory subject of bargaining, when in fact it is.

The duty of an employer to meet and confer with the representative of its employees includes the duty to deal with whoever is designated by the employees' representative to carry on negotiations. An employer may not dictate to a union its selection of agents or representatives and the employer must, in general, recognize the designated agent.

The employer's duty to bargain includes the duty to supply, upon request, information that is "relevant and necessary" to allow the employees' representative to bargain intelligently and effectively with respect to wages, hours, and other conditions of employment.

Finally, the duty of an employer to bargain includes the duty to refrain from unilateral action, that is, taking action on its own with respect to matters concerning which it is required to bargain, and from making changes in terms and conditions of employment without consulting the employees' representative and reaching agreement or an impasse.

As you can see, questions of good faith bargaining have the potential to be both factually and legally complex, requiring meticulous investigation and thoughtful analysis when raised by unfair labor practice charges. For further information on this topic, you may wish to consult the Basic Guide to the National Labor Relation Act published by the NLRB and available at our website at www.nlrb.gov by clicking on "Publications".

www.nlrb.gov

An Introduction to the NLRB Website

This is the first in a series of articles exploring the resources made available through the Agency's award-winning website, (www.nlrb.gov). Each article will focus on several different aspects of the website including the numerous Agency publications posted at the site and electronic document filing capabilities.

Our website was recognized as one of the five best in the Federal

Region will determine whether or not the charge has merit.

After the Region Makes a 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. 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.

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.

Government by the National Security Archive (NSA), a nongovernmental research institute and library located at George Washington University. The NSA audited the websites of 158 agencies, including the NLRB, to determine their compliance with the 1996 Congressional amendment to the Freedom of Information Act (FOIA) that required agencies to put more public information on their websites. Following the audit, the NSA rated the NLRB website as an "E-STAR" stating, "Excellent navigation scheme. Site is well organized and very easy to follow. Good guidance. Electronic reading room with a lot of available information."

The National Labor Relations Board launched its new interactive web site, with more document collections, in November 2006. The agency steadily has been expanding its electronic filing program for the public since July 2003. An improved navigational structure makes it easier for users to find information. A searchable database of case information was added to the site that contains detailed public information, including docketing events, related documents, and dates in cases pending before the Board and in cases at the Regional Offices.

The site allows users to transact business online with the agency more easily. Several important enhancements include "My NLRB," a new 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 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.

Here is what you will see when you access our homepage.

How to File a Representation Petition

Filing NLRB representation petitions can be simple and convenient. 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:

- Know which Regional office will handle your petition. Region 6 covers 41 counties in Pennsylvania and 26 counties in West Virginia.
- You may prepare your petition on our website at: www.nlrb.gov (filing instructions detailed).
- Know the job titles used by the Employer and the employee shift schedules.
- Provide the Region with authorization or membership cards (or other proof of interest) signed and dated by at least 30 percent of the employees in the petitioned-for unit.
- Although 91% of elections are conducted pursuant to election agreements, be prepared for a hearing by knowing: (1) the employer's operations; (2) the community of interests of various employee

What's Happening in the Region

Representation Case News

RNs Vote at Altoona Regional Health System

Interestingly, notwithstanding a significant decline in case filings in the recent past, this spring the Region conducted one of the largest elections held the in area in the past several years. In April, Pennsylvania's Health Care Union, SEIU District 1199P filed a petition seeking an election in a bargaining unit of all registered nurses employed by the Altoona Regional Health System at its Altoona Hospital and Bon Secours Hospital campuses. With the cooperation of representatives of both the Hospital and the Union, the Region was able to achieve a *Stipulated Election Agreement* for an election which was held on May 24. The election began at 6 a.m. and was conducted during three separate polling periods at each of two hospital campuses and did not end until 8 p.m. that evening. A total of 667 of the 732 eligible registered nurses voted with 379 voting for union representation and 288 voting against, with only 9 challenged ballots. As a result, on June 6, Regional Director Gerald Kobell issued the *Certification of Representative* for Pennsylvania's Health Care Union, SEIU District 1199P to represent the registered nurses in collective bargaining.

Region Issues Supplemental Decision In Point Park University Faculty Case

On July 12, 2007, Regional Director Kobell issued a *Supplemental Decision on Remand* in Point Park University reaffirming his earlier finding that the University's faculty members are not managerial employees and, therefore, are employees within the meaning of the Act and entitled to the rights guaranteed under the Act.

In October 2003, Newspaper Guild of Pittsburgh, Communications Workers of America, Local 38061, AFL-CIO, CLC, filed a *Petition* seeking to represent approximately 77 full-time faculty members at Point Park University. Following a 20-day hearing which ended in January 2004, the Regional Director issued a 100 page *Decision and Direction of Election* finding the faculty to be employees. Thereafter, the Board affirmed the Regional Director's *Decision.* The Union won the election held in this matter by a vote of 49 to 14 and was certified as the bargaining representative in July of 2004.

Thereafter, the Employer refused to bargain in order to obtain Circuit Court review of the Board's decision in this matter. The Union filed *Unfair Labor Practice* charges. In the ULP process the Board reaffirmed its earlier ruling. The matter was then appealed to the United States Court of Appeals for the District of Columbia Circuit which heard oral argument

job categories; and (3) who the "supervisors" are. Hearings are typically held 10-14 days from date of filing.

- Be prepared for the election to be conducted within 42 days from the date of filing.
- Always call the assigned Board agent with questions or concerns.

on the matter in January 2006. In August the Circuit remanded the case to the Board for further consideration. The Circuit decision noted that some findings in the *Decision and Direction of Election* suggested that some faculty are managerial employees, while other factors suggested that they are not. The Circuit criticized the *Decision* for failing to explain which factors are significant and which are less so and why, in determining the question of the managerial status of the faculty. Ultimately, the matter was referred back to the Regional Office and the Representation case was reopened, resulting in the July 2007 *Supplemental Decision*.

The case involves the application of the Supreme Court's decision in NLRB v. Yeshiva University, 444 U.S. 672 (1980), wherein the Court found under the circumstances of that case that the faculty members' exercise of authority in academic matters was absolute and, therefore, that the faculty members were managerial.

It is anticipated that the Employer will file a *Request for Review* of the *Supplemental Decision* with the Board.

Unfair Labor Practice Case News

Construction Contractor Does Not Appear at Hearing

In June 2006, the Mid-Atlantic Council of Carpenters/West Virginia District a/w United Brotherhood of Carpenters filed the first of eleven unfair labor practice charges against RVL, a Virginia drywall subcontractor at a dormitory project at West Virginia University. After a lengthy investigation, including the issuance of several investigative subpoenas, the Region issued a C*omplaint* regarding four charges. Alleged as unlawful were threats, interrogations of job applicants and the layoff of two employees.

Although RVL filed an answer to the *Complaint*, no company representative made an appearance at the November 29th hearing and as a result the facts presented by the counsel for the NLRB General Counsel were uncontested. Not surprisingly, in February the Administrative Law Judge issued a decision favorable to the Region and in the absence of any exceptions by RVL, the Board adopted the ALJ's decision and proposed order. The Agency's Division of Enforcement Litigation filed a petition for enforcement of the Board's *Order* in the Third Circuit Court of Appeals. In July 2007, the Circuit Court issued a judgment enforcing the Board's *Order*. Next, we move to the compliance stage where will seek to have RVL post the Board notice to employees, offer reinstatement to the two laid-off employees and pay those employees the backpay they have lost as a result of RVL's unlawful actions.

Exclusive Hiring Halls for Drivers Raise Concerns

Two separate and otherwise unrelated recent cases filed against the same union reflect some common problems in the operation of job referral systems or hiring halls. If a system is exclusive, meaning that employers cannot hire except through the union-operated hall, the

Non-Union Protected Concerted Activity

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 their employer on their behalf
- Act together with other employees for their benefit and protection
- Choose not to engage in any protected activities

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

A: Yes. For instance, employees not represented by a union, who walked off a job together 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.

referrals must be made on some rational basis and may not be done arbitrarily.

In one instance, the employer relied on a Union steward to call and schedule extra drivers. While such an arrangement is not per se unlawful, here we were unable to discern any rational basis for the manner in which the steward selected the extra drivers. In another case, the Union referred drivers to producers of motion pictures being filmed in the Pittsburgh area, but again, in what appears to be an exclusive hiring system, failed to establish that any reasonable or rational considerations were relied upon to make the referrals.

Complaints have issued in both cases with the trials set for later this summer. In both cases, the parties have now modified the hiring hall practices to the satisfaction of the Region. We are now working closely with all parties in pursuit of resolution of the backpay and related issues in an effort to avoid costly litigation.

Unilateral Implementation of Final Proposal at Day Automotive

On December 15, 2006, the Board issued its *Decision* in Day Automotive Resources, Inc. involving a dispute arising out of the 2005 negotiations for a new contract covering approximately 14 auto mechanics at Centennial Chevrolet in Uniontown, Pennsylvania, and Day's unilateral implementation of its final contract offer.

Although the initial complaint alleged a number of specific Employer actions related to contract negotiations as violative of the National Labor Relations Act, the Board adopted the Administrative Law Judge's decision finding violations on a more limited basis. Basically, the ALJ and the Board found that Day bargained in bad faith by conditioning negotiation on acceptance by the Union of Day's proposal changing the health insurance carrier and significantly increasing the portion of the premium paid by employees and by unilaterally implementing its final contract proposal when there was no impasse in bargaining. As to the former finding, it was undisputed that Day was "adamant and unmovable" about placing the mechanics in same the health insurance plan as the other 500 Day employees. As to the latter finding, the ALJ and the Board rejected Day's argument that given the importance of the health care issue and the positions of the parties, a valid impasse existed after only a few bargaining sessions. On the contrary, the ALJ found that because of the significance of the issue that divided the parties and the radical change proposed by the Employer, more than a few meetings could be expected to be needed. The ALJ quoted from an Board decision in PRC Recording Co., 280 NLRB 615, 635 (1986), "While it is true that the number of negotiating sessions is not controlling, generally, the more meetings, the better the chance of finding an impasse."

Prior to the issuance of the ALJ decision, the Board had authorized the Regional Director to petition the United States District Court for the Western District of Pennsylvania for an injunction under Section 10(j) of Act to restore the status quo on an interim basis pending a Board determination in this matter. In an effort to resolve the underlying issues,

Contact the Region

There is always an information officer available at an NLRB Regional Office to answer general inquiries or to discuss a specific workplace problem or question. The information officer can provide information about the Act and advice as to whether it appears to be appropriate to file an unfair labor practice charge or representation petition. If filing a charge or petition does appear to be appropriate, the information officer can assist in completing the form.

The information officer at Region 6 may be reached by telephone at:

1-866-667-6572
(Toll free)
Or
412-395-4400

Se habla español

Judge Thomas Hardiman mediated a settlement of the injunction related issues which resulted in a consent order acceptable to all parties requiring partial restoration of the status quo while the parties resumed bargaining. As a result, the parties went back to the bargaining table and reached agreement on a new contract in the fall of 2006.

Earlier this year the Agency's Enforcement Litigation Branch filed a *Petition for Enforcement* of the *Board Order* in the Third Circuit Court of Appeals. Through the efforts of the Circuit's mediator, an agreement was reached on the amount of money owned to employees and Day has now committed to fully comply with the *Board Order*.

Speakers Available

Members of the Region's staff are available to make presentations before any unions, employer organizations, social service organizations, high school or college classes and others to describe the Act's protections, how the Region investigates and decides unfair labor practice cases and processes representation petitions, and other NLRB topics of interest.

To arrange for a speaker and to discuss possible topics, telephone Supervisory Attorney Donald Burns at 412 395-6892.