



**NLRB**  
National Labor Relations Board

# Region 21



## The Downtowner

May 2006  
Volume 1, Issue 1

*News from and about Region 21*

### In This Issue:

- Regional Perspective
- Litigation
- From the R Case Desk
- Recent Developments:  
    Updates from the  
    Board and GC
- Nuts and Bolts-  
    Procedural Tips
- Substantive Topic
- Other News
- Board Bits

### Contact Us

[Region21@nlrb.gov](mailto:Region21@nlrb.gov)

(213) 894-5204

**Agency website:**

[www.nlrb.gov](http://www.nlrb.gov)  
1-866-667-6572

Victoria E. Aguayo  
Regional Director  
Region 21

888 S. Figueroa Street  
9<sup>th</sup> Floor  
Los Angeles, CA 90017

## Regional Perspective

Greetings and welcome to the inaugural issue of *The Downtowner*, Region 21's bi-annual newsletter! We recognize that many of you are experienced NLRB practitioners who are familiar with Board procedures and keep abreast of recent legal developments. However, a number of you have expressed an interest in obtaining accessible, practical information that increases effectiveness in dealings with the Region. We have listened. In recent years, we have hosted informal **Coffees with the Board** for new practitioners and union representatives. Our last, held on April 5, provided basic tips on the proper filing of charges and petitions as well as an amicable and productive exchange of information. We also learn from you.

This newsletter has two objectives: to provide you with Agency-wide news *and* share Regional experiences and expertise in a friendly and manageable format. You will read about the new General Counsel's priorities and the five-member Board's recent decisions in one section. In other articles, we will bring you up-to-date on our case handling, including our litigation, provide procedural tips, and share staffing changes and public events that may be of interest to you. For instance, on July 19, 2006 the Region will be co-sponsoring it's **24<sup>th</sup> Annual LaborLaw Symposium** in Anaheim, California with General Counsel Ronald Meisburg as the featured luncheon speaker.

Please call us for details about the

Conference. We certainly hope you will be attending.

Other important Region 21 news involves the imminent departure of our long-time Region 21 colleague and friend, **Supervisory Examiner Kelly Selvidge**. Next month, Kelly will be moving to Denver, Colorado to accept a well-deserved promotion to Assistant to the Regional Director in Region 27. Kelly has been a major force in Region 21 during the last 15 years, and we will miss her very much. We know many of you will as well.



Kelly Selvidge

The staff of Region 21 actively participated in shaping the purpose, design and content of the newsletter, and we hope that you find it useful. Your comments and suggestions are most welcome.

Please e-mail comments to:  
[Region21@nlrb.gov](mailto:Region21@nlrb.gov)

**Victoria E. Aguayo**



## Litigation

## Comments from the Regional Attorney

**Aguayo v. Windsor Convalescent Center**  
10(j) Injunction Granted  
C.D. Cal March 23, 2006

**Small v. Marine Spill Response Corporation**  
10(j) Injunction Pending

The Region's attorneys regularly have a busy schedule of unfair labor practice and District Court injunction litigation. Noteworthy recent trials include:

**Windsor Convalescent Center of North Long Beach**, which was handled by former Field Attorney Jean Libby and Field Attorney Alan Wu, and **Marine Spill Response Corporation**, which was handled by Field Attorney Lisa McNeill.

After hearings in each of these cases, the employers

were found by the Administrative Law Judges to be successors to predecessor employers and thus obligated to recognize and bargain with the unions which had represented the predecessors' employees. Both cases will now proceed to be decided by the Board in Washington, D.C.

In the Windsor case, the Region was authorized to petition for a preliminary injunction under Section 10 (j) of the Act requiring, among other things, bargaining in one of the two units, and in Marine

Spill, the Region again was authorized to seek a 10(j) injunction requiring the employer to bargain with the union which represents its employees.

Another significant case, **Alstyle Apparel**, involves, among other alleged unfair labor practices, the discharges of six employees at the inception of a union organizing effort. Most of the witnesses are testifying through a Vietnamese interpreter. This case is being presented to the Administrative Law Judge by Field Attorneys Julie Gutman and Patrick Cullen.

**William Pate**

### Board Bits:

1. *What year did the Supreme Court find the NLRA constitutional?*



2. *Who is the present NLRB General Counsel?*

## From the R Case Desk

R cases remain the heart of the Act. Section 7, *inter alia*, gives employees the right to self-organization, to bargain collectively, to form, join or assist labor organizations or to refrain from any or all activities, except as proscribed. Section 9, *inter alia*, sets out the Board's election process and procedure in detail.

It seems that pundits from both sides of the political fence regularly question the effectiveness of the Board's election process.

Contrary to the pundits, in my view, the Board's election process is alive and well. Industrial democracy is thriving in Southern California and Region 21. Board elections, unlike other mechanisms to

determine majority status, are a tested and objective measure of employee free choice. Under the Board's election process, employees cast ballots in a secret ballot election in favor or against union representation. The election is supervised by an agency of the United States government and conducted under strict laboratory conditions. The Board has over 70 years of experience in conducting representation elections. The Courts regularly defer to the Board's expertise in conducting elections, and with good cause: the Board usually gets it right. Let's look at the record.

According to information contained in our election tally reports during the first half of the current fiscal

## Musings by the ARD

year, Region 21 conducted representation elections in 29 cases involving over 4500 employees. Unions prevailed in 17 cases, involving nearly 3200 unit employees. Region 21 conducted elections in a median time of 39 days from date of filing.

Nearly 90% of all elections are achieved without a need for a formal hearing. If a Regional Director Decision and Direction of Election is required, the directed election is almost always held within 80 days of filing. Indeed, if parties are amenable, delay can be avoided through a process called a full consent election.

R cases are alive and well in Region 21.

**James Small**

Parties to a collective-bargaining agreement often request information for a variety of reasons. The duty to provide information is contained in Section 8(a)(5) of the Act, which makes it an unfair labor practice for an employer to refuse to bargain collectively with the representative of its employees. Section 8(b)(3) likewise makes the same conduct unlawful for a labor organization.

Generally, the requested information must be relevant and necessary for the negotiation, administration, or policing of the collective-bargaining agreement or to the processing of a grievance (or the decision whether even to file a grievance). Information about terms and conditions of employment is presumptively relevant: the requesting party does not have to explain why it is needed. However, a specific need must be shown for information about employees outside the unit.

Following are just a few of the "do's" for making an information request. Look for the "don'ts" in our next issue.

- **DO** make your request in writing, or follow up in writing if made orally.
- **DO** be as specific as possible, and explain the relevance even for unit information.
- **DO** number the items in your request if it is lengthy or voluminous, and keep the same numbering in future correspondence.
- **DO** respond to a request for information promptly and completely: delay or lack of response may be an unfair labor practice.
- **DO** make a good-faith effort to reach an accommodation with the requesting party to provide the information in a timely manner.
- **DO** file an unfair labor practice charge within 6 months of the most recent request if there is no response or an unsatisfactory response.
- **DO** provide the Board Agent with copies of all relevant correspondence and background information as soon as you file the charge.
- **DO** call the Information Officer at (213) 894-5254 for assistance.

**Attorney Ami Silverman**

## Recent Developments: Updates from the Board and GC

### *A Tough New Prosecutor and a Five-Member Board*

Ronald Meisburg is a former Board member who brings a multidimensional understanding of the enforcement of the Act to his new position. His goals include maintaining timely case processing and seeking input from Agency constituencies to enhance Agency effectiveness. He has also vowed to be a tough prosecutor and to run a solid 10(j) program under which the Agency seeks injunctive relief in federal courts. The GC has sought 10(j) authorization

from the Board in several cases. In one case, a certified independent union affiliated with an established International Union. The affiliation agreement provided that the union would become an independent local and retain the same officers. After a secret ballot affiliation vote, the Union requested that bargaining with the employer resume. The Employer refused based upon its belief that the affiliation was not legally adequate. The Region concluded that the affiliation met due process safeguards and that the affiliation did not result in changes that were sufficiently dramatic to alter the identity of the Union. The GC determined that relief was necessary to prevent irreparable erosion

of employee support for the Union, pending Board decision. In another case, the GC sought 10(j) authorization against an International Union and its Local for their refusal to submit a negotiated agreement with a broad no-sympathy strike clause for membership ratification.

The Board is now at full strength for the first time since December 2004. The current Board members are Chairman Robert J. Battista, Wilma B. Liebman, Peter C. Schaumber, Peter N. Kirsanow and Dennis P. Walsh. Injunction authorization requests sent to the five-member Board have been unanimously authorized, with only some modifications to the proposed Orders.

**Attorney Sonia Sanchez**



### Board Bits:

3. In what year did Region 21 open for business?
4. Who named this newsletter?
5. Who was the last Region 21 employee to serve as a Board member?



# Nuts and Bolts

## Procedural Tips

When charges are filed with Region 21, the Information Officer is not always utilized to help draft charges. In those situations, the language on the charges is often times too general or too detailed. When the investigation discloses that the language of the charge is incorrect, an amended charge may be needed. Drafting a charge is hardly an exact science, but here are a few suggestions:

- ✦ When describing the date of an alleged unfair labor practice, a good rule of thumb is to state that the alleged unfair labor practices occurred "within six months prior to the filing of the charge" in order to meet the Section 10(b) standard for timely filing. Sometimes Charging Parties are a bit off on the dates, so it is best to stay with the standard language.

- ✦ When describing Section 8(a)(1) statements on a charge, it is not necessary to name the agent who committed the acts. Use general terms such as "interrogated," "threatened," and "surveilled." Never state the names of the witnesses to the Section 8(a)(1) conduct. Similarly, if it is alleged that a union agent threatened or coerced an individual in violation of Section 8(b)(1)(A), the affected individual should not be named on the charge.
- ✦ Of course, the alleged victims of discrimination should be named on the charge, and the type of discrimination should be identified.

Kelly Selvidge

## Other News

The **San Diego Resident Office** is a viable force in Region 21. The staff there consists of Resident Officer Steven Sorensen, Field Examiner Dave Selder, and Field Attorney Robert MacKay. The Resident Office routinely processes in excess of 125 unfair labor practice charges and 30 representation petitions per year. The entire SDRO staff was recently involved in conducting an election at Children's Hospital San Diego in a unit involving 700 service and maintenance employees.

**Judy Katz**, from the Board's Injunction Litigation Branch, recently spoke before the Southern California Industrial Relations Research Association (So Cal IRRA) regarding the effectiveness of the 10(j) program. The dinner meeting held on April 27<sup>th</sup> also honored William Pate and Byron Kohn, Regional Attorneys in Regions 21 and 31, respectively.

**Coffee With the Board**, another of the Region's continued outreach efforts, was held on April 5<sup>th</sup>. Several staff members participated in an interactive nuts and bolts discussion of Regional operations.

**24<sup>th</sup> Annual Labor Law Conference**, jointly sponsored, by Region 21, OCIRRA, and the FMCS, is scheduled for **July 19<sup>th</sup>, 2006** in Anaheim, CA. For information, e-mail [Region21@nlrb.gov](mailto:Region21@nlrb.gov) or go to [www.ocirra.org](http://www.ocirra.org).

### Contributors to this issue:

- Victoria Aguayo
- James Small
- William Pate
- Kelly Selvidge
- Ami Silverman
- Sonia Sanchez
- Steve Sorensen
- Hector Martinez, *photographer*



### Answers to Board Bits:

1. 1937
2. Ronald Meisburg
3. 1935
4. Region 21 employees, after an election
5. Wilford "Bud" Johansen

