



NLRB Region 3

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Outreach



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NLRB staff are available to speak to service and advocacy organizations
- Region 3 co-sponsored a program focusing on labor law basics under the National Labor Relations Act

Did you Know?

Workplace rights under the National Labor Relations Act

Many people know that the National Labor Relations Board protects employee rights to join and support unions where they work.

The NLRB protects other employee rights as well.

Employees have the right to act together to raise workplace issues with their employer or to press for changes in wages or 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 to make employees whole for losses suffered as a result of unlawful actions.

The National Labor Relations Act also protects an employee's right to not participate in unions or in other actions with employees. The Act does not require an employer to grant any specific employee or union demands.

• **How to File a 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 Region will determine whether or not the charge has merit.

Litigation News

Region 3 recently received a favorable decision from an administrative law judge in First Student, Inc., JD (ATL)-32-08, dated September 3, 2008. The complaint alleged that the Employer, which provides bus transportation services, unilaterally began enforcing a driver qualification policy, that resulted in the termination of three drivers at a Buffalo-area terminal, without bargaining with the Union representing the employees over the enforcement of the policy and over two of the three employees' terminations. All three employees had disclosed their driving records with respect to this policy. The ALJ concluded that there was no notice to, or bargaining with, the Union prior to the discharges. The judge rejected the Employer's argument that there was no material change and its argument that it had merely delayed in enforcing a previously existing, nationally enforced driver qualification policy. The judge ordered the rescission of the application of the policy and the reinstatement with backpay of the three terminated drivers.

Late last year, the NLRB upheld an administrative law judge's decision in Local 190, Laborers International Union (VP Builders, Inc.), JD-53-07 (December 27, 2007), finding that the union had unlawfully caused an employer to fire an employee from his job. The judge found that, in the absence of a collective-bargaining agreement containing an exclusive hiring hall provision, the union acted unlawfully in seeking the termination of an employee who did not obtain his job through the union's hiring hall. The remedy ordered by the judge in this case included posting in the union's hall an NLRB notice about the violation, notifying the employer that the union had no objection to the employment of the individual at issue, and making the employee whole for any loss of earnings or benefits resulting from the union's actions.

In May, after four days of hearing before an administrative law judge in E.I. DuPont de Nemours & Co., Case 3-CA-26181, the judge approved the Union's request to withdraw the charge and dismissed the complaint when the parties reached a settlement agreement.

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.

(Litigation News Continued)

The complaint alleged that the Employer violated Section 8(a)(1) and (5) of the Act by unilaterally changing seven employee benefit plans at DuPont's Tonawanda, New York plant. The parties had been without a collective-bargaining agreement since 1993. The settlement agreement provided for a collective-bargaining agreement effective for a four-year term commencing March 2008.

In June, Region 3 received a favorable administrative law judge's decision in Rochester Gas & Electric Corp., JD-31-08 (June 12, 2008). The ALJ found that RG&E had unlawfully refused to bargain over the effects of its decision to discontinue its practice of requiring certain employees represented by Local Union 36 of the IBEW to take service vehicles home after work for use in responding to emergency service calls. While the Employer's decision to eliminate the use of the vehicles by employees was not a mandatory subject of bargaining because of language in the parties' collective-bargaining agreement, the ALJ concluded that the effects of the decision on employees were mandatory subjects of bargaining. The judge reasoned that the elimination of the practice had a substantial economic impact on employees because of the increased costs incurred by employees who no longer had a Company vehicle to use in commuting to work. The Judge also found that the Employer had unlawfully refused to furnish information requested by the Union concerning the elimination of the benefit. The ALJ's recommended order to the Board requires the Employer to bargain over the effects of discontinuing the benefit, make whole employees for their loss of the benefit, and to furnish the Union with the information it had requested. The case is presently before the Board on exceptions taken by the Employer and the Union to the Judge's decision.

Region Settles Unfair Labor Practice Charges at Statler Towers

In 2006, Bashar Al Issa purchased the Statler Towers in downtown Buffalo, New York, with the intent to renovate and restore the historic hotel and establish it as a mixed-use facility with a hotel, office space and condominiums. On November 16, 2007, LIUNA, Laborers Local 210 was certified as the collective-bargaining representative of the laborers employed to perform renovation work by Issa's companies, BSC Development Buf, LLC & Connex Construction. Numerous unfair labor practice charges were filed by Local 210, alleging violations of the National Labor Relations Act. The Region's investigation concluded that the Employer had unlawfully interrogated employees, threatened employees, made promises of benefits, interfered with employees' union activities, and engaged in other various forms of Section 8(a)(1) misconduct under the Act;

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 of this newsletter. If you complete the petition yourself, keep in mind these helpful tips:

- Know which Regional office will handle your petition. Region 3 covers all of New York except New York City.
- Long Island, Orange, Putnam, Rockland and Westchester Counties. Persons may also obtain service at Region 3's Resident Office located in Albany, New York.
- 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.
- 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 job categories; and (3) who the "supervisors" are. Hearings are typically held 10-14 days from date the petition was filed.
- Be prepared for the election to be conducted within 42 days from the date the petition was filed.
- Always call the assigned Board agent with questions or concerns.

(Litigation News Continued)

discharged and laid off employees and assigned them more onerous working conditions in violation of Section 8(a)(3) of the Act; and failed to bargain in good faith with the Local 210 and specifically failed to bargain with the Union regarding layoffs of employees, subcontracted bargaining unit work and unilaterally granted wage increases in violation of Section 8(a)(5) of the Act.

After a complaint and notice of hearing issued, Region Three entered into an informal settlement agreement with the Employer requiring the posting and mailing of notices to employees concerning their rights under the Act, and further requiring that the Employer make whole those employees who were laid off without notice to and bargaining with the Union. This agreement provided for the payment of over \$78,000, with half of the money due two weeks after the approval of the settlement agreement and the remainder to be paid in installment payments over a period of five months. The agreement contains default provisions to ensure payment and includes a promissory note as a personal guarantee of payment signed by Issa. To date, the terms of the settlement agreement have been complied with, and checks have been issued to the employees.

These cases and others, are posted on the NLRB website, <http://www.nlr.gov/research/decisions/index.aspx>.

Representation Case News

Region 3 Election Statistics to Date for FY 2008

- So far this fiscal year, 107 representation petitions of all types have been filed in Region 3. Elections have been conducted in 68 of these cases. Unions have won 42 of these elections. Employees voted against representation in the other 26 cases.
- Over 98% of elections have been achieved by way of an election agreement between the parties over the same period.
- Approximately 95% of elections have been held within 42 days from the filing of the petition.

Initial elections have been conducted in a median of 36 days from the filing of the petition.

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

Non-Union Protected Concerted Activity

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

A: Yes. For instance, employees not represented by a union, who walked off a job 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 and that they could not be lawfully discharged for such action.

Careful!

There are limits to the Act's protections.

The National Labor Relations Act protects employees in acting 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 occupation of the employer's premises are among actions generally considered to be misconduct warranting discipline.

Although the right to strike is protected by the Act, an employer may permanently replace employees who are engaged in an economic strike. An employer may not permanently replace employees who are engaged in an unfair labor practice strike. When permanently replaced as a result of an economic strike, a striking employee is entitled to return to work only when a new position becomes available.

The Act provides for backpay to compensate employees for losses resulting from unlawful conduct, but the Act does *not* provide for fines, punitive damages, or, generally, for losses not directly resulting from lost employment.

The Act does *not* require an employer to grant employee demands.

The Act offers other protections and restrictions

The Act also protects an employee's right to join or support a union.

The Act has procedures for determining by secret-ballot election whether a majority of employees in a workplace want a union to represent them in dealing with their employer over wages, hours, and working conditions.

Where a majority of employees show that they want union representation, the Act requires an employer to recognize and bargain with the union.

The Act requires both unions and employers to bargain in good faith.

The Act requires unions to represent their members fairly.

The Act prohibits unions from picketing neutral employers in order to get them to cease doing business with other employers with whom the union has a labor dispute.

Learn More:

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

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 offer information about the Act and advice as to whether it appears to be appropriate to file an unfair labor practice charge. If filing a charge does appear to be appropriate, the information officer can assist in completing the charge form.

The information officer at Region 3 may be reached by telephone at:

1-866-667-6572

(Toll free)

or

716-551-4931 (Buffalo)

518-431-4155 (Albany)

Se habla español

Region 3 Co-Sponsors Labor Law Conference

Region 3 co-sponsored and participated in planning and presentations at an NLRB Basics Conference co-sponsored with the American Bar Association and the New York State Bar Association held in Rochester, New York on April 11, 2008. **Regional Attorney Rhonda Ley** and **Deputy Regional Attorney Michael Israel** were on the planning committee and made presentations at the conference which was attended by approximately 40 practitioners, including many who were new to NLRB practices and procedures.

Regional Director Helen Marsh provided attendees with an overview of the NLRA and NLRB including information concerning the structure and history of the Agency and a description of the process involved in unfair labor practice casehandling. Other agency speakers included **Assistant to the Regional Director Paul Murphy**, **Albany Resident Officer Barney Horowitz**, **Supervisory Attorney Beth Mattimore** and **Field Attorney Nicole Roberts**. The conference agenda included panels consisting of both management and union attorneys as well as Agency personnel. The conference topics included spirited discussions of protected concerted activities and Weingarten rights in a non-union setting, representation law and procedure, management and union rights and obligations in collective-bargaining, the duty of fair representation under the Act, process and procedure in unfair labor practice cases and a discussion of "hot topics" involving recent controversial Board decisions.

The lunchtime speaker at the conference was James A. Gross, Professor of Labor Policy & Labor Arbitration - School of Industrial and Labor Relations, Cornell University, who held a provocative discussion of rights under the NLRA as compared to human rights and international labor law as defined by the International Labour Organization.

At the conclusion of the conference, a practices and procedures meeting open to conference attendees was conducted by Regional Director Marsh and the Region 3 managers and supervisors.

Coffee with the Board

On September 10, Region 3 hosted an informal morning meeting at the Region's Buffalo office attended by approximately 50 practitioners, union and employer representatives, and representatives of public interest groups. After opening remarks by **Regional Director Helen Marsh**,

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TOLL FREE NUMBER:

The Agency also has a toll free telephone number that offers a general description of the Agency's mission, referrals to other related agencies and access to an Information Officer based upon the caller's telephone number. A Spanish language option is also available. Toll free access is available by dialing:

1-866-667-NLRB (1-866-667-6572)

or

(TTY) 1-866-315-NLRB (1-866-315-6572) for hearing impaired

(Coffee With The Board Continued)

attendees listened to presentations by **Assistant to the Regional Director Paul Murphy** concerning the use of employer e-mail by employees; **Regional Attorney Rhonda Ley** concerning the Board's pilot project for electronic issuance of Board and ALJ decisions; **Field Attorney Jesse Feuerstein** on property rights; and **Field Attorneys Nicole Roberts and Ron Scott** on protected concerted activity. Beverages and pastries were served and there were discussions with Region 3's staff concerning questions and issues raised by the presentations. The Region intends to have more of these events in the future.

Speakers Available

Members of the Region's staff are available to make presentations before any group, such as classroom groups; and the staff of a legal services clinic or a service agency, as well as those members of the public that they serve, to describe what the Act's protections cover, how the Region investigates and resolves unfair labor practice charges, or any NLRB topic of interest.

To arrange for a speaker and to discuss possible topics, please don't hesitate to telephone Regional Attorney Rhonda Ley at (716) 551-4938; Assistant Regional Director Paul J. Murphy (716) 551-4935; or, in the Albany area, Resident Officer Barney Horowitz (518) 431-4156.

Helen E. Marsh, Regional Director
National Labor Relations Board, Region 3