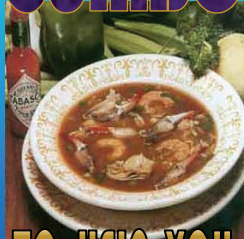




The NLRB GUMBO



WE ARE HERE TO HELP YOU

May 2007
Inaugural Issue

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Available formats

This Newsletter is available in two formats:

1. Email
2. Hardcopy

Requests to change your receipt of the Newsletter should be sent to:

NLRBRegion15@nlrb.gov.

Please include the word "Newsletter" in the subject line.

Gumbo-a thick, spicy, roux-based soup sometimes thickened with okra or file'. It can include sausage, chicken, ham, seafood, or a combination thereof, and is served over rice. It is a New Orleans specialty.



Region 15, New Orleans

WELCOME

From the Desk of
Regional Director Rodney D. Johnson

Welcome to the inaugural issue of The NLRB Gumbo. This publication is an outgrowth of the NLRB's nation-wide emphasis on outreach. We at Region 15 are glad to join the ranks of NLRB Regional Offices that have published newsletters. It is our hope that you find this issue and forthcoming issues of The NLRB Gumbo to be informative and interesting. Our intended audience is meant to range from members of the bar who are experienced in dealing with the NLRB to the general public that might not be aware of the NLRB and the rights which we seek to protect. Consequently, the content of The NLRB Gumbo will vary from providing basic information about the NLRB to discussions about noteworthy cases and Agency-wide initiatives. We also hope to provide you with some insight into the inner workings of Region 15. We might even throw in some tidbits that have absolutely nothing to do with the NLRB, but which you might, nonetheless, find to be interesting.

Region 15 is responsible for the enforcement of the National Labor Relations Act (Act) in all of Louisiana, 14 counties in Mississippi, 26 counties in Alabama and 12 counties in Florida. As of the preparation of this edition of The NLRB Gumbo, the Region's workforce is made up of fourteen professionals and seven support staff personnel. We have plans to add a new professional in September 2007.

EMPLOYEE RIGHTS!

The National Labor Relations Act (NLRA) protects employees' rights to engage in protected concerted activities with or without a union, which are usually group activities (2 or more employees acting together) attempting to improve working conditions, such as wages and benefits. Some examples of such activities include:

- A. Two or more employees addressing their employer about improving their working conditions and pay;
- B. One employee speaking to his/her employer on behalf of him/herself and one or more co-workers about improving workplace conditions;
- C. Two or more employees discussing pay or other work-related issues with each other.

The NLRA also protects an individual employee's right to engage or not to engage in union activities or in other protected, concerted activities.

SPEAKERS AVAILABLE

Regional Staff are Available to Speak to Your Organization. Contact our Outreach Coordinator Kevin McClue at 504-589-6306, Kevin.McClue@nlrb.gov or the Region at 504-589-6362, NLRBRegion15@nlrb.gov.

NEWSLETTER SUGGESTIONS

If you have suggestions for the newsletter, please forward them to NLRBRegion15@nlrb.gov. Please include the words "Newsletter Suggestion" in the subject line.

SO YOU WANT TO FILE A CHARGE

A charge can be filed by an employee, Employer, Union or any other person alleging the National Labor Relations Act (Act) was violated.

You must generally file and serve your charge within 6 months of the alleged violation.

You can get copies of the forms used to file charges against a Union or an Employer on the NLRB website -- www.nlr.gov.

However, it is suggested that you contact your closest NLRB Regional Office to discuss your concerns and seek assistance in filing a charge. You can find the closest NLRB office at www.nlr.gov Under "Office Finder."

Speaking with the Region prior to filing your charge can avoid delays and mistakes.

The Region will assist you in deciding whether or not to file an unfair labor practice charge.

Once your charge is filed a Board agent is assigned to investigate the allegations in your charge. The Investigating Board Agent will explain to you what evidence you need to prove your charge allegations.

The Investigating Board Agent will ask you to provide evidence, including a Board prepared affidavits, in support of the allegations in your charge.

The Employer and/or Union will be allowed to provide evidence in support of their defense against your charge allegations.

Once the investigation of the charge is complete the Regional Director will decide if the evidence is sufficient to show the Act was violated.

If a violation of the Act is found the Region will try to resolve the violations short of litigation - either through an informal or a non-Board settlement.

If the Union or Employer refuses to settle the matter the case is taken to hearing and/or trial before an Administrative Law Judge.

If a violation of the Act is not found, the Region will try to resolve the case by asking you to withdraw the charge.

A case that is withdrawn can be re-filed as long as you re-file within 6 months of the date the alleged violation and/or conduct occurred.

Your case will be dismissed if the allegations are found not to violate the Act, and you refuse to withdraw the charge.

You can request a short or long form dismissal. Within 14 days of the dismissal. You are allowed to file an appeal of the decision to dismiss.

LITIGATION LAGNIAPPE*

D.C. Circuit Enforces Board's Findings of Unfair Labor Practices, and Grants Union's Request to "Pierce the Corporate Veil"

In *A. J. Mechanical, Inc., et al.* (15-CA-15350, 345 NLRB No. 22), March 16, 2007, the District of Columbia Circuit enforced the Board's backpay order against A. J. Mechanical, Inc., and granted the Union's petition for review.

The National Labor Relations Board found that A. J. Mechanical and its two owners committed a series of flagrant violations of the National Labor Relations Act. Although the Board ordered the company to provide backpay to the victims of its unfair labor practices the owners had already distributed all of the company's funds to themselves.

Therefore, the Union argued, and the ALJ agreed, the Board should pierce the corporate veil and hold one of the Company's sole stockholders and directors, William A. Greene (and his wife), personally liable for \$462,755 in backpay. In remanding for further proceedings, the Court wrote:

"The NLRB held that William Greene and his company committed egregious violations of the labor laws, and it adopted the ALJ's determination that Greene's testimony [at the compliance proceeding] was unworthy of belief. Nonetheless, the Board accepted Greene's contentions that he was unaware that his conduct could subject his company to monetary liability until the union filed formal [unfair labor practice] charges, and that he distributed all of the company's assets pursuant to a bona fide decision to close the business made long before those charges were filed. Based on those two findings, the Board refused to pierce the corporate veil and hold the Greenes personally liable for the backpay order that it had issued against the by-then defunct company. The Board failed to cite evidence sufficient to support those findings and failed to explain why it disregarded evidence that contradicts them. We therefore grant the union's petition for review, vacate the Board's refusal to pierce the veil, and remand for further proceedings."

The Board has agreed to accept the Court's remand.

Austal USA, L.L.C., 349 NLRB No. 51, (March 21, 2007).

The Board affirmed the Administrative Law Judge's findings that Austal violated the Act and engaged in objectionable conduct that warranted a new election. It set aside the election held in Case No. 15-RC-8394 on May 24, 2002, which Sheet Metal Workers Local 441 (Union) lost 45 to 63, and directed a second election.

Specifically, the Board agreed with the Judge that the Respondent violated Section 8(a)(1) and engaged in objectionable conduct by:

- coercively questioning employees about their union sentiments;
- threatening plant closure, job loss, stricter discipline, and other unspecified reprisals if employees voted for the Union;
- promising or impliedly promising benefits if employees rejected the Union;
- giving informal evaluations to three employees because of their union activity, and
- instructing employees not to read or discuss union material during working time.

It also found Austal violated Section 8(a)(3) and (1) by:

- terminating team leader Charles Gates because he would not support the Respondent's position on unionization;
- refusing to allow Gates to return to the Respondent's premises as an employee of a contractor the day after he was terminated;
- terminating eight employees on May 9, 2002;
- suspending employee Tony Causey and terminating him;
- giving employee Darrell Spencer a 3-day suspension, and
- giving employee Hank Williams a verbal warning.

Currently the Region's Compliance office is working with all parties and the discriminatees to resolve the matter in accordance with the Board Order.

***Lagniappe** means something that is added — throwing in a little extra. It is widely practiced today in Louisiana

Board Returns to Passavant

In **Truserv Corp.**, 349 NLRB No. 023, January 31, 2007, Board returns to **Passavant**. The Board held that after 8(a)(5) case has been resolved by a settlement agreement or a CBA, a decertification petition can be processed and an election can be held after completion of the remedial period associated with the settlement of an unfair labor practice (ULP) charge, but a petition cannot be processed if:

- (1) execution of the settlement of the ULP charge comes before filing of petition,
- (2) Regional Director finds that petition was instigated by Employer or that employees' showing of interest was solicited by Employer, or
- (3) settlement of ULP charge includes agreement by petitioner to withdraw petition.

The Board found absent a finding of ULPs or admissions by Employer, there is no basis for dismissing a petition based on the settlement of unproven ULPs; to do so would unfairly give determinative weight to allegations of unlawful conduct and be in derogation of employee rights under Section 7. A settlement agreement is not an admission that the Employer committed ULP unless such admission is part of an agreement.



COMPLIANCE CORNER:

In this section we hope to educate you on what the Agency means by the term "compliance" and to inform you of ongoing compliance cases in the Region.

Formal compliance cases involve ensuring a Respondent carries out the requirements of a Board order or a court judgment that enforces a Board order. Informal settlement agreements do not involve a Board order or a court judgment, and are usually negotiated by the Board agent who investigated the original charge or by the trial attorney assigned to litigate the case. At Region 15 our Compliance office is manned by Compliance Officer Debra Warner and Compliance Assistant, Terry Bennett. Debra can be reached at 504-589-6389, and Terry at 504-589-6369.

What is a Discriminatee?

An employee who is involved in a NLRB case, where they were discriminated against by an Employer or by a Union. Such discrimination might involve a discriminatee suffering economic losses.

What is the Backpay Period?

The period during which backpay liability accrues, beginning when the unlawful action took place and ending when a valid offer of reinstatement is made or when the backpay period has been tolled for other valid reasons (for example, closure of the facility; evidence that discriminatee would have been laid off during the backpay period notwithstanding the unfair labor practice; or death of the discriminatee) or when conditions in effect prior to the unlawful action have been restored.

What is Gross Backpay?

What the discriminatee would have earned from an Employer had there been no unlawful action. Earnings include not just wages, but all other forms of compensation such as vacation pay, health and retirement benefits, bonus payments, and use of vehicles. Backpay awards do not include punitive damages.

What are Interim Earnings?

Earnings of the discriminatee from other employment obtained during the backpay period.

Expenses

Necessary expenses incurred by the discriminatee in seeking and holding interim employment that they would not have otherwise incurred are offset against quarterly interim earnings. In quarters in which there are no interim earnings, the discriminatee is not entitled to reimbursement for expenses.

What is Net Backpay

The amount owed a discriminatee by an Employer or a Union. Net backpay is generally gross backpay minus interim earnings.

Duty to Mitigate

Discriminatees have a duty to make reasonable efforts during the backpay period to seek and hold a job while they are waiting for a final decision to be made concerning their entitlement to backpay. A discriminatee is not due backpay for any period within the backpay period during which it is determined the discriminatee failed to make a reasonable effort to mitigate.

FYI: The standard employee Social Security contributions and payroll tax deductions must be made from the net backpay owed to the discriminatee, but not from any interest or reimbursement of medical expenses.

Did You Know? In January 2007, the new Compliance Manual became available on the Agency's website.

EXAMPLES OF UNION CONDUCT THAT VIOLATES The NLRA

Refusing to process a grievance because an employee criticized a union officer;

Causing an Employer to discriminate against an employee because an employee refused to engage in union activity or because an employee criticized the Union;

Threatening employees with the loss of their job because they refused to support the Union, and

Refusing to refer or giving preference in a hiring hall because of race or an employee's perceived dissonant union activity.

Examples of Employer Conduct that Violates The NLRA

Telling employees they can't discuss their wages with other employees;

Disciplining employees in any manner because they and other employees complain about working conditions;

Allowing employees to talk to other employees during working hours but not allowing employees to talk to other employees about unions during working hours;

Forcing employees to join a union;

Questioning employees about their or other employees' union activities;

Threatening or disciplining employees in any manner because they support a union, and

Promising employees benefits to discourage or encourage their support of a union.

***Roux**-a mixture of fat and flour that is cooked together and used as a thickening for soups and as a base for etouffe and other Cajun and Creole dishes.

REPRESENTATION ROUX*

In this part of the newsletter we will attempt to educate and inform you about one of the two primary missions of the Agency, which is to give employees an opportunity to decide if they want to be or no longer want to be represented by a specific union.

What is a Petition?

A petition is the document an employee, Union or an Employer files with the NLRB to begin the process necessary to decide if a group of employees will be represented by a specific Union. The Act provides for four types of petitions seeking Board-conducted elections:

- (1) RC -- a petition seeking certification;
- (2) RM -- an employer petition seeking resolution of a question concerning representation;
- (3) RD -- a petition seeking decertification of the presently recognized bargaining agent, and
- (4) UD -- petitions for amendment of the certification of a union.

The two remaining types of petitions, UC and AC do not require an election:

- (5) UC -- is a petition for clarification of a bargaining unit, and
- (6) AC -- is a petition to amend certification to reflect changed circumstances, such as changes in the name of the labor organization or in the site or location of the employer.

Hopping To Represent

In *M&B Services, Inc. d/b/a Milton Berry, Sr.*, Case No. 15-RC-8692, the Region did a lot of "hopping" to ensure a group of M&B Services, Inc. (M&B) employees were given the opportunity to vote on whether they wanted to be represented by Service Employees Union International, Local 100 (Union).

Richard's Disposal Inc. (Richard's) and Metro Disposal, Inc. (Metro) have a contract with the City of New Orleans, Louisiana to collect garbage and hazardous waste for the City. M&B provides hoppers for Richard and Metro. Hoppers are the individuals that ride on the back of garbage trucks and hop on and off the trucks emptying garbage cans into the garbage truck's trash compartment.

Monday through Saturday morning the hoppers meet either at Richard's or Metro's yard to board the garbage trucks. The hoppers report to one of the two yards between 2 a.m. and 4 a.m. to "roll out" with the trucks. Therefore, the election was scheduled to take place simultaneously at each yard between 2 a.m. and 4 a.m., to catch the hoppers as they reported to work for the day at one of the two yards.

The Region was able to use a warehouse on Richard's yard as the election site for the hoppers who reported to Richard's on the date of the election. Unfortunately, Metro did not have a facility the Region could use to conduct the election at its yard; therefore the Region rented a U-haul and turned it into an election room. Additionally, because the Region was unable to park the U-Haul on Metro's yard, it was parked on the road outside Metro's yard to ensure the hoppers reporting to Metro on the day of the election had the opportunity to vote.

Although normally when there are multiple election sites, an employer is able to provide a voting eligibility list for each site that was not possible in this case. Hoppers that work for M&B are not assigned to a specific yard on any given day; therefore M&B could not determine in advance if on the date of the election a specific hopper would be working on a Richard's truck or a Metro truck. Therefore, in order to prevent a hopper from possibly voting twice, the parties agreed to vote everyone subject to challenge.

Well, the election was held successfully during the pre-dawn hours of May 8, 2007, in an area that was heavily damaged by Hurricane Katrina. Luckily, the back of the U-Haul truck came equipped with overhead lights.

WHO'S WHO AT THE REGION

NLRB'S WEBSITE IS ONE OF THE BEST IN THE FEDERAL GOVERNMENT

The National Labor Relations Board's website (www.nlr.gov) was recognized as one of the five best in the Federal Government by the National Security Archive (NSA), a nongovernmental research institute and library located at George Washington University.

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.

Regional Quiz

Who or what is the Region's DRD? The answer is contained in the attached organizational chart, and will be fully explained in the next newsletter.



Did You Know?

The Region is expecting to move its offices to the F. Edward Hebert Federal Building, 600 S. Maestri Place, New Orleans, Louisiana 70130 in the fall of 2007.

Fernando de Juan -- Will begin working at Region 15 in September 2007

Fernando de Juan was born in Cuba but spent the majority of his childhood in the U.S. He is a native Spanish speaker that learned to speak Mandarin while living in Taiwan, R.O.C. Fernando graduated from George Washington University in Washington, D.C. with a bachelor's degree in Criminal Justice, and began working as a flight attendant after graduating.

Fernando will receive his JD from the University of Denver Sturm College of Law in 2007. During law school, he served as technical editor on the Transportation Law Journal, and worked as a Spanish interpreter in the school's law clinic. During Fernando's last year of law school, he served as a judicial intern to the Colorado Supreme Court.

Fernando has two daughters who live in Colorado.

Externship is Win-Win

The NLRB provides opportunities for Law Students to work as externs for an NLRB Regional office during their third year of law school. Region 15 currently has externship agreements with Tulane and Loyola schools of law. During school year 2006-2007, the Region was incredibly fortunate to have working for us, Jacob Frisch, a student from Tulane Law School. Jacob was asked to provide a short biography and description of his experiences as an extern for this newsletter with the following results.

I had the great fortune to be an Extern at Region 15 over the past eight months while completing my last year at Tulane University Law School. I had somewhat of an idea what to expect because of an undergraduate degree in Industrial and Labor Relations from Cornell University and previous legal experience advocating on behalf of employees and unions. Thanks to great co-workers, I was able to contribute from the very start. As an extern, I was able to achieve a level of personal interaction with workers that I never thought possible. I am so grateful for the opportunity to gain valuable experience which inevitably led to accepting a position with the Office of the General Counsel upon graduation. I am looking forward to continuing my career with the Board and am extremely excited about working for the Office of the General Counsel in the fall of 2007.

In addition to his casehandling responsibilities, Jacob also interviewed one of the few remaining fulltime Labor Law professors in the jurisdiction covered by Region 15.

The Future of Labor Law in Law Schools, a Chat with Professor Joel Friedman

By Jacob Frisch

I recently sat down with Professor Joel Friedman of Tulane University Law School to discuss his thoughts on the trends of Labor Law in law schools. Professor Friedman was recently awarded the Judge John Brown Award from the Federal Judicial Center for his contributions in training federal judges and magistrates in the area of employment discrimination.

After speaking with Professor Friedman, I became aware of numerous problems occurring inside our nation's law schools. Professor Friedman stated that fewer law schools are choosing to teach Labor Law than in years past. And a large number of schools that are offering the course are replacing full-time faculty with adjunct professors. This unfortunate trend ends up hurting Labor Law students in several ways.

First, adjuncts are not scholars in the field because they do not regularly publish articles and books. Second, adjuncts traditionally have another full-time job, making it much harder for students to meet with them since they are rarely at the school. Third, adjuncts often teach with their own bias towards the subject matter because of their regular job; therefore offering a more limited perspective of the Labor Law. If this trend continues, students will be disadvantaged because they will not have full access to an experienced professor who is continuously publishing in the field. In order for law schools to reverse this development, students must take an interest in labor law and actively ask their school's administration to hire a full time labor law professor to teach the course.

Region 15



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Organizational Chart

