



NLRB Region 32

Outreach

www.nlr.gov

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Service Agency Edition

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In This Issue:

- Did you know
Rights protected by the National Labor Relations Act
- Drivers Receive Backpay
Two truck drivers receive \$35,000 in backpay through an NLRB charge after their employer laid them off unlawfully because they pressed for a raise.
- How To File a Charge
How to file an unfair labor practice charge with the NLRB. How the NLRB investigates charges.
- Learn More
NLRB staff are available to speak to service and advocacy organizations.

Region 32 holds periodic workshops on protected rights and NLRB procedures.

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 employees' 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 demand.

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.

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 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 had merit.

Truck Drivers Settle NLRB Charge for \$35,000.

When their Employer laid them off, Jorge Rivera and Ascanio Reyna* didn't think it was right. They had worked for their employer for several years, delivering doors and fixtures from its main production shop in Modesto, California, to customers located between Portland and Los Angeles. They had good work records and knew the job, but when it let them go, supposedly because work had slowed, their employer kept two newly hired drivers who had almost no driving experience.

Rivera and Reyna went to the Modesto office of California Rural Legal Assistance. There, a staff attorney referred them to the NLRB's Region 32 in Oakland, after they explained to her that several months earlier they had led their fellow drivers, about twelve in all, in demanding a raise when they learned that the employer paid more to its drivers who worked out of a terminal located in Los Angeles. Although the employer gave the drivers a raise, Rivera and Reyna suspected that it had marked the two of them for layoff because of their role in the recent wage dispute.

Rivera and Contreras filed unfair labor practice charges with Region 32. Their statements in support of the charges strongly suggested that the employer had decided to lay them off because they had spoken out on behalf of all the drivers in demanding a raise.

In its investigation, Region 32 also gave the employer a chance to explain why it had selected them for layoff. When the employer claimed that the two had poor driving records, the Region demanded documents to support the claim. When the employer claimed that it had no idea that the two had been leaders behind the drivers' recent demand for a raise, the Region sought out a number of witnesses who could testify as to the role that Rivera and Reyna had played in the wage dispute, and why the Employer would have seen them as the drivers' leaders.

Region 32 eventually determined that the employer had laid off Rivera and Reyna unlawfully, selecting them because of their role in the wage dispute. The employer quickly offered to settle the case. By then, the two drivers had found new jobs, and did not want to return to work with the employer. Both lost several months of work, however, and under terms of the settlement, Rivera received about \$16,000 in backpay while Reyna received about \$19,000, compensating the two for earnings they had lost as a result of their unlawful layoff.

*Names are changed to protect privacy.

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, it will pursue the charge 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.

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 a strike. When permanently replaced, 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 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. I

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.

January 2007

Page four

NLRB Region 32

Outreach

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 32 may be reached by telephone at:

1-866-667-6572

(Toll free)

or

510-637-3300

Se habla español

Speakers Available

Members of the Region's staff are available to make presentations before any group, such as 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 Will Baudler at (510)-637-3260 or Assistant Regional Director Michael Leong at (510)-637-3264

Attend a Workshop

Region 32 also will be hosting a series of workshops at the Ronald V. Dellums Oakland Federal Building, where Region 32's office is located. Workshops will be on specific NLRB-related topics. All members of the public are invited to attend.

The next Region 32 workshop will be held on Wednesday, February 7, 2007, in Conference Room H, located on the fifth floor of the north tower of the Dellums Federal Building, from 10:00 a.m. until 12:00 p.m.

The February 7 workshop will address two topics—protected workplace rights, and how the Region investigates an unfair labor practice charge.

Future workshops, which will be scheduled on a monthly basis, will cover such topics as filing and processing an election petition for a secret-ballot union representation election, a union's duty of fair representation the employees it represents, and work rules, lawful and unlawful.

Please confirm your interest in the February 6 workshop, or ask to receive future announcements, by email to region32@nlrb.gov.

The rights protected by the National Labor Relations Act are available to all. Along with the Region's staff, I am committed to improving public awareness of the Act and of the recourse available through the Regional Office to those who have suffered any violation of it.

Alan B. Reichard, Regional Director

National Labor Relations Board, Region 32