

NLRB CONNECTIONS

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**On the Web at
www.nlr.gov**

**The Regional office is
open Monday through
Friday, 9:00 AM to
5:30 PM**

KORN'S BAKERY SETTLEMENT Region to Distribute \$3.3 Million in Backpay

The Board recently approved an historic settlement agreement between its General Counsel and Korn's, a wholesale bakery located in Brooklyn. Region 29's Compliance Division has begun distributing up to \$3.3 million in backpay owed to current and former production employees. Those production employees consist of 118 identified employees and a group of unidentified employees, who were employed between May 1992 and August 2006, but whose names did not appear on the bakery's payroll. Several unidentified employees have already contacted the Region.

Any production employee who was employed at the bakery between 1992 and 2006 who has not yet submitted a claim to the Compliance Division should contact the Regional office at 718/330-2148, immediately, **but not later than**



The Brooklyn Bridge circa 1915

December 1, 2008, if they wish to receive their share of the settlement.

The Board's compliance effort, spearheaded by recently-appointed supervisory attorney, Elias Feuer, and retired supervisory compliance officer, Richard Epifanio, reme-

dies Korn's failure to comply with wage and benefit provisions of its collective bargaining agreement with Local 3, Bakery, Confectionary and Tobacco Workers Union, AFL-CIO, after Korn's unlawfully withdrew recognition from Local 3 and attempted to impose a (cont. at P.3)

Region 29 Settles into its New Home

In September, 2006, Region 29 moved from One MetroTech Center, to neighboring Two MetroTech Center, 5th Floor.

Despite the inherent difficulties in moving an entire op-

eration, Region 29 closed for only one day, and was able to field public inquiries even on its first day at the new facility.

Increased security at our new office requires visitors to pass through a metal detector and

surrender a photo I.D. before gaining entry.

Those without photo I.D. may contact the Region's information office at 718/330-7713, to make alternative arrangements.

Did you know that . . .

- Upon finding merit to an unfair labor practice charge, the Regional office issues a Complaint and Notice of Hearing, absent settlement.
- Cases deemed not to have merit are dismissed, unless withdrawn, and may be appealed to the General Counsel's Office of Appeals in Washington, D.C.
- Cases found to have merit by the Region or General Counsel, which do not settle, are litigated before administrative law judges.
- Where appropriate, even prior to such litigation, the Regional office, on behalf of the Board, may seek injunctive relief under Section 10(j) of the Act.
- The decisions of NLRB administrative law judges are not final adjudications. Exceptions to those decisions may be filed with the Board.
- Board Orders, while not self-enforcing, are enforced by the Board's Enforcement Litigation Branch in Washington, D.C.

Protected and Concerted Update

Many are aware of the National Labor Relations Act's protection of employee rights to form, join or assist labor organizations, or to refrain from those activities.

But the Act also protects a worker's right to act together with co-workers to improve wages, hours and other conditions of employment. If employees are discharged, or subject to other disciplinary measures because of engaging in such protected concerted activities, the NLRB's General Counsel ordinarily seeks backpay and an offer of reinstatement.



The NLRB safeguards protected concerted activities.

In one such Region 29 case, *Wang's Alliance Corp.*, JD(NY)-26-06 (June 17, 2006), an administra-

tive law judge found that the employer discharged an employee based on its belief that he discussed his dissatisfaction with various company policies with his co-workers. Even though the employer was mistaken about this, the Judge found the employer's conduct unlawful.

The Board adopted the Judge's decision, which was unchallenged by the employer, after which the Region was able to negotiate a favorable settlement.

Recently, (cont. at p. 3)

Law & Order . . . Region 29 Style

From the "leaving no stone unturned" department, in *Quinn's Restaurant Corp.*, a discriminatee, who was owed backpay, disappeared. Though Region 29 Compliance agents could find no co-workers with information about him, it found a neighbor of his who heard rumor of the

discriminatee's murder. Next, Compliance sought out Jersey City homicide, confirmed the murder, but learned the body had been identified by a nephew who flew in from Turkey and moved into his uncle's home. Homicide detectives provided Compliance with the nephew's name, and

the Turkish consulate provided information from the nephew's visa application, including an e-mail address. Turns out, the discriminatee had three surviving siblings in Istanbul. Compliance was able to see that they soon received the discriminatee's rightful backpay.

From the Desk of Regional Director Blyer

We are pleased to present this inaugural issue of *Connections*, Region 29's quarterly newsletter.

Connections is part of the Region's ongoing outreach program, to better inform the public of our efforts to enforce the Act and to further workplace democracy.

Public awareness of the

NLRB's mandate and our efforts to achieve it is important, and our outreach program is certainly one of our priorities. We welcome your input.

Regional staff, including myself, are available to speak to any group or organization about the NLRB, the Act and the protections it offers. We welcome the opportunity to

speak to your group.

If you want to learn more about our outreach program, or are interested in having us provide a speaker to your organization or event, please contact our outreach coordinator, Richard Bock, at 718/330-7725.

Representation Round-Up

Various issues arise in the representation area. Here are some of recent note in Region 29:

- In *Maggies Paratransit*, the petitioning union and employer are litigating whether 25 dispatchers are supervisors within the meaning of the Act, calling for application of the Board's recent decisions in *Oakwood Healthcare, Inc.*; *Croft Metals, Inc.*; and *Golden Crest Healthcare Center*.

- In *Queens Long Island Medical Group, P.C.*, the Region directed an election in a unit of "implementation specialists", responsible for training employees in the use of a new record-keeping system, and rejected the Employer's argument that the unit would be substantially contracted upon completed installation of that system, finding that any plans to diminish the unit were not sufficiently definite or imminent to war-

rant postponing employees' right to choose whether to be represented.

- In *D'Addario & Co., Inc.*, the Region directed an election in a unit limited to maintenance mechanics, who manufacture parts and accessories for musical instruments. The Region rejected the Employer's argument that machinists and set-up employees also be included in the unit.

G.C. Eyes Added Remedies for First Contract Bargaining Cases

Citing the daunting impact that certain bad faith bargaining violations may have during negotiations for an initial contract, the General Counsel will now regularly consider pursuit of additional remedies so as to adequately restore pre-violation conditions.

Ordinarily, the General Counsel requests a standard bargaining order to remedy unlawful bad faith bargaining by either party.

However, in view of the impact certain unfair labor practices may have during negotiations for an initial contract, additional remedies may be necessary. Such unlawful acts may include outright refusals to bargain or overall bad faith; refusals to meet; use of agents armed without adequate bargaining authority or other tactics to delay the process; unilateral changes that inject extraneous issues into bargaining and unlawful discharges of union supporters.

In such cases, additional remedies will be considered, including: requiring bargaining on a prescribed or compressed schedule; mandated periodic reports on bargaining status; extensions of the certification year; and reimbursement of bargaining costs.

It is the General Counsel's position that such additional remedies will work to restore the status quo and remedy violations at a critical stage in collective bargaining.

Korn's Bakery Settlement (cont. from page 1)

company-selected union on its employees.

In addition to the sizable monetary remedy, the case represents the first time the Board sought and obtained a District Court Order appointing a receiver to operate a business and to protect its

assets from being dissipated. The Application for the Pre-Judgment Appointment of a Receiver was made under the Federal Debt Collection Procedures Act, which allows the Board to preserve assets even before a liquidated judgment has been entered, thereby ensuring a full rem-

edy. The law also enables the Board to apply for pre-judgment writs of garnishment, writs of attachment, writs of sequestration and protective restraining orders. Each of these tools is also available post-judgment.

Protected and Concerted Update (cont. from page 2)

Region 29 issued Complaints against two different employers, *Handyfat Trading*, 29-CA-28181, and *Sunrise Plus*, 29-CA-28115, each alleging that the respective employers terminated certain of their employees in retaliation for those workers having acted together to complain about the companies' failure to

comply with both state and federal wage and overtime laws.

The *Handyfat* case opened May 22, before Judge Howard Edelman, with the Region calling a number



Section 7 of the Act specifically protects concerted activity for the purpose of mutual aid or protection.

of witnesses. The *Sunrise Plus* matter is currently being litigated.

In each case, the Region is seeking backpay and reinstatement offers.

Of Note . . .

- In *Bolivar Tees, Inc.*, 349 NLRB No. 70 (Apr. 12, 2007), the Board found a single employer relationship between an American and a Mexican corporation, despite the lack of specific evidence of centralized control of labor relations.
- In *Mickey's Linen & Towel Supply, Inc.*, 349 NLRB No. 76 (Apr. 20, 2007), the Board found an employer provided unlawful assistance to a decertification effort where its supervisor performed translations for an employee soliciting signatures on a decertification petition.
- In *PSK Supermarkets, Inc.*, 349 NLRB No. 6 (Jan. 22, 2007), the Board held that an employer failed to establish special circumstances warranting a total ban on wearing union, or non-company issued buttons, where the employer argued that its "no button" rule was justified because its employees had contact with customers.

General Counsel Expands Electronic Filing Initiatives

Recently, the General Counsel expanded the list of documents parties may file electronically.

Now, Answers to Complaints or Compliance Specifications; Motions for Summary Judgment; Petitions to Revoke Subpoenas; Motions for Bills of Particular; and election objections may also be filed with Regional, Subregional or Resident Offices through use of the Agency's website, www.nlr.gov. Only Answers and documents over 15 pages must also be received in hard copy no later than three business days after the date of electronic filing.

These documents join an ever-growing list that also includes: position statements; notices of app-

earance; requests for extensions of time for documents filed with a Regional Director or Hearing Officer; postponement requests filed with a Reg-



Exclusive use of regular mail is quickly becoming a thing of the past in NLRB offices.

ional Director or Hearing Officer; *Excelsior* lists; Observer Designations; Requests to Proceed; Withdrawal Requests; Disclaimers of Interest; R-case briefs to Regional Director or Hearing Officer; Briefs to ALJs; ULP Exceptions and Briefs to the Board to be served on General Counsel; and any document filed with

the Board in accordance with its E-Filing Project.

Once on the website, parties filing electronically simply scroll to E-Gov, click on the E-Filing link on the pull-down menu, then click on the "File Documents" button under "Regional, Subregional and Resident Offices."

After accepting the terms, a page appears enabling the sender to transmit a document.

Practice and Procedure Tips...

The Regional Office is neutral in the investigation of ULP charges and in processing representation petitions. Here are some important procedural tips:

*If you wish to file a charge, the proper forms are on our website, or you may do so in person. You should know the exact name of the party against which you wish to file, its address, phone

number and responsible officials. Be prepared to promptly produce evidence, including witnesses.

*For representation petitions, be prepared with unit information and the required 30 per cent showing of interest.

*All petitioners must show the subject employer does some business in interstate commerce.

* When requesting an adjournment of a representation hearing,

do so in writing, either electronically or in hard copy and include other parties' positions regarding your request.

* Parties seeking withdrawal of a charge due to non-Board settlement should send the settlement to the Regional Office as part of the withdrawal process.