

Region 18 HOT DISH

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HOT DISH EDITOR:

**PAMELA SCOTT,
SUPERVISORY ATTORNEY**

From the Director's Chair

This is Region 18's second newsletter which stems from the Agency's nationwide emphasis on outreach to the community. We will issue this newsletter on a periodic basis in order to apprise our customers and the general public of recent developments in both the Region and the Agency.

Representation cases, specifically conducting elections, are the primary area in which the face of the National Labor Relations Board is shown to the public. Nationally each year the Agency conducts thousands of secret-ballot elections in which tens of thousands of employees exercise their democratic right to choose whether or not to be represented by a labor organization and, if so, by which union. For example, in fiscal year 2007 the NLRB conducted 2080 initial representation elections while in fiscal year 2006 it conducted 2,430 initial elections among some 122,730 employee voters.

Within Region 18, as well as nationally, there has been a marked decrease in the number of petitions filed in recent years. However, the Region experienced a slight increase in R-Case activity during the first six months of this fiscal year (October 2007 – March 2008). During this period, we had 58 petitions filed, an increase of 17 petitions over the

number of petitions filed during the first half of last fiscal year. The election median during these initial six months



**Regional Director
Bob Chester**

is 37 days from filing of the petition to the conduct of the election. We ran 59 elections and issued 18 Certifications of Representation and 23 Certifications of Results during this period. Other representation cases remain pending issuance of an appropriate certification. ULP charge intake remains about the same as it did last fiscal year. During the first six months of the fiscal year we received 228 charges, only four charges more than during the first six months of last fiscal year.

Nationally, the Agency has proposed a new type of election petition to be jointly filed by a labor organization and an employer. The proposal, called the RJ Petition, was published in the Federal Reg-

ister on February 26, 2008 and the comment period ended on March 27. The Agency is now reviewing the comments.

Under the newly proposed Section 102.62(c) of the Board's Rules and Regulations, a labor organization and an employer may jointly file a petition for certification consenting to an election with disputed pre-election and post-election matters to be resolved with finality by the Regional Director, rather than the Board. It is anticipated that this will substantially decrease the period of time between the filing of the petition and the ultimate certification. The petition will provide for an agreed upon date for an election, not to exceed 28 days from the date of the filing of the petition. No showing of interest is required to be filed with the petition and the petition will include the agreed upon unit and all details of the election. Within 3 days of the docketing of the petition the Regional Director will advise the parties of his/her approval of the request for an election and provide the parties with official notices of election. Motions to intervene may be filed within 14 days from the docketing of the petition and traditional intervention policies will apply. Final Board action on this proposal is pending.

Current Board Composition

As you are probably aware, the Board is currently operating with only two members, Member Wilma Liebman and Chairman Designee Peter Schaumber. Former Chairman Robert Battista's term expired on December 16, 2007 and the recess appointments of Members Peter Kirsanow and Dennis Walsh expired December 31, 2007. On December 20, 2007, in anticipation of the loss of members, Members Liebman, Schaumber, Kirsanow and Walsh unanimously delegated to the General Counsel authority on all court litigation matters that otherwise would require Board authorization. This delegation gives the General Counsel full and final authority on behalf of the Board to initiate and prosecute injunction proceedings under Section 10(j), or Section 10(e) and (f), of the National Labor Relations Act. The Board issued a similar delegation of authority to the

General Counsel in 1993 and 2001. The Board also delegated its powers to Members Liebman, Schaumber, and Kirsanow. This action will permit Members Liebman and Schaumber, as a quorum of the three-member group, to issue decisions and orders in unfair labor practice and representation cases. In 2005, a three-member Board issued a similar delegation permitting a two-member quorum to issue decisions. The temporary delegations will be revoked when the Board returns to at least three members. Although the President has submitted the nominations of former Chairman Battista, former Member Walsh, and Phoenix attorney Gerald Morales to serve as members of the Board, they have not been given recess appointments. We recently learned that Battista has withdrawn his name from consideration.

By Bob Chester, RD

Compliance Matters in Region 18

By Roger Czaia, Compliance Officer

Things have been quite busy in Compliance since the beginning of the year. During that time we have closed more than 12 informal and 2 formal cases and we are currently processing 4 formal cases, not to mention a large informal settlement of a CB case out of Region 21 (Los Angeles) we agreed to handle. In spite of the workload things have gone well as we have calculated total backpay in all of the aforementioned cases in excess of \$200,000.

Capable compliance assistant Deann Helget readily rises to challenges such as maintaining contact with potential backpay recipients and assisting those who may require translation services. In the formal cases

the Region has worked on this year, she has maintained contact with more than 35 potential recipients for more than 2 years. We have learned over the years that initiating and maintaining contact with potential recipients makes a tremendous difference in being in a position to get a settlement with an accurate backpay computation if and when a Respondent is ready to consider such a possibility. Keeping the files current, complete and accurate makes everyone's jobs much easier and those of us in Compliance appreciate the efforts by the Region 18 examiners and attorneys in this regard

A major compliance-related initiative the Agency has implemented this year includes the impact on backpay of Oil Capital Sheet Metal, Inc. 348 NLRB No. 118 (2007). In that case, the Board determined that it will now require the General Counsel to present affirmative evidence that a salt/discriminatee if hired, would have worked for the respondent for the backpay period claimed by the General Counsel. In other words, the presumption of indefinite employment of union organizers or "salts" has ended, and the burden has shifted to the General Counsel to prove the backpay period claimed. Please feel free to contact me with any questions you may have on this issue.

"Capable compliance assistant Deann Helget readily rises to challenges..."



Employer efforts to avoid bargaining obligations



By Marlin Osthus, Regional Attorney

Since January 2007, Region 18 has confronted numerous employer efforts to illegally end their bargaining obligations with unions. Of the six unfair labor practice hearings held involving Region 18 since the beginning of 2007, two involved employers that illegally fired every employee in the unit; and one involved a successor employer that illegally refused to hire the predecessor employer's employees, in order to avoid union representation. In a fourth case, while the successor hired all the unit employees, it engaged in a course of unlawful bargaining that—in the Region's view—continues to date, including making proposals that would render the union powerless and union representation meaningless.

In addition to the litigated cases, in three recent cases that settled (one after complaint issued and two prior to complaint), the Region determined that the employers were engaged in conduct designed to thwart union representation of employees. One involved an employer that fired half the unit; established a second company to perform the work of the discharged employees; and refused to engage in collective bargaining. In the second case, which was resolved prior to issuance of complaint, the employer withdrew recognition from the union after "outsourcing" all unit work. However, not only did the employer fail to give the union notice of the decision to outsource, but also the evidence clearly established that the "outsourcing" was a sham, with the employer retaining significant control over the alleged new employer and the new em-

ployer's employees. Finally, in a third case, which also settled prior to issuance of complaint, after years of employer efforts to avoid recognizing the union by challenging its certification, employer counsel would only meet and bargain with the union about once a month, in spite of repeated union protests that more frequent bargaining was necessary.

All of these cases share a number of characteristics. First, each involves numerous charges; complex evidentiary or legal issues; and careful, costly and time-consuming investigations. Moreover, most required issuance of investigative subpoenas in order to conduct complete investigations. Second, each involves an employer that attempted to avoid dealing with its employees' designated bargaining agent, and none of the employers has been particularly subtle about its motives. Third, except for two cases, each involves (or absent settlement would have involved) 10(j) injunctive relief. Moreover, in the case involving the employer's bargaining tactics and proposals, the Region has taken the highly unusual step of filing a motion with the Federal District Court for the Southern District of Iowa asking the Court to find the employer in contempt of the Court's 10(j) order because of the employer's ongoing bad faith bargaining. Fourth, each involves an employer negotiating its first contract with a union (whether as a successor or in a newly certified unit, or—in one case—as a result of voluntary recognition). As a result, the Region and Division of Advice considered special remedies pursuant to Memorandum GC 07-08 (Additional Remedies in First Contract Bargaining Case). Finally, in each case that has been litigated, administrative law judges sustained the most significant complaint alle-

gations, including all allegations related to unlawful discharges or refusal to hire, and the unlawful imposition of a final offer.

In addition to the legal expenses, each employer incurred significant costs associated with their actions. For example, with regard to the litigated cases, the successor employer that refused to hire unit employees not only was ordered to instate and make the employees whole, but also to pay employees' wages and benefits consistent with the predecessor employer's contract with the union, retroactive to the successor's first day of operation. See *Planned Building Services*, 347 NLRB No. 64 (2006); *Love's Barbeque Restaurant No. 62*, 245 NLRB 78 (1979), enfd. sub nom. *Kallman v. NLRB*, 640 F.2d 1094 (9th Cir. 1981). The successor employer whose bargaining tactics and positions have been challenged has been enjoined for nearly two years from imposing any final offer and is facing contempt proceedings, where the Region is seeking numerous remedies, including that the employer reimburse the union for all bargaining expenses and the Region for all expenses related to the investigation, consideration and litigation of the contempt matter. One of the employers that discharged the entire unit was required to reinstate two of the three employees pursuant to a 10(j) order, has endured sporadic informational picketing, and recently sold the business to a purchaser, which quickly reached a contract with the union.

In one of the two cases resolved prior to issuance of complaint, the employer agreed to offer reinstatement and make whole all employees not offered jobs as a result of the "outsourcing," to rescind the "outsourcing," and to

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Insights from Iowa

by Chip Chermak, Field Examiner

Public Sector Bargaining Laws in Iowa Beginning to Resemble the NLRA

A new labor bill which will expand the scope of union bargaining in the public sector has passed both the Iowa House and the Iowa Senate and awaits Governor Chet Culver's signature to become law. Currently, public sector bargaining is limited to wages, vacations, holidays, seniority, transfer procedures, job classifications, procedures for staff reduction, and training. House File 2645 will expand the scope of bargaining to also include work shifts and schedules, shift differentials, insurance carriers, leaves of absence, overtime compensation, supplemental pay, health or safety matters, evaluation procedures, discipline, preparation time, school class size, work uniforms, staffing levels, and early retirement issues. The bill also includes a provision that mandates that an act or practice does not have to be willful in order to be a violation. Both the increased scope of mandatory subjects of bargaining and the elimination of the willful conduct standard brings public sector bargaining more in line with the standards of the National Labor Relations Act.

Those opposing the bill contend that it will cause a rise in state taxes because of the financial burden of paying for more arbitrations. Further, the opposition asserts that decision-making will be taken out of the hands of elected officials, such as school board members, and put into the hands of arbitrators.

Advocates, on the other hand, say that along with an increased scope in the mandatory subjects of bargaining, taxpayers can expect to see a safer, more productive work environment. Advocates add that fewer than one percent of negotiations end in arbitration.

Democratic Governor, and former teacher, Chet Culver's intentions towards the bill are still unknown. Culver has previously warned there was a possibility that he would exercise his veto power unless common ground could be found. However, after further study, he has now stated that it appears the bill cannot be amended to achieve consensus.

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resume collective bargaining with the union. In the other, when advised that the Region intended to seek extension of the certification year to remedy the employer's refusal to meet more than once/month, the employer finally got serious about bargaining and reached contracts with the union for two units. In the case that settled after complaint issued, the employer agreed to reinstate two of four illegally fired employees, to recognize the union as the bargaining agent for all unit work performed by both the employer and its alter ego, and to a strict bargaining schedule, meeting with the union at least four days/month and at least six hours/each day of bargaining.

In all of the cases described above, by employing a variety of procedures that are designed to increase the Agency's effectiveness, Region 18 successfully thwarted employer efforts to

illegally interfere with employee rights to be represented by unions. These procedures include seeking assistance from the Division of Advice, using our 10(j) injunctive and contempt authority, requiring special remedies, issuing investigative subpoenas, and devoting the necessary resources to the investigative and litigation processes. Of course, the most important element in the Region's success has been and continues to be the field, support and supervisory staff who remain committed to the principles of employees' Section 7 rights.

Citations to cases referred to in this article:

Eichorn Motors, Inc., 18-CA-18226, et al., JD-05-08 (February 5, 2008) (no exceptions filed)

MJ Mueller, LLC d/b/a Benjamin Franklin Plumbing, 18-CA-18216, et al., JD-82-07 (December 28, 2007) (pending before the Board due to Employer exceptions)

CMPJ Enterprises d/b/a Holiday Inn Express, 18-CA-18254, JD-55-07 (August 7, 2007) (no exceptions filed)

Whitesell Corporation, 18-CA-18143, et al., JD-15-07 (March 2, 2007) (pending before Board due to Employer exceptions)

Vincent Trucking LLC, 18-CA-18503, et al. (Consolidated complaint issued February 22, 2008—settled after complaint issued.)

We're on the Web: www.nlrb.gov

Region 18 staff participate in Habitat for Humanity Activities

This spring, Region 18 employees participated in the 2008 Minnesota Federal Employee Habitat for Humanity Build project. As part of this project, federal employees from various agencies raised money to help fund the building of a Habitat for Humanity eight-plex. More than 250 federal employee volunteers from 13 federal agencies helped to build the two-story eight-plex located in Ramsey, Minnesota.

On May 15, Region 18 employees and family members went to Ramsey and spent a fantastic day framing the eight-plex. This was the first year Region 18 participated in the Federal Build project but we hope to participate again in the future.



Participants in Bowling Fundraiser:

RD Bob Chester, FA Sandie Francis, FA Kristyn Myers, FX Jenny Hadsall, Jenny's husband Ryan, FA Florence Brammer and Florence's husband David Schlay.

Region 18 employees also bowled at a bowling fundraiser and donated theatre tickets and related items to a silent auction fundraiser. The bowling fundraiser and silent auction raised \$2,700 for the Federal Build project. Region 18 employees also held their own silent auction fundraiser, which raised over \$400.

Participants in the Habitat Build included:

(back row) Paul Peel, FA Nichole Burgess-Peel, FA Kristyn Myers, FX Deb Rogers, Karen Czaia, RD Bob Chester, FA Florence Brammer and Florence's daughter Sarah. (front row) RD Secretary Paulette Jamison and Compliance Officer Roger Czaia.

We have speakers available to give presentations to your organization!



We want to remind you that Regional office staff members are available to speak to organizations, large and small, at your request. We regularly provide speakers to make presentations to colleges, high schools, technical schools, labor unions and employer associations. Please contact the Region's Outreach Coordinator, Pamela Scott at 612-348-1788 or via email at pamela.scott@nlrb.gov to make arrangements for a speaker. Last year we addressed several groups throughout the region and this year we plan to address many more.

Our staff is readily available through our information officer program to assist the public with any questions they have regarding issues arising under the Act. In FY 07 the Region's information officer responded to over 1500 inquiries from the general public. The information officer is available Monday through Friday from 8:00 am to 4:30 pm at 612-348-1757. The Agency also has an award-winning website at www.nlrb.gov, which has been recognized as one of the five best in the Federal Government. Our website contains a great deal of useful information about the Act, Board policies and procedures and how to contact a Regional Office.