



NLRB, Region 20 Roundup

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REGION 20 LITIGATES CASE ALLEGING BLUE DIAMOND GROWERS TERMINATED EMPLOYEES TO DISCOURAGE UNION ACTIVITY

Sacramento, CA – An administrative law trial took place from January 16 through January 19, 2007, at the John H. Moss Federal Building, based on a complaint issued by the Region, alleging that California Almond Growers Exchange, dba Blue Diamond Growers, unlawfully disciplined and discharged employees to discourage union activity. David B. Reeves and Matthew Peterson appeared as Counsel for the General Counsel of the NLRB. Field Examiner Scott Smith investigated these charges against Blue Diamond Growers. In a prior case brought by the Region against Blue Diamond Growers at the same plant, an Administrative Law Judge found on March 17, 2006, that the company had violated the National Labor Relations Act by terminating two employees and discriminating against a third to discourage employees' support for the International Longshore & Warehouse Workers Union, Local 17, AFL-CIO; threatened employees with loss of scheduled wage increases, loss of benefits, loss of pension benefits, plant closure and loss of employment in response to the union activity of employees; and coercively interrogated employees about their union activities and sympathies. According to Blue Diamond Growers' Internet website, Blue Diamond Growers is the largest tree nut processing and marketing company in the world.

Board Seeks 10(j) Injunction Against SFO Good-Nite Inn

San Francisco, CA – On November 28, 2006, the National Labor Relations Board petitioned for a temporary injunction under Section 10(j) of the National Labor Relations Act against SFO Good-Nite Inn. On September 28, 2006, an Administrative Law Judge (ALJ) found that the South San Francisco hotel unlawfully withdrew recognition from UNITE/Here, Local 2; has been unlawfully refusing to bargain with the union; terminated two employees because they would not sign a petition to remove the union; and made unlawful threats and promises of benefits to employees to encourage them to remove the union. Because the hotel refuses to comply with the ALJ's recommended remedial order, the Board determined that an injunction should be requested in federal district court under Section 10(j) of the Act, so that any Order ultimately issued by the Board will not be rendered ineffectual due to the passage of time. The petitioned-for injunction would require the hotel immediately to recognize and bargain with the union, reinstate the fired employees, and cease and desist from its unlawful conduct. A hearing on the petitioned-for injunction is scheduled for February 13, 2007, in the U.S. District Court, Northern District of California, San Francisco. Field Attorney Micah Berul will appear as attorney for the Petitioner, Regional Director Joseph P. Norelli.

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 of these 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.

Oakwood Supervisory Issue Addressed in North Coast Opportunities, Inc.

Ukiah, CA – On September 27 and 28, 2006, a hearing was held concerning SEIU Local 707's petition for a union election to represent certain employees of North Coast Opportunities, Inc. The hearing was conducted by NLRB Hearing Officer Daniel J. Owens, after an investigation of the petition by Field Examiner Lana Pfeifer. The employer asserted that 21 lead teachers at its Early Head Start and Head Start Child Development Program facilities in Mendocino and Lake Counties were statutory supervisors, who should be excluded from the bargaining unit. The union took the position that these employees were not supervisors. On September 29, 2006, the Board issued its landmark ruling on supervisory issues in *Oakwood Healthcare, Inc.* Region 20 then solicited further evidence from the parties in light of the *Oakwood* decision. On November 20, 2006, Regional Director Joseph P. Norelli issued a Decision and Direction of Election (DD&E) in the case. The Region determined that nearly all of the lead teachers were not statutory supervisors and were properly included in the bargaining unit, and that the petitioned-for unit, including the lead teachers, was an appropriate unit for collective bargaining purposes. The testimony of one lead teacher, however, raised a substantial question as to whether she was a statutory supervisor, but was insufficient to allow a final determination of the issue, and therefore, the lead teacher was held eligible to vote in the election subject to challenge. The DD&E directed a mail ballot election, and the ballot count was conducted on January 12, 2007, at Region 20's offices. As a result of the election, the union was certified as the employees' exclusive bargaining representative.

Recent Settlements

Fairfield, CA – On January 24, 2007, Region 20's Regional Director, Joseph P. Norelli, approved a settlement of unfair labor practice allegations against Ford of Fairfield in a case filed by Machinists Automotive Trades District Lodge 190, Local Lodge 1173. The case involved the termination of two automotive technicians on the same day that the Union distributed flyers to automotive technicians at Ford of Fairfield and other automobile dealerships in the Fairfield area. The Region issued complaint on December 19, 2006, and subsequently settled the case with an agreement calling for the posting of an official Board Notice to Employees and full backpay for the discharged employees. By the terms of the agreement, the employer did not admit that it violated the NLRA. The discharged employees did not want to be reinstated to their former positions, so instead they signed a side agreement between the employer and the union which called for what amounts to "front pay" until they obtain similar employment. Field Attorney Margaret Dietz conducted the investigation and settled this case.

San Francisco, CA – On November 15, 2006, Regional Director Joseph P. Norelli approved settlement of complaint allegations against the American Postal Workers Union, San Francisco Local. In this case, a bargaining unit clerk, who was not a member of the union, was informed that the union was going to file a grievance to have her job reposted because she had been acting as a supervisor for longer than the contract permitted. The clerk maintained that a shop steward from the union told the clerk, however, that he would not file the grievance that could cause her to lose her position if

Unfair Labor Practice Charge Procedures

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 and date the charge.

Once a charge is filed the Regional Office begins its investigation. The charging party is responsible for promptly presenting evidence in support of the charge, which often consists of sworn statements and key documents.

The charged party is then required to respond to the allegations, and will be provided an opportunity to furnish evidence in support of its position.

After a full investigation, the Regional Office will determine if the charge has merit. If there is no merit to the charge, the Region will issue a letter dismissing the charge. The charging party has a right to appeal that decision. If the Region determines there is merit to the charge, it will issue complaint and seek an NLRB Order requiring a remedy of the violations, unless the charged party agrees to a settlement.

she would agree to join the union. She declined to join the union but thought the union was no longer seeking to have her position re-posted after complaining to the union's president. The clerk's job, however, was in fact reposted. The case was tried before an administrative law judge, but at the conclusion of the hearing the parties elected to work out a solution instead of requiring the judge to issue a recommended order. The charging party asked for and received a written apology and assurances she would not be treated differently from union members with respect to contract enforcement. Lucile L. Rosen appeared as Counsel for the General Counsel in this case.

Fairfield, CA – On January 12, 2007, the Regional Director approved a settlement agreement between Sutter Regional Medical Foundation (SRMF) and the Office & Professional Employees International Union, Local 29, AFL-CIO. The agreement resolves numerous unfair labor practice allegations that the Region has been investigating since September 2006. By the terms of the settlement, SRMF did not admit that it violated the National Labor Relations Act, but the agreement calls for SRMF to refrain from disciplining employees because of their union activity; changing Admitting and Registration employees' break times because of their union activity; enforcing a previously unenforced rule that prohibits employees from communicating via email about non-work matters, in response to employees' union activity; prohibiting employees from sending emails or soliciting other employees about unions during working time, while permitting emails and solicitations about other non-work matters during working time; creating the impression that employees are under surveillance because of their union activity; threatening employees with disciplinary action for engaging in union activity; interrogating employees about their union activity; telling off-duty employees that they are not permitted to engage in union activity in non-work areas of our facilities; and preventing employees from having union literature and other union materials at work. In addition, the settlement requires SRMF to rescind any discipline issued to employees because of their union activity and to reinstitute its policies regarding Admitting and Registration employees' break times. Field Attorney Micah Berul conducted the investigation.

San Francisco, CA – The Region also recently approved a settlement agreement between Prospect Aviation Services, Inc. and the Service Employees International Union, Local 790. The case involved a long delay in providing information requested by the union, which was recognized as the employees' collective-bargaining representative by the employer pursuant to an authorization card check conducted by the California State Mediation and Conciliation Service in June of 2006. The information was needed in order for the union to negotiate an initial collective-bargaining agreement with the employer. The settlement provided for the posting of a Board Notice to employees containing the employer's promise to bargain in good faith with the union. By the terms of the settlement the employer did not admit that it violated the National Labor Relations Act.

Subpoena Enforcement

Recently, Region 20 was required to seek in Federal District Court enforcement of subpoenas it issued in two cases, where witnesses would not cooperate with the Region's investigation. Both cases involved claims by

witnesses that the subpoenas issued to them by the Region did not require that they furnish sworn testimony, but merely required them to appear and answer questions regarding the case without an oath or affirmation. A Federal District Court Judge in one of the cases, and a Federal Magistrate Judge in the other, both rejected these novel arguments by the witnesses and ordered these witnesses to provide sworn testimony. In both cases, the witnesses are now cooperating with the Region. These matters were handled by Field Attorneys Kathleen C. Schneider and David B. Reeves.

Highlights from NLRB's Office of the General Counsel in Fiscal Year 2006

In 2006, the Regional Offices and Headquarters staff of the NLRB's Office of the General Counsel had what can only be described as a banner year. (The Office of the General Counsel is the Agency's prosecutorial arm, while the five-member Board in Washington performs the Agency's adjudicatory functions. The General Counsel and five Board members are appointed by the President, subject to Senate approval.)

2006 Highlights

- A 96.7% settlement rate was achieved in the Regional Offices in meritorious unfair labor practice cases.
- Initial elections in union representation cases were conducted in a median of 39 days from the filing of the petition, with 94.2% of all elections conducted within 56 days.
- The Regions won 86.4% of Board and Administrative Law Judge decisions in whole or in part.
- A total \$110,727,428 was recovered on behalf of employees as backpay or reimbursement of fees, dues and fines.
- 2,927 employees were offered reinstatement as a remedy.
- 182,161 public inquiries were answered as part of the Agency's Public Information Program.
- The Agency established a Speakers Bureau, allowing citizen groups of all kinds with an interest in learning more about the NLRB to arrange a presentation by an Agency professional. (To arrange for a presentation in the Bay Area and throughout Northern California, contact Region 20's Outreach Coordinator, Regional Attorney Olivia Garcia, or Field Attorney Cecily Vix at 415-356-5130, or visit our website at <http://www.nlr.gov> and click on the [speakers](#) link.

The **National Labor Relations Board** is an independent federal agency created by Congress in 1935 to administer the [National Labor Relations Act](#), the primary law governing relations between unions and employers in the private sector. The statute guarantees the right of employees to organize and to bargain collectively with their employers, and to engage in other protected concerted activity with or without a union, or to refrain from all such activity.

Contact Us:

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To learn more about the National Labor Relations Board and the National Labor Relations Act, please visit the Agency's website at:

<http://www.nlr.gov>

The information officer in Region 20 may be reached by telephone at 415/356-5130.

The NLRB may be reached toll free by calling 1-866-667-6572.

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