NLRB Region 6 Outreach

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National Labor Relations Board, Region 6

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Gerald Kobell, Regional Director

In This Issue:

Regional Director's Corner

REGIONAL OFFICE DISTRIBUTES ONE MILLION DOLLARS

On March 4th and 5th, Regional Director Gerald Kobell and Compliance Officer Clyde G. Graham were in Milton, PA, a small town near Williamsport, to distribute over one million dollars for reimbursed health insurance costs and out of pocket expenses as well as enhanced pension benefits.

The case arose in 2003 when the United Steelworkers of America, AFL-CIO, CLC, which is now known as United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), filed an unfair labor practice charge alleging that ACF Industries, LLC, which manufactures railroad tank cars at its Milton Pennsylvania, plant, unilaterally implemented changes in its pay scale and then existing health insurance and pension plan, without having

first bargained to impasse with the Union. After a thorough investigation, the Region determined that there was no impasse when ACF implemented its last offer, since the union desired to make additional cost saving proposals, and in any event, the health and pension agreements had over two or three additional months to run, since both expired on a different subsequent date than the collective bargaining agreement. Although both the administrative law judge and the Board found that there was an impasse, regarding the collective bargaining agreement, the ALJ found and the Board upheld a violation with respect to the unilateral changes in the health insurance and pension benefits plans.

Thereafter, ACF filed a Petition for Review in the Court of Appeals for the District of Columbia Circuit asserting that the Board's decision was erroneous, and that, at most, only two or three months, respectively, of health insurance premium reimbursements and pension enhancements were due. The Union filed its own Petition for Review in the Court of Appeals for the Third Circuit, asserting that there never was an impasse, and that back pay and benefits were due until a new contract was signed 23 months later. The Appellate Court Branch filed a Cross Application for Enforcement of the Board's Order, which was limited to the unilateral changes in the benefits. Pursuant to the rules concerning multi-district filings, the Third Circuit was selected to hear and decide the case.

The Third Circuit then referred the case to its staff mediator and negotiations began between the parties to resolve the issues. Although ACF was tenacious in asserting that it would be vindicated in the Court of Appeals, and that it owed no more than $35,000, it ultimately agreed to reimburse all of the impacted employees for virtually all of their increased expenses for health insurance, COBRA payments, co-pays, and deductibles, including interest, for the entire period until a new collective bargaining agreement was signed, and six months of additional pension credits, which was substantially less than would have been owed, all of which amounted to over one million dollars. Everyone recognized that since ACF's pension plan was capped in 2005, and replaced with a 401(k) plan, the settlement without further litigation was very beneficial. Over 200 of the 282 employees entitled to receive monies personally came to the union hall to receive their checks, and many expressed their thanks for our efforts in their behalf. The remaining checks have been mailed to the recipients by certified mail.

Labor Law Developments

Board Denies Employees Right To Use E-Mail for Organizational Purposes

On December 16, 2007, the Board issued its decision in ***Register Guard***, 351 NLRB No. 70. The Board held that, in general, employees have no right to use an employer's e-mail system for Section 7 purposes.

In this case the employer, a newspaper, had an e-mail policy stating:

> Company communication systems and the equipment used to operate the communication system are owned and provided by the Company to assist in conducting the business of The Register-Guard. Communications systems are not to be used to solicit or proselytize for commercial

ventures, religious or political causes, outside organizations, or other non-job-related solicitations.

A bargaining unit employee of the newspaper sent an e-mail in response to an e-mail from management stating that the police had warned the newspaper that "anarchists" might attend a union rally. The unit employee stated that, in fact, the newspaper told the police that anarchists might attend. After the rally the union president, who was also an employee of the newspaper, learned that certain statements in her coworker's e-mail had been inaccurate. She then sent out an e-mail to employees entitled "setting it straight." Afterward, the employer issued a written warning to the union president for violating the newspaper's e-mail policy. This employee received a second written warning for two subsequent e-mails to employees sent from a computer in the union's office. One of these e-mails urged employees to wear green in support of the union's position in contract negotiations and the other e-mail asked employees to participate in the union's entry in an upcoming parade.

In ***Register Guard***, the Board majority held that the newspaper's employees did *not* have a Section 7 right to use the employer-provided e-mail system for union purposes. This is true whether the employee sent the union-related communication from the employer's computer or from a non-work location on a computer owned by the union. The Board left open the possibility, however, that an employer that relies heavily on e-mail as the means of employee communication, such as companies whose employees telecommute, may be compelled to allow the use of e-mail for union activity because there are no means of communication among employees at work other than e-mail.

The Board also narrowed the definition of "discrimination" to allow employers greater latitude to permit non-business use of e-mail while still prohibiting its use for union activity. Traditionally, the Board has held that an employer discriminates against union activity if it forbids the use of bulletin boards and other employer resources for union business but permits the use of its bulletin boards for any other non-work related purpose. The only exception to this rule was for "beneficent acts," such as an employer's yearly United Way campaign.

The newspaper did permit other non-business use of its e-mail including to send jokes, baby announcements, party invitations, the occasional offer of sports tickets or solicitations for services such as dog walking. The employer did not, however, permit solicitations for outside organizations, except for periodic campaigns for the United Way. The Board majority concluded that the question is not simply whether or not the employer permits any non-business use of e-mail, but whether or not the employer permits use of e-mail *to solicit for outside organizations*.

Applying this new standard for discrimination, the Board majority concluded that reprimanding the union president/employee for sending the two e-mails from the union's office soliciting support for the union, while permitting personal messages from individual employees, was not discriminatory. On the other hand, the majority concluded that reprimanding the union president for the first email setting the record straight regarding prior e-mails about anarchists at the union rally was discriminatory because that e-mail did not solicit support for the union, it

Filing Information

How to file an unfair labor practice charge and representation petition with the NLRB

How to File an Unfair Labor Practice 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.

You must file the charge within 6 months of the unfair labor practice.

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 and documentation 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 has merit.

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, the Region will proceed to trial 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.

merely "clarified the facts," and the employer's policy only prohibited non-job-related *solicitation*, not all non-job-related *communication*.

Board Narrows Rights of Union "Salts"

In ***Toering Electric Company*, 351 NLRB No. 18 (September 29, 2007)** the Board changed the burden of proof required to establish that an individual is a "job applicant" entitled to statutory protection against hiring discrimination. The Board "abandon[ed] its previous implicit presumption that anyone who applies for a job is protected as a Section 2(3) employee." The Board stated "a Section 2(3) employee is someone genuinely interested in seeking to establish an employment relationship with the employer. We further hold that the General Counsel bears the ultimate burden of proving an individual's genuine interest in seeking to establish an employment relationship with the employer."

Toering thus modifies *FES (A Division of Thermo Power),* 331 NLRB 9 (2000), enfd. 301 F.3d 83 (3rd Cir. 2002), in that, to prove a prima facie case, the General Counsel now has the burden of proving that an applicant is genuinely interested in seeking to establish an employment relationship with an employer, rather than the employer having the burden of proving the applicant had no such interest. The General Counsel's burden embraces two components: (1) there was a bona fide application for employment; and (2) the applicant had a genuine interest in becoming employed by the employer. The other elements of *FES'* burden-shifting framework still apply in refusal to hire and consider cases. The Board in *Toering* also held that its new rule would apply to all pending cases, "in whatever stage." (fn. 52)

Although the broadly worded holding suggests that an applicant's genuine interest in employment is an issue in all discriminatory refusal to consider and refusal to hire cases, the Board's post-*Toering* decision in *Windsor Convalescent Center,* 351 NLRB No. 44 (September 30, 2007), indicates that *Toering* is intended to apply only in the salting context.

Under established Board law for determining backpay, it is presumed that discriminatees in the construction industry, like discriminatees elsewhere and salts and nonsalts alike, would have continued indefinitely in the respondent's employ. A respondent could challenge a backpay period by proving that the employee would have left the job before completion of the project or, under *Dean General Contractors*, 285 NLRB 573 (1987), a respondent could rebut the presumption of continued employment by proving that it would not have transferred or reassigned the discriminatee after completion of the project at issue.

In ***Oil Capitol Sheet Metal*, 349 NLRB No. 118 (May 31, 2007)**, the Board overruled the application of the *Dean General* presumption to salting discriminatees. The Board held that the General Counsel must now affirmatively prove that salting discriminatees would have worked the entire backpay period alleged in the compliance specification, thereby shifting the burden of proving the duration of a salting discriminatee's backpay period to the General Counsel.

The holding in *Oil Capital* will not only affect future salting cases, but may also implicate backpay and instatement issues in cases still pending. Previously litigated pending cases may raise the issue of whether

How to File a Representation Petition

Filing NLRB representation petitions can be simple and convenient. An NLRB Information Officer can assist you in completing a petition form. Our contact information is on page one.

If you complete the petition yourself, keep in mind these helpful tips:

- Know which Regional office will handle your petition. Region 6 covers 41 counties in Pennsylvania and 26 counties in West Virginia.
- You may prepare your petition on our website at: www.nlrb.gov (filing instructions detailed).
- Know the job titles used by the Employer and the employee shift schedules.
- Provide the Region with authorization or membership cards (or other proof of interest) signed and dated by at least 30 percent of the employees in the petitioned-for unit.
- Although 91% of elections are conducted pursuant to election agreements, be prepared for a hearing by knowing: (1) the employer's operations; (2) the community of interests of various employee

retroactive application of *Oil Capitol* will cause a manifest injustice to the discriminatees in the case. Although the Board customarily applies new policies and standards retroactively "to all pending cases in whatever stage," in evaluating whether retroactive application of a new rule will cause manifest injustice, it will consider parties' reliance on preexisting law; the effect of retroactivity on accomplishment of the purposes of the Act; and any particular injustice arising from retroactive application. *SNE Enterprises*, 344 NLRB 673, 673 (2005)

Labor and Employment Relations Association Forum on Recent Board Decisions

The Region participated in a well attended panel discussion in Pittsburgh addressing the Board's 61 decisions issued in September 2007, dubbed by unions as a "September Massacre." Setting the stage for the well known panelists -- management attorney William Bevan and union attorney Joseph Pass -- Supervisory Examiner Mark Wirick compared press reports of heated protests, comments by Board members and prominent practitioners, and reactions in partisan media against the reality of the decisions. His remarks, summarized below, framed the issues for a lively discussion by the panelists and audience.

The Board was deeply divided, with the dissenting minority accusing the majority of frustrating the enforcement of the Act, and making it easier and less costly to violate the Act. The majority was repeatedly accused of a rush to reverse precedent, even when that precedent did not control the case at hand. Union demonstrations involving giant inflated rats, ceremonial oaths not to take cases before the Board, filing a complaint with the ILO**,** and sheer name calling by union advocates elevated the protest to an extraordinary, perhaps unprecedented level. Ironically, Board Member Schaumber's remarks that several dissents "bordered on disrespectful" may be a rare item of agreement among the members. Board Chairman Batista dismissed union protests as having more to do with politics than reasoned analysis.

Examining whether 61 decisions issued in a month's time was in itself significant, it appears that unions' focus on the sheer volume of decisions is misplaced. Even minority Board members have acknowledged that the end of the fiscal year, the impending end to the terms of three members, and goals to reduce backlog in accordance with the Government Performance Results Act made it foreseeable that many of the Board's oldest and most difficult cases would be decided during this period. In fact, many may have languished indefinitely otherwise.

Despite the rhetoric, not all 61 decisions were significant, nor were all adverse to the interests of unions. Arguably about half of the decisions were neither significant nor controversial. Chairman Batista pointed out that in 31 ULP cases (a majority of those involving alleged Employer misconduct) only 12 cases resulted in the dismissal of ALL allegations against Employers. Yet in many instances the significance of the cases lay not in the violations upheld, but rather in the allegations the divided Board dismissed. Also, the September decisions, in large measure, were not merely a return to Board precedent from some era in the past, but were clearly plowing new ground. There were indeed several groups of findings with profound significance to several areas of law.

job categories; and (3) who the "supervisors" are. Hearings are typically held 10-14 days from date of filing.

- Be prepared for the election to be conducted within 42 days from the date of filing.
- Always call the assigned Board agent with questions or concerns.

Twelve September cases involved “salting” tactics in one way or another. Viewed together with the ***Oil Capital*** (2007) decision, and in the context of applying ***FES*** (2000), it is clear the Board takes a narrow view of what constitutes legitimate salting entitled to the Act’s protection.

Obviously, the long-awaited ***Dana Corp.*** decision affects the voluntary recognition landscape. Whether viewed as an affirmation of the Board conducted-election as the preferred measure of employee choice, or conversely, as an unjustified attack on a union strategy because of its success, undoubtedly the dynamic has been altered. To what extent the new policy will result in additional elections remains to be seen.

Four cases involved employee misconduct in the context of other employer ULPs. The Board is likely to uphold a discharge, even where the misconduct would not have been discovered or may not have occurred but for those ULPs, or where managers commit other ULPs not directly related to the discharge.

Three cases involving discharged employees’ obligation to seek work to mitigate damages make it clear that such efforts must be prompt, bona fide and documented.

The ***BE&K Construction*** decision is being hailed by business advocates as encouraging legitimate defenses against corporate campaigns, but assailed by unions as empowering employers to punish unions with lawsuits filed simply to impose litigation costs.

Building upon previous decisions regarding union requests for information, the Board majority takes a dim view of what it deems union fishing expeditions. The dissents continue to assert that the Board is requiring unions to prove a contract was violated in order to be entitled to the information to determine if that is so.

In one RC and two ULP cases, application of the Board’s ***Oakwood*** (2006) supervisory status criteria resulted in dismissals of the petition and the ULP complaints. Other noteworthy cases issued involving ***Gissell*** bargaining orders, after-acquired clauses, and withdrawal of recognition based on employee petitions or union affiliation votes.

While these and other recent decisions have practical impact on how the Region investigates and processes certain cases, and certainly will affect Regional determinations, it was made clear that the Region is committed to the effective and fair enforcement of the Act. Ironically, the panel seemed to agree that the Board’s willingness to reverse precedent in the face of vigorous dissent creates complications for legal advisors and practitioners, who look to the future and its uncertainty as to the future composition of the Board.

Relocation of the Regional Office

Just when you thought you knew where the Board's offices were (and figured out how to park in the garage), Region 6 will be moving "home" again. In the Fall of 2008, we will be moving back to the Moorhead Federal Building, located at 1000 Liberty Ave., Pittsburgh PA 15222.

Our new offices will be located on the ninth floor. The hearing rooms, library and all staff offices will be located on the same floor. Our phone numbers will all remain the same.

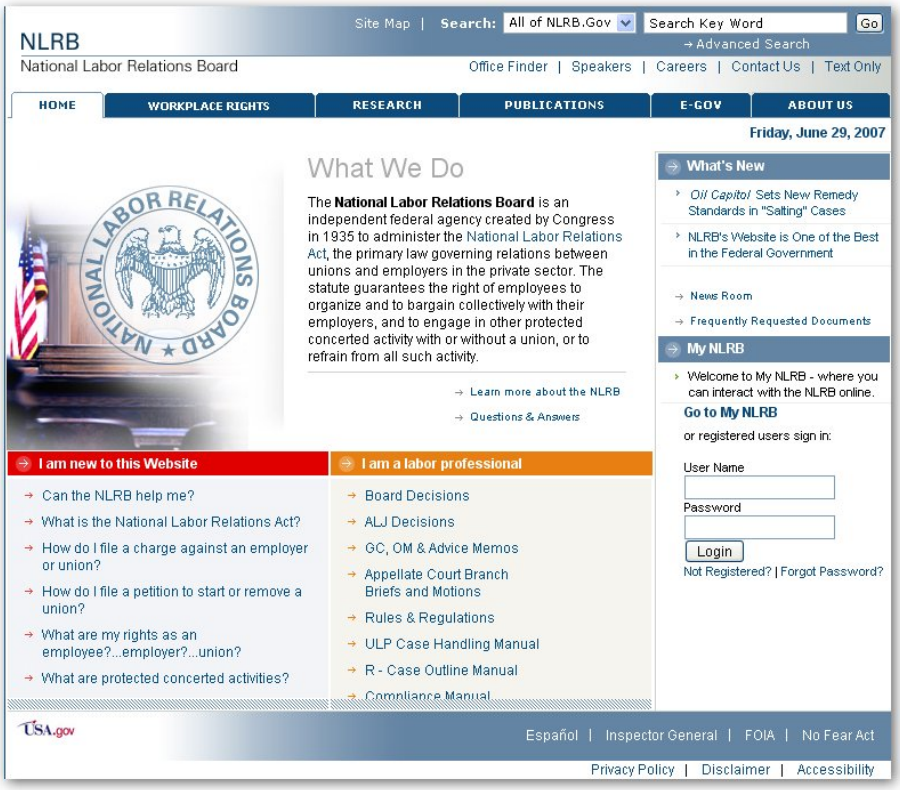
Come visit us in our new digs in the Fall !

www.nlrb.gov

Find Board Decisions and Casehandling Manuals on NLRB Website

This is the second in a series of articles on resources made available through the Agency's award-winning website, (www.nlrb.gov). These resources include Agency publications posted at the site and electronic document filing capabilities.

Here is what you will see when you access our homepage.



Those who are routinely involved in Board activities may have found it necessary in the past to amass a private library comprised of volumes of Board decisions and manuals outlining Board policies and procedures. It is no longer imperative to do so. The Board's entire archive of Decisions, Volume I to present, is available on-line. To find a particular citation, simply click the "research" tab on the NLRB homepage and select "Decisions" from the pull down menu. The following page allows the user to select the appropriate volume number which reveals a chronological list of cases contained in that volume. Many documents are available in both html and PDF formats for the user's convenience when viewing and/or printing these materials.

Also available are the NLRB Casehandling Manuals for both Unfair Labor Practice and Representation cases in both html and PDF formats. To access manuals, click the "publications" tab on the NLRB homepage and select the desired manual. An index appears for that particular manual from which you may choose the desired topic for viewing and/or printing. This index allows the user to print portions of the manuals pertaining to particular topics rather than printing the entire manual.

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 provide information about the Act and advice as to whether it appears to be appropriate to file an unfair labor practice charge or representation petition. If filing a charge or petition does appear to be appropriate, the information officer can assist in completing the form.

The information officer at Region 6 may be reached by telephone at:

1-866-667-6572
(Toll free)
Or
412-395-4400

Se habla español

What's Happening in the Region

Representation Case News

New Joint Representation Petition Proposed

In order to better serve the public and in light of the increased use of neutrality and card check agreements, the Board has proposed a new type of election petition to be jointly filed by a labor organization and an employer. The proposal described below was published in the Federal Register on February 26, 2008, for comments which had to be submitted by March 27, 2008.

Under the newly proposed Section 102.62(c) of the Board's Rules and Regulations, a labor organization and an employer may file jointly 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 date for an election, not to exceed 28 days from the date of the filing of the petition, and all other details for the election, including the description of the bargaining unit that the parties claim to be appropriate, and the full names and addresses of employees eligible to vote in the election. No showing of interest is required to be filed with the petition.

Within 3 days of the docketing of the petition, the Regional Director will advise the parties of his/her approval of their request for an election. Also within 3 days of the docketing of the petition, the Regional Director will send to the employer official NLRB notices, informing employees that the joint petition for certification has been filed and specifying the date, place and hours of the election. In addition to these notices, the employer must post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days before the day of the election.

Motions to intervene may be filed within 14 days from the docketing of the petition. The Board's traditional intervention policies will apply regarding levels of intervention and an intervenor's corresponding rights to appear on the ballot, to seek a different unit either in scope or composition or to insist on a hearing. Unfair labor practice charges, including those alleging Section 8(a)(2) or Section 8(a)(5) violations of the Act will not serve to block an election or cause ballots cast to be impounded, but will be handled in conjunction with any post-election proceedings. As already noted, all election and post-election matters will be resolved with finality by the Regional Director. Except as outlined above, the Board's traditional election rules and policies will apply.

Final Board action on this proposal will occur after the closing of the March 27th comment period.

Speakers Available

Members of the Region's staff are available to make presentations before any unions, employer organizations, social service organizations, high school or college classes and others to describe the Act's protections, how the Region investigates and decides unfair labor practice cases and processes representation petitions, and other NLRB topics of interest. To arrange for a speaker and to discuss possible topics, telephone Supervisory Attorney Donald Burns at 412 395-6892.

Recently, Region 6's staff spoke to a group of union stewards about the process of filing an unfair labor practice charge and what occurs when a charge is filed. Other presentations have been given on contract violations vis-à-vis unfair labor practice charges, and collective bargaining issues. We have also spoken before college classes providing an outline and history of the National Labor Relations Act and explaining the structure of the National Labor Relations Board. We have even conducted a mock representation election before law and graduate students.

Regional Director Gerald Kobell is scheduled to address the annual Labor Management Conference at Indiana University of Pennsylvania on Friday, April 25, 2008. The

Unfair Labor Practice Case News

Diligence Secures $400,000 Settlement

Seven years of effort by the Region and the Charging Party Union, International Brotherhood of Teamsters, Local 205, was rewarded by a favorable settlement in Great Atlantic News, LLC, et al, Case 6-CA-31033. To achieve this result, the Region and the Charging Party had to persevere through at least eight separate subpoena battles, one motion for partial summary judgment, two special appeals to the Board, and an extensive mid-trial investigation into the corporate relationships of six interrelated companies with ties to a multi-billion dollar Canadian business enterprise. The settlement resulted in the distribution of $400,000 dollars in backpay to the 22 identified discriminatees and represented 100% of the backpay due to them. Despite the many obstacles created by the Respondent through its protracted litigation strategy, the Region and the Union remained focused upon the ultimate goal of enforcing the Section 7 rights of the employees and on the effectuation of a meaningful backpay remedy in this case by ensuring that the appropriate Respondent(s) were parties to the proceedings. The successful prosecution of this case exemplifies the results that can be achieved when the Region and the Charging Party refuse to yield despite numerous hurdles.

ALJ Rules on Hiring Hall for Movie Drivers

Numerous movie production companies have filmed in and around Pittsburgh. These movies include *Hoffa*, *Lorenzo's Oil*, and *The Mothman Prophecies*. Production companies need drivers to transport equipment, personnel and even the movie stars. These driver jobs are prized by some persons, if for no other reason than the high pay and overtime.

For many years Teamsters Local 249 operated a hiring hall for referring drivers to movie production jobs. Under the NLRA, hiring halls are deemed either exclusive or non-exclusive. In an exclusive hiring hall, job seekers obtain work *only* by the Union referring them to an employer. An exclusive hiring hall can be formally established through an agreement between the union and the employers, or it can simply exist on a de facto basis, meaning that in practice the employers simply always look to the union to get their employees. If a union operates an exclusive hiring hall, it must refer union members and non-members alike in a non-discriminatory manner using only objective criteria.

Three members of Local 249 filed charges alleging that their dissident union activities— protesting the discriminatory operation of the Local 249 hiring hall to International Union President James P. Hoffa and other Union officials—resulted in the Union's refusal to refer them to the productions of *Mysteries of Pittsburgh* and *Smart People*, both shot during the fall of 2006. After investigating the charges, the Regional Office issued Complaint alleging that the Union was operating its hiring hall for movie drivers without using objective criteria and that it had discriminated against the three members by not referring them to these productions.

On March 26, 2008, the Board affirmed the decision of Administrative Law Judge Earl Shamwell. In deciding these cases, Judge Shamwell concluded that Local 249 had operated an exclusive hiring hall during the

conference is designed to assist professionals in the broad field of employment relations and is targeted to meet the needs of human relations professionals in both organized and unorganized environments, union members and officers, attorneys involved in employment matters, labor relations professionals, labor relations neutrals and anyone interested in employment issues.

Regional Director Gerald Kobell will also address the Allegheny County Bar Association, Labor and Employment Law Section on Tuesday, May 20, 2008. He will give an update on Labor Law and discuss significant cases from the National Labor Relations Board. Mr. Kobell will speak from 12 noon to 1:00 p.m. in the Conference Center Auditorium, Room 920 City-County Building. For more information call 412-261-6161.

relevant period, but instead of utilizing a rational and non-discriminatory system for referring drivers, the Union simply referred whomever it wished. He also found that Local 249 refused to refer the three members who filed the charges in these cases. In arriving at his findings, the Judge noted that several novices to the movie driver positions were referred to these productions rather than these three highly experienced and well qualified Local 249 members. The Judge ordered the Union to operate its exclusive hiring hall using objective criteria and to make the three charging parties financially whole for the losses they sustained.

Notably, while the cases were under investigation, Local 249 changed its practice from operating an exclusive hiring hall to a non-exclusive one. Under the new, lawful system the Union collects resumes and applications and forwards them to production companies without comment or referral.

Region Obtains Injunction and ULP Ruling Against Transportation Solutions

During 2006 Teamsters Local 249 filed numerous unfair labor practice charges against Transportation Solutions, Inc., a Pittsburgh area van and shuttle service provider. After a lengthy investigation the Region issued a Consolidated Complaint, alleging that Transportation Solutions violated Section 8(a)(1), (3) and (4) of the Act, both during and after an organizing drive by Local 249, by terminating the employment of three employees, refusing to hire an employee, and by making threats and engaging in other unlawful anti-union conduct.

In March 2007 these cases were tried by Board Attorneys Robin Wiegand and Dalia Belinkoff before Administrative Law Judge Mark D. Rubin. In August 2007 Judge Rubin issued a Decision and Recommended Order finding virtually all of the alleged violations of the Act.

In July 2007, the Regional Director filed for injunctive relief under Section 10(j) of the Act against this employer in the U. S. District Court for the Western District of Pennsylvania seeking interim relief with respect to the violations found by Judge Rubin pending final disposition by the Board. After Transportation Solutions failed to respond to any of the Region's pleadings, U.S. District Court Judge Gary Lancaster issued a Default Judgment and Order Granting Temporary Injunction against Transportation Solutions on August 24, 2007. The Board subsequently adopted the Decision and Recommended Order of Administrative Law Judge Rubin. Then Transportation Solutions offered reinstatement to the discharged employees and offered employment to the employee it refused to hire. The Employer also paid net backpay in excess of $33,000, mailed an extensive Notice to Employees to all of the bargaining unit members, and posted the Board Notice and the District Court's Order at its facility.

Transportation Solutions is currently bargaining with the Union for their first contract. However, the Union has filed new charges alleging that Transportation Solutions violated Section 8(a)(1), (3) and (5) of the Act by discharging another visible and active union supporter and unilaterally changing the work schedule of mechanics.