



National Labor
Relations Board
Region 17



Kansas City Strip

News from and about Region 17

The Eagle 67th & Ward Parkway Kansas City

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Constituency of the Board As We Progress Into 2008

By Regional Director Dan Hubbel

While Region 17 began the new year with a full complement of employees, the traditional five member board began 2008, and continues to date, with two sitting members.

On December 16, 2007, the term of Chairman Robert J. Battista as a member of the NLRB ended. During this period, Members Peter N. Kirsanow and Dennis P. Walsh had been serving in recess appointment that expired at the *sine die* adjournment of the first session of the 110th Congressional session. In the past, presidents have used the time between the first and second sessions of congress to make recess appointments to fill vacancies without the need to seek Senate confirmation. In a parliamentary move to inhibit such recess appointments, Congress did not adjourn the first session until immediately prior to the start of the second Congressional session in January. With this adjournment, the recess appointments of Kirsanow and Walsh expired. The Board is now left with just two sitting members, Wilma B. Liebman and Peter C. Schaumber.

Anticipating the loss of these two members, in late December 2007, the Board unanimously decided to temporarily approve the delegation of authority on all court litigation matters that would otherwise require Board authorization to the General Counsel. This delegation gives the General Counsel full and final authority, on behalf of the Board, to initiate and prosecute injunctive proceeding under Section 10(j), 10(e) and 10(l) of the Act. Similar authority was delegated to the General Counsel in 1993 and 2001. Such authority will continue until the Board returns to a complement of at least three members. The Board, acting pursuant to Section 3(b) of the Act, took this action and announced that it was doing so based upon "a continuing responsibility to fulfill its statutory obligations in the most effective and efficient manner possible."

In addition, the Board relied upon the legal analysis and U.S. Circuit Court precedent set forth in an opinion issued by the Office of Legal Counsel (OLC) of the U.S. Department of Justice dated March 4, 2003, in response to the Board's request for an opinion on whether the NLRB may issue decisions when three or more vacancies exist on the Board.

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Agency Website

www.nlr.gov

For an
electronic
version of this
newsletter,
send your e-mail
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Constituency of the Board, continued from page 1.

The OLC concluded that “if the Board delegated all of its powers to a group of three members, that group could continue to issue decisions and orders as long as a quorum of two members remained.”

After the start of the second session of the 110th Congress, President Bush announced his intention to nominate Chairman Battista to serve as a member and designate Chair upon confirmation for the remainder of a five-year term expiring December 16, 2009. The President also intends to nominate Member Walsh for the remainder of a term expiring August 27, 2008 and an additional five-year term expiring August 13, 2013. To fill the final vacancy, the President announced his intention to nominate Gerard Morales for a five-year term to expire December 16, 2012. Mr. Morales is currently a Partner at Snell & Wilmer, LLP in Phoenix, Arizona. Prior to his employment with this firm, Mr. Morales was Adjunct Professor at the University of Arizona College of Law. Earlier in his career, Mr. Morales served as an NLRB Field Attorney.

Senate confirmation is required for these appointments and until such time, the Board will continue to function with its current two members and with the authority delegated to the General Counsel as noted above. So work at the Board goes on, both here in Region 17 and in Washington, and we will all look for further developments in the nomination process.

Voluntary Recognition, Recognition Bar, and VR Cases after *Dana*

In *Dana Corporation*, 351 NLRB No. 28 (September 29, 2007), the Board set forth a new policy that applies in situations in which an employer voluntarily recognizes a union as the majority representative of its employees. Voluntary recognition, an established component of labor law for at least 40 years, allows a union to obtain recognition as the collective-bargaining agent of the employer’s employees without a Board-conducted election, typically through the use of signed authorization cards. Throughout the years, the Board has treated representative status gained through voluntary recognition in the same manner as if such status were obtained through an election by applying the recognition-bar doctrine to prevent attack of the union’s status as majority representative for a “reasonable period of time.” In *Dana*, the Board revisited the issues and considerations surrounding voluntary recognition and decided to modify the recognition-bar doctrine as it applies to voluntary recognition.

Although voluntary recognition remains an acceptable method of obtaining recognition, the *Dana* majority explained that it views secret-ballot elections as a more reliable means of ascertaining whether a union enjoys majority support. The Board noted that, unlike secret-ballot elections, mechanisms for establishing voluntary recognition do not contain safeguards to ensure that employees’ true support is not influenced or masked by group pressure or misinformation. The Board concluded that,

Voluntary Recognition & *Dana*, continued from page 2

given its concerns about voluntary recognition, “a higher standard of notice to employees...must be met before an election bar is imposed.” Accordingly, the Board modified the recognition-bar doctrine as follows:

There will be no bar to an election following a grant of voluntary recognition unless (a) affected unit employees receive adequate notice of the recognition and of their opportunity to file a Board election petition within 45 days, and (b) 45 days pass from the date of notice without the filing of a validly-supported petition.

To comply with *Dana*, an employer or union must promptly notify one of the Board’s Regional Offices, in writing, that voluntary recognition has been granted. The notice must be accompanied by a copy of the written recognition, including the date of the grant of recognition and a description of the unit in which recognition was granted. Upon receiving such notice, the appropriate Regional Office will send an official NLRB notice to be posted in conspicuous places at the employer’s facility during the 45-day period following the grant of recognition. The notice will recite the following information:

- The date on which the employer recognized the union as the employees’ exclusive bargaining representative based on evidence indicating that a majority of employees in the bargaining unit desire its representation;
- All employees, including those who previously signed cards in support of the recognized union, have the Section 7 right to be represented by a union of their choice or by no union at all;
- Within 45 days of the date of the NLRB notice, the Board will accept a decertification petition seeking a secret-ballot election to determine whether the unit employees wish to be represented by the union or a representation petition filed on behalf of another union seeking to represent the employees in the bargaining unit, provided that any petition must be supported by 30 percent or more of the unit employees;
- Any properly-supported petition filed within the 45-day period will be processed according to the Board’s normal procedures; and
- If no petition is filed within 45 days of the notice, then the recognized union’s status as the unit employees’ exclusive majority bargaining representative will not be subject to challenge for a reasonable period of time following the expiration of the 45-day window period, to permit the union and the employer an opportunity to negotiate a collective-bargaining agreement.

It is important to note that the *Dana* decision does not apply retroactively. Nevertheless, it is incumbent upon employers and unions to heed the decision’s ramifications in the event that they are a party to a voluntary grant of recognition in the future. Although this is a new process, Region 17 has already processed five cases stemming from a notice of voluntary recognition. We encourage individuals with questions about the voluntary requirements to contact the Regional Office.

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La Ley y Su Derechos

• La sola función de la Agencia es administrar La Ley Nacional de Relaciones del Trabajo. Este Ley les protegé los derechos de los obreros para organizar una unión, participar en los actividades de la unión o abstenerse de los actividades de una unión, y protegé empleados quien participen en actividades convenidos para mejorar el sueldo, salarios, horas o otra condiciones de trabajo.

Tambien, por la Ley, los patrones estan requerido negociar con las uniones que representan una mayoría de sus obreros, y estas uniones estan requerido representar imparcialmente los obreros.

- Tiene el derecho archivar un cargo de practicas ilícitas si quiere contra su union o patron.
- Si decide archivar un cargo, debe mandar una copia completa a nuestra oficina.

Si requiere ayuda para completar la forma, debe llamar nuestra oficina a (913) 967-3000, y pregunte hablar con la Oficial de Informacion, o "Information Officer." La Ley Nacional de Relaciones del Trabajo requiere que archiva su cargo antes de seis meses han pasado desde que la practica ilicita

La Ley define los derechos basicos de trabajadores en la manera siguiente:

De organizarse

De formar, ingresar, o ayudar a sindicatos obreros

De negociar colectivamente a traves de representantes seleccionados por ellos

De participar en otras "actividades concertadas" protegidas, es decir, de actuar juntos con el propósito de ayuda protección mutua

De abstenerse de participar en cualesquiera de estas actividades.

The Law and Your Rights

• The sole function of the Agency is to administer the National Labor Relations Act. This law protects the rights of workers to organize a union, to participate in union activities or abstain from union activities, and protects employees who want to participate in concerted activities in order to improve their wages, salaries, hours or other working conditions.

Also, under the Act, employers are required to negotiate with unions that represent a majority of the employees, and these unions are required to represent the workers fairly.

- You have the right to file a charge against your union or employer for committing unfair labor practices.
- If you decide to file a charge, you should send a complete copy of the charge to our office.

If you require assistance in completing the charge, you should call our office at (913) 967-3000, and ask to speak with an information officer.

The National Labor Relations Act requires that you file your charge before six months have passed from the date of the illegal practice.

The law defines the rights of workers as follows:

To organize

To form, join, or assist other workers

To negotiate collectively through representatives of their own choosing

To participate in other protected "concerted activities," which is to say, to act together for each others' mutual aid and protection

To abstain from participation in any of these activities.

Glimpses of a GC Visit

General Counsel Ron Meisburg visits Region 17 on October 24 to speak to the labor community and rally the troops.



Wilma Carson and Marion Murphy



Dan Hubbel and Chuck Hoskin



Naomi Stuart and Ron Meisburg



Trecia Moore, Susan Wade-Wilhoit, Lynn Fleming, and Mary Taves.



Mike Werner and Bill LeMaster



Susan Stokenbury, Bob Fetsch and Marlon Bankston

By the Numbers

The numbers are in for Region 17 for fiscal year 2007 which began October 1, 2006 and ended September 30, 2007:

Agents acting as information officers received 1,111 inquiries from individuals, employers and unions. 9.2% of these inquiries resulted in a charge being filed, and 35% of those who inquired were referred to another government agency for further assistance.

372 cases were filed and the Region had, on average, 50 cases pending each month. In all unfair labor practice cases filed (c cases), 40.2% were found to have merit. Of cases found to have merit, 96.9% settled.

Counting the cases closed in Region 17 in this fiscal year, discriminatees received over \$1,464,614 in backpay and monetary remedies. Six discriminatees accepted reinstatement as part of a settlement.

In addition, in Bridgestone Firestone, 17-CA-23808, a plant was closed and a charge was filed regarding the closure and other actions of the Employer in the course of the closure. Although the closure itself was not found to violate the Act by the Region, merit was found to other allegations of discrimination on the basis of union activity. The parties reached a settlement before complaint issued. Chances are that many factors went into the settlement along with the unfair labor practice issues, including pending grievances, severance pay, etc. The total settlement exceeded 21.7 million dollars. According to one estimate however, about \$19,497,000 collected by 1200 employees were attributable, at least in part, to the settlement of the unfair labor practice allegations. In any event, the Board charge and investigation were a factor in a significant settlement for 1200 employees.

Those are the numbers for Region 17 for this last year.

Kansas City Strip Board of Editors

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Estamos
A Su Servicio

Para asistencia de someter

Una carga o petición,
Llame

La oficina Regional
a 1-866-667-6572 oprima 2
(913) 967-3000

o

llame (913) 967-3000

Y marquee O y pida por

La oficial de información.

La oficial de información discutirá
Su situación y le ayudará si desee
someter una carga o petición.

Información esta dispuesta a usted
mientras las horas de servicio:

Lunes — Viernes,
8:15 a.m. to 4:45 p.m.
o 24/7/365 a
www.NLRB.gov

We are
At Your Service

For assistance in filing

a charge or a petition,
call

the Regional Office
at (913) 967-3000

or

the Resident Office
at (918) 581-7951

and ask for

the information officer.

The information officer will discuss
the situation and assist you in filling
out a charge or petition.

Information is available during office
hours,

Monday through Friday,
8:15 a.m. to 4:45 p.m.
or 24/7/365 at
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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 17

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