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NLRB Region 32 Newsletter

Summer 2008
Service Agency Edition

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NLRB staff are available to speak to service and advocacy organizations.

Region 32 holds periodic workshops on protected rights and NLRB procedures.

Did you Know?

Rights under the National Labor Relations Act

Many people know that the National Labor Relations Board protects employee rights to join and support unions where they work.

However, the NLRB protects other employee rights as well. For example, employees have the right to act together to raise workplace issues with their employer or to press for changes in wages or conditions. Such employee actions are known as protected concerted activities.

Unlawful employer actions that are prohibited by the Act include:

- Threatening, disciplining, terminating, or otherwise retaliating against an employee for having engaged in protected concerted activities.
- Prohibiting employees from discussing or sharing information about their wages or working conditions.
- Prohibiting employees from talking about workplace issues on their own time.

Employers who violate the Act generally must cease their unlawful actions, assure employees of their rights, and pay backpay to make employees whole for losses suffered as a result of unlawful actions.

The National Labor Relations Act also protects an employees' right to not participate in unions or in other actions with employees. The Act does not require an Employer to grant any specific employee or union demand.

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How to File a 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.

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 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 had merit.

Employer Unlawfully Terminated Drivers and Changed Their Routes for Signing Petition and Requesting Raise to Cover Increased Gasoline Prices.

In *Igrramo Enterprise, Inc.*, 351 NLRB No. 99 (2007), the Board found that employees were engaged in protected concerted activities when they signed a petition and asked to meet with managers to request raises to cover increased gasoline prices, holiday, vacation pay and sick pay, pay for vehicle maintenance days and days cancelled due to snow, and reimbursement for tolls. The Employer also unlawfully threatened employees that the business would likely close and they would lose their jobs if they continued to engage in these protected concerted activities. The Board ordered the Employer to reinstate and pay backpay to two employees, one who was unlawfully "laid off" and another whose route was changed, because they signed the petition and requested raises and additional pay for themselves and their coworkers.

New Limits on Backpay.

On September 11, 2007, the Board issued its decision in *Grosvenor Orlando Associates, LTD., d/b/a The Grosvenor Resort, and its general partners Grosvenor Properties, Ltd., Donald E. Werby and Robert K. Werbe*, 350 NLRB No. 86. In this decision, the Board found "that reasonably diligent discriminatees should at least have begun searching for interim work at some time within the initial 2-week period. . ." Thus, a discriminatee will lose backpay if there is more than a 2 week period after his/her termination, layoff or refusal to hire in which s/he does not engage in a search for work. However, even if the discriminatee fails to search for work during this 2 week period, the backpay period does not stop. If a discriminatee unreasonably delays an initial search, the Board will cut off backpay until such time as a reasonably diligent search begins.

As a result of this decision, it is important to remember that if backpay and/or other reimbursement is due as part of the remedy for the unfair labor practice, for instance, an unlawful discharge or refusal to hire, the Board requires discriminatees to mitigate (offset) the backpay by beginning to look for another job in the same or similar line of work promptly. If a discriminatee is unable to establish that s/he actively sought to mitigate damages, s/he may face the risk of having whatever money is owed reduced.

Accordingly, discriminatees are urged to keep careful records of when and where they sought employment.

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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, it will pursue the charge 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.

The Act also:

- Protects an employee's right to join or support a Union.
- Conducts secret-ballot elections to determine whether a majority of employees in a workplace want a union to represent them in dealing with their employer over wages, hours, and working conditions. I
- Requires an employer to recognize and bargain with the union where a majority of employees show that they want union representation.
- Requires both unions and employers to bargain in good faith.
- Requires unions to represent their members fairly.
- Prohibits unions from picketing neutral employers to get them to cease doing business with other employers with whom the union has a labor dispute.

Careful – the Act's protections are limited.

- The National Labor Relations Act protects employees in acting together to raise workplace issues. Employees are **not** protected by the Act when they make complaints or demands for themselves alone.
- The Act does **not** protect employees who engage in misconduct, even when the misconduct is intended to support concerted employee action. Threats, violence, or occupation of the employer's premises are among actions generally considered to be misconduct warranting discipline.
- Although the right to strike is protected by the Act, and you cannot be fired because you engaged in a lawful strike, an employer may permanently replace employees who are engaged in an economic strike. When permanently replaced, a striking employee is entitled to return to work only when their former position or a substantially equivalent position becomes available or the person occupying their position is no longer employed in that position.
- The Act provides for backpay to compensate employees for losses resulting from unlawful conduct, but the Act does **not** provide for fines, punitive damages, or losses not directly resulting from lost employment.
- The Act does **not** require an employer to grant employee demands.

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Learn More:

The NLRB website, www.nlr.gov, contains a great deal of additional information about the protections of the Act, Board policies and procedures, and how to contact the nearest Regional Office.

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

The information officer at Region 32 may be reached by telephone at:

1-866-667-6572
(Toll free)
or
510-637-3300

Se Habla Español

Speakers Available

Members of the Region's staff are available to make presentations before any group, such as high school, college and university students, labor organizations, employer associations, the staff of a legal services clinics or service agencies, as well as those members of the public that they serve, to describe what the Act's protections cover, how the Region investigates and resolves unfair labor practice charges, or any NLRB topic of interest.

To arrange for a speaker and to discuss possible topics, please don't hesitate to telephone Outreach Coordinator Shelley Coppock at (510)-637-3257 or Assistant Regional Director Michael Leong at (510)-637-3264.

Regional Workshops

Region 32 hosts a series of workshops at the Ronald V. Dellums Oakland Federal Building, where Region 32's office is located. Workshops cover specific NLRB-related topics in which all members of the public are invited to attend. The Region will conduct issue-specific workshops for your organization or firm upon request.

From Region 32's Director

"The rights protected by the National Labor Relations Act are available to all. Along with the Region's staff, I am committed to improving public awareness of the Act and of the recourse available through the Regional Office to those who have suffered any violation of it."

**Alan B. Reichard, Regional Director
National Labor Relations Board, Region 32**



President Roosevelt, July 5, 1935, Signing the Wagner Act (National Labor Relations Act).

"Democracy cannot work unless it is honored in the factory as well as the polling booth; men [and women] cannot be truly free in body and in spirit unless their freedom extends into the places where they earn their daily bread."

Senator Robert F. Wagner in 1935