



# NLRB, Region 20 Roundup

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## **NLRB FINDS REAL FOODS UNLAWFULLY CLOSED A SAN FRANCISCO STORE AND FIRED EMPLOYEES TO AVOID UNIONIZATION**

Washington, D.C. – On July 24, 2007, the National Labor Relations Board held that Nutraceutical and its wholly-owned subsidiary, Fresh Organics, Inc., dba Real Foods Company, engaged in multiple violations of the National Labor Relations Act by closing one of its four San Francisco-area organic grocery stores and terminating its employees in response to a union organizing campaign. The Board found that in early May 2003, the grocer learned that its employees were organizing a union at the 24<sup>th</sup> Street store in San Francisco. Subsequently, two vocal union supporters were terminated in July 2003. On August 7, 2003, Real Foods' general manager/vice president met with union supporters, who presented him with a list of demands. Then, on August 28, 2003, the company closed its 24<sup>th</sup> Street store with no notice to employees, vendors, or customers, terminating all 29 employees at the 24<sup>th</sup> Street store. The Board concluded the company's actions were a response to the union organizing campaign, and that the grocer did not close the store for legitimate business reasons, noting that the company's CEO stated prior to the closure that the store would close if it unionized. In reaching its conclusion about the closing of the store, the Board stated that the timing of the decision came on the heels of the employees presenting their list of grievances, as well as the escalation of events leading up to the closing, including the terminations of the two union supporters, weighed heavily in their finding that the grocer unlawfully shut down the 24<sup>th</sup> Street store. The Board's order awards backpay to the employees who were unlawfully terminated, and also requires the grocer to place them on a preferential hire list at the grocer's remaining San Francisco-area stores, unless and until positions are available for all of the employees who were unlawfully discharged at the 24<sup>th</sup> Street store. The Board's order also requires Real Foods to cease and desist from its unlawful conduct and post a notice to employees, which states the grocer's obligations under the Board order, at its California and Park City, Utah stores, and to mail copies of the notice to the employees who worked at the 24<sup>th</sup> Street store. A circuit court appeal of the Board's decision has been filed. Kathleen C. Schneider and Robert Guerra appeared as Counsel for the General Counsel of the NLRB in the underlying administrative law trial in this case.

## **Region Conducts Union Security De-authorization Election in Covenant Aviation Security, LLC**

San Francisco, CA – Pursuant to an order of the National Labor Relations Board, on August 14, 2007, Region 20 counted the ballots in a union security de-authorization mail ballot election, based on a petition filed by an employee of Covenant Aviation Security. Covenant is a security screening services contractor at San Francisco International Airport, which is party to a

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.

collective-bargaining agreement with SEIU, Local 790. A union security de-authorization petition allows employees who are covered by a union security contract (a collective-bargaining agreement containing a provision that requires employees covered by the agreement to pay membership dues or fees to the union as a condition of employment) to vote to rescind the union's authority to maintain the union security provision. Before the Region could conduct the election, however, the union, in response to the Board's March 30, 2007, order to process the de-authorization petition, filed in federal district court a motion for a temporary restraining order and order to set aside the Board's representation order. The Court ordered the Agency not to process the petition pending the ruling on the preliminary injunction but ultimately denied the union's requested relief, and the Region proceeded with the mail ballot election. Unlike other representation elections conducted by the Agency, which only require a majority of votes counted for a party to prevail, a majority of eligible voters must vote to de-authorize the union's authority to enter into a union security contract. Out of 926 eligible voters, 248 voted in favor of de-authorizing the union, and the number of challenged ballots was insufficient to affect the outcome of the election. The Petitioner, however, has filed objections to the election, which will be ruled upon prior to a certification of the election results. If the results of the election are upheld, the union will have retained its authority to enter a union security contract. Field Examiner Lana Pfeifer conducted the election, and NLRB Special Litigation Attorney, Dawn Goldstein, along with Region 20 Field Attorneys, David B. Reeves and Kathleen C. Schneider, handled the District Court matters.

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## Board Finds SEIU United Healthcare Workers-West Failed to Give Proper Notice of Refusal to Work

Washington, D.C. – On July 23, 2007, the National Labor Relations Board upheld the findings of an administrative law judge that SEIU United Healthcare Workers – West, violated Section 8(g) of the National Labor Relations Act by failing to give the required ten-day notice before engaging in a concerted refusal to volunteer to work overtime. Section 8(g), which was enacted by Congress in 1974 when it extended the Act's coverage to health care institutions, was intended to balance the right of employees to strike with a hospital's special needs to arrange for continuing patient care. In this case, the Board concluded that a concerted refusal to volunteer for overtime was conduct constituting a "strike, picketing, or other concerted refusal to work" as set forth in Section 8(g), and, accordingly, the Union's failure to provide notice at least ten days in advance of the job action violated the Act. David B. Reeves appeared as Counsel for the General Counsel of the NLRB in the underlying administrative law trial in this case.

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## Recognitional Picketing Dispute at Golden Gate University

San Francisco, CA - On July 12, 2007, Golden Gate University filed an unfair labor practice charge alleging that SEIU, Local 87, had been picketing for recognitional and organizing purposes for more than a reasonable time period. Section 8(b)(7)(C) of the National Labor Relations Act makes such picketing unlawful when it occurs without a petition for a representation election having been filed with the Board within a reasonable time period, not to exceed 30 days from the commencement of the picketing. After investigating the allegations, Region 20 issued a complaint on July 23, 2007,

## 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.

alleging that the union was picketing in violation of Section 8(b)(7)(C) of the Act. The dispute arose when the union learned that the University would no longer contract with Able Building Maintenance for janitorial services, but would instead hire employees directly to perform janitorial and other maintenance duties. The janitors employed by Able Building Maintenance are represented by the union. Because Regional Director Joseph P. Norelli found reasonable cause to believe that Section 8(b)(7)(C) of the National Labor Relations Act had been violated, he petitioned on behalf of the Board for a preliminary injunction in federal district court to enjoin the picketing, as required under Section 10(l) of the Act. On August 2, 2007, the petition for injunctive relief was heard by Judge Martin J. Jenkins of the Northern District of California. The University and Union, however, subsequently entered into a settlement agreement, whereby the union ended the picketing and ultimately filed for an NLRB representation election. Regional Director Norelli approved the settlement on August 17, 2007, and, consistent with that outcome, as petitioner in the District Court matter, he filed a motion to withdraw the petition for a preliminary injunction. Field Attorney Christy Kwon handled the investigation of the charge and appeared as counsel for Petitioner in the District Court proceedings.

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## Region Requests Bargaining Order against San Jose Auto Dealer

San Jose, CA – On August 24, 2007, Region 20 issued a complaint alleging that Stevens Creek Chrysler Jeep Dodge engaged in numerous violations of the National Labor Relations Act during a union organizing campaign by Machinists District Lodge 190, Local 1101, AFL-CIO. Based on the Region's investigation of the charges filed by the union, Regional Director Joseph P. Norelli alleged in the complaint that the employer engaged in over 35 violations of the Act by unlawfully interrogating and threatening employees in response to the union's organizing campaign (including the threat of closing the business), refusing to hire an applicant because of his union activity, and unlawfully granting pay raises for the purpose of discouraging employees' support for the union. The Region is seeking a *Gissel* bargaining order in this case, a special remedy where an employer is ordered to bargain in good faith with the union based on a showing of majority support for the union (usually through union cards signed by employees that authorize the union to represent them for purposes of collective-bargaining). According to Regional Attorney Olivia Garcia, "consistent with the Supreme Court's holding in *NLRB v. Gissel Packing Co.*, a bargaining order is the appropriate remedy when an employer has committed unfair labor practices of such a serious nature that the likelihood of determining employees' true wishes concerning union representation is more likely from the card showing than from an election that is held after the unfair labor practices have been committed." The investigation of these charges has been handled by Field Attorneys Donald R. Rendall and Cecily Vix. An administrative law trial on the complaint allegations will be held in San Francisco on September 24, 2007. David B. Reeves and Cecily Vix will appear as Counsel for the General Counsel of the NLRB.

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## Settlement in SSF Investments/Paramount Hospitality Management

South San Francisco, CA – A long-running labor dispute involving employees of the South San Francisco Comfort Suites hotel came to an end on May 16, 2007, when Regional Director Joseph P. Norelli approved the settlement of the unfair labor practice charges and withdrew the Region's complaint

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>

To arrange for a presentation about the NLRB 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 us online at the Internet address above and click on the speakers link.

For questions about *NLRB, Region 20 Roundup*, contact Newsletter Editor, Field Attorney Micah Berul at: 415-356-5169

allegations. The dispute arose when the hotel's housekeepers, represented by UNITE/HERE! Local 2, were terminated after their positions were subcontracted by the hotel (owned by SSF Investments and managed by Paramount Hospitality Management) in 2004. An administrative law trial was scheduled for June 18, 2007, but prior to the hearing the parties negotiated a settlement, facilitated by Counsel for the General Counsel Micah Berul and Jason Wong, which awarded the laid off employees full backpay. By the terms of the settlement, the employers do not admit that they violated the National Labor Relations Act. The charges in this matter were investigated by Field Examiner Olivia Vargas.

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## Region 20 Coordinating Charges Against USF Reddaway Agency-Wide

San Francisco, CA – Region 20 has been designated by the Agency to coordinate the investigation of all charges filed throughout the country against USF Reddaway, Inc., a national freight hauling company. Charges have been filed by the International Brotherhood of Teamsters in a number of Regional offices, since USF Reddaway purchased the assets of USF Bestway earlier this year. On July 30, 2007, Region 20 issued a consolidated complaint on two charges filed by the Teamsters against USF Reddaway, alleging that the company has discriminated against employees because of their union activity and changed the delivery routes of bargaining unit employees without bargaining with the union. Field Examiners Scott Smith and Daniel J. Owens have been handling the investigation of these charges.

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## Settlement of Charge Against One Source

San Francisco, CA – On May 18, 2007, the Region issued complaint alleging that One Source, a provider of janitorial services, unlawfully refused to execute an agreed-upon collective-bargaining agreement with SEIU Local 1877. A trial was scheduled for July 31, 2007, but prior to the hearing, the parties entered into a settlement, facilitated by Counsel for the General Counsel, Paula R. Katz, in which they negotiated some changes to the agreement, which they then executed. As part of the settlement, the Union requested that its unfair labor practice charge be withdrawn, and the withdrawal request was approved by the Regional Director.

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## **CONFERENCE ON LABOR AND EMPLOYMENT LAW TO BE HELD NOVEMBER 16, 2007 SAVE THE DATE!**

San Francisco, CA – On November 16, 2007, Regions 20 and 32 of the National Labor Relations Board, along with the Industrial Relations Research Association's San Francisco Bay Area Chapter, and the Bar Association of San Francisco's Labor and Employment Law Section, will hold their annual Conference on Labor and Employment Law. The Conference is a day-long event, and this year will be held at the Hyatt Regency San Francisco. This year's program will have our usual lively panel discussion on current hot-button NLRB issues, as well as panel discussions concerning proposals for labor law reform and interest arbitration. Be sure to be on the lookout for our registration form, which will be mailed in the coming weeks. This is "the" labor and employment conference in the Bay Area. Don't miss it!