

# NLRB Region 1



## Outreach



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### Did you Know?

#### **Workplace 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.

#### ***The NLRB protects other employee rights as well.***

**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 employee's 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 demands.

➤ **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.
- 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.

**Recent Litigation Involving Region 1**

In *Shaw's Supermarkets, Inc.*, 350 NLRB No. 55 (August 10, 2007) (Battista, Schaumber; Liebman diss.), the Employer withdrew recognition from the Union after the third year of a five year contract, after receiving evidence of an actual loss of majority support, and while a decertification petition was pending. Describing the issue as one of first impression, the majority held that an employer, relying on untainted evidence of a union's actual loss of majority support, will be permitted to withdraw recognition after the third year of a contract of longer duration. While the Employer could have awaited the outcome of the decertification election, there was no need to use the election process, which can be delayed by blocking charges, challenges, and objections, where there has been a loss of majority support. Dissenting Member Liebman would find that the Employer's withdrawal of recognition violates the clear rule under *Montgomery Ward & Co.* that a party to a collective-bargaining agreement may not repudiate its own contract or, in most instances, petition the Board for an election during the life of that contract. If a party to a contract may not even file an election petition during the contract term, unilateral self-help is also prohibited. Here, the Union's continued majority status could have been promptly tested by the employee-filed decertification petition but for the Employer's unilateral action, which frustrated a free and fair election.

In *Carney Hospital*, 350 NLRB No. 56 (August 13, 2007)(Battista, Schaumber, Walsh), the Board refined the second prong of the test in *Redd-I, Inc.*, under which unfair labor practice allegations that would otherwise be time-barred by Section 10(b) of the Act may be litigated, because they are "closely related" to timely allegations, in that they arise from the same factual situation or sequence of events. Overruling *Ross Stores*, the Board held that this prong of the *Redd-I* test will not be satisfied merely because the timely and untimely allegations pertain to events that occurred during or in response to the same union campaign. Rather, it must be shown that the two sets of allegations demonstrate similar conduct, usually during the same time period with a similar object, or that there is a causal nexus between the allegations and they are part of a chain or progression of events, or that they are part of an overall plan to undermine union activity. Applying the test, the Board found that various 8(a)(1) allegations were barred by 10(b) since they were not factually closely related to a timely charge alleging an 8(a)(3) suspension. In this regard, although they occurred during the same organizational campaign and the same time period, the 8(a)(1) allegations and the suspension did not involve similar conduct, and the record did not disclose that the 8(a)(1) violations and the employee's suspension were any more than separate actions carried out independently by several different Employer officials.

➤ **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 after giving the charging party the opportunity to withdraw. 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.

In *Memorial Hospital of Rhode Island* (July 20, 2007), ALJ Wallace Nations found that the Hospital unlawfully disciplined employees and threatened them with discipline when, during the course of a labor dispute over contract negotiations, they wore union stickers in both patient care areas and non-patient care areas that said, “Know Respect, United Nurses & Allied Professionals.” In this regard, the message on the sticker was cryptic and ambiguous and did not speak to the safety of patients or the level of patient care in the Hospital. No patients or families, save one, asked any questions as to its meaning, and no one indicated in that the button in any way made them feel unsafe, uncomfortable, or intimidated. Further, the Hospital made no distinction between the wearing of the stickers in patient care areas versus non-patient care areas. Because the ban, as promulgated and applied, prohibited employees from wearing the stickers in areas outside of immediate patient care areas, such as the Hospital cafeteria and employee break room, the rule was presumptively invalid. Because the Hospital failed to produce any credible evidence sufficient to overcome the presumption, i.e., that the restriction was necessary to avoid disruption of health care operations or disturbance of patients, the rule was overbroad and could not be used in support of the Hospital’s direction to remove the stickers in any area of the Hospital, including patient care areas. Finally, the ALJ found that the purpose of the ban and the discipline issued for violating the ban was not founded in any concern for patient feeling, but rather, from management frustration over the progress of contract negotiations and was an attempt to punish the Union. In reaching this conclusion, the ALJ noted that the Hospital disciplined employees for wearing the Know Respect sticker at the same time it was encouraging employees to wear its button throughout the Hospital that encouraged employees to accept the Hospital’s contract offer.

## **Region One Wins Subpoena Enforcement Case in the District of Massachusetts**

On June 8, 2007, the District Court for the District of Massachusetts issued an order in *NLRB v. Champagne Dry Wall, Inc.* (Case No. 06-11352-GAO), granting the NLRB's request for enforcement of two investigatory subpoenas duces tecum.

Region One is investigating the employer for allegedly refusing to consider and hire qualified job applicants because of their union affiliation. In refusing to cooperate, the employer argued that the NLRB's subpoena power extends only to existing documentary evidence, that it would be an undue hardship for the employer to compile lists containing the requested data, and that the scope of the subpoenas is overly broad. The District Court rejected all of the employer's arguments, relying on Fourth, Fifth, Seventh and Tenth Circuit law that the Board's subpoena power is not so limited. Further, the Court found that the employer is required to "compile [the existing] data into the format requested by the subpoena." Finally, the Court found the scope of the subpoenas "reasonably relevant to the investigation" because the information sought from 2004 provided a comparative reference to the employer's alleged discriminatory hiring actions in 2005, and that the payroll and personnel information was also relevant to investigating discriminatory hirings. However, the Court did find that information related to the value of the employer's jobs was not relevant to the NLRB's investigation into possible discriminatory hirings and need not be provided by the employer.

These cases and others are posted on the NLRB website, <http://www.nlr.gov/research/decisions/index.aspx>.

## **Region 1 Unfair Labor Practice Statistics From October 2006 through August 2007:**

- Over 800 unfair labor practices were filed.
- Over 42% of the cases were found to be meritorious
- 100% of the meritorious cases were settled prior to hearing

➤ 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.

**Recent Compliance News:**

The Compliance Department is responsible for ensuring that parties satisfy voluntary or court-imposed obligations to resolve cases. Compliance's most basic function is to locate discriminatees and distribute backpay checks, and to assure that all affirmative obligations of a party are discharged. In cases where non-compliance is alleged, the Compliance Department will investigate the matter and take appropriate further action. Current matters pending in Compliance include determining backpay for a unit of approximately 800 employees in a refusal-to-bargain case, and tracing an employer who defaulted on an installment settlement after paying \$15,000 of \$18,000 owed. In cases where a party asserts an inability to meet its obligations, the Compliance Department will independently verify the financial circumstances of the party, and also investigate whether other entities or individuals might have derivative liability for the obligation. In cases where Circuit Court judgment has entered, the Compliance Department has not only the standard tools of investigative interviews and subpoenas, but also can initiate contempt proceedings before the Circuit Court.

The Compliance department recently settled a contested matter involving the discharge of eight employees because of their union activities. The Region had obtained a favorable decision before the Administrative Law Judge, and the Employer took exceptions to the Board. While awaiting Board determination, the Employer initiated a state court receivership to liquidate its assets for the benefit of creditors. Board attorneys negotiated directly with the Receiver, reaching a compromise settlement providing for substantial backpay to all discriminatees, and accelerated distribution of backpay.

**Region 1 Compliance Statistics from October 2006 through August 2007:**

- **Over \$1,500,000 Backpay was distributed to Discriminatees**

➤ **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:

- Prepare your petition on our website at: [www.nlr.gov](http://www.nlr.gov) (filing instructions detailed).
- Know the job titles used by the Employer and the employee shift schedules.
- Provide the Region with authorization/membership cards (or other proof of interest) signed and dated by at least 30 percent of the employees in the petitioned-for unit.
- Be prepared for a hearing by knowing: (1) the employer's operations; (2) the community of interests of various employee job categories; and (3) who the "supervisors" are. Hearings are typically held 10 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.

**Representation Case News:**

Region One conducted almost 100 elections during the last fiscal year, offering employees the opportunity to choose union representation if they so desired. Some results from the last couple of months include the approximately 200 professional and non-professional employees of the Arc of Blackstone Valley; a community care facility located in Pawtucket, Rhode Island, who voted to retain New England Health Care Employees District 1199, a/w Service Employees International Union, as its collective bargaining representative. In another case, the LPNs, therapists, and service employees of Harborside Healthcare – North Shore also voted to be represented by that union.

The ten fleet employees of Zipcar of Boston, and the 90 employees of Kiessling Transport of Braintree, each recently voted to be represented by Teamsters Local 25.

**Region 1 Representation Statistics from October 2006 through August 2007:**

- Representation elections were conducted in 48 cases.
- 89.7% of elections were achieved by way of an election agreement between the parties.
- Approximately 85% of elections were held within 45 days from the filing of the petition.
- Initial elections were conducted in a median of 41 days from the filing of the petition.

**Learn More:**

The NLRB website, [www.nlr.gov](http://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 may be reached by telephone at:

1-617-565-6700

Puede comunicarse con un oficial de información que hable español llamando al 1-617-565-6700.

**Speakers Available**

Under General Counsel Ronald Meisburg, the Agency is making special effort to reach community groups with information about the NLRB. Members of the Region's staff are available to make presentations before any group, such as classroom groups, and the staff of a legal services clinic or a service agency, 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 do not hesitate to telephone Assistant Regional Director Elizabeth A. Gemperline (617) 565-6713; or, Board Attorney Lucy Reyes (617) 565-6778.

Varios miembros de la Región 1 están disponibles para hacer presentaciones a cualquier grupo acerca de nuestro trabajo o de otro tópico de interés acerca de la Junta Nacional de Relaciones del Trabajo. Estas presentaciones pueden hacerse en español.

**Attend Our October 18, 2007 National Labor Relations Board/U.S. Department of Labor Annual Conference**

**Date:** Thursday, October 18, 2007

**Location:** Suffolk University Law School, 120 Tremont St., Boston, MA

**Time:** 12: 30 PM - 5: 30 PM, followed by a reception

The 35th Annual Labor Law Conference addresses topics of critical importance to practitioners, analyzes recent developments, and frames forthcoming issues. Providing an inside look at the General Counsel's initiatives, with focus on 10(j) remedies and concerted protected activity, is National Labor Relations Board Deputy General Counsel John E. Higgins, Jr., who is also a former NLRB Board Member and the Editor in Chief of the ABA's *The Developing Labor Law*. Jonathan L. Snare, the Acting Solicitor of Labor, gives the Department of Labor's keynote address on recent developments in the laws affecting the American workforce.

Through an analysis of several lead decisions by the current National Labor Relations Board, Boston University Law Professor Harper explains how the federal courts can moderate policy oscillations without denying the Board an appropriate level of discretion. Joining him are former Board Member and current management attorney Marshall Babson, union attorney Shelley Kroll, and Suffolk University Law School Professor Marc Greenbaum. The Board decisions treated include the *Oakwood Healthcare* cases on the definition of supervisor under the Act, as well as decisions reversing law made by the Clinton Board.

The Department of Labor panel features a discussion of pertinent wage and hour issues under the Fair Labor Standards Act. Topics include: the Motor Carrier Act exemption; comparison of federal versus state wage and hour claims; developments regarding the companionship exemption; and a discussion of the compensability of the practice of volunteering for one's employer. Moderated by James Glickman, Senior Trial Attorney at the U.S. Department of Labor Regional Solicitor's Office in Boston, the panel features union attorney Shannon Liss-Riordan and management attorney Ellen Kearns.