



# The Downtowner

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*News from and about Region 21*

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## Regional Perspective

Historically, the Agency's and Region's effectiveness in administering the Act has been enhanced by our ability to attain voluntary resolutions of meritorious unfair labor practices. Over 95 percent of meritorious cases settle through Board settlements and non-Board agreements. A settlement is not an end in and of itself, however. Of primary importance is the broad authority vested in the Board under Section 10(c) of the Act to prevent and remedy unfair labor practices.

The Agency is increasing its consideration and use of special remedies. General Counsel Ronald Meisburg has stated that notice readings, union access, and electronic notice postings are necessary and effective special remedies in appropriate circumstances. Details are available on the Agency's website under the GC and OM Memos links. The Division of Advice recently authorized several special remedies in a Region 21 case where an employer discharged union supporters, threatened plant relocation and announced an unlawful no access policy at captive audience meetings. The remedies include a notice reading, and requirements that the employer provide the union with employees' names and addresses and the opportunity to conduct a meeting on company time prior to any representation election. The special remedies will assure employees that their statutory rights will be respected and enable them to communicate in a non-coercive atmosphere.

The public's confidence in the Region's ability and integrity in proposing and negotiating settlements is important to us and critical to achieving meaningful resolutions. We are proud of settlements that have restored long standing collective bargaining relationships and solidified new ones. Our settlements have also provided tangible relief to employees who have been compensated for discrimination in violation of their rights. Region 21 agents have been working with parties to achieve more meaningful, enduring, and customized resolution of disputes. Recent settlements have included such nontraditional remedies as: training on the duty to furnish information; training on *Beck* obligations in CB charges; a requirement that bargaining status be reported to the Region during the course of compliance with a bad-faith bargaining settlement; union access to the employer's facility, early provision of voters' names and addresses in consolidated R and C case situations, employer and union web site postings, and front pay.

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Board Agent  
**Luis Anguiano** reading  
notice at respondent  
job site.





## Litigation

## Comments from the Regional Attorney

**Small v. Marine Spill**  
10(j) Injunction Granted

**Aguayo v. Alstyle Apparel**  
10(j) authorized. After  
petition filed, case settled.

The Region's attorneys continue to be involved in many significant and interesting cases.

For example, in **Wayne Jimenez Concrete**, one of the unfair labor practice allegations involved the eviction of an employee from an apartment owned by one of the Employer's managers. The Region is seeking an effective and quality settlement to resolve this and other allegations. Field Attorney Steve Hernandez has been assisted in settlement efforts by Field Examiner Jessica Toton.

In **Ducommun Aerostructures**, tried by Field Attorney Alan Wu, the Region is participating in the Board's pilot Alternate Dispute Resolution program. An ALJ found several violations. While awaiting a Board decision, the parties entered into the ADR process, permitting effective and unique settlement options to be explored.

In **Alstyle Apparel**, an ALJ found the discharges of six employees at the inception of a union organizing effort unlawful. The case was presented to the ALJ by Field Attorneys Julie Gutman and Patrick Cullen. Subsequent to the ALJ

Decision, injunctive relief was authorized pursuant to Section 10(j), seeking the immediate reinstatement of the six employees. The Employer thereafter settled the 10(j) case and stipulated to a Court order requiring the immediate reinstatement of the six employees.

In another significant case, **Marine Spill Response Corporation**, after oral argument by Field Attorney Gutman, the District Court granted a 10(j) injunction requiring the Employer to bargain with the Union. Bargaining is now ongoing.

**Regional Attorney  
William Pate**

### Board Bits:

1. Who was the longest serving Board member?



2. Who is the longest serving member on the current Board?

## From the R Case Desk

### Musings by the ARD

In response to concerns that the Board's election process is too cumbersome, the Board is considering "rule making" to permit a new type of representation petition. The new petition will be called an **RJ** petition, jointly filed by the Employer and the Union. The RJ petition will guarantee the imprimatur of a Government run election, which will be conducted in a very short time frame, without any procedural delays.

We continue to await a Board ruling on the controversial issue of the legality of "neutrality agreements." In this regard, the Board granted review on the issue of a "labor peace agreement."

*Marriott Hartford Downtown Hotel*, 347 NLRB No. 87. According to the Board, the case "presents the same issues that the Board is addressing in several cases involving voluntary recognition and neutrality and/or card check agreements."

The Board has reconsidered one area of objectionable conduct. In a 3-2 decision, the Board found that unions engage in objectionable conduct when they photograph employees being offered literature by union representatives. *Randell Warehouse of Arizona*, 347 NLRB No. 56. The Board majority reasoned that "...in the absence of a valid explanation conveyed to employees in a timely manner, photographing

employees engaged in Section 7 activity constitutes objectionable conduct whether engaged in by a union or an employer."

Applying longstanding law, the Board in a 4-1 decision adhered to the standard that an employee who is out on sick leave or disability leave is eligible to vote. *Home Health Care Network, Inc.* 347 NLRB No. 80. Also applying an existing Board standard, a Board majority reinforced the concept that undocumented workers are "employees" under the Act. *Concrete Form Walls, Inc.*, 346 NLRB No. 80.

**Assistant to the  
Regional Director  
James Small**

Parties to a collective-bargaining agreement often request information for a variety of reasons. The duty to provide information is contained in Section 8(a)(5) of the Act, which makes it an unfair labor practice for an employer to refuse to bargain collectively with the representative of its employees. Section 8(b)(3) likewise makes the same conduct unlawful for a labor organization.

Generally, the requested information must be relevant and necessary for the negotiation, administration, or policing of the collective-bargaining agreement or to the processing of a grievance (or the decision whether even to file a grievance). Information about terms and conditions of employment is presumptively relevant: the requesting party does not have to explain why it is needed. However, a specific need must be shown for information about employees outside the unit.

In our last issue, we reviewed some of the “do’s” for making information requests. Here are some of the “don’ts”:

- **Don’t** make information requests orally. Reduce requests to writing and be specific.
- **Don’t** forget to follow up in writing on your original information request, especially in cases where there is no response.
- **Don’t** neglect to file an unfair labor practice charge within 6 months of the most recent request in situations where there is no response or an unsatisfactory response.
- **Don’t** delay in responding to an information request, as an unjustified delay may constitute an unfair labor practice even if the information is eventually provided.
- **Don’t** make broad, general or vague objections in response to information requests. Any objections should be in writing.
- **Don’t** provide requested information to the investigating Board agent and expect a resolution of an unfair labor practice charge. Requested information should be provided to the requesting party.

Field Attorney Ami Silverman



### Board Bits:

3. How much backpay was collected by the Board in the last year?
4. What was the largest backpay award to an employee ever granted in Region 21?
5. Who is the longest serving Director in the history of Region 21?

## Cont’d. Regional Perspective

Notice readings are also becoming common in the Region’s settlements. The Notice should be a strong statement of a respondent’s promise to not engage in unlawful conduct. A notice reading to assembled employees by respondent’s representative or a Board agent in the representative’s presence is appropriate when a representative has been directly involved in respondent’s unlawful conduct, because it ensures that employees gain assurances from high level representatives that respondent will respect

their Section 7 rights. Several English and Spanish notice readings have been conducted in the past year, and our Board agents have been present to assist respondents and employees at these salutary gatherings.

We hope the public’s confidence in the Region is well served by the quality of settlements that are being considered and obtained.

Your input and thoughts are appreciated. Feel free to contact us:

[Region21@nlrb.gov](mailto:Region21@nlrb.gov)

Victoria Aguayo  
Regional Director

## Ninth Circuit Affirms Dismissal of Suit to Enjoin the Board

On August 10, 2006, the Ninth Circuit issued a decision in *AMERCO v. NLRB*, affirming a district court decision that it lacked jurisdiction to enjoin an unfair labor practice proceeding. Relying upon *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41 (1938), the court found that Section 10(f) of the Act is the exclusive mechanism for federal court review of unfair labor practice proceedings.



# Nuts and Bolts

## Procedural Tips

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 21 covers all of Orange, Riverside, San Diego and Imperial Counties and the portion of Los Angeles County lying east of Gaffey Street, the 110 Freeway, and Arroyo Parkway, and south of the 210 Freeway and Baseline Road (State Route 30).
- ✎ 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.
- ✎ 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 job categories; and (3) who the "supervisors" are. Hearings are typically held 10-14 days from date of filing. Don't file a petition and disappear.
- ✎ 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.

Field Examiner John Hatem

## Other News

The **San Diego Resident Office**, consisting of Resident Officer Steven Sorensen, Field Examiner Dave Selder, and Field Attorney Robert MacKay, recently conducted several high profile elections. For example, SDRO staff conducted elections in two units at NASSCO, consisting of 1700 and 500 employees, respectively. Unions were certified in both cases. The SDRO staffers also regularly investigated and prosecuted myriad unfair labor practice charges, including charges involving the news media, the longshore industry and numerous janitorial companies. SDRO staffers were also frequently in the Regional office assisting on casehandling matters.

**Over 5000 employees** have voted in Region 21 conducted elections in the last 6 months. Many of the elections involved multiple Board agents over multiple days, with unusual hours and voting conditions. In addition, five Region 21 agents assisted the Agricultural Labor Relations Board in an election.

Another of the popular **Coffee With the Board** interactive outreach events will be held in early 2007. Contact the Regional office in early 2007 for details.

**Los Angeles Co. Bar Association, Labor & Employment Law Section**, is sponsoring its 27<sup>th</sup> annual symposium on March 8, 2007, at the Millennium Biltmore Hotel. Mark your calendar. For info: [www.lacba.org](http://www.lacba.org)



### Answers to Board Bits:

1. *John Fanning.*  
*From 1957 to 1982*
2. *Wilma Leibman*  
*From 1997 to present*
3. *\$84 million*  
*Per the Board's Annual Report for 2005*
4. *\$420,000 to Kris Borum in Livingston-Graham (paid 1992)*
5. *Victoria Aguayo*  
*From 1985 to Present*

### Contributors to this issue:

- Victoria Aguayo
- James Small
- William Pate
- John Hatem
- Ami Silverman
- Tirza Castellanos
- Julie Gutman
- Stephanie Cahn
- Steve Sorensen
- Hector Martinez,  
*photographer*



## Recent Developments: GC and Board Update



At Pre-Conference dinner, GC Meisburg, Region 21 Director Aguayo, Region 31 Director McDermott

At the **OCIRRA Labor Law Conference**, held on July 19, 2006, co-sponsored by the National Labor Relations Board, Region 21 and the Federal Mediation and Conciliation Service, General Counsel Ronald Meisburg emphasized his commitment to promoting employee free choice through protecting nascent bargaining relationships. In GC Memorandum 06-05, GC Meisburg announced that he would be focusing particular attention on remedies for violations that occur during the period after union certification, when parties are or should be negotiating for an initial collective-bargaining agreement.

In GC Memorandum 06-07, GC Meisburg reiterated his commitment to employee free choice, this time through establishment of expedited procedures for the processing of technical 8(a)(5) refusal to bargain charges.

### Board Asserts Jurisdiction Over Private Airport Screening Company

In a 4-1 decision, the Board exercised jurisdiction over a company that provides passenger and baggage screening services at an airport under a contract with the Transportation Security Administration (TSA). *Firstline Transportation Security, Inc.*, 347 NLRB No. 40. The Board majority rejected the employer argument that a memo issued by a TSA official barring **federally** employed airport screeners from engaging in collective bargaining also covers privately covered screeners. The employer further argued that the Board should decline to assert jurisdiction in the interest of national security. The Board majority rejected the employer's argument and found "no case in which our protection of employees' Section 7 rights [under the Act] had an adverse impact on national security or defense."

### Developmental Center Illegally Withdrew Recognition

An Employer violated federal labor law by withdrawing recognition from a union on the day a contract expired. Three months earlier, the Employer had received an anti-union petition signed by a majority of employees. However, the day before the contract expired, the Union presented evidence that it represented a majority of the employees. The Board issued an affirmative bargaining order. *Parkwood Developmental Center, Inc.*, 347 NLRB No. 95.

### Board Rejects Argument That Undocumented Workers Are Not Statutory Employees

In *Concrete Form Walls, Inc.*, 346 NLRB No. 80, the Board upheld the ALJ's findings that the employer violated Sections 8(a)(3),(4), and (1) of the Act by discharging employees because they voted in a representation election, and engaged in objectionable conduct by promising employees a wage increase on the eve of the election. The ALJ, with Board approval, concluded that the employer failed to meet its *Wright Line* burden establishing that it had an independent basis to fire the employees because the "People Find USA" search did not prove that the discharged employees were undocumented workers. Moreover, the Board rejected the argument that undocumented workers are not statutory employees, ordered the purportedly undocumented employees' determinative ballots to be opened and counted, and concluded that a *Gissel* bargaining order was warranted in light of the post-election unlawful terminations and other hallmark violations.

Julie Gutman,  
Field Attorney



## Outreach by Region 21



Agents involved in outreach activity at OCIRRA Labor Conference from left to right:  
 Front row: **Tirza Castellanos, Anne White (Region 31)**  
 Back row: **Jerry George (Region 31), Carolina Lopez (EEOC), and James Small**

The NLRB and Region 21 have a long history of providing outreach and public information programs. These programs have promoted a broader awareness of the Act and have been focused on the labor and employment relations community. At the urging of the General Counsel, the Agency will be expanding outreach services to members of the public and community groups, who may not be aware of the Act, including those individuals just entering the work force.

Historically, Region 21 has actively engaged in outreach activities, providing agents to speak to labor and management groups, academic groups, law firms, professional and community groups, and other organizations. Region 21 has also sponsored conferences and events for practitioners. In connection with the expanded outreach program, Region 21 has established an outreach team. The team consists entirely of enthusiastic volunteers and includes **James Small, Tirza Castellanos, John Hatem, Irma Hernandez, Hector Martinez and Ami Silverman**. The team will explore innovative opportunities to inform the public about the Board's mission, and offer services to those who seek assistance from the Agency. In the past few months, Region 21 has co-sponsored an annual labor and employment law conference, provided agents to speak to several academic classes, provided agents to train various practitioners at educational seminars presented by the Department of Labor, provided specific training for union stewards, participated in discussions with several community organizations, and joined with the Equal Employment Opportunity Commission in coordinated outreach

activities. In future months, the NLRB will be engaging in further partnering with other Federal Agencies to foster additional coordinated outreach efforts. You'll likely see NLRB agents at conferences and events sponsored by other Federal agencies. You'll also see Region 21 and Region 31, the two NLRB regions serving Southern California, jointly promoting NLRB outreach activities. Indeed, Region 21 and Region 31 have had agents participate in outreach activities with the EEOC and have jointly presented training at community events and with the Department of Labor.

What does this mean for you? Simply this: NLRB representatives are readily available and eager to participate in meetings, conferences and seminars with employees and employer groups, labor organizations, professional associations, student groups, non-profit entities, community organizations and other members of the general public. The NLRB will gladly provide speakers. We will tailor the presentation to the particular needs of your group or organization. We can speak on basic information about the Agency or specialized sections of the Act. Our Regional Office outreach team can be reached at [Region21@nlrb.gov](mailto:Region21@nlrb.gov), or call one of the team members directly. One or more speakers can be arranged from Region 21, our sister Region 31 office, or our national NLRB office. We are dedicated to promoting the concept of industrial democracy.

**Field Examiner**  
**Tirza Castellanos**