



Summer 2007 Issue

Regional Insight

AN OUTREACH NEWSLETTER TO INFORM THE PUBLIC ABOUT WORKPLACE RIGHTS & ISSUES

INSIDE THIS ISSUE:

Region 25 Secures Nearly \$210,000 in Backpay 2

Know Your Workplace Rights 2

Injunction Filed Against Shopping Mall Contractor 3

NLRB Speaker Availability 3

How to Request Regional Case Documents 3

Representation Case Stats for Fiscal Year 2006 4

Regional Attorney's Corner 4

From the Desk of the Regional Director 5

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Employee Use of Company Email Considered

Do employees have a right to use their employer's e-mail system (or other computer-based communication systems) to communicate with other employees about union or other concerted, protected matters? That was just one of the questions being considered by the Board when it heard oral argument on March 27, 2007, as to whether an employer can ban the non-business use of its e-mail system.

The oral argument was in connection with *The Guard Publishing Company, d/b/a the Register Guard*, Case 36-CA-8743, et. al., which involved discipline issued to employees who used the employer's e-mail system for communication regarding upcoming contract talks. Administrative Law Judge McCarick found that the Employer permitted employees to use the company's e-mail system for a wide variety of purposes, including some non-business purposes, while prohibiting employees from using the system

Can you use your work email system to organize?



to discuss union matters. However, while the ALJ found that the Employer's policy was facially lawful, he also found the discipline imposed on the union president was discriminatory because the employer allowed employees to use the e-mail system for non-business related activity.

In addition to presentations from both the Union and the Employer, several *amici* presentations were made at the oral argument by interested groups, including the Human Resources Policy Association and the United States Chamber of Commerce. Copies of the parties' briefs can be accessed on the web at: http://www.nlrb.gov/research/frequently_requested_documents.aspx.

10(I) Injunction Granted Against Teamsters Local 414

Following the filing of an unfair labor practice charge and an investigation, Region 25 concluded that Teamsters Local 414 (Fort Wayne, Indiana) was engaged in recognitional picketing prohibited by Section 8(b)(7)(c) of the National Labor Relations Act. The Act prohibits unions from picketing an employer in excess of thirty days with an object of forcing or requiring the employer to recognize and bargain with the union as the representative of their

employees without filing a petition with the NLRB. Teamsters Local 414 exceeded this limitation when it picketed Aggregate Industries – Central Region in excess of the thirty days in an effort to force Aggregate Industries to recognize it as the exclusive bargaining representative of the employees of its newly acquired subsidiary, Klink Concrete.

When the Union refused to cease picketing, the

(story continued on page 4)

Yellow Ambulance Pays Employees Nearly \$210,000 In Backpay



Yellow Enterprise Systems, a Louisville-based business operating an ambulance service in Owensboro, Kentucky, recently paid \$209,500 in backpay and expenses to EMTs and Paramedics pursuant to the terms of a Compliance Settlement.

On August 17, 2004, the National Labor Relations Board affirmed the Administrative Law Judge's finding that the Respondent Employer had committed numerous unfair labor practices during and after a union organizing campaign. The violations included the unlawful

discipline of employees, suspension of two employees, discharge of five employees and constructive discharge of three employees. In addition to ordering that the employees be made whole for their losses, the Board also ordered the reinstatement of employees and the removal of the unlawful discipline and discharges from their personnel records. Approximately \$208,000 of backpay with interest was distributed to the ten employees who had been unlawfully suspended or discharged.

Additionally, the Respondent Employer was found to have violated the law when it assessed twenty-two employees a \$50 fee for a required EMT certification course. The Employer announced the imposition of the fee the day after the Union overwhelmingly won in the NLRB representation election. Less than two months earlier, an Employer representative had announced that the course would be free to employees. In its decision the Board ordered reimbursement of the fee plus interest. Accordingly, each employee received \$70.

The National Labor Relations Act (NLRA) protects the rights of both unionized and non-unionized employees.

Know Your Workplace Rights

The National Labor Relations Act (NLRA) protects the rights of both unionized and non-unionized employees. The NLRA protects employee rights to join and support unions where they work, to participate in protected concerted activities with other employees, and to refrain from participating in such activities. Under the NLRA, two or more employees have the right to act together to raise workplace issues with their employer or to press for changes in wages or other working conditions. Such employee actions are known as protected concerted activities.

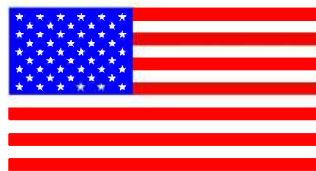
The following are examples of **unlawful acts by an employer under the NLRA**

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

The NLRA prohibits not only certain employer activities but many types of union conduct as well.

Union violations of the NLRA include, among other things, the following

- ⇒ Statements to employees who oppose the union that the employees will lose their jobs if the union wins a majority in the plant.
- ⇒ Fining employees for crossing a picket line after they resigned from the union.
- ⇒ Refusing to process a grievance in retaliation for an employee's criticism of union officers.
- ⇒ Rejecting an application for referral to a job based on the applicant's race or union activities.



Requesting Regional Case Documents

All requests under the Freedom of Information Act, 5 U.S.C. 552, for documents maintained by Region 25 should be addressed to Regional Director Rik Lineback. All FOIA requests must: 1) be made in writing, 2) state that the request is a FOIA request, and 3) state that the requestor is willing to pay the appropriate fees. If you are concerned about the amount of the fee, you can indicate a maximum that you are willing to pay without being contacted first. The more specific the request the more likely the request can be fulfilled. When possible include the case number, employer's name, union's name, charging party's name, date of the charge or petition filing, and any other identifying information. Also, when appropriate, please indicate a timeframe for which you are seeking information. For example if you want

copies of all the charges filed against a particular union, please indicate the time period for which you are requesting documents.

While some documents, such as charges, petitions, and notices of appearance, are always disclosed under FOIA, there are FOIA exemptions that allow the Region to deny requests for information in certain circumstances. For example, very few documents beyond the charge or petition will be released from an open case. Even in a closed case, some information such as medical records, Board prepared affidavits, internal Board memoranda, and Board attorney work product documents, are still exempt from disclosure. Additional information about FOIA requests can be found at: <http://www.nlr.gov/e-gov/index.aspx>



Janitors Get Discipline Removed From Their Record

As part of their "Justice for Janitors" campaign, the Service Employees International Union, Local 3 organized a one-day strike in the Fall of 2006 among janitors working at several shopping malls in the Indianapolis area. After an extensive investigation, Region 25 issued a complaint against a janitorial contractor at one of the shopping malls involved alleging that the contractor violated the National Labor Relations Act by issuing the employees who had gone out on strike a written warning for their absence from work on the day of the strike, threatening employees with additional discipline (including termination) if they engaged in another strike, and instructing employees to give it advance notice of future strike activity. The Region also sought and received authorization from the National Labor Relations Board in Washington to pursue Section 10(j) injunctive relief. As such, the Region filed a request for a temporary injunction with the United States District

Court for the Southern District of Indiana against the janitorial contractor that included a request that the Court order the employer to expunge from its records any reference to the warnings issued to the employees.

Shortly after the injunction petition was filed and before the hearing in this case was held, the employer agreed to settle the alleged unfair labor practices by posting a notice to employees at the shopping mall and agreeing to expunge the warnings from the employees' records. In the notice, employees were informed, among other things, that in the future the employer would not issue warnings because employees participate in a strike and would not require them to give it advance notice of any future strike activity. Since many of the janitorial employees involved were Hispanic, the employer was required to post the notice to employees in both English and Spanish.

Section 10(j)
allows the
Region to
request an
injunction in
District Court
pending the
conclusion of
the Board
proceedings.

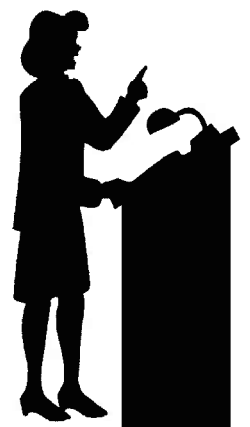
NLRB Speakers are Available for Your Group

Interested in having a representative of the Regional Office address your group?

Members of the Regional Office staff are available to make presentations before any group, including classroom groups, legal services clinics or service agency staffs, as well as those members of the public that they serve. Speakers are available to cover a variety of topics, including presentations describing what the Act's

protections cover, how the Region investigates unfair labor practice charges, the NLRB's representation case procedures, or any other NLRB topic of interest.

To arrange for a speaker and to discuss possible topics, please contact the Assistant to the Regional Director Patricia Nachand at (317) 226-7404. You may also request a speaker through a link on the NLRB's Web site: http://www.nlr.gov/about_us/speakers.aspx



The Regional Attorney's Corner

By Dick Simon

As the Regional Attorney, one of my responsibilities is the overall supervision of the litigation of cases by the Region before an Administrative Law Judge or the Board as well as cases involving district court litigation or bankruptcy proceedings. As part of this responsibility, I also oversee settlement efforts on cases which have been or may be scheduled for trial. The Region normally settles about 85 to 90 percent of such cases. The Region is always willing to consider possible settlement, even during and after a hearing before an ALJ, so you are encouraged to discuss with the Region the possible settlement of a case at any time after the Region has determined that there is merit to a charge.

During the past fiscal year the Region was successful in whole or in part in 9 of the 12 cases decided by an ALJ or the Board. The issues covered by these decisions included the discharge of employees for engaging in union activities, unilateral changes in terms and conditions of employment, union requests for information that is relevant to a pending grievance, and an em-

ployee's right to have a union representative present during an investigatory interview.

During the current fiscal year we have litigated three cases before an ALJ involving such issues as the discharge of employees because of their union activities, the promulgation and maintenance of overly broad and discriminatorily enforced employee rules, and a request by the employer that employees provide the employer with copies of their affidavits taken by Board agents. In addition, the Region continues to aggressively pursue Section 10(j) relief in cases where such relief is appropriate—for example, the janitorial contractor case which is discussed on page 3 of this newsletter.

In future Newsletters I plan to discuss issues relating to settlements, procedural issues in litigation, the differences between litigation of alleged unfair labor practices versus litigation of compliance issues, and the nature and extent of the Region's involvement in bankruptcy cases. Please let me know if there is a particular issue you would like me to address in a future newsletter.



Elections conducted by Region 25 were held within a median of only 38 days from the date of petition filing.

Region 25 Representation Case Statistics

During Fiscal Year 2006, 90 representational petitions were filed with Region 25. Of those 90 petitions, 48 initial elections were held—38 seeking certification of representative, 8 seeking decertification of representative, and 2 seeking de-authorization of a contractual union security clause. About 94% of the elections were held by stipulated agreement of the parties and the elections were held within a median of only 38 days from the date of the filing of the petition.

The results of the 48 initial elections conducted by the Region were as follows:

~ 25 certifications of representative.

~ 20 certifications of results.

~ 3 still pending at the end of the fiscal year.

For the remainder of the 90 petitions filed within the fiscal year, 32 of the petitions were withdrawn prior to an election, 3 petitions were filed late in the fiscal year and were still being processed at the end of the fiscal year, and 7 petitions were either blocked by unfair labor practices or dismissed.

Teamsters 414 Injunction (continued from page 1)

Region sought a temporary injunction in U.S. District Court under the authority of Section 10(l) of the Act. On July 13, 2007, The Honorable Theresa Springmann of the U.S. District Court, Northern District of Indiana determined that the Region is likely to prevail on the merits of the case and issued an injunction against Teamsters Local 414 ordering them to immediately cease such picketing pending the final outcome of the case before the NLRB.

Despite the issuance of the injunction, Teamsters Local 414 asserts that it was not engaged in picketing

with an object to seek recognition, but rather because Aggregate refused to settle two grievances previously filed by the Teamsters. The Union argues that the final step in the parties' grievance procedure provides for a choice of either arbitration or economic action if the parties are unable to reach agreement on settlement.

The underlying unfair labor practice charge was heard before Administrative Law Judge Michael Rosas on July 31, 2007, and briefs in the case are due on September 3, 2007





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Regional Insight is an outreach newsletter published by Region 25 of the National Labor Relations Board to inform the public about workplace rights & issues.

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*** Please contact the Region if you wish to be added to or deleted from our newsletter distribution list.*

The National Labor Relations Board is an independent federal agency created by Congress in 1935 to administer the National Labor Relations Act, the primary law governing relations between unions and employers in the private sector. The statute guarantees the right of employees to organize and to bargain collectively with their employers, and to engage in other protected concerted activity with or without a union, or to refrain from all such activity. The NLRA extends rights to most private sector employees, to their employers, and to unions/labor organizations. The NLRA protects workers who form, join, support or assist unions, also known as labor organizations, and protects groups of workers (two or more employees) who engage in protected concerted activities without a union seeking to modify their wages or working conditions. The Act protects non-union and union employees against employer and union discrimination based on union-related activities or other protected concerted activities.

Employees, who wish to pursue workplace organization issues or allegations of unfair labor practices may seek assistance from the nearest regional NLRB office. Employers and Unions who wish to pursue allegations of unfair labor practices may do the same. The Agency has 51 regional, sub-regional, or resident offices to serve the public.

We're on the Web!
www.nlr.gov

From the Desk of the Regional Director

**Regional
Director,
Rik Lineback**



"Without labor nothing prospers." ~ Sophocles

"Employment is nature's physician, and is essential to human happiness." ~ Galen

People are passionate about work and working conditions. So much of our lives, fortunes, and perspectives are shaped by the work we do and the people we work for and with. In this our first edition of Regional Insight, we present to you, no matter your position on the labor-management-employee spectrum, factual and insightful news and information about the work we at the NLRB diligently pursue – fairly and effectively upholding and

giving life to the National Labor Relations Act. Our staff has labored long and skillfully in putting together this inaugural issue. They provide timely information about employees' rights to engage in concerted and union activities, and the equal rights of employees to refrain from such activities; news about our 10(j) injunctive relief program; e-mail/internet usage at work and other timely topics. We hope you will give us a heads up about what you like as well as what you don't like about our articles. Please also keep us in mind as a source for providing speakers to address your supervisors/managers, your civic group, or your union agents concerning timely labor law topics and how we conduct investigations and elections.

Cordially,