

# NLRB Region 1



## Outreach



Fall 2008

*Third Edition*

Tip O'Neill Federal Building (617) 565-6700

10 Causeway Street fax (617)565-6725

Boston, MA 02222

Region1.newsletter@nlrb.gov www.nlrb.gov

### *In This Issue:*

- Did you know?

*History of the National Labor Relations Board*

- Recent Litigation Involving Region 1
- Recent Compliance News
- Representation Case News
- October 16, 2008 Annual NLRB/DOL Conference
- Speakers Available  
NLRB staff are available to speak to any group

### **Did you Know?**

#### **What We Do**

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.

#### **How to Find Out What's New in the Field**

The National Labor Relations Board web site may be accessed at [www.nlrb.gov](http://www.nlrb.gov). The web site provides a wealth of information, from how to initiate representation and unfair labor practices, to ready access to the statute, the Board's Rules and Regulations, Board and administrative law judge decisions, and useful Board publications such as the three volume Casehandling manual. By clicking on the "Frequently Requested Documents" tab, the user can get access to timely developments in Board law, including important recent decisions such as *Register Guard* (on whether there is a Section 7 right of employee access to an employer's e-mail system), *Oakwood Healthcare* on supervisory status, and *Dana Corp.*, in which the Board announced a new rule in voluntary recognition situations, requiring the posting of a notice and a right to an election if a petition is timely filed challenging the recognition. With respect to *Dana*, the Board maintains a spread sheet, also available on its web site, of post-*Dana* recognition cases. As of Sept. 9, nationwide there have been requests for 388 voluntary recognition notices. Thirty election petitions have been filed in voluntary recognition cases and the NLRB has conducted 15 elections. The employees voted for union representation in 11 of the elections and against union representation in the other four elections. Of the other 15 petitions, seven were withdrawn,

### 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 identify the parties to the charge and provide 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.

two were dismissed, two are blocked by pending unfair labor practice charges, and four are pending.

Specifically in Region 1, to date, there have been eleven requests received for the posting of *Dana* notices. Nine of these cases were closed after the 45-day posting period without any petition being filed, and in another case the posting period has not yet expired. In the final *Dana* filing, a decertification petition was filed by a unit employee during the 45-day “window” period following the voluntary recognition; however, the Region is currently investigating certain unfair labor practices that allege that the decertification petition was unlawfully sponsored and assisted by the employer.

## Recent Litigation Involving Region 1

### Teamsters Local 25

This case involves drivers on film productions in the Boston area. At issue is whether the union has unlawfully insisted that employers sign collective-bargaining agreements prior to hiring any employees in the represented unit, and whether the union, as the exclusive source of driver referrals, has maintained a lawful and objective system to administer such referrals. A portion of this case settled; the remainder is in the process of being settled.

### FedEx Home Delivery before D.C. Circuit

The Region certified two units of the Employer’s drivers in the Boston area. The Employer refused to bargain, and the ensuing unfair labor practice case is presently before the D.C. Circuit Court. The issue is whether the drivers at issue are, as the Employer claims, independent contractors, and consequently not employees within the meaning of the Act.

Board decisions and Administrative Law Judge decisions are posted on the NLRB website,

<http://www.nlr.gov/research/decisions/index.aspx>.

### 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.

### Region 1 Unfair Labor Practice Statistics From October 2007 through August 2008:

- 818 unfair labor practices were filed.
- 45.2% of the cases were found to be meritorious
- 98.8% of the meritorious cases were settled prior to hearing

### MEASURING UP

Employees of the National Labor Relations Board take great pride in performing high quality work in a timely manner. It may be trite, but it is true: Justice delayed is justice denied. In order to assure that we not rest on our laurels, in 2007, the NLRB and the General Counsel adopted overarching measures of performance of the Agency's core mission activities. These goals become progressively more ambitious each year, through 2012. For the fiscal year October 1, 2007 through September 30, 2008, the three goals are:

1. Close 80% of all Representation cases within 100 days.
2. Close 68% of all unfair labor practice cases within 120 days.
3. Close 75% of all merit unfair labor practice cases within one year.

So, how is Region One doing? We met the first goal, closing 80.19% of our representation cases within 100 days. We just missed the second goal, closing 66.21% of our unfair labor practice cases within 120 days. And we exceeded goal 3, closing 82.44% of our merit unfair labor practice cases within 365 days. In fact, Region 1's performance exceeds the ambitious 77% goal established for fiscal year 2012.

Timely case processing is a high priority for the NLRB, and metrics such as the above goals, and our long-established time targets for case handling help us to be successful in this area of performance. We understand, though, that exemplary timeliness is only a virtue if the quality of our work is equally exemplary. We are proud that various measures indicate we are meeting the challenge.

For instance, Region 1's merit factor (percent of charges found to warrant issuance of complaint on at least one allegation) has consistently run in the range of 40-45%, compared to a national average of 30-33%. Is this merit rate too high? Apparently not: both our settlement rate of 98.8% and the fact that Region 1 only lost one case in this time period before the ALJ, and that case is currently on appeal, shows that our litigation success rate is in line with the Agency's national averages.

Of course, these numbers do not capture your experience in dealing with us. We welcome the opportunity to discuss your concerns and answer your questions regarding any case before us.

### **Guidelines for High Quality Unfair Labor Practice Investigations on Board Web Site**

If you have not yet discovered the NLRB's public web site ([www.nlr.gov](http://www.nlr.gov)), it is worth a visit. A vast amount of information about Agency practice and procedure is now readily available online.

As an example, any visitor can view GC Mem. 08-06, Report of Quality Committee on 2007 Quality Reviews. Since 2004, a committee of 8 managers from Regional Offices, including Region 1 Regional Director Rosemary Pye and two headquarters employees, including Assistant General Counsel James Paulsen who oversees the work of Region 1, has reviewed case handling in the Agency's Regional Offices and issued recommendations to assist Regions in achieving uniformly high quality case handling. For the public, Attachments B through E of the 2007 Report are of special interest. Each attachment is a checklist to structure investigations of violations of specified sections of the National Labor Relations Act. A quick review of these checklists will go a long way towards informing parties and witnesses of what to expect when they meet with an agent of the Regional Office, and how to prepare effectively in advance for such meetings.

**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:**

**Discriminatees' Search for Work**

Under on a recent Board decision, discriminatees are urged to keep careful records of when and where they sought employment.

On September 11, 2007, the Board issued its decision in *The Grosvenor Resort*, 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 the termination, layoff, or refusal to hire in which the discriminatee 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 stop the right to 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, as in an unlawful discharge or refusal to hire, the Board requires discriminatees to mitigate or offset the backpay by promptly beginning to look for another job in the same or similar line of work. If a discriminatee is unable to establish that they actively sought to mitigate damages, the discriminatee may face the risk of having whatever money is owed reduced.

**Region 1 Compliance Statistics from October 2007 through August 2008:**

- **Over \$1,885,000 backpay was distributed to discriminatees.**
- **Over 47 discriminatees were awarded backpay and offered reinstatement to their jobs.**

## 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:

In recent elections involving bargaining units in excess of 100 employees, unions were selected as employees' representative in cases involving various types of employees. For instance, bus drivers and monitors at the Nashua, New Hampshire, location of First Student selected Teamsters Local 633; clerical employees employed by Northrup Grummond Technical Services in St. Albans, Vermont, selected UE Local 56; engineers, control operators and technicians employed by Fox TV in Dedham, Massachusetts, selected IBEW Local 1228; and operations and maintenance employees employed by Coventa Energy, in Wareham, Massachusetts, selected Utility Workers Local 369.

## Region 1 Representation Statistics from October 2007 through August 2008:

- Representation elections were conducted in 93 cases.
- 93% of elections were achieved by way of an election agreement between the parties.
- Approximately 90.3% of elections were held within 56 days from the filing of the petition.
- Initial elections were conducted in a median of 40 days from the filing of the petition.

## Save the Date:

Dialogue on NLRB Region 1 Practice between NLRB Managers and Labor Practitioners

Date: Thursday, October 30, 2008

Sponsors: Joint Session of the Mass. Bar Association Labor Open Forum and ABA Practice and Procedures Section

Time: Noon – 2:00 P.M.

Location: Massachusetts Bar Association, 20 West Street, Boston, MA

**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.

Please e-mail [region1.newsletter@NLRB.gov](mailto:region1.newsletter@NLRB.gov) if you wish to subscribe or unsubscribe to future newsletters.

**Attend Our October 16, 2008 National Labor Relations Board/U.S. Department of Labor Annual Conference**

**Date:** Thursday, October 16, 2008

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

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

Be sure to mark your calendar for the 36<sup>th</sup> Annual Labor Law Conference. Solicitor of Labor for the U.S Department of Labor Gregory Jacob and Deputy Associate General Counsel, Division of Advice of the National Labor Relations Board, Ellen Farrell are the keynote speakers. The program will feature a panel discussion on Union solicitation and E-mail AFL-CIO Associate General Counsel James Coppess, Jones Day Partner, Andrew Krammer, and NLRB Deputy Associate Counsel, Linda Dreeben.

**Speakers Available**

Under General Counsel Ronald Meisburg, the Agency is making a 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 Deputy Regional Attorney Scott Burson (617) 565-6704; 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.

