



# NLRB Region 3

[www.nlr.gov](http://www.nlr.gov)

## Outreach



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*First Edition*

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### In This Issue:

- **Did you know**  
Rights protected by the National Labor Relations Act
- **Drivers to Receive Backpay** of approximately \$100,000 after employer unlawfully subcontracted their work
- **Rules Restricting Union Organizing** found unlawful
- **Filing Information**  
How to file an unfair labor practice charge and representation petition with the NLRB
- **Learn More**  
NLRB staff are available to speak to service and advocacy organizations
- Region 3 will participate in a May 11, 2007 program focusing on labor relations under the National Labor Relations Act

### 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.

## **Litigation**

The NLRB recently upheld an administrative law judge's decision in Kenmore Mercy Hospital, JD-08-07, February 6, 2007, finding that the Hospital had unlawfully restricted employee access to its facility, restricted employees from engaging in union activity and unlawfully disciplined an employee. The Hospital had maintained a rule in its employee handbook permitting employees access to its premises only during authorized work hours and used the rule to discipline an employee who remained at the facility after her work shift was over to solicit another employee to join a union. The judge found that the rule and discipline violated the National Labor Relations Act because the rule was overly broad and unlawfully interfered with employee rights to engage in union organizing activities. The judge noted that there was no evidence that the brief conversation between the employees interfered with work. The Hospital had allowed other employees to be on the premises before and after their work shifts in working areas where they discussed non-work matters with employees who were working.

A second part of the case involved an employee who was placed on administrative leave during an investigation of an alleged altercation between the employee and a coworker. While at home, the employee received a telephone message from her supervisor informing her that she was being placed on administrative leave and "not to talk to any employee or come on the premises under any circumstances." Before being placed on administrative leave, the employee had been speaking with other employees about joining a union. The judge found the supervisor's prohibition on the employee's communication with other employees overly broad, because it could reasonably encompass and restrict rights under the Act to engage in union activities. The judge also found that the Hospital had not demonstrated a legitimate and substantial justification for the rule, noting that, if the employer had wanted to avoid physical or verbal confrontations with other employees it could have tailored or limited the rule to do so.

The remedy ordered by the judge in this case included posting an NLRB notice about the violations in the workplace, eliminating the unlawful access rule from the Hospital's employee handbook, and removing any disciplinary records for violating the rule from employee files.

**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. 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.

**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.

**More Litigation News:**

In January, the NLRB, in Sunoco, Inc., 349 NLRB No. 26, upheld a decision of an administrative law judge finding that Sunoco had unlawfully changed its established past practice of giving its drivers in Tonawanda, Rochester and Syracuse the opportunity to perform jet fuel deliveries, before subcontracting out the work. The union representing the drivers had filed an unfair labor practice charge with Region 3 alleging that Sunoco had failed to bargain with the union about its change in past practice regarding jet fuel deliveries. In addition, the union filed a charge that Sunoco had failed to provide the union with information it had requested regarding the subcontracting of jet fuel deliveries so that the union could bargain over the change in the practice.

The NLRB adopted the judge’s decision that Sunoco could not change its established practice of providing the drivers with the opportunity to perform jet fuel deliveries before subcontracting the work, without notifying or bargaining with the union. The administrative law judge found that Sunoco’s decision to subcontract jet fuel deliveries constituted a mandatory subject of bargaining with the union because Sunoco was substituting subcontractors for its employees. In addition, the Board upheld the judge’s conclusion that Sunoco had failed to provide the information requested by the union concerning the subcontracting of jet fuel deliveries.

Following the Board’s decision, Sunoco paid 24 drivers approximately \$100,000 in backpay for their loss of overtime pay resulting from the subcontracting of the jet fuel deliveries. Sunoco has also agreed to post an NLRB notice at the Tonawanda, Rochester and Syracuse facilities stating that it will not violate the National Labor Relations Act.

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

## 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:

- Know which Regional office will handle your petition. Region 3 covers all of New York except New York City, Long Island, Orange, Putnam, Rockland and Westchester Counties. Persons may also obtain service at the Resident Office located in Albany, New York.
- 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.
- 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.

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## Representation Case News:

1199 SEIU United Health Workers East; Service Employees International Union recently won a representation election conducted by the NLRB at TLC Health Network, d/b/a Lakeshore Nursing Home in Irving, New York, involving approximately 150 nursing home employees.

Earlier this year, an unrepresented group of electrical assemblers and electrical technician assistants at Strippit/LVC in Akron, New York, voted in an NLRB election to be included in a bargaining unit with their coworkers who are represented to by the International Association of Machinists & Aerospace Workers, AFL-CIO, DL 65, LL 630.

The custodians, mechanical trades employees and other employees of Sodexo, Inc., who work at Nazareth College in Rochester, New York, voted in a Board-conducted election to be represented for purposes of collective bargaining by Independent Union of Sodexo Workers at Nazareth College.

## Region 3 Statistics for Fiscal Year 2006:

- Representation elections were conducted in more than 50 cases.
- Nearly 92% of elections were achieved by way of an election agreement between the parties.
- Approximately 90% of elections were held within 45 days from the filing of the petition.
- Initial elections were conducted in a median of 38 days from the filing of the petition.

## 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 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.

## Careful!

### There are limits to the Act's protections.

The National Labor Relations Act protects employees in acting together to raise workplace issues. Employees are *not* protected by the Act when they make complaints or demands for themselves alone.

The Act does *not* protect employees who engage in misconduct, even when the misconduct is intended to support concerted employee action. Threats, violence, or occupation of the employer's premises are among actions generally considered to be misconduct warranting discipline.

Although the right to strike is protected by the Act, an employer may permanently replace employees who are engaged in an economic strike. An employer may not permanently replace employees who are engaged in an unfair labor practice strike. When permanently replaced as a result of an economic strike, a striking employee is entitled to return to work only when a new position becomes available.

The Act provides for backpay to compensate employees for losses resulting from unlawful conduct, but the Act does *not* provide for fines, punitive damages, or losses not directly resulting from lost employment.

The Act does *not* require an employer to grant employee demands.

### The Act offers other protections and restrictions

The Act also protects an employee's right to join or support a union.

The Act has procedures for determining by secret-ballot election whether a majority of employees in a workplace want a union to represent them in dealing with their employer over wages, hours, and working conditions.

Where a majority of employees show that they want union representation, the Act requires an employer to recognize and bargain with the union.

The Act requires both unions and employers to bargain in good faith.

The Act requires unions to represent their members fairly.

The Act prohibits unions from picketing neutral employers in order to get them to cease doing business with other employers with whom the union has a labor dispute.

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## 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 at Region 3 may be reached by telephone at:

1-866-667-6572  
(Toll free)

or

716-551-4931 (Buffalo)  
518-431-4155 (Albany)

**Se habla español**

## Speakers Available

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 don't hesitate to telephone Regional Attorney Rhonda Ley at (716) 551-4938; Assistant Regional Director Charles J. Donner (716) 551-4935; or, in the Albany area, Resident Officer Barney Horowitz (518) 431-4156.

## Attend Our May 11, 2007 Labor and Employment Law Program

Region 3 of the National Labor Relations Board, Cornell University-School of Industrial and Labor Relations and the Labor and Employment Law Section of the New York State Bar Association are pleased to announce a program focusing on private sector labor relations under the National Labor Relations Act.

This program is designed for those attorneys and non-attorneys who may be new to the private sector labor and employment relations area, as well as for those seasoned practitioners who are interested in obtaining the latest updates on important issues. The program features a presentation by Board Member Wilma B. Liebman, Esq., National Labor Relations Board, Washington, D.C.

The conference will be held at the Hearthstone Manor, Depew, NY. Contact Alice Torres for registration information at (585) 262-4440.

The rights protected by the National Labor Relations Act are available to all. Along with the Region's staff, I am committed to improving public awareness of the Act and of the recourse available through the Regional Office to those who have suffered any violation of it.

**Helen E. Marsh, Regional Director**  
National Labor Relations Board, Region 3