NLRB, Region 20 Roundup

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In This Issue

LABOR DISPUTE OVER FERRY TO ALCATRAZ

San Francisco, CA – In October 2006, Region 20 of the National Labor Relations Board began an extensive unfair labor practice investigation of charges filed by Hornblower Cruises & Events and Alcatraz Cruises, LLC against the Inlandboatmen's Union of the Pacific and the International Organization of Masters, Mates and Pilots, as well as charges filed by both unions against both employers. This labor dispute has been widely covered by the media in the San Francisco Bay Area, and has attracted the attention of local and national politicians. The Alcatraz ferry service had been previously provided by Blue & Gold Fleet, a company with collective-bargaining agreements with both unions for over twenty-five years. In September 2005, Hornblower was awarded the concessionaire contract by the National Park Services, giving it the exclusive right to transport passengers to Alcatraz Island for the next 10 years, after competing with Blue & Gold for the contract. Hornblower designated Alcatraz Cruises as the ferry operator and began operations in September 2006. The unions alleged that Alcatraz Cruises and Hornblower are a single employer under the National Labor Relations Act (NLRA), and discriminatorily refused to hire the unions' members, in order to avoid a successor employer's duty to bargain with the unions. The employers denied the unions' allegations and claimed that the unions were violating the Act, by engaging in unlawful secondary picketing (picketing directed towards an employer with which a union does not have a primary labor dispute) and unlawful recognitional picketing (picketing for more than a reasonable period of time where the union is seeking to be recognized by the employer as the employees' collective-bargaining representative). The unions denied those allegations. In January 2007, the secondary picketing charges were withdrawn, and Regional Director Joseph P. Norelli dismissed the charges filed against the employers, concluding that the evidence did not establish violations of the NLRA. After the Office of Appeals sustained the dismissals of those charges in March 2007, the unions agreed to settle the recognitional picketing charges. (Had the unions prevailed on their allegations that the employers were unlawfully refusing to bargain with them, the picketing would have been lawful.) These cases were investigated by Field Attorney Christy Kwon.

Judge Grants Injunction Against SFO Good-Nite Inn; Region Issues New Complaint Against Hotel

San Francisco, CA – On March 1, 2007, Federal District Court Judge Martin J. Jenkins granted a temporary injunction against SFO Good-Nite Inn, a South San Francisco Hotel, which the Board alleged threatened employees and promised them benefits to induce them to sign an anti-union petition, fired two housekeepers who refused to sign the petition, and withdrew union recognition and refused to bargain with the union while a collective-bargaining agreement was in effect. Judge Jenkins found that it was likely

that the Petitioner, Regional Director Joseph P. Norelli on behalf of the NLRB, would ultimately prevail in regard to these allegations against the hotel and that the threat of irreparable harm to the employees, if immediate injunctive relief pending the Board's final determination in the case was not granted, warranted granting the injunction. Accordingly, Judge Jenkins issued an Order immediately enjoining the hotel from terminating employees because of their support for the union, threatening employees with reprisals and promising them benefits to erode their support for the union, and requiring that the hotel immediately reinstate the fired employees and recognize and bargain with the union. Field Attorney Micah Berul appeared as attorney for Petitioner, Regional Director Norelli.

In a related story, Region 20 issued a new complaint against SFO Good-Nite Inn on March 28, 2007, alleging that the hotel fired an employee because she supported the Union and testified in the NLRB proceeding concerning the case discussed above, and failed to reinstate another employee returning from a leave of absence for the same reasons. Upon notice of the Region's complaint decision, the hotel agreed to reinstate those employees immediately, thereby avoiding further injunctive proceedings. An administrative law trial in the matter was scheduled for May 22, 2007, in which the Region was seeking notice posting and backpay the employees were entitled to, but Counsel for the General Counsel of the NLRB, Paula R. Katz and Matthew Peterson, negotiated a settlement remedying the violations, although the Hotel does not admit it violated the Act.

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 of these protected activities

Protected Concerted Activity in Action – Region Settles Kid Chow and ABC Supply Co. Charges

As the column to the left points out, the National Labor Relations Act protects employees who act in concert with other employees for mutual aid and protection, whether or not they have a union. Because the percentage of unionized workers in the U.S. has been in decline for a number of years (there are a number of theories concerning the causes for this phenomenon, a discussion of which is beyond the scope of this article), it is increasingly important that employees are aware of their right to engage in protected concerted activity. In two recent cases, Region 20 achieved settlements on behalf of employees who alleged they were retaliated against because they engaged in protected concerted activity.

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.

San Francisco, CA – In Kid Chow, Inc., an employee alleged that the employer, a company that prepares cold lunches for Bay Area schools, terminated her because she discussed with her co-workers issues relating to hours, wages and working conditions. Before final resolution of Region 20's investigation of the case, which was handled by Field Attorney Cecily Vix, the parties settled the case with the Regional Director's approval on March 30, 2007. By the terms of the settlement, which Vix negotiated with the assistance of Supervisory Attorney/Region 20 Settlement Coordinator Mark D. Berman, Kid Chow does not admit it violated the NLRA, but agreed to make whole the terminated employee for her lost wages and post a notice that makes clear to employees that acting in concert with other employees for mutual aid or protection is protected under the law.

Burlingame, CA – On February 27, 2007, the Regional Director approved settlement in another protected concerted activity case, a charge filed

Unfair Labor Practice Charge Procedures

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 and date the charge.

Once a charge is filed the Regional Office begins its investigation. The charging party is responsible for promptly presenting evidence in support of the charge, which often consists of sworn statements and key documents.

The charged party is then required to respond to the allegations, and will be provided an opportunity to furnish evidence in support of its position.

After a full investigation, the Regional Office will determine if the charge has merit. If there is no merit to the charge, the Region will issue a letter dismissing the charge. The charging party has a right to appeal that decision. If the Region determines there is merit to the charge, it will issue complaint and seek an NLRB Order requiring a remedy of the violations, unless the charged party agrees to a settlement.

against ABC Supply Co. Inc., which alleged that the employer discriminated against and harassed employees because they engaged in protected concerted activity. ABC Supply Co. is a nationwide commercial and residential roofing supply company with branches in over 300 locations throughout the United States. At the conclusion of the Region's investigation, the employer entered into the settlement agreement. By the terms of the agreement, the employer does not admit that it violated the NLRA, but it undertook that it would not harass employees because they engage in protected concerted activity, and the employer agreed to post an NLRB notice in conspicuous places at its Burlingame facility, which informs employees of their right to act together with other employees for their mutual aid and protection, and states the employer's commitment not to harass them for exercising that right. This case was handled by Field Examiner Olivia Vargas.

Region Settles Complaint Allegations against Keystone Schools

Elmira, CA – On March 26, 2007, Regional Director, Joseph P. Norelli, approved a settlement of unfair labor practice allegations against Universal Health Services dba Keystone Schools. The case involved the termination of an education assistant/bus driver who, the Region alleged in a complaint issued on February 28, 2007, was fired because he attempted to form a union with his co-workers. Prior to hearing, the case was settled by an agreement calling for the posting of an official Board Notice to Employees stating among other things that employees would not be fired for attempting to form a union, as well as a full backpay award for the discharged employee. By the terms of the agreement, the employer did not admit that it violated the NLRA. The settlement also required the employer to offer the discharged employee reinstatement, which he accepted, although the Region has learned that the employee has since resigned in order to attend law school (with a head start no doubt in Labor Law I after his firsthand experiences with the NLRB in this case!) Field Examiner Sylvia Meza investigated the charge, and David B. Reeves, Counsel for the General Counsel of the NLRB in this case, negotiated the settlement agreement.

Board Orders Union Security De-authorization Election in Covenant Aviation Security, LLC

Washington, D.C. - On March 30, 2007, a three-member Panel of the National Labor Relations Board (Member Walsh dissenting) reversed Regional Director Joseph P. Norelli's March 23, 2006, dismissal of a union security de-authorization petition filed by employees of Covenant Aviation Security, a security screening services contractor at San Francisco International Airport that is party to a collective-bargaining agreement with SEIU, Local 790. A union security de-authorization petition ("UD petition") allows employees who are covered by a union security contract (a collective-bargaining agreement containing a provision that requires employees covered by the agreement to pay membership dues or fees to the union as a condition of employment) to vote to rescind the union's authority to maintain the union security provision. Section 9(e)(1) of the NLRA requires that the UD petition be accompanied by a showing of interest of at least 30 percent of the bargaining unit covered by a union security contract, stating that they wish to rescind the union's authority to maintain a union security provision. In this case, the Regional Director dismissed the petition because the

Representation Case Procedures

The National Labor Relations Act provides the legal framework for private-sector employees to organize into bargaining units in their workplace, or to dissolve their labor unions through a decertification petition.

The filing of a petition seeking certification or decertification of a union should be accompanied by a sufficient showing of interest to support such a petition. Support is typically demonstrated by submitting dated signatures of at least 30% of employees in the bargaining unit in favor of forming a union, or to decertify a currently recognized union.

Any union, employer or individual may file a petition to obtain an NLRB election.

The NLRA does not include coverage for all workers, excluding some employees such as agricultural and domestic workers, those employed by a parent or spouse, independent contractors, supervisors, public sector employees, and workers engaged in interstate transportation covered by the Railway Labor Act.

employees' signatures in support of the showing of interest accompanying the petition predated the existence of the union security contract by about four months. Relying on the plain language of Section 9(e)(1), as well as the legislative history of that Section and policy considerations, the Regional Director reasoned that the showing of interest was premature because it was collected before the parties had entered their contract, at a time when the employees did not know what benefits the collective-bargaining agreement would provide. The Board majority, however, found the legislative history and statutory language inconclusive, and determined that the statutory purpose of protecting employee free choice was best effectuated by processing the UD petition, whether or not the signatures on the showing of interest pre-dated the union security contract, reinstating the petition and remanding it to the Regional Director for further proceedings.

Enloe Medical Center Agrees to Reinstate Laid-off Employees and Bargain in Good Faith with the Union

Chico, CA – The origins of this labor dispute date back to 2004, when SEIU United Healthcare Workers-West won an NLRB election to represent employees in the hospital's service unit, which also includes Certified Nursing Assistants. After the union's NLRB certification, the hospital refused to recognize and bargain with the union, and the union filed an unfair labor practice charge alleging the hospital was acting in violation of the NLRA. The Board upheld the union's certification and ordered the hospital to recognize and bargain with the union, and the hospital appealed that order to the D.C. Circuit Court of Appeals. While the case was pending on appeal, the hospital then laid off approximately 75 employees, and the union filed new unfair labor practice charges, alleging the hospital unlawfully laid off the employees, reduced the working hours of other unit employees, and re-assigned bargaining unit work without bargaining with the union. The union also alleged that the hospital bypassed the union and unlawfully dealt directly with employees. The D.C. Circuit Court of Appeals upheld the union's certification in March 2007, affirming the Board's order for the hospital to recognize and bargain with the union. In May 2007, the Regional Director approved a settlement of the remaining charges, according to which, the Employer will reinstate all laid off employees with full backpay, restore the bargaining unit employees' terms and conditions that were in effect prior to the employer's changes to them, and agree to recognize the union and bargain in good faith. By the terms of the settlement, the hospital does not admit that it violated the Act. The Union was not a party to the settlement, but the Regional Director unilaterally approved the settlement because it fully remedied the unfair labor practices. This case was handled by Field Examiner Daniel J. Owens.

USF Reddaway to Reinstate Teamster

Santa Clara, CA – On March 8, 2007, Teamsters Local 287 filed an unfair labor practice charge alleging that USF Reddaway, a shipping and delivery company, disciplined and terminated an employee because of his union activities. The parties reached a settlement of the dispute, whereby the employee was reinstated to his position with four weeks of paid vacation, reimbursement for his health insurance expenses under COBRA, and adjustment of his seniority and rate of pay. Field Attorney Kathleen C. Schneider handled the case, and Regional Attorney Olivia Garcia was particularly pleased with the settlement because of the swiftness of the remedy, occurring only two months after the employee was terminated.

To learn more about the National Labor Relations Board and the National Labor Relations Act, please visit the Agency's website at:

http://www.nlrb.gov

To arrange for a presentation about the NLRB in the Bay Area and throughout Northern California, contact Region 20's Outreach Coordinators, Regional Attorney Olivia Garcia, or Field Attorney Cecily Vix at:

415-356-5130

or visit us online at the Internet address above and click on the speakers link.

According to Garcia, "the timeliness of the Board's remedies plays a crucial role in upholding employees' rights under the NLRA to choose to engage in, or not engage in, union or other protected concerted activity. When employees see that their rights under the statute are expeditiously upheld they are less likely to be afraid to assert those rights in the future."

Union Alleged to Have Unlawfully Fired Agent

San Francisco, CA – On April 30, 2007, Region 20 issued a complaint against Service Employees International Union, United Healthcare Workers – West ("UHW-West") for discharging an employee because of her union and other protected concerted activity. This is a situation where UHW-West is the charged employer, and the employee who was terminated worked for UHW-West as a field representative and is also a member of a union, United Staff Workers, which represents the employees of UHW-West. The Region alleges that UHW-West retaliated against the employee because she engaged in activity on behalf of United Staff Workers, as well as other protected concerted activity. The investigation of this charge has been ongoing since 2004, because the UHW-West and United Staff Workers initially decided to submit the matter to their grievance/arbitration procedure. The allegations in the charge were never addressed, however, by that procedure, causing the Region to reactivate the case, which was further delayed by UHW-West's refusal to comply with the Region's investigative subpoena. Field Examiner Scott M. Smith investigated this charge.

Region 20 Issues Complaint against Team Chevrolet Cadillac

Vallejo, CA – Following an investigation of unfair labor practice charges filed by Machinists District Lodge 190, the Region issued a complaint on January 23, 2007, alleging that Vallejo car dealer, Team Chevrolet Cadillac, fired the lead in-plant organizer for the union on Jan. 23, 2007, because of his union activity. The complaint also alleges that the company violated the labor law by: interrogating employees about their union activities; promising employees benefits and improved conditions of employment if they refrained from union organizational activity; and telling employees it would be futile to select the union as their collective-bargaining representative. The union won an election to represent the employees for purposes of collective-bargaining in late February, and the parties are attempting to negotiate an initial collective-bargaining agreement. The administrative law trial will take place in San Francisco, CA on June 19, 2007, and will involve three accomplished and experienced NLRB practitioners. David B. Reeves will appear as Counsel for the General Counsel of the NLRB. The union and company are represented by David A. Rosenfeld and Patrick W. Jordan, respectively.

McGeorge School of Law and Union to Return to Table

Sacramento, CA – On April 27, 2007, Regional Director Joseph P. Norelli approved a settlement between the McGeorge School of Law and McGeorge Officers Association, the union that represents its security officers. The union had alleged that the school had violated the NLRA by, among other things, failing to bargain in good faith by implementing its final contract proposal prior to a good faith impasse. By the terms of the settlement, the school admits no wrongdoing but has agreed to rescind the changes it made to employees' terms and conditions of employment and return to the bargaining table until the parties reach a collective-bargaining agreement or a good faith impasse. Field Attorney Micah Berul handled this case.