



NLRB Region 3

www.nlr.gov

Outreach



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NLRB staff are available to speak to service and advocacy organizations
- Region 3 co-sponsored a program focusing on labor law basics under the National Labor Relations Act

Did you Know?

Workplace rights under the National Labor Relations Act

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 working 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 not to 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.

Careful!

There are limits to the Act's protections.

The National Labor Relations Act protects employees who act 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, generally, for 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 or to refrain from engaging in these activities.

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.

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 a make whole remedy 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.

Regional Director's Corner

It has been my privilege to be the Regional Director of Region 3 since February 2009. Since that time, the Region has undergone a transition in management and supervisory staff, but while their titles may have changed, the faces and names you have come to know and trust have remained the same. More importantly, we remain committed to serving you in a timely and effective manner and to provide opportunities for an open dialogue with the Region to help us better provide the services you need. I hope you will participate in our outreach efforts by attending our Coffee with the Board events, our conference in the Spring 2010, and by inviting us to provide information to the groups you serve. I also encourage you to meet with us in an effort to settle your cases. In the end, our mission is to accomplish the meaningful and timely resolution of labor disputes and we are dedicated to providing you with all the assistance and expertise necessary to attain that goal.

Please contact us if you need assistance. Our information officer is on duty every day to answer your questions. Our website, www.nlr.gov, provides a great deal of useful information as well as the means to file documents with us. I encourage you to please make use of this tool, for, as we progress toward the maintenance of electronic files, this will enable us to more effectively and efficiently provide you with excellent customer service. I look forward to meeting you and working with you in the future.

Rhonda P. Ley, Regional Director

Coffee with the Board

On June 11, Region 3 hosted its second informal meeting at the Region's Buffalo office attended by approximately 30 practitioners, union and employer representatives, and representatives of public interest groups. After opening remarks by **Regional Director Rhonda Ley**, who introduced the staff and also gave an overview of New E-filing Initiatives, attendees listened to several presentations by **Assistant to the Regional Director Paul Murphy** concerning recent notable Board decisions; **Regional Attorney Michael Israel and current Deputy Regional Attorney Beth Mattimore** on Section 10(j) injunctions; **Senior Field Attorney (now Supervisory Attorney) Lillian Kleingardner** on contract bar issues; **Senior Field Attorneys Ron Scott and Kevin Kitchen** on settling cases with Region 3 and the Board's pilot project for electronic issuance of Board and ALJ decisions. Beverages and desserts were served and there were discussions with Region 3's staff concerning questions and issues raised by the presentations.

The Region intends to have more of these events in the future in Rochester, Syracuse and Albany and is planning a labor law conference in Buffalo next Spring.

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 of this newsletter. 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 Region 3's Resident Office located in Albany, New York.
- Prepare your petition on our website at: 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 the petition was filed.
- Be prepared for the election to be conducted within 42 days from the date the petition was filed.
- Always call the assigned Board agent with questions or concerns.

Region 3 Distributes Largest Backpay Settlement in its History

Approximately 70 employees from the Tonawanda, NY plant of E.I. DuPont de Nemours and Company assembled at Region 3's Buffalo office on February 4, 2009, to collect backpay and benefits checks totaling \$3 million as part of a settlement of unfair labor practice cases. The cases had a long history, beginning in July 2001 when DuPont laid off unit employees represented by Paper, Allied Industrial, Chemical and Energy Workers International Union, Local 1-6992. Since that time, the Union merged with the United Steelworkers and is now known as the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

The Union filed several charges in 2001, resulting in a lengthy investigation, followed by 15 days of trial in 2002. In February 2006, the Board upheld ALJ John Clark's finding that the company had unlawfully laid off the employees and ordered their reinstatement and backpay. The Second Circuit Court of Appeals enforced the Board Order in June 2007.

The Region's Compliance Officer, Sandra Larkin, prepared a voluminous Compliance Specification in September 2008. The Region was gearing up for a compliance hearing when the parties agreed to meet with a settlement judge at a conference in Buffalo. In November 2008, ALJ Marc Rubin spent two days in the Regional Office, assisting the parties to reach this notable settlement.

Litigation News

An employee was reinstated to his job after Region 3 received a favorable decision from an administrative law judge in *Empire State Weeklies, Inc., JD-18-09 (May 13, 2009)*. The complaint alleged, and ALJ Ira Sandron found, that the Employer discharged an employee for his union-organizing activities in violation of Section 8(a)(3) of the Act and, also, because of his protected-concerted activity, in violation of Section 8(a)(1) of the Act. The ALJ further found that the Employer had unlawfully interrogated the employee and had created the impression that his activities were under surveillance. The Region had filed a petition for a Section 10(j) injunction in district court in this matter, seeking, among other remedies, the interim reinstatement of the terminated employee. After the ALJ issued his decision, the Employer offered to reinstate the employee. As a result, the parties in the 10(j) proceeding stipulated to the dismissal of the case in federal court. The stipulation, which was approved by the district court, required the Employer to post a notice in its facility advising employees of their Section 7 rights to form, join and assist unions.

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 and that they could not be lawfully discharged for such action.

(Litigation News Continued)

Region 3 recently received a favorable administrative law judge's decision in *Dutchess Overhead Doors, JD-31-09 (July 1, 2009)*. The complaint alleged that the Employer had violated Section 8(a)(5) of the Act by insisting, as a condition of reaching a successor collective-bargaining agreement, that the Union agree to amend the existing recognition language to delete the reference to Section 9(a) status and substitute instead Section 8(f) status; a unilateral increase in wage rates; and a refusal to furnish information. ALJ Bruce Rosenstein found violations on all allegations in the complaint. The case is presently before the Board on exceptions taken by the Employer to the Judge's decision.

Region 3 also obtained a significant settlement in *Pontiac Nursing Home, Cases 3-CA-26925 and 3-CA-27002*, including a special remedy, after receiving Board authorization to seek Section 10(j) injunctive relief in district court, but before filing the petition for an injunction. These cases involved a small nursing home that had unlawfully withdrawn recognition from an incumbent union, and had refused to sign a collective-bargaining agreement that had been ratified by the union membership. The matter settled shortly before the hearing when the Employer agreed to sign a Board formal settlement agreement. The terms of a formal Board settlement agreement track the complaint allegations and also usually provide for the entry of a consent court judgment enforcing the Board order. The Region required a formal settlement agreement in these cases because the Employer had previously violated the Act, as found by the Board in *Pontiac Care & Rehabilitation Center, 344 NLRB 761 (2004)*.

The settlement agreement required the Employer to recognize the Union, execute and abide by the terms of the contract, make employees whole for the loss of a pay increase resulting from the Employer's failure to honor the terms of the contract, and post a Board notice. Because the Employer was a recidivist, the settlement agreement also included the unusual remedy of having a representative of the Employer read the Board notice to the employees on worktime in the presence of a Board agent. The settlement agreement is presently pending before the Board for approval.

Discriminatees Must Begin Immediate Search for Work

On September 11, 2007, the Board issued its decision in *Grosvenor Orlando Associates, LTD., d/b/a The Grosvenor Resort, and its general partners Grosvenor Properties, Ltd., Donald E. Werby and Robert K. Werbe, 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 two-week period. . ." Thus, a discriminatee will lose backpay if there is more than a two-week period after his/her termination, layoff or refusal to hire in which s/he does not engage in a search for work. However, even if the discriminatee fails to

Learn More:

The NLRB website, 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

(Litigation News Continued)

search for work during this two-week period, the backpay period does not stop. If a discriminatee unreasonably delays an initial search, the Board will toll 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, for instance, in cases involving an unlawful discharge or refusal to hire, the Board requires discriminatees to mitigate (offset) the backpay by beginning to look for another job in the same or similar line of work promptly. If a discriminatee is unable to establish that s/he actively sought to mitigate damages, s/he may face the risk of having whatever money is owed reduced. **Accordingly, discriminatees are urged to keep careful records of when and where they sought employment.**

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

Representation Case News

**Dispute Involving UNITE HERE,
Workers United and/or SEIU**

Pending before the Agency are numerous petitions and unfair labor practice charges raising issues related to a dispute between UNITE HERE, Workers United and/or SEIU. The dispute involves the decision of some of the constituent parts of UNITE HERE, including some local unions and some regional district councils, to disaffiliate from UNITE/HERE and to affiliate with the Service Employees International Union (SEIU). As part of the effort to affiliate with the SEIU, these former constituent parts of UNITE HERE have formed a new organization, Workers United. UNITE HERE has challenged the validity of the attempted disaffiliation effort claiming that it is not allowed under the UNITE HERE Constitution. As a result of this dispute, it appears that many employers have received letters both from UNITE HERE and from Workers United, or one of its constituent locals or regional councils, claiming to be the entity that represents the employer's employees. In the face of these competing claims, employers have taken a variety of actions. Some have ceased remitting dues to either side until the internal union dispute is resolved. Others have taken other actions that are alleged in pending charges as unilateral changes. Some of the employers have filed RM petitions claiming that the conflicting claims raise a "question concerning representation" (QCR) warranting a representation election.

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TOLL FREE NUMBER:

The Agency also has a toll free telephone number that offers a general description of the Agency's mission, referrals to other related agencies and access to an Information Officer based upon the caller's telephone number. A Spanish language option is also available. Toll free access is available by dialing:

1-866-667-NLRB (1-866-667-6572)

or

(TTY) 1-866-315-NLRB (1-866-315-6572) for hearing impaired

(Representation Case News Continued)

Several RM petitions and unfair labor practice charges involving the dispute have been filed in Region 3. In 3-RM-790, involving a petition filed by First Colonie/Desmond Hotel, located in Albany, the Region recently issued a decision dismissing the petition, concluding that the dispute did not raise a QCR, where there was substantial continuity in the representation of the employees at the Hotel after the disaffiliation of the local union and joint board from UNITE HERE. Unfair labor practice charges filed against the hotel, alleging several violations including a withdrawal of recognition, are under investigation. Another RM petition involving a different employer is under initial processing.

Speakers Available

Members of the Region's staff are available to make presentations before any group, including labor practitioners and unions, classroom groups, 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 Director Rhonda Ley at (716) 551-4938; Regional Attorney Michael Israel (716) 551-4947; Assistant Regional Director Paul Murphy (716) 551-4935; or, in the Albany area, Resident Officer Barney Horowitz (518) 431-4156.

Rhonda P. Ley, Regional Director
National Labor Relations Board, Region 3