Region 10 PERSPECTIVE

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CHIP'S CORNER

As discussed in our last edition, on May 1, 2012, Region 10 and Region 11 embarked on a pilot consolidation program. So, how is that going, you ask? Well, from our Perspective it is going just fine. We have pushed down and established lines of authority for decision making in less controversial cases so I can appropriately concentrate on the more difficult or high profile cases. We have been able to transfer, assist or otherwise share work when one office or the other has been overloaded. We have also shared ideas as to how we can best operate as a full region without totally erasing the self-identity of each office. More importantly, we were able to get the staffs from Birmingham, Atlanta and Winston-Salem together from August 1 through 3 for joint training and for the purpose of enhancing camaraderie between the offices. All that and more have been achieved while maintaining the high standards that you and we share in terms of quality and timely case handling.

Now to our latest news: On October 9, Acting General Counsel Lafe Solomon proposed that the Nashville Resident Office, which is currently part of Region 26-Memphis, be moved to Region 10 while the remainder of Region 26 be consolidated with Region 15-New Orleans. That proposal is currently awaiting input from the staffs of these offices and other stakeholders who may be affected by the proposed change.

And now a plea: Effective October 1, the official case files for

Regional Director C.T. "Chip" Harrell, Jr.

charges and petitions filed on or after that date is an electronic file rather than the traditional paper file. There are obvious advantages to this electronic files, including that they allow for easy access by Agency personnel throughout the country when such access is needed. The downside is that the only way to get information submitted in paper format into the system is by having the documents scanned. This can be very time-consuming in large cases. Accordingly, I ask — even plead — that whenever possible you submit documents through the Agency's E-File system and not by fax or mail. Paper courtesy copies are not necessary. Please remember, too, that the E-File system obviates the need to send documents at my personal email address. With three offices now and another on the way, you can imagine how many emails I already receive on a daily basis. Please save me a little time by just using the E-File system – it works very well!

Thanks,
Chip

CASENOTES: Sub-Region 11, Winston-Salem

The past year has presented a number of interesting trends for Sub-Region 11. At the top of the list is the 100% litigation win rate, which was shaped by a combination of ALJ and Board decisions in which the Sub-Region achieved wins in six cases. These cases were hard-fought and well-litigated on both sides; we continue to appreciate the high level of professionalism and collegiality demonstrated by the Regional bar in their work before the Agency.

In addition, through the perseverance and professional conduct of counsel on all sides, we were able to achieve extremely good settlements in a large number of cases, including *Stabilus,* Cases 11-CA-020386 and –023077; *EBI,* Cases 11-CA-061444 and –068477; and *Grede II LLC*, Cases 11-CA-022980, et al., garnering in excess of $1,081,842 in back pay for over 497 discriminatees. These results would not have been possible without the productive working relationships that exist with counsel and other representatives and parties who regularly appear before the Sub-Region. We believe this inures to the benefit of all concerned, and we do not take it for granted.

In regard to overall numbers, this year showed a fairly striking downturn in case intake, with a total of 473 cases filed this fiscal year versus 532 filed for the previous fiscal year. Of the cases filed, the Sub-Region determined that 36% had merit, a percentage that is two points above the national average for merit determinations. In those merit cases, we issued a total of 30 complaints this past fiscal year. Although most settled before going to trial, hearings were held in four cases. The Atlanta staff of Region 10 was extremely helpful in handling several cases originating in Winston-Salem upon which complaint issued, by performing the investigative, complaint and/or post-complaint work in *Kindred Nursing Home,* Case 11-CA-066552; *APWU Local 375*, Case 11-CB-073902; *USPS*, Case 11-CA-076110; *Boeing Aerospace*, Case 11-CA-077979; and *Halocarbon,* Case 10-CA-080681.

Yet another interesting trend in Sub-Region 11 is the increasing percentage of cases filed that involve issues related to protected concerted activity. A review of all of our Category 3 case filings, which are defined generally as cases with the highest impact on public policy, show that at least 25 percent of these in FY12 were protected activity cases, and we are seeing filings in a wider variety of workplaces, including nursing homes, restaurants, medical offices and facilities, and both large and small businesses. Although most of these cases involve the discharge of one or more employees, the cases often also involve "bad rules" in employee handbooks, which prohibit employees from engaging in a variety of conduct protected under Section 7 of the Act, including, for example, discussing wages with one another.

The protected concerted activity area clearly is one in which more education, both of employers and their representatives, as well as employees, would be useful. To that end, we are always interested in providing outreach services to all the constituencies within our territory, so don't hesitate to ask for one of us to speak to any employer association or union that you are associated with or represent. We can readily provide a talk on the rights of employees and responsibilities of employers in this still-emerging area of the law.

We look forward to our continued work together in the coming year.

Jane P. North
Deputy Director, Sub-Region 11

BENNETT NAMED RESIDENT OFFICER IN BIRMINGHAM

On October 4, 2012, I was sitting at my desk planning activities for the long Columbus Day holiday, when my telephone rang and the voice on the other end said, "Congratulations on your selection as the new Resident Officer in Birmingham." After a pregnant pause, I managed only to make a most ineloquent comment like, "You are kidding me." Regional Director Chip Harrell assured me that it was no joke and that he looked forward to working with me. My colleagues in Birmingham and Atlanta warmly congratulated me, and former RD Martin Arlook wrote to wish me the best of luck.

I am excited and humbled by my appointment to lead the Birmingham Resident office in which I have served for the last 30 years. I look forward to playing my part in helping the Agency continue to do great things in Birmingham, assisting Regional Director Harrell in accomplishing the Agency's mission and working with a group of examiners, attorneys, and administrative staff who are passionate about enforcing the Act, experienced and good at their jobs.

For more than 36 years, C. Douglas Marshall served as the RO in Birmingham. For many practitioners and labor representatives he was the face of the NLRB here in Alabama. Although there will be a new face now, practitioners and labor representatives can rest assured that there will not be a change in the quality service provided. I am cognizant of the fact that I have some mighty big shoes to fill, both literally and figuratively, but I welcome the challenge and look forward to working closely with the Alabama labor community.

Belinda Bennett

SOLOMON ANNOUNCES CHANGES TO RESTRUCTURING PROPOSAL

Acting General Counsel Lafe Solomon has announced changes to a regional restructuring plan proposed in July and currently under review, pertaining solely to the Regional Office in Memphis, Tennessee (Region 26) and adjacent Regional Offices, including Region 10. Under the adjusted proposal, the Regional Office in Memphis and Resident Office in Little Rock, Arkansas would move to the jurisdiction of the Regional Office in New Orleans, Louisiana (Region 15), while the Resident Office in Nashville, Tennessee would move to the jurisdiction of the Atlanta Regional Office.

The Nashville Office would become a Resident Office of Region 10 and its staff would report to the Regional Director there. The modification is informed by the Agency's experience in a pilot program involving Regions 10 and 11, and provides for a more logical consolidation because Nashville is considerably closer to Region 10 than Region 15. Click here for details of the changes by county.

RECENT DECISIONS

USA Fire Protection, 10-CA-038074 — Board decision finding Employer unlawfully withdrew recognition

The Heil Co., 10-CA-080758 — Board order denying Employer's petition to revoke subpoenas

Martin Law Group, 10-CA-078395 — Board order denying Employer's motion to dismiss

Ports America, 10-RC-080061 — Board order denying request for review of Regional Director's Decision and Direction of Election

USPS, 10-CA-038097 — ALJ decision finding Employer unlawfully delayed providing requested information

Boeing Co., 11-CA-077979 — ALJ decision finding Employer promulgated unlawful rule prohibiting union discussion

USPS, 11-CA-076110 — Board decision finding Employer unlawfully delayed providing requested information

US Infrastructure Corp., 11-RD-000732 — Board decision on challenged ballots remanding for hearing

StageTech Productions, 11-CA-022813 — Board decision setting aside settlement agreement and finding violations of Section 8(a)(1), (3) and (4)

PCA Corner: A Regular Look at 8(a)(1)

This regular column will focus on one or two recent Board decisions concerning protected concerted activity. In this edition, we feature Board decisions that issued in September 2012. Both cases examine whether an employee's conduct is sufficiently egregious to lose the protection of the Act. In making that determination, the Board balances *Atlantic Steel Factors*: 1) the place of the discussion, 2) the subject of the discussion, 3) the nature of the employee's outburst, and 4) whether the outburst was, in any way, provoked by the employer's unfair labor practice.

In *Fresenius USA Manufacturing, Inc.*, 358 NLRB No. 1389 (2012), during a decertification campaign, three union newsletters with anonymous handwritten statements appeared in the employee break room. One handwritten statement read "Dear Pussies, Please Read!" Another handwritten statement on a second newsletter read, "Hey cat food lovers, how's your income doing?" The third newsletter contained a handwritten statement which said "Warehouse workers, RIP." Several female warehouse workers complained that the statements were vulgar, offensive, and threatening. The employer ultimately determined that prounion employee Grosso was responsible and terminated him based on the comments as well as his dishonesty during the investigation.

The Judge concluded that Grosso lost the protection of the Act, even though she concluded that the subject matter of his comments—Grosso was attempting to encourage union support—weighed in favor of protection. However, the Judge found that the location and nature of Grosso's comments and the absence of employer provocation weighed against him. In agreement with the Judge, the Board (Member Hayes dissenting) found that the subject matter of Grosso's comments weighed strongly in favor of protection. Contrary to the Judge, the Board found that the location of the comments—an employee break room—is generally an appropriate place to discuss union issues, as it is unlikely to disrupt production, and either favored protection, or, at most, was a neutral factor. In disagreement with the Judge over the nature of the outburst, among other things, the Board noted that Grosso's comments were impulsive. In addition, although the "pussies" reference could be viewed as vulgar, the term can also refer to a weak person. In that regard, the Board also noted that profanity had been used at the worksite with only minor repercussions. Grosso's "RIP" comment was devoid of any physical or threatening conduct that would warrant treating it as something other than a figure of speech. Finally, in analyzing whether the outburst was provoked, there was no evidence that the employer engaged in any provocation. In situations in which employee remarks are directed toward coworkers, rather than employer officials, the Board has found that factor to be neutral, neither weighing in favor of, nor against protection. On balance, the Board concluded that employee Grosso did not lose the protection of the Act.

In *Coca Cola Puerto Rico Bottlers*, 358 NLRB No. 129 (2012), the Board also found that the employee at issue did not lose the protection of the Act. The case concerned a work stoppage during a contractual hiatus period. Among other things, the employer terminated five shop stewards for encouraging other employees to stop working. The Board, in disagreement with the Judge, concluded that the stewards were engaged in protected concerted activity when they encouraged employees to join the strike. The employer had also terminated steward Marrero for his statements to employer official Colon. During the walkout, Marrero raised an incident with Colon that had occurred a number of years before when Colon had worked for another employer and had been shot in that employer's parking area, necessitating extensive surgery and hospitalization. Marrero stated, "It's good that this is happening to you; that's why they shot at you, bastard." Upon hearing that, Colon immediately left the area to wait in his office until the police arrived.

In finding that Marrero's statements were unprotected, the Judge concluded that they violated the Employer's rules of conduct. The Board disagreed, finding that Marrero's statements did not remove him from the protection of the Act. In that regard, the Board noted that although the exchange between Marrero and Colon took place in the employer's facility, there was no evidence that any employees except shop stewards heard their conversation; the remark referred to a past event, did not occur in the context of violence, and did not threaten future violence; and the comment was directly responsive to Colon's attempt to move the union representative and shop stewards from the employer's property which the stewards viewed as an unfair labor practice. The Board also found that Marrero's statement to another employer official, Troche, to "shut up, you asshole, this has nothing to do with you" was also protected noting that the remark did not contain a threat and was not heard by other employees.

Both cases demonstrate the extent of protection accorded employees in the course of protected concerted activity. They also illustrate that there is often disagreement in this area as the Board reversed the Judge in both cases, and in one of those cases a Board member dissented from the majority.

— Sub-Region 11 Deputy Regional Attorney Lisa R. Shearin

Meet the Region's New Professionals

If you've dealt with Region 10 in Atlanta, Winston-Salem, or Birmingham lately and thought you heard a new voice or saw a new face, you are not imagining things. Region 10 officially introduces its talented new professionals:

Birmingham Field Attorney **Shelly Skinner** was born in Birmingham, Alabama, and raised in Birmingham and San Diego, California. Shelly is a double Longhorn, having received a BS in Economics with Honors and a JD degree from the University of Texas at Austin. Additional honors include Phi Beta Kappa during her undergraduate career and receiving the Constangy Brooks & Smith Diversity Scholars Award and the University Co-op Public Interest award during law school. Shelly has had a unique opportunity to work in several regional offices in a short time to accommodate her husband's medical education. She started her Board career in 2007 in then Region 11 (Winston-Salem), followed by a six-month detail in Region 15 (New Orleans) and a transfer to the Region 5 (Washington, DC Resident Office), where she remained just shy of three years. She joined the Birmingham resident office in June 2012. Shelly enjoys advocating for parties whose workplace rights have been infringed upon and is especially fascinated by the intricate details of other people's jobs. In her leisure time, she enjoys cooking, hiking, and perusing travel magazines. A little-known fact about Shelly is her status as a "mathlete" in middle and high school. Shelly's dream trip destination is Bora Bora because of its remoteness and beauty.

Atlanta Field Attorney **Nicholas Rowe** was born in Riverside, California. Nicholas is a magna cum laude and Phi Beta Kappa graduate of UCLA, where he received a BA in Political Science with a minor in music history. He moved across the country to attend New York University Law School and received his JD degree in 2012. During law school, Nicholas served as a Peggy Browning Fellow/law clerk for the NLRB Division of Judges in San Francisco and as a legal intern for Region 2 (Manhattan). Nicholas joined the Atlanta office in August 2012 and enjoys the job not only because he believes that the substantive work is worthwhile, but, as an added perk, the position allows him to live in the heart of Atlanta. Nicholas' passions outside of work include all sports, and he is a rabid LA Angels and LA Lakers fan. He also enjoys television drama and live music in his spare time. Something that you might not know about Nicholas is that he was a classic rock radio DJ for UCLA radio. Nicholas' ideal adventure would be a summer jaunt around the country to see baseball games played at every major league park.

Winston-Salem Field Attorney **Sarah Bencini** was born and raised in High Point, North Carolina. She received a BA in Spanish with a minor in Economics from Davidson College in 2006 and was the recipient of a presidential scholarship. Sarah enjoyed the opportunity to study abroad for a year through Middlebury College in Madrid, Spain. She received her JD from UNC-Chapel Hill School of Law in 2010 and joined the Winston-Salem office in October of that year. Sarah has the distinction of being Winston-Salem's first and only bilingual agent. She opines that the best thing about the job is her co-workers. Her outside interests including listening to music, traveling, and watching sports and movies. She describes herself as a die-hard Tar Heel fan and, as such, bleeds blue. Something unusual that you might not know about Sarah is that she is part Peruvian. Sarah is eager to travel to India someday because of its vibrant culture.

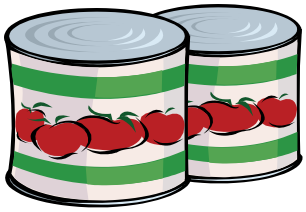
Winston-Salem Field Examiner **Brent Kensey** was born in Indiana, Pennsylvania. He received a BA in Computer Science and a BA in Asian Studies in 2010 from Indiana University of Pennsylvania and graduated summa cum laude. Brent also received a Masters in Employment and Labor Relations from his alma mater in 2011, again graduating summa cum laude. Brent's prior work experience includes a stint as a web developer with the American Economic Association, and he is frequently pestered by his co-workers for computer assistance. Brent joined the Winston-Salem office in March 2012 following a six-month co-op in Region 16 (Fort Worth). Brent considers the best thing about working for the Board to be the people we serve with all their varied stories. In his free time, Brent writes smartphone applications, runs, and explores city parks. He claims that he can speak Chinese (or that he used to be able to). Brent's dream travel venture is scuba diving at the Great Barrier Reef in Australia.

Winston-Salem Field Attorney **Joel White** was born at Robins Air Force Base, Georgia. A self-described military brat, Joel was raised in Georgia, Utah, Japan, North Dakota, and North Carolina. Joel received a BA in sociology with a minor in political science from East Carolina University in 2008, and received a JD from UNC-Chapel Hill School of Law in 2011. During law school, Joel served two summers as a law clerk for the Winston-Salem office. Following law school, Joel worked for PRA International and negotiated and drafted pharmaceutical contracts for major drug companies. He joined the Winston-Salem office in May 2012. Joel enjoys his position because the nature of the work ensures that no two days are ever the same. In his spare time, Joel enjoys NFL football (Cleveland Browns) and soccer (DC United), spending time with his wife, playing videogames, and Harry Potter. As a history buff, Joel would like to travel to France (again) but this time take his wife!

Winston-Salem Labor Management Relations Aide **Kevin Crawford** was born in Atlanta, Georgia. In 2012, Kevin received a BA in Sociology from Saint Leo University, in Saint Leo, Florida, and graduated magna cum laude. Kevin served in the US Navy for 20 years and worked as an aviation storekeeper, where his duties included managing inventories of repair parts and general supplies that support ships, squadrons and shore-based activities; producing, receiving, storing and issuing material and repair components; and utilizing financial accounting and database systems to perform inventory and financial management functions. Kevin joined the Winston-Salem office in January 2010 as an office automation assistant. He was accepted into the Agency's Bridge program in July 2012 and is now training to become a field examiner. Kevin indicates that the best things about the job are the benefits and the travel opportunities available in this office. To unwind from his self-described "perfectionist" tendencies, Kevin's extracurricular activities include weightlifting, fishing, and spectator sports. Kevin's dream destination is to travel to Pearl Harbor, Hawaii, to visit his daughter, who is in the Navy and presently stationed aboard the U.S.S. *Okane*.

Winston-Salem Law Clerk (trainee) **Ashley Banks** was born in Winston-Salem, North Carolina. She graduated from Duke University with an AB in Political Science and a minor in African and African American Studies. Ashley graduated cum laude from Tulane University Law School in New Orleans, Louisiana. In law school, she was the recipient of the Tulane 34 Award and Louisiana State Bar Association's Law Student Pro Bono Award. Ashley joined the Winston-Salem office in August 2012. Prior to that she worked as a third-year law extern in Region 15 (New Orleans). She also previously served as an intern for SEIU. According to Ashley, the most rewarding things about the job are the constant challenge of learning new things as well as the opportunity to use her legal education toward protecting workplace justice in a practical way. Kickboxing, reading, and cheering for Duke basketball are activities that she enjoys outside of work. As to the latter, Ashley knows to temper that enthusiasm in the workplace as she is vastly outnumbered by Carolina faithful. Ashley hopes to travel to Accra, Ghana, as she is fascinated by African history, cultures, and traditions. She plans to sit for the North Carolina bar in 2013.

— Lisa R. Shearin, Deputy Regional Attorney, Sub-Region 11



OFFICES GIVE BACK GENEROUSLY

In the critical months leading up to the new school year, the Atlanta and Birmingham offices once again whole-heartedly participated in the Feds Feed Families campaign. The Atlanta office smashed its previous totals by contributing 791 pounds of canned and dry groceries to Atlanta Community Food Bank. The Community Food Bank of Central Alabama benefitted from the 364 pounds of food donated by the Birmingham office. Thanks to all who helped meet an important community need!

Winston-Salem's Notable Compliance Successes

This fiscal year, Sub-Region11 had a lot of success in the compliance area. The most notable cases were:

Stabilus, 355 NLRB No. 161 (2010): This case involved with a single 8(a)(3) discriminatee who endured a significant financial hardship as a result of his unlawful 2004 discharge at the end of a contentious union organizing campaign. Following a favorable administrative law judge's decision in September 2005, the parties waited until August, 2010, for an affirming Board decision. Computing the Charging Party's back pay was complicated. It it involved computing the return on investment of his 401(k) plan, which had changed administrators during the back pay period and included several investment funds. Further, the Respondent had reinstated the Charging Party in 2006 to a different shift, which the Region determined resulted in a loss of overtime. Ultimately, the case settled for a total of $154,000, which represented 95% of the back pay, with interest, claimed by the Region.

Teamsters Local 509 (ABC Studios), 357 NLRB No. 138 (2011): This case was litigated as a consolidated complaint and compliance specification. In December 2011, the Board issued an Order adopting the Administrative Law Judge's determination that the Union had unlawfully refused to refer a driver from its exclusive hiring hall because he was not a union member. The Board fully agreed with the amount of net back pay ($55,467.62) claimed by Region in its compliance specification. This Board Decision is significant for the issue of a discriminatee's obligation to mitigate his or her back pay. At hearing, the Charging Party testified that he had interim earnings in every quarter of the back pay period. However, in an Expense, Search For Work and Interim Earnings Report submitted by the Charging Party to the Region, we wrote: *I was unemployed and looking for work as directed by Va. Employment Commission. Work with MKC became unavailable and I lived off my savings and tax return as my unemployment was frozen. My records of the job search are too sketchy to document for these proceedings, so I will not try.* On this basis, the Union claimed that the Charging Party's back pay should be reduced by a 2-month period. The Board adopted the ALJ's analysis that, notwithstanding the above statement, the Union had not met its burden to establish that Charging Party had not made reasonable efforts to find interim employment. This case is currently pending on review before the D.C. Circuit.

Rosetta B. Lane was the trial attorney in this case, and Jennifer A. Corbin represented the Region as the compliance officer.

Alton H. Piester, LLC, 357 NLRB No. 116 (2011): This case raised two issues concerning the amount of back pay due the Charging Party, whom the Board had previously found was unlawfully terminated because of his protected concerted complaints concerning a wage dispute. The Region's claimed amount of $72,538.47 plus interest, was affirmed by the ALJ and adopted by the Board. The first issue concerned the method of computation utilized by the Region. In this regard, the Board agreed with the Region that computing the Charging Party's back pay based on the earnings of the two highest drivers was reasonable in view of the Charging Party's pre-discharge earnings which established that he was consistently one of the two highest paid drivers.

The second issue concerned whether the Charging Party should be barred from reinstatement in light of three traffic violations and two accidents he incurred prior to his unlawful discharge. It is undisputed that Respondent was aware of the driving infractions at the time of the Charging Party's discharge, and they were not cited as a reason for his discharge. The Board found that, although the evidence demonstrated that Respondent's insurance premiums would likely have increased if the Charging Party was reinstated, and Respondent, with one exception, had not always hired drivers for this reason, Charging Party was entitled to back pay for the entire period. This case is pending review before the 4th Circuit.

Shannon Meares was the trial attorney here, and Jenny Dunn represented the Region as the Compliance Officer.

— Acting Assistant to the Regional Director Nancy Wilson

To whom should electronic remedial notices be distributed when a union commits an unfair labor practice?

The Office of the General Counsel has clarified a potentially ambiguous NLRB Operations-Management memorandum that originally issued on May 24, 2012, which stated that unions should electronically distribute remedial notices to members and post the notices electronically on any intranet site or website that the union customarily uses to communicate with its members. The original memorandum also stated that notices that have to be read to members must be read at union meetings. The revised memo, OM 12-57, issued on August 22, 2012, makes it clear that in the "large majority of cases" against unions, electronic communication, notice posting and notice reading should reach *all bargaining unit employees*, not just union members.

The revision and the original memo apply only to unfair labor practices committed by unions in their capacity as labor organizations and not those cases when charges have been filed against a union in its capacity as an employer. — N.R.

AGENCY RELEASES THIRD SOCIAL MEDIA REPORT

On May 30, 2012, Acting General Counsel Lafe Solomon issued a third report on social media cases brought to the agency, this time focusing exclusively on policies governing the use of social media by employees.

The Operations Management Memo details seven cases involving such policies. In six cases, the General Counsel's office found some provisions of the employer's social media policy to be unlawful. In the seventh case, the entire policy was found to be lawful.

Provisions are found to be unlawful when they interfere with the rights of employees under the National Labor Relations Act, such as the right to discuss wages and working conditions with co-workers.

"I hope that this report, with its specific examples of various employer policies and rules, will provide additional guidance in this area," Mr. Solomon said in releasing the memo. Two previous memos on social media cases, both of which involved discharges based on Facebook posts, issued in January 2012 and in August 2011.

REGION 10 COMMUNITY OUTREACH

- On June 21, 2012, Regional Attorney Mary Bulls and Supervisory Attorney Lisa Henderson held a workshop at the Georgia Labor-Management Conference in Jekyll Island GA. The session, which has become a favorite at this annual gathering, focused first on social media and then introduced participants to the Agency's new and improved website.
- On July 11, 2012, Regional Director Chip Harrell conducted a "Chat with Chip" informational session via videoconference with two management attorneys and two union business representatives Birmingham, Alabama. Now-retired Birmingham Resident Officer Douglas Marshall also participated.
- On August 10, 2012, Senior Attorney Kerstin Meyers participated in a CLE presentation on *D.R. Horton, Inc.*, 357 N.L.R.B. No. 184 (2011). There were 110 people in attendance, and the talk lasted approximately an hour.
- On August 17, 2012, RA Bulls served on a panel of government officials at the EEOC Atlanta Seminar sponsored by that agency's Atlanta District Office. Ms. Bulls presented a general overview of the NLRA, including procedural issues, jurisdiction and the kinds of cases we handle.
- On August 20, 2012, RA Bulls spoke about the role of the NLRB and union organizing campaigns at the Interfaith Worker Justice Meeting, Atlanta Organizing Council at the Atlanta University Interdenominational Center.
- On September 13, 2012, SA Henderson represented the Agency in a panel discussion, "How Social Media Affects Employers," facilitated by Martin & Miller PLLC's Atlanta office. For an audience of labor and employment lawyers and human resources professionals, Henderson discussed recent trends in NLRB decisions involving this developing media form.
- On September 13, RA Bulls discussed developing trends in NLRB law with Dr. Stephanie Samms' labor law class at Savannah State University's School of Business Administration.
- On September 24, 2012, Field Attorney Katherine Chahrouri attended the LERA Alabama Chapter Annual Meeting in Orange Beach, Alabama. Former RO Marshall was a charter member of the Alabama chapter, and his "NLRB Update" had served as the opening session of this conference for the past 20 years. In "Trends and Decisions at the NLRB," Chahrouri updated the attendees on issues of both local and national interest, including Board decisions in social media and the Act, bargaining unit composition, overly broad work rules, mandatory arbitration requirements, bannering, non-employee access to employer facilities, independent contractors as employees under the Act, and many other topics. She also included information about the status of the Board's rulemaking efforts (R-case and notice posting), remedies, 10(j) injunctions, case processing statistics, composition of the Board/recess appointments and related issues, the consolidation of Agency offices, and the recent extension of the Agency's budget.
- On October 16, 2012, Region 10 participated in the annual meeting of the ABA Practice and Procedure under the NLRA Committee hosted by the Employment Law Department of Paul Hastings LLP's Atlanta office. Three Regional Directors (Atlanta, Tampa and San Juan, Puerto Rico) and their top staff met with local practitioners to discuss practice issues that have arisen in the Regions and new developments at the Board.

RD SECRETARY LUCAS RETIRES

On August 31, 2012, Nellie L. Lucas, a long-time member of the Region 10-Atlanta staff, retired as Regional Director's Secretary. Lucas, shown here with retired Regional Director Martin M. Arlook, served the National Labor Relations Board for 37 years and was feted at a local restaurant in recognition of her valued contributions to the office and agency. Nellie was always patient and kind and could be counted on for a warm smile to brighten any day. Her well-deserved retirement leaves a void in the halls of Region 10!

CHAHROURI NAMED LOCAL LERA VEEP

On September 25, 2012, Field Attorney Kathy Chahrouri was elected to serve as the Birmingham Vice President for the Alabama LERA chapter. The Labor and Employment Relations Association (LERA), formerly the IRRA, was founded in 1947 and is a major professional group for those interested in labor relations and human resources. The Alabama Chapter-LERA, chartered in 1985, brings together labor, management, academics, government, advocates and third party neutrals to explore issues of local, regional and national importance in labor relations. The chapter is governed by a president, four regional vice presidents, a secretary and a treasurer. The 60-member chapter holds a dinner meeting in Birmingham in the Fall, an annual Alabama legislative update in Montgomery at the beginning of each Spring legislative session, a luncheon meeting in Mobile in May, a luncheon meeting in cooperation with the Huntsville Labor-Management Committee in June, and a two-day Fall Conference at Orange Beach in September. Kathy follows a tradition of Alabama LERA service in the Region 10 Birmingham Resident Office – recently-retired Birmingham Resident Officer Doug Marshall served as the newly-chartered chapter's second president back in the late 1980's, and was a long-time active Alabama chapter member, delivering the annual "NLRB Round-Up" at the Fall Conference for over 20 consecutive years. "I won't come close to filling his size 75 shoes, but I'll do my best to update the chapter on a very busy year at the NLRB," Kathy lightheartedly commented before taking the stage to deliver the 2012 NLRB update which opened this year's Fall Conference.

Pursuant to New Horizons for the Retarded, 283 NLRB 1173 (1987), the rate used to calculate interest on back pay and other monetary remedies provided for in Board Orders is to be based upon the "short-term Federal rate," i.e., the rate assessed by the Internal Revenue Service on the underpayment of taxes. The rate assessed for the fourth quarter of Fiscal Year 2012, July 1-September 30, 2012, and the first quarter of Fiscal Year 2013, October 1-December 31, 2012 is 3 percent.

A list of rates to be used to calculate interest on Board monetary awards from April 1, 2001, to the present may be found in Operations Management (OM) Memo 11-39, posted under "Publications" on the agency's website, www.nlrb.gov.

REGIONAL R-CASE ROUND-UP

Since May 1, 2012, the following final election results have been recorded in Region 10's Atlanta, Birmingham and Winston-Salem offices:

- 10-RC-074862, Mableton, GA – MSC Industrial (179) - Teamsters Local 528 (96)
- 10-RC-079295, Winfield, AL – GGNSC (14) - USPSWIU (31)
- 10-RC-077533, Chattanooga, TN – ABC (Dr. Pepper) (1) - Teamsters Local 519 (7)
- 10-RC-080061, Savannah, GA – Marine Terminal (Ports of America) (0) - SAGCD (ILA) (38)
- 10-RC-080090, Russellville, AL – Pilgrim's Pride (292) - RWDSIU (UFCW)(706)
- 10-RC-080095, Tifton, GA – Mayfield Dairies (28) - Teamsters Local 528 (27)
- 10-RC-080106, Cottondale, AL – Faurecia (33) - UAW (79)
- 10-RC-080922, Moncure, NC — Moncure Plywood (55) - IAMAW Local W369 (41)
- 10-RC-081114, Huntsville, AL – PPG Industries (267) - IAMAW (206)
- 10-RD-081717, Eutaw, AL – Southfresh (47) - UFCW (47)
- 10-RC-082146, Clayton, NC — Automatic Rolls (32) - UFCW Local 204 (11)
- 10-RC-082404, Savannah, GA – IKEA Distr. (3) - IAMAW (53)
- 10-RD-085850, Mulga, AL — Watcon Alabama (3) - US (STIU) (14)
- 10-RC-085965, Winston-Salem, NC — Suiza Dairy Group (102) - BCTGM Local 358 (58)
- 10-RC-086226, Raleigh, NC — Elevator Specialists of Carolina (3) - Int'l U. of Elevator Constructors Local 80 (8)
- 10-RD-086933, Leeds, AL – Guzzler Manufacturing (5) - IBBISP (5)
- 10-RC-087613, Ronceverte, WV — Greenbrier VMC (45) - Nat'l Nurses Organizing Committee (59)
- 10-RC-087616, Bluefield, WV — Bluefield Hospital (49) - Nat'l Nurses Organizing Committee (79)

NLRB LAUNCHES WEBPAGE DESCRIBING PCA RIGHTS

The National Labor Relations Board recently made public a webpage that describes the rights of employees to act together for their mutual aid and protection, even if they are not in a union.

The page, at www.nlrb.gov/concerted-activity, tells the stories of more than a dozen recent cases involving **protected concerted activity**, which can be viewed by clicking points on a map. Among the cases: A construction crew fired after refusing to work in the rain near exposed electrical wires; a customer service representative who lost her job after discussing her wages with a coworker; an engineer at a vegetable packing plant fired after reporting safety concerns affecting other employees; a paramedic fired after posting work-related grievances on Facebook; and poultry workers fired after discussing their grievances with a newspaper reporter.

Some cases were quickly settled after charges were filed, while others progressed to a Board decision or to federal appellate courts. They were selected to show a variety of situations, but they have in common a finding at some point in the NLRB process that the activity that the employees undertook was protected under federal labor law.

The right to engage in certain types of concerted activity was written into the original 1935 National Labor Relations Act's Section 7, which states that: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, **and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection**, and shall also have the right to refrain from any or all such activities."

"A right only has value when people know it exists," said NLRB Chairman Mark Gaston Pearce. "We think the right to engage in protected concerted activity is one of the best kept secrets of the National Labor Relations Act, and more important than ever in these difficult economic times. Our hope is that other workers will see themselves in the cases we've selected and understand that they do have strength in numbers."

AGENCY OFFERS PARTIES CONVENIENT E-FILING

The NLRB strongly encourages parties to use the Agency's E-Filing Program to file documents with the Regional offices, the Office of Appeals, the Division of Judges, and the Office of the Executive Secretary. The E-filing system provides an easy way to file most case documents electronically. The case number is required for all documents uploaded through the E-file system. Please enter the case number in this format — 2 digits, dash, 2 characters, dash, 6 digits, i.e. 10-CA-000000. For consolidated cases, it is sufficient to E-File the document solely under the lead (lowest) case number in order to file in all the cases. For complete information about E-filing, please click here.

The E-filing system accepts most documents allowed under Board rules, including:

- Answer to Complaint/Compliance Specification
- Appeal Filings
- Amicus Brief or Reply to Amicus Brief, Post Hearing Brief, Briefs in Support of Motions
- Disclaimer of Interest
- EAJA Applications
- Evidence
- Excelsior List
- Exceptions or Cross Exceptions
- Exhibits
- Extension of Time Request
- Formal Settlement Agreement
- Letter
- Motions, Oppositions to Motions, and Replies to Oppositions to Motions
- Motion to Stay Election
- Notice of Appearance
- Objections to Election
- Petition to Revoke Subpoenas or Response
- Position Statement
- Request for Review and Oppositions to a Request for Review
- Request for Special Permission to Appeal
- Requests to Proceed with Election
- Questionnaire
- Settlement Agreement
- Service Documents
- Withdrawal Request

Documents that may NOT be E-Filed include:

- Unfair Labor Practice Charges
- Representation Petitions
- Petitions for Advisory Opinions
- A document that is more than twenty (20) megabytes in size

A NOTE FROM THE EDITOR

Region 10 Perspective **always encourages your questions, suggestions, comments and feedback. Please feel free to contact me at Lisa.Henderson@nlrb.gov or 404-331-2889.**

Thank you!
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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, and protects groups of workers (two or more employees) without a union who engage in protected concerted activities 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 wishing 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.

Please let us know if you'd like to be added to or deleted from our newsletter mailing list. If you would like to receive future copies of Perspective by email, please notify us at NLRBRegion10@nlrb.gov.

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

NLRB Speakers are Available for Your Group

Members of the Region's staff are available to make presentations before any employer or union group, classroom group, legal services clinic or service agency, or labor relations association to describe the Act's protections, how the Region investigates and resolves unfair labor practice charges, how it processes representation petitions, or any NLRB topic of interest.

To arrange for a speaker and to discuss possible topics, please do not hesitate to contact Regional Outreach Coordinator Jason Hardman at Jason.Hardman@nlrb.gov or (404) 331-2888.

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