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Region 10

PERSPECTIVE

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On April 9, 2012, Region 10 welcomed the return of Claude T. “Chip” Harrell, Jr., this time as Regional Director:

Perhaps, sometimes, you can go home again. Little did I know when I left Region 10 to become the Regional Director in Region 14, St Louis in June of 2010, that by April 2012, I would return as Regional Director of Region 10 along with the added responsibility of managing Region 11 whose main office is situated in Winston-Salem, North Carolina and whose territory includes North Carolina, South Carolina and parts of the Virginias.



As discussed more fully later in this newsletter, the Agency is piloting the consolidation of several regional offices. These consolidations are driven by a need to adjust to changing case loads and a desire become more efficient as we transition from paper to an electronic based case processing management system. As part of the pilots, we are experimenting with how best to manage our offices in light of tightening budgets, increased telework and, among other things, the implementation of the new Representation Case processing rules, which are also discussed later. We are even experimenting with telemanagement by having an acting Assistant Regional Director operating out of our Winston-Salem office.

As you can imagine, these are challenging but exhilarating times. Undoubtedly, there may be a few false steps during the transition. However, we will learn from them and the knowledge we gain from these pilots will be invaluable when other regional office consolidations are contemplated in the future. Please do not hesitate in providing feedback so that we may develop methods which will not only effectuate the Act to its fullest but also provide the best service possible to you.

Claude T. “Chip” Harrell, Jr.

AGENCY ANNOUNCES PILOT MERGER OF REGIONS



Region 10 sincerely thanks Regional Attorney Mary L. Bulls, who served as Acting Regional Director from December 1, 2011-April 6, 2012. Mary's able stewardship ensured smooth operation and a seamless transition following Martin Arlook's retirement.

Acting General Counsel Lafe Solomon has announced implementation of a pilot program consolidating Regional Offices effective May 1, 2012. **The pilot program will consolidate Regional Offices in Atlanta, Georgia (Region 10) and Winston-Salem, North Carolina (Region 11).** This program will also consolidate Regional Offices in St. Louis, Missouri (Region 14) and Kansas City, Kansas (Region 17), and the sub-regional office in Peoria, Illinois will move from the jurisdiction of the St. Louis office to that of the Indianapolis, Indiana regional office (Region 25).

In each consolidation the two regions will report to a single Regional Director. Thus, Regions 10 and 11 will report to Regional Director Chip Harrell. No offices will be closed under this pilot program. Nor, if the consolidations of offices are later made permanent, is it contemplated that any office would be closed.

The pilot program will allow the agency to gather information and sort out questions that arise on internal management and case processing. Based on that experience, the Acting General Counsel could choose to present a formal consolidation proposal to the Board. Any permanent structural change would need to move through the federal rulemaking process.

The pilot program is part of an ongoing effort by the Agency to explore ways to restructure its field operation in light of new technologies and changing patterns in case intake. Further restructuring could be proposed in the future.

LONG-STANDING ALABAMA DISPUTE RESOLVED

The owner of an Alabama manufacturing plant and the union representing its workers have ended a long-running labor dispute through a settlement agreement signed May 15 by NLRB Acting General Counsel Lafe Solomon.

Illinois-based NTN-Bower Corporation agreed to reinstate 60 former strikers to their previous jobs at its facility in Hamilton, Alabama, and to distribute \$1.85 million in backpay to current and former employees. The company, which manufactures precision roller bearings, also agreed to recognize the United Automobile, Aerospace & Agricultural Workers of America, AFL-CIO, as the representative of its employees, and to apply the terms of the previous collective bargaining agreement.

The agreement resolves multiple pending cases, including a [2011 Board decision](#) that was appealed to the D.C. Circuit, a [2012 Administrative Law Judge decision](#) that was on review before the Board, and several recent charges that were under investigation by the Board's Regional Office. The settlement was reached with the assistance of a volunteer mediator assigned by the U.S. Court of Appeals for the District of Columbia Circuit.

At issue was the company's failure to restore a substantial number of former strikers to their jobs following a 2008 strike, as well as the company's eventual refusal to recognize the union, which had represented employees at the facility for several decades.

"We are very pleased that the company and the union have been able to come together to find a productive and forward-looking solution to this dispute," said Acting General Counsel Solomon. "We fully expect this agreement to be the first step in a new and mutually-beneficial relationship."

Birmingham Bits

C. Douglas Marshall, Resident Officer



Since we only publish the Region 10 Perspective semi-annually, this ninth installment of *Birmingham Bits* will be my last as Resident Officer. I will be retiring in late July. As I sit here trying to compose an appropriate farewell without losing my composure, I realize that there is no one in Region 10 now who was there when I started on April 26, 1971. Please indulge me as I reflect on how I got here and some of my observations as the longest continuously-serving Region 10 employee. (Ever, I am told.)

The desire to work for the Agency was first sparked when, as an idealistic nineteen-year old college student, I listened intently to political science lectures on the Wagner Act. My interest was nurtured by an Labor Economics advisor who had been involved as an arbitrator in the Steelworkers Trilogy and taught and later designed a three-year graduate program in labor relations. My dreams were finally realized when the late Walter C. Phillips, then Regional Director offered me a job as a Field Examiner in the Atlanta office. On reflection, I would neither change the path nor the destination of my career.

During my six years in the Atlanta office, I extensively traveled the ridges of upper east Tennessee, as recounted in my article here last year. In my fifth year as an agent, I was rewarded with a special contempt investigation assignment involving J. P. Stevens that covered four states and thousands of miles by car and culminated in a week in DC Headquarters, where I was able to meet and work closely with a number of our Washington personnel. Soon thereafter I was selected as Birmingham Resident Officer.

I have been fortunate to serve under Regional Directors who have uniformly believed that if the Agency is going to have a Resident Office, it should be staffed and allowed to serve the public within the framework of good public policy. They collectively helped the office grow from three in 1977 to as many as nine several years ago. In my 35 years as Birmingham Resident Officer, I have had the pleasure of working with employees who were dedicated to the application of the National Labor Relations Act and who shared my commitment to the resolution of labor/management disputes consistent with the protection of employee rights.

Although proximity has made my Birmingham ties the closest, the total experience of my 41 years with the NLRB has afforded me opportunities to work with bright, dedicated and highly competent Agency employees, managers and administrators. I will treasure many memories, but it is the career-long daily contact with the labor/management representatives and the public that has made my NLRB time so gratifying and fulfilling.

I thank all of you.

BOARD AGAIN AT FULL-STRENGTH WITH RECESS APPOINTMENTS

National Labor Relations Board Members Sharon Block, Terence F. Flynn and Richard F. Griffin were sworn in to office on January 9, 2012, bringing the Board to full, five-member strength for the first time since August 2010. They join Chairman Mark Gaston Pearce and Member Brian Hayes, who were confirmed by the Senate to their positions in June, 2010.

"I welcome our new colleagues who bring a wealth of experience to this agency," said Chairman Mark Gaston Pearce. "We are gratified that the Board is now at its full complement and can continue the important work of resolving workplace disputes and protecting employee rights."

The three new members, all recess appointments by President Obama, were sworn by Chairman Pearce at Board headquarters in Washington.

RECENT REGION 10 RECIPIENTS OF GOVERNMENT SERVICE AWARDS

Mary L. Bulls

35 years

Carla L. Wiley

20 years

REGION 10 COMMUNITY OUTREACH

- On October 13, 2011, Field Examiner Belinda Bennett attended a community outreach luncheon sponsored by a Birmingham, Alabama, church and attended by 15 ministers pastoring neighboring churches. The purpose of the meeting was to coordinate outreach to Birmingham's Eastlake community, focusing on spiritual, financial and employment growth. Bennett was asked to make a 5-7 minute presentation about the NLRB and its role in the area of employment rights. With the exception of two former steelworkers, most of the ministers were not aware of the Agency's existence or purpose. Bennett took questions from the audience, distributed literature, and passed out her card to those who wish to make arrangements for speakers.
- On November 1, 2011, 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.
- On November 7, 2011, Regional Attorney Mary Bulls gave a presentation before the National Telecommunication Cooperative Association regarding procedures for processing representation and unfair labor practice cases.
- On November 28, 2011, Regional Attorney Mary Bulls gave a brief presentation to a Black Women's Studies class at Spelman College about her legal career.
- On December 1, 2011, Resident Officer C. Douglas Marshall spoke to 30 students in Dr. Barbara Wech's senior-level Human Resources class at the University of Alabama-Birmingham yesterday. Marshall covered the history and organization of the Agency, briefly overviewed U.S. labor relations in the early to mid-thirties in the US, and talked about what the NLRB does. Marshall walked students through a fictional 8(a)(3) scenario, from investigation to supreme court certification, and also explained protected concerted activity cases, duty of fair representation cases, CA and CB bargaining cases, and the Agency's election function of the Board.
- On March 17, 2012, Field Attorney Elaine Robinson-Fraction represented the NLRB at the 4th Annual Economic Opportunity Empowerment (EOE) Fair, sponsored by the Atlanta Alumnae Chapter of Delta Sigma Theta Sorority, a public service sorority. Ms. Robinson-Fraction distributed pamphlets and provided information about the Board and the Act and answered questions about employees' rights when facing discharge for voicing complaints about terms and conditions of work or for promoting union ideals.
- On April 18, 2012, Supervisory Attorney Lisa Y. Henderson addressed Georgia State University Law School's Law & Employment Society at a lunch-time panel on practicing labor and employment law in the government sector.
- On April 20, 2012, Field Attorney Lauren Rich trained a class of new Communications Workers of America stewards on basic NLRB law and procedure.

REGION MARKS BLACK HISTORY MONTH WITH DISTINGUISHED GUEST SPEAKER

The hallmark of one's life should be a succession plan that ensures one's public service legacy is carried on, said Philippa Victoria Ellis, Esq., speaker for Region 10's African-American History Month celebration held February 29, 2012. Ellis, a founding partner of Owen, Gleaton, Egan, Jones & Sweeney, LLP, a commercial and tort litigation firm, is a magna cum laude graduate of Langston University and the University of Oklahoma College of Law. She has been selected as a Georgia Super Lawyer five times and a Super Lawyer-Corporate Counsel Edition twice, and in 2012 appeared in *The Best Lawyers in America*. Her current civic and community activities include memberships on the Board of Directors for Atlanta's Tony Award®-winning Alliance Theatre, on the Board of Trustees for The Leadership Institute for Women of Color Attorneys, and in Alpha Kappa Alpha Sorority, Inc.



DRA Gaye Hymon, guest speaker Ellis, Reg. Atty. Mary Bulls

Ellis believes that instead of simply acknowledging a problem, we should engage in public service to eradicate it. As an example, she cited the way an ABA study of attrition among minority associates in law firms – the problem of so-called “visible invisibility” – led to the formation of a black attorneys’ organization dedicated to guiding and mentoring young lawyers.

Ellis also spoke feelingly about the four black women who forged her foundation: Harriett Tubman, Marian Wright Edelman, her cousin Pennsylvania Justice Juanita Kidd-Stout, and former Georgia Chief Justice Leah Ward Sears. These women embodied perseverance, cared not what others thought of them, and kept their eyes upon their missions, she recounted. Ellis informed the audience that Tubman not only was a chief “engineer” of the Underground Railroad, but established schools for freed slaves though she herself could not read or write. Tubman also parented orphans and assisted the elderly and the sick in establishing their lives after slavery. Edelman is renowned as the founder of the Children’s Defense Fund and was the first black woman admitted to the Mississippi bar. Chief Justice Sears was the first African-American female chief justice in the United States and the youngest person and first woman to sit on Georgia’s Supreme Court. She is also the founding president of the Georgia Association of Black Women Attorneys, an organization in which speaker Ellis plays an active role.

Ellis recalled her first day in the courtroom, when, despite her suit and briefcase, she was mistaken for a secretary. Without the groundwork laid by Tubman, Stout, Edelman and Ward, her challenges would have been insurmountable, Ellis says. She also draws inspiration from Freedom Riders who were threatened with the loss of everything and still stood steadfast in their mission. None of us can do less, she asserts.

Ellis cited her mother as her personal hero and the impetus to Ellis’ legal career. Ellis’ mother, who held several advanced degrees, began law school while Ellis was in college. Although her mother succumbed to breast cancer before realizing her goal, Ellis recalls that she made studying law look easy. Ellis was also influenced by her cousin Juanita Kidd Stout and noted that men who once appeared in then-judge Stout’s court told her that Stout’s admonition that “crime was not their destiny” had altered their lives.

Ellis repeatedly remarked upon the Agency’s work as a valuable public service. Recognizing the adversity the NLRB and its employees face in the current political environment, she offered lessons learned with her husband, DeKalb County (Georgia) Chief Executive Officer Burrell Ellis, who left a lucrative career to pursue public service. “You hear, feel, and see criticism,” she said, “but you know in your brain who *you* are. Remembering this gives me insight to do my best and keeps me grounded, as does my faith.”

WILSON TO SERVE AS ACTING ARD DURING PILOT MERGER

Supervisory Examiner Nancy Wilson will serve as Region 10's Acting Assistant to the Regional Director during the pilot consolidation of Regions 10 and 11. Nancy works in the Agency's Winston-Salem NC office. She was hired as a Field Examiner in Region 22 (Newark, NJ) after completing an MS degree in Industrial Relations at Rutgers University. During her 17 years of employment in R-22, Wilson worked for about 10 years on the compliance team. In June, 2004, she transferred to R-11 as a Field Examiner and in 2006 was promoted to Supervisory Examiner. Between May, 2011 and January, 2012, Wilson served simultaneously as R-11's Acting Deputy Regional Director and as Supervisory Examiner. "This experience provided me with the opportunity to learn about higher-level managerial positions with the Agency," she notes.

NO IMPLEMENTATION OF NOTICE-POSTING RULE

In light of conflicting decisions at the district court level, the DC Circuit Court of Appeals has temporarily enjoined the NLRB's rule requiring the posting of an employee rights notice, which was scheduled to take effect on April 30, 2012.

In view of the DC Circuit's order, and in light of the strong interest in the uniform implementation and administration of agency rules, regional offices will not implement the rule pending the resolution of the issues before the court.

In March, the [D.C. District Court found](#) that the agency had the authority to issue the rule. The NLRB supports that decision, but plans to appeal a separate part that raised questions about enforcement mechanisms. The agency disagrees with and will appeal last week's decision by the South Carolina District Court, which found the NLRB lacked authority to promulgate the rule.

Chairman Mark Gaston Pearce said of the recent decisions, "We continue to believe that requiring employers to post this notice is well within the Board's authority, and that it provides a genuine service to employees who may not otherwise know their rights under our law."

SPANISH-LANGUAGE ASSISTANCE AVAILABLE

Region 10 now has a Language Assistant, Mariana Ryan, on staff who is available to provide Spanish-language translation to charging parties, charged parties, witnesses and members of the public seeking the Region's assistance.

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 second and third quarters of Fiscal Year 2012, January 1-June 30, 2012, is 3 per cent.

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.nlr.gov.

REGIONAL R-CASE ROUND-UP

Since November 1, 2011, the following final election results have been recorded in Region 10, Atlanta and Birmingham offices:

- 10-RC-015820, Austell, GA — Caraustar Mill (Sweetwater) (33) - USPFR (18)
- 10-RC-015827, Atlanta, GA — Paragon Systems (SPFPA) (44) - USPOA (101)
- 10-RC-064853, Knoxville, TN — Aqua-Chem (48) - IBBISBBFH (13)
- 10-RC-066020, Bogart, GA — Loomis Armored (5) - USPOA (2)
- 10-RC-066689, Peachtree City, GA — Whitestone Group (0) - USPOA (8)
- 10-RC-067014, College Park, GA — Protection Strategies (1) - USPOA (11)
- 10-RC-067018, College Park, GA — Protection Strategies (0) - USPOA (3)
- 10-RD-068021, Columbus, GA — Jillden Realty (23), Columbus Metal Trades (23)
- 10-RC-068543, Huntsville, AL — L3 Vertex (0) - IBTCWH (2)
- 10-RC-068827, Atlanta, GA — Sodexo, Inc. (29) - Southern Region SEIU (41)
- 10-RC-069489, McDonough, GA — BFI Waste (14) - Teamsters Local 728 (24)
- 10-RC-069738, Columbus, GA — ESP, Inc. (0) - Columbus Metal Trades (8)
- 10-RC-069751, Columbus, GA — URS Federal (0) - Columbus Metal Trades (4)
- 10-RD-070852, Marietta, GA - LGE Community Credit Union (59) - AMIAMAW (32)
- 10-RC-073208, Waynesboro, GA — Total Protection Services (7) - SPFPA (33)
- 10-RC-073470, Huntsville, AL — Excalibur (0) - SPFPA (7)
- 10-RC-074862, Mableton, GA - MSC Industrial (179) - Teamsters - (96)

Significant Recent Cases: MANDATORY ARBITRATION AGREEMENTS

The National Labor Relations Board has ruled that it is a violation of federal labor law to require employees to sign arbitration agreements that prevent them from joining together to pursue employment-related legal claims in any forum, whether in arbitration or in court.

The decision examined one such agreement used by nationwide homebuilder D.R. Horton, in which employees waived their right to a judicial forum and agreed to bring all claims to an arbitrator on an individual basis. The agreement prohibited the arbitrator from consolidating claims, fashioning a class or collective action, or awarding relief to a group or class of employees.

The Board found that the agreement unlawfully barred employees from engaging in “concerted activity” protected by the National Labor Relations Act. The Board emphasized that the ruling does not require class arbitration as long as the agreement leaves open a judicial forum for group claims. The decision requires Horton to rescind the agreement or revise it to make clear to employees that they are not waiving their right to pursue a class or collective action in all forums.

The Board sought briefs on the issue from interested parties last summer. More than a dozen amicus briefs were filed, and can be read on this [case page](#).

SOCIAL MEDIA CASE UPDATE

To help provide further guidance to practitioners and human resource professionals, NLRB Acting General Counsel Lafe Solomon has released a second report describing social media cases reviewed by his office.

The [Operations Management Memo](#) covers 14 cases, half of which involve questions about employer social media policies. Five of those policies were found to be unlawfully broad, one was lawful, and one was found to be lawful after it was revised.

The remaining cases involved discharges of employees after they posted comments to Facebook. Several discharges were found to be unlawful because they flowed from unlawful policies. But in one case, the discharge was upheld despite an unlawful policy because the employee's posting was not work-related.

The report underscores two main points made in an [earlier compilation of cases](#):

- Employer policies should not be so sweeping that they prohibit the kinds of activity protected by federal labor law, such as the discussion of wages or working conditions among employees.
- An employee's comments on social media are generally not protected if they are mere gripes not made in relation to group activity among employees.

Given the new and evolving nature of social media cases, the Acting General Counsel had asked all regional offices to send cases which the Regions believed to be meritorious to the agency's Division of Advice in Washington D.C., in the interest of tracking them and devising a consistent approach. About 75 cases were forwarded to the office. The report, which does not name the parties to the cases or their locations, illustrates that these cases are extremely fact-specific.

The report represents the Acting General Counsel's interpretation of the National Labor Relations Act as it applies to forms of communication that did not exist when the Act was written. Three cases involving social media questions are currently pending before the Board and those decisions will give further guidance as the law around social media develops. Information on the three cases can be found on their Case Pages [here](#), [here](#), and [here](#).

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!

Lisa Y. Henderson, Editor
Supervisory Attorney

Contact Information:

ATLANTA REGIONAL OFFICE

Suite 1000, Harris Tower
 233 Peachtree St., NE
 Atlanta GA 30303
 Phone: (404) 331-2896
 Fax: (404) 331-2858 [50-page limit]

BIRMINGHAM RESIDENT OFFICE

Suite 3400, Ridge Park Place
 1130—22nd St. South
 Birmingham AL 35205
 Phone: (205) 933-2018
 Fax: (205) 933-3017 [50-page limit]

WINSTON-SALEM SUBREGIONAL OFFICE

Suite 200, Republic Square
 4035 University Parkway
 Winston-Salem NC 27106-3325
 Phone: (336) 631-5201
 Fax: (336) 631-5210 [50-page limit]

For the hearing impaired: (866) 315-6572

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.



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.

Spring 2012 Issue Contributors:

Editor Lisa Y. Henderson. Writers Shawn Carroll, Joselle Chatman, Chip Harrell, Doug Marshall, & Elaine Robinson-Fraction.