



NLRB Region 6

Outreach

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National Labor Relations Board, Region 6

March 2010

William S. Moorhead Federal Building, Room 904

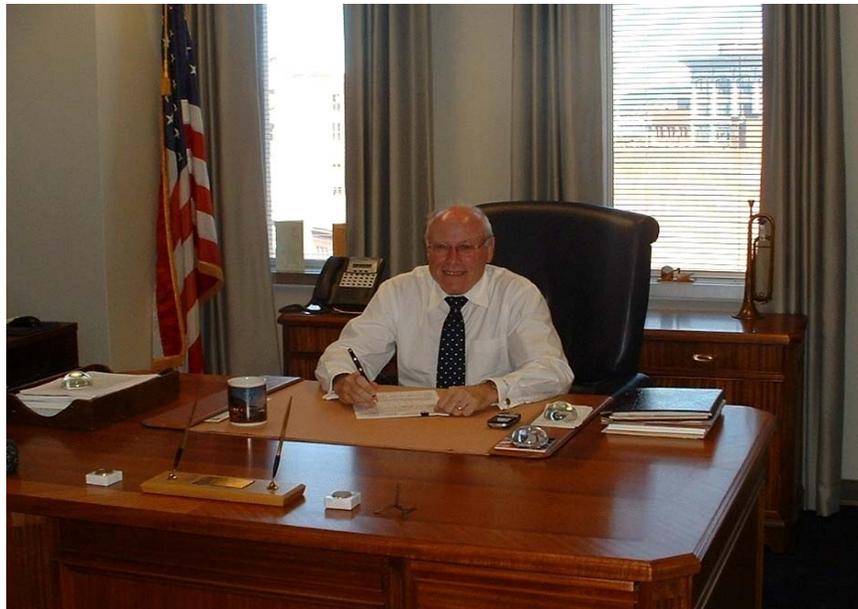
Fifth Edition

1000 Liberty Avenue

Pittsburgh, PA 15222-4111

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From the Director's Chair

From the vantage point of my office I have seen a lot of changes since I returned to Region 6 in May 2009. As we celebrate the 75th anniversary of the passage of the NLRA, a law intended to equalize bargaining power between labor and capital, we see the potential for much broader change on the horizon.

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NLRB staff are
available to speak
to service,
education and
advocacy
organizations

I hope that you can find time in your busy schedules to join Region 6 on Wednesday, April 14, 2010 from 1:00 pm to 3:30 pm for an informal gathering to celebrate the history of the NLRB and Region 6. Light refreshments will be served.

Deputy General Counsel John Higgins will discuss the history of the Agency and former Regional Director Gerald Kobell will talk about the history of the Region. Many of you know John from his many contributions to the Agency during his more than forty years of service with the NLRB and his contributions as editor and now as editor-in-chief of *The Developing Labor Law, Fifth Edition*. Long-time Regional Director Gerry Kobell is very well known and respected in the labor community and who could better talk about the history of the Region than Gerry? Presentations will also be given by ARD Mark Wirick, RA Kim Siegert and me. You will also be able to meet and talk to the Regional Office Staff including our newest supervisor, Janet Schaefer. The Region may have selected a new supervisory attorney and a new compliance officer by the time we get together.

On July 5, 1935, President Franklin Roosevelt signed the NLRA into law, stating that the law sought to achieve "common justice and economic advance." It is worth remembering, especially during this 75th anniversary year, why the Act was passed. It was seen as a means of restoring the nation to prosperity.

As you know, the Agency awaits a Supreme Court ruling on its authority to issue decisions with three of its five seats vacant. A decision by the Tenth Circuit in December in *Teamsters Local 523 v. National Labor Relations Board* brought the number of rulings favorable to the Agency to five. Read further in this issue for the details.

Meanwhile, the three NLRB nominees remain pending confirmation by the Senate. Three seats on the Board have been vacant since January 2008. Nominees Mark G. Pearce, Brian E. Hayes and Craig Becker are still awaiting confirmation to join sitting members Chairman Wilma B. Liebman and Member Peter C. Schaumber. Hope can spring eternal that we will have some positive news on the nominations when we get together in April.

Bob Chester, Regional Director

Regional Attorney Appointed

Kim Siegert was named Regional Attorney for Region Six in January 2010, after the retirement of the Region's former long-term RA Stanley R. Zawatski.

Kim was born and raised in Baltimore, Maryland. He graduated from Ithaca College with a B.A. in Politics in 1976. Then, in 1979, Kim graduated from the University of Baltimore Law School where he was the Legislative Editor of the Law Review. Kim's tenure with the NLRB began in 1981 in Fort Worth, Texas. He transferred to Region Six in 1984 as a trial attorney and litigated many complex cases for the Region. Kim became a supervisory attorney in 2001 and was promoted to Deputy Regional Attorney in May 2009.

The work of the NLRB has always been interesting and challenging to Kim. He especially enjoys meeting the wide range of individual employees, union representatives, corporate representatives and officers, and attorneys who are

Filing Information

How to file an unfair labor practice charge and representation petition with the NLRB

How to File an Unfair Labor Practice 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

involved in the detailed nature of our work. In reflecting on his years with Region Six, Kim expressed sincere appreciation of Stan Zawatski's knowledge of the Act, as well as his integrity and dedication to public service. Kim intends to use Stan Zawatski as a role model in performing the duties of his new position.

Over A Century Of Knowledge

Region Six lost a wealth of experience with the retirements of Regional Attorney **Stan Zawatski**, Compliance Officer **Clyde Graham**, and Supervisory Attorney **Don Burns** at the end of 2009.

Stan, who is originally from eastern Pennsylvania, began his career as a Law Clerk in the St. Louis (Region 14) office in 1973. Stan transferred to Pittsburgh as a Supervisory Attorney in 1979 and in 1986 was named Regional Attorney by then-RD Gerry Kobell. Stan served as RA for 24 years and was highly regarded and relied upon for his knowledge of Board law and procedure. Stan and his wife Betty live in Bethel Park and have three grown sons. Stan loves cars and in retirement plans to drive around in his commemorative-edition Lemans blue Corvette as often as weather permits.

Clyde started with the Board as a Field Examiner in 1976 following his tour in the Army. Clyde became the Region's Compliance Officer in 1999, following the retirement of John O'Connell. Clyde then singlehandedly ran that department for over 10 years. Clyde has always been an avid outdoorsman and plans to continue these pursuits and to fish as much as possible from his new boat, now that he has more time to do so. Clyde lives in West Mifflin with his wife Wendy and their children Erin and Adam.

Don began his career with the Board in 1972 as a Field Attorney in Region 6 after a short stint in a corporate law department. Don was named Supervisory Attorney in 1983 and held that position for 27 years. In retirement, Don plans to spend more time with his wife Sandy and his extended family and grandchildren.

In Memoriam

Tom Stefanac

Tom Stefanac, a former Field Examiner in Region 6, died on February 15, 2010. Tom joined the Agency in 1971 and served the Region for 31 years, retiring in 2002 for health reasons. Tom lived in Baldwin and is survived by his wife Jeanne, and his two sons and their wives and children.

You're Invited!

We look forward to seeing you at our 75th Anniversary celebration from 1:00 to 3:30, on Wednesday April 14, at the William S. Moorhead Federal Building, room 1310. Come learn a bit of history; meet or reconnect with the Region's staff; and, enjoy the company of others interested in labor relations. Speakers will include John Higgins, Deputy General Counsel and editor of *Developing Labor Law* and Gerald Kobell, former Regional Director and others. Light refreshments will be served. RSVP 412-395-4717 or janet.schaefer@nrlb.gov.

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.

After the Region Makes a Determination

If the Region determines that a charge has no merit—that the charged party has not violated the Act—it will dismiss the charge. The charging party has the right to appeal a dismissal.

If the Region determines that a charge has merit—that the charged party has violated the Act—it will attempt to settle the case. Unless there is a settlement, the Region will proceed to trial to obtain a finding of a violation and an order directing the charged party to undertake remedial actions. The charged party has appeal rights, including a right to a hearing, with a final decision subject to appeal to a federal court.

Remedies for Violations

When there has been a violation, the Act does not impose fines or other direct penalties. Rather, it requires remedial action to correct the violation and its effects.

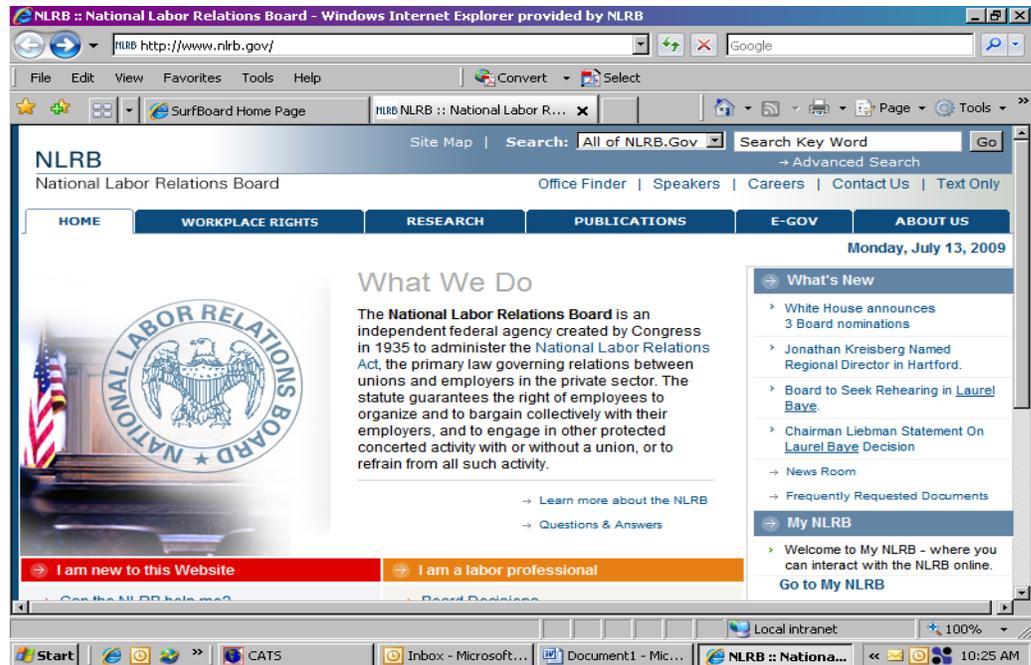
NLRB Remedies require those who have violated the Act to cease the violation, to inform employees that they will respect their rights, to reinstate employees who

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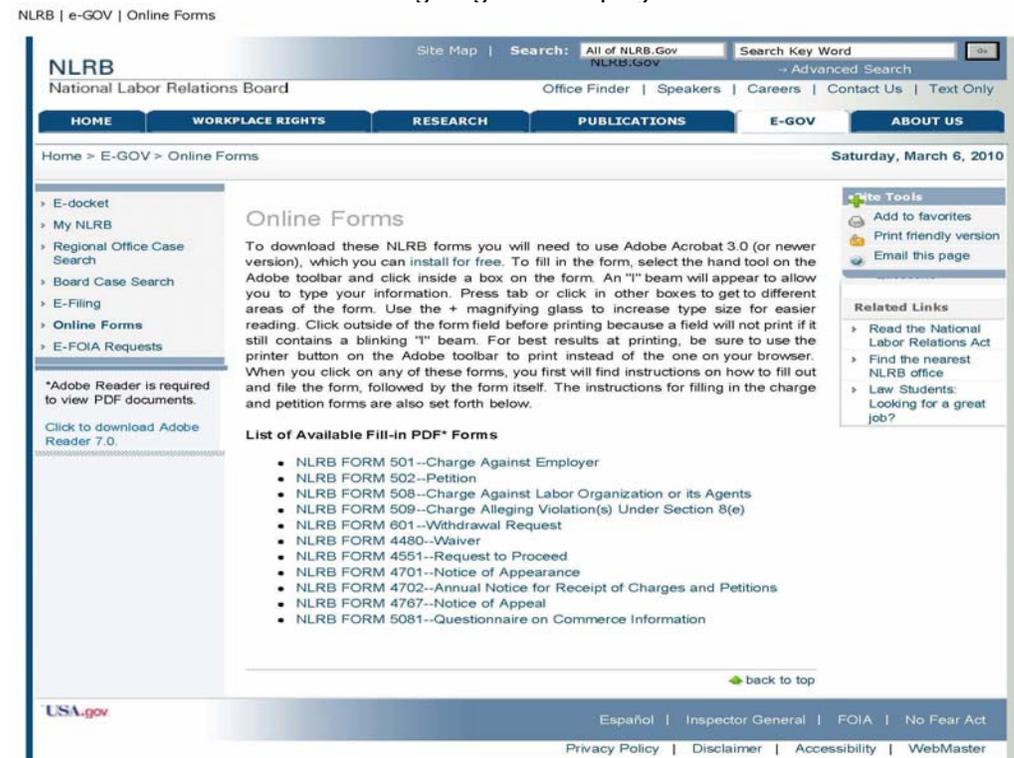
File charges and petitions using fillable forms from the NLRB website

Fifth in a series of informational articles about the Agency's electronic portal.

Even for those only minimally computer savvy, the website provides blank "fillable" forms for representation petitions and unfair labor practice charges. For example, to file an unfair labor practice charge against an employer, go to the NLRB website and click on the E-Gov tab.



A pull-down menu will appear. Select "Online Forms" from that list. The following page provides a list of all available on-line forms. For this example, click on "NLRB Form 501—Charge Against Employer" link.



have been unlawfully fired, and to pay compensation for lost earnings.

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 seven.

If you complete the petition yourself, keep in mind these helpful tips:

- Know which Regional office will handle your petition. Region 6 covers 41 counties in Pennsylvania and 26 counties in West Virginia.
- You may 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 or membership cards (or other proof of interest) signed and dated by at least 30 percent of the

The next page presented will be the form itself along with attached instructions. The form contains accessible fields in which all requested information should be entered. It is important to read the attached instructions carefully. Generally no error in the completion of the form will be fatal, but it is important to provide the most accurate information available. If information provided needs to be corrected, it may delay the processing, investigation and/or disposition of your charge. If you have any questions about completing the form, please contact the Region's information officer at (412)395-4400. **Once the form is completed, it may be submitted to the Regional Office in person, via regular mail or via fax.**

Although petitions, charges and voluntary recognition notifications cannot yet be filed electronically, parties may still use the website to make the process faster and easier.

Proposed Rule Will Require Contractors To Notify Employees Of Rights Under NLRA

On August 3, 2009, the Department of Labor's Office of Labor-Management Standards proposed regulations to implement Executive Order 13496, which President Obama signed on January 30, 2009. See Notification of Employee Rights Under Federal Labor Laws, 74 Fed. Reg. 38,488 (2009) (to be codified at 29 C.F.R. pt. 471) (proposed August 3, 2009).

Executive Order 13496 requires nonexempt Federal departments and agencies to include within their Government contracts provisions that require contractors and subcontractors with whom they do business to post notices informing their employees of their rights under Federal labor laws, including the National Labor Relations Act. Executive Order 13496 states that the Federal government interest of industrial peace is best achieved when workers are well informed of their rights under Federal labor laws.

The proposed rule gives the Office of Federal Contract Compliance the authority to evaluate a contractor's compliance and to impose penalties that could include cancellation, suspension, or termination of a contract after offering the head of the contracting agency an opportunity to object in writing. The Department of Labor has received public comments and will proceed with its consideration of the rule.

Supreme Court To Rule On Two-Member Board

On November 2, 2009, the Supreme Court granted certiorari in New Process Steel, L.P. v. NLRB, to consider whether the currently acting Board has authority to hear cases and issue orders under the Act. Decisions based on this issue have been split between Circuits where dozens of Board cases have been appealed.

The petition for certiorari presents the question of "Whether Section 3(b) of the National Labor Relations Act, 29 U.S.C. 153(b), authorizes the National Labor Relations Board to act when only two of its five positions are filled, if the Board has previously delegated its full powers to a three-member group of the Board that includes the two remaining members."

employees in the petitioned-for unit.

- Although more than 90% of elections are conducted pursuant to election agreements, be prepared for a hearing by knowing: (1) the employer's operations; (2) the community of interests of various employee job categories; and (3) who the "supervisors" are. Hearings are typically held 10-14 days from date of filing.
- Be prepared for the election to be conducted within 42 days from the date of filing.
- Always call the assigned Board agent with questions or concerns.

On this issue, Section 3(b) provides in relevant part that "The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise...A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof." The exception language in the last sentence will be one of the main issues considered by the Court.

The current situation arose in the following manner. In late 2007, the Board had four members but anticipated losing two of those members imminently when their recess appointments expired at the end of the year. Acting on the advice of the Justice Department's Office of Legal Counsel, in December 28, 2007, the four sitting members of the Board--Members Liebman, Schaumber, Kirsanow, and Walsh--delegated all of the Board's powers to a three-member group consisting of Members Liebman, Schaumber and Kirsanow. After the recess appointments of Kirsanow and Walsh expired three days later, remaining Members Liebman and Schaumber, acting as a two-member quorum, continued to exercise the powers the Board had delegated to the three-member group. Since January 1, 2008, that group, through its two-member quorum, has issued more than 500 decisions.

In 2008, then-President Bush submitted nominees to the Board which were blocked in the Senate and never confirmed. In July 2009, President Obama nominated lawyers Craig Becker, Brian Hayes and Mark Pearce to be Members of the Board. Hayes and Pearce were approved by Senate committee but the three-person confirmation package stalled when Becker's nomination was placed on hold by a single Senator. The Senate then returned the nomination to the White House at the end of the 2009 session. Obama promptly renominated Becker and in February, Becker was also approved by the Senate committee. However, Becker's nomination remained on hold and the package could not be put to a full Senate confirmation vote. Cloture was invoked as it is a procedural mechanism to overcome holds placed on nominees. However, the full Senate defeated the cloture motion by a 52-33 vote, falling eight votes short of the 60 needed to end debate and proceed to confirmation. Therefore, no action has been taken on the renomination of Becker while Hayes and Pearce remain pending.

There have been several occasions during the Board's history when it functioned with only two members. However, the current quorum of Chairman Wilma Liebman and Member Peter Schaumber has now been functioning in excess of two years and this time period is unprecedented. Oral argument in New Process is scheduled for March 23 and a decision from the Court is expected in the spring. As it is unclear when there will be new Board Members, this decision should bring resolution and clarification to this important issue.

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 provide information about the Act and advice as to whether it appears to be appropriate to file an unfair labor practice charge or representation petition. If filing a charge or petition does appear to be appropriate, the information officer can assist in completing the form.

The information officer at Region 6 may be reached by telephone at:

1-866-667-6572

(Toll free)

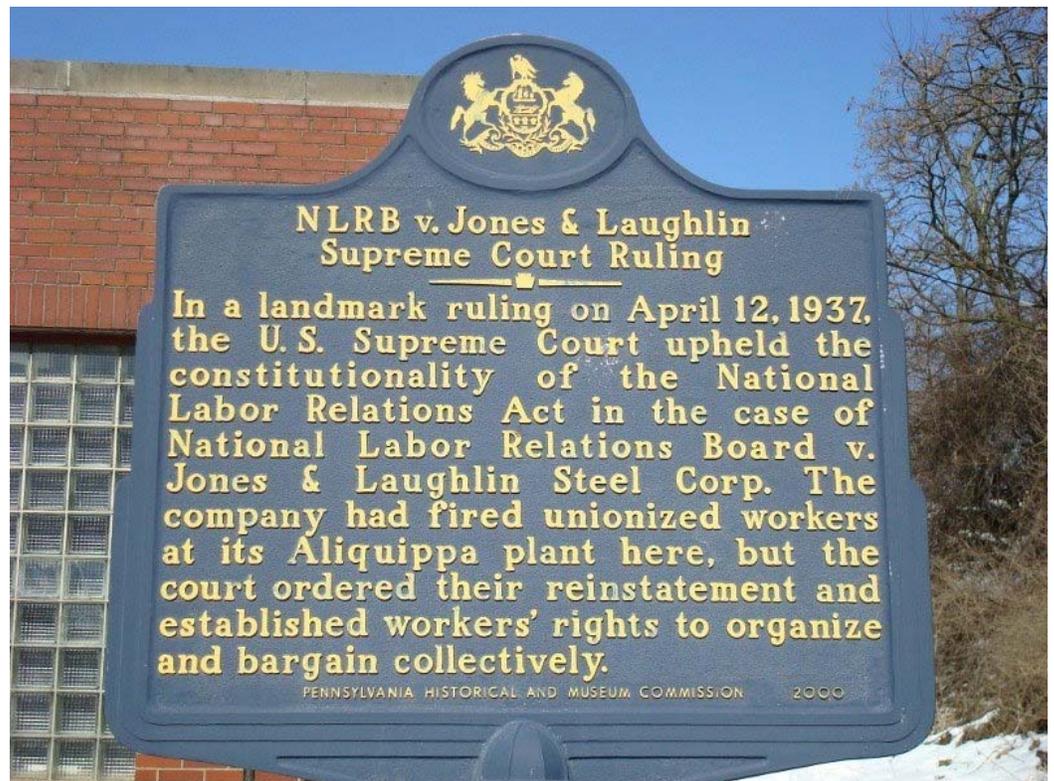
Or

412-395-4400

Se habla español

Speakers Available

Members of the Region's staff are available to make presentations before any unions, employer organizations, social service organizations,



Case 6-C-6 And Its Legacy

On July 5, 1935 Franklin Delano Roosevelt signed the National Labor Relations Act, commonly known as the "Wagner Act." The Act was the most far reaching of New Deal legislation designed to protect the rights of employees to organize into unions and to bargain with their employers. It was also widely viewed as destined for the same fate as the National Recovery Act, overturned a few months earlier by the Supreme Court on constitutional grounds. For that reason, the first 21 months of the NLRB's existence were quite dramatic, and often made front page news.

The conventional wisdom was that the Court would strike down this "radical" new law. Perhaps this emboldened the Jones and Laughlin Steel Corporation, just 4 days after FDR signed the law, to discharge 13 employees heavily involved in union activity at its Aliquippa, PA plant. For various reasons, including fear of reprisals, only 10 of those discharges were made the subject of the Unfair Labor Practice Charge number 6-C-6, filed in the fledgling NLRB's Regional Office in Pittsburgh on December 18, 1935. The subsequent complaint issued on January 23, 1936.

J&L had been open in its antipathy toward unions, and its motive for firing the union activists was only thinly disguised. The real issue in dispute, and the issue that would destine the subsequent Supreme Court decision to be a landmark ruling in our nation's history, was whether J&L's motive was any of the Federal government's business.

After the fate of the National Recovery Act was sealed by the Court in May, 1935, Senator Wagner deftly inserted language addressing the constitutional issue into the final version of his NLRA, which Roosevelt pointedly alluded to in his signing statement. FDR noted, "It does not cover all industry and labor, but is applicable only when violation of the legal right of independent self-

high school or college classes and others interested groups. We are happy to describe the Act's protections, how the Region investigates and decides unfair labor practice cases and processes representation petitions, and other NLRB topics of interest. To arrange for a speaker and to discuss possible topics, telephone ARD Mark Wirick at (412) 395 6846.

Recently, Region 6's staff spoke to groups of union stewards about the process of filing an unfair labor practice charge and what occurs when a charge is filed. Other presentations have been given on contract violations vis-à-vis unfair labor practice charges, and collective bargaining issues. We have also spoken before college classes providing an outline and history of the National Labor Relations Act and explaining the structure of the National Labor Relations Board. We have even conducted mock representation elections in front of law and graduate students.

organization would burden or obstruct interstate commerce."

The Board's hearings on the matter focused first upon the nature of J&L's business. After the Board members, who conducted the hearings directly, denied J&L's motion for dismissal based on its claim that its manufacturing operations in Aliquippa were neither in nor affected interstate commerce, J&L's representatives walked out. The hearings went on without them. The company would not try to justify its actions within the scope of the law; instead it would rely on the Circuit and Supreme Courts to declare that the law went beyond Congress' authority to regulate its actions.

The fate of the Act was obviously important to the 10 fired employees, to the labor organizations who longed for the protection of the law, to industries which had long fought union organizing in the courts and sometime the streets, and incidentally, to the Members and employees of the NLRB. In the end, its impact transcended those significant, but still limited, interests.

The issue before the Court was whether the Act's supporters had crafted a way for the commerce clause to be used to regulate matters such as labor disputes, and theoretically other economic actions of industry, or whether such matters would continue to be deemed outside the stream of interstate commerce.

The swing vote turned out to be that of Chief Justice Charles Evans Hughes. In delivering the 5-4 opinion of the Court on April 12, 1937, Hughes shocked the nation. While most observers perceived Hughes' view to be that the commerce clause should be construed more narrowly than the Act provided, the core of his conclusion was akin to Roosevelt's signing commentary. Hughes wrote, "The grant of authority to the Board does not purport to extend to the relationship between all industrial employees and employers. Its terms do not impose collective bargaining upon all industry regardless of effects upon interstate or foreign commerce. It purports to reach only what may be deemed to burden or obstruct that commerce and, thus qualified, it must be construed as contemplating the exercise of control within constitutional bounds."

Much has been written and said about Hughes' perceived change of heart about the commerce clause. Some credit Wagner's language change correcting the technical deficiency of Congress' previous attempts to regulate economic activity. Perhaps the absurdity of ruling that a labor dispute disrupting the far-flung, vertically integrated J&L enterprise did not affect interstate commerce, convinced Hughes that continuing to block New Deal efforts to regulate economic activity was indefensible. Another popular view was that Hughes feared FDR's threat to "pack the court" if the Supreme Court continued to block New Deal initiatives. After all, January 1937 saw a "super majority" of Democrats seated in both houses of Congress, which made Roosevelt's threat viable. In fact, in February 1937 FDR had sent a court reform plan to the Senate. After the NLRA decision, and after one of Hughes' conservative colleagues announced his retirement, the court packing issue faded into history. Perhaps several factors contributed to Hughes' shift in judicial philosophy. In any event, as they say, "The rest is history."

Most Supreme Court historians list the J&L decision as among the most significant. For better or worse, the role of the Federal government in regulating the economy would never be the same. Not incidentally, neither would labor relations.