



NLRB NEWS:

CONNECTICUT

NLRB REGION 34



July 2012

Ninth Edition

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*****BREAKING NEWS*****

Acting General Counsel Proposes Consolidation of Regional Offices in Hartford and Boston

Acting General Counsel Life Solomon announced on July 2nd that he is considering a proposal to reorganize four Regional offices as part of an ongoing effort by the Agency to explore ways to restructure its operations in light of new technologies and changing patterns in case intake.

Under the proposal, the Hartford Regional Office (Region 34) would become a Subregion of the Boston Regional Office (Region 1), with the Regional Director located in the Boston office. The Memphis Regional Office (Region 26) would become a Subregion of the New Orleans Regional Office (Region 15), with the Regional Director located in New Orleans. No offices will be closed under this proposed reorganization.

The Acting General Counsel will thoroughly consider input from Agency staff and from external stakeholders, including practitioners, members of the management-labor relations community, and Members of Congress, before making a final decision whether to present a formal proposal to the National Labor Relations Board. Any permanent structural change would need to be approved by the Board and then move through the federal rulemaking process. The final decision will likely include the previously announced pilot reorganization of Regions 10 and 11 (Atlanta and Winston-Salem), Regions 14 and 17 (Kansas City and St. Louis), and Region 25 and Subregion 33 (Indianapolis and Peoria).

Feedback and comments regarding the proposed restructuring should be submitted by July 31, 2012 to Associate General Counsel Anne Purcell at feedback@nlrb.gov or mailed to her at the National Labor Relations Board, 1099 14th Street NW, Suite 10206, Washington DC 20570.

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Contact the Region:

There is always an information officer available between 8:30 am and 5:00 pm at the Hartford Regional office, by phone at (860) 240-3522 or in person at 450 Main St. in Hartford, to answer general workplace related inquiries or to discuss a specific workplace problem or question. The information officer can offer information about the NLRA and advice as to whether it appears to be appropriate to file an unfair labor practice charge or a petition. If filing a charge or petition appears to be appropriate, the information officer will assist you in completing the charge or petition form.

Information is also available on the Board's website at www.nlr.gov, which has a link to the Hartford Regional Office webpage featuring newsletters, news releases and local cases and decisions.

WE ARE AT YOUR SERVICE

For assistance in filing a charge or a petition, call the Regional Office at

(860) 240-3522 and ask for the information officer.

The information officer will discuss the situation and assist you in filling out a charge or petition. Information is available during office hours, Monday to Friday, 8:30 a.m. to 5:00 p.m., or at

www.nlr.gov

ESTAMOS A SU SERVICIO

Para asistencia de someter una carga o petición llame la oficial de información en oficina regional a (860) 240-3522.

La oficial de información discutirá su situación y le ayudará si desee someter una carga o petición. Información esta dispuesta a usted mientras las horas de servicio - lunes a viernes, 8:30 a.m. to 5:00 p.m, o

www.nlr.gov

Region 34 Professional Staff Roster

AGENT	TELEPHONE	E-MAIL - @nlrb.gov
Jonathan Kreisberg, Reg. Dir.	860-240-3004	Jonathan.Kreisberg
John Cotter, Deputy Reg. Dir.	860-240-3003	John.Cotter
Michael Cass, Supervisory Ex.	860-240-3524	Michael.Cass
Terri Blue, Deputy Reg. Atty.	860-240-3532	Terri.Blue
Dina Emirzian, Compliance Off.	860-240-3006	Dina.Emirzian
Thomas Quigley, Field Attorney	860-240-3375	Thomas.Quigley
Margaret Lareau, Field Attorney	860-240-3561	Margaret.Lareau
Lindsey Kotulski, Field Attorney	860-240-3525	Lindsey.Kotulski
Jennifer Dease, Field Attorney	860-240-3376	Jennifer.Dease
Rick Concepcion, Field Attorney	860-240-3374	Rick.Concepcion
Claire Sellers, Field Attorney	860-240-3557	Claire.Sellers
Sheldon Smith, Field Attorney	860-240-3539	Sheldon.Smith
Heather Williams, Field Exam.	860-240-3545	April.Williams
Grant Dodds, Field Examiner	860-240-3567	Grant.Dodds
John McGrath, Field Attorney	860-240-3527	John.McGrath

How to File an Unfair Labor Practice (ULP) Charge:

- Anyone may file a ULP charge with the NLRB by submitting a charge form to any Regional Office. The form identifies the parties to the charge and includes a brief statement of the basis for the charge, and must be signed by the charging party.
- Forms are available on the NLRB website, or may be obtained from any NLRB regional office. The Hartford Regional Office has information officers available to assist with the filing of charges.
- 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, which usually consists of a sworn statement and documentation of key events.
- The Region will ask the charged party to present a response to the charge, and will further investigate the charge to establish all facts.
- After a full investigation, the Region will determine whether or not the charge has merit.

******MORE BREAKING NEWS******

NLRB suspends implementation of New Representation Case Rules

In response to the May 14 District Court decision in *Chamber of Commerce et al. v. NLRB*, No. 1:11-cv-02262-JEB (D.D.C.), the NLRB has temporarily suspended the implementation of changes to its representation case rules, which had taken effect April 30.

Board Chairman Mark Gaston Pearce said the Board is reviewing the [court decision](#) and considering its response. “We continue to believe that the amendments represent a significant improvement in our process and serve the public interest by eliminating unnecessary litigation,” he said. “We are determined to move forward.” Acting General Counsel Lafe Solomon also withdrew the [guidance to regional offices](#) he issued prior to the effective date and advised regional directors to revert to their previous practices for election petitions.

About 150 election petitions (including 7 in the Hartford Regional Office) were filed under the new procedures. Many of those petitions resulted in election agreements, while several have gone to hearing. All parties involved in the 150 cases were contacted and given the opportunity to continue processing the case from its current posture rather than re-initiating the case under the prior procedure.

On June 11, the Board filed a Motion to Alter or Amend Judgment in the R Case Rules case. The Board requested that (1) the Court's order and judgment of May 14, 2012 be vacated, and (2) summary judgment be granted to the Board. The Motion and supporting brief is located at: www.nlr.gov – Cases and Decisions tab – Special Litigation briefs and motions – Representation procedures rules – Motion to alter or amend judgment. That Motion is currently pending before the Court.

After the Region Makes a ULP 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 after giving the charging party the opportunity to withdraw. 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 the Federal Circuit Court of Appeals.

Regional Office News

Acting General Counsel Lafe Solomon is Featured Speaker at Connecticut Bar Association Annual Meeting

Acting General Counsel Lafe Solomon was the featured speaker during a program sponsored by the Labor and Employment Law Section of the Connecticut Bar Association at its Annual Meeting on June 11 at the Connecticut Convention Center in Hartford. Mr. Solomon, a career NLRB attorney, was named Acting General Counsel by President Obama as of June 21, 2010, and his nomination to serve as General Counsel was sent to the Senate on January 5, 2011. The Agency's top investigative and prosecutorial position, the General Counsel has supervisory authority over all Regional Offices and guides policy on issuing complaints, seeking injunctions, and enforcing the Board's decisions.

Mr. Solomon began his presentation by addressing the legal status of the Board's recent rulemaking regarding the Employee Rights Poster and the new Representation Case Rules. He then went on to discuss in great detail his handling of social media and "Facebook" cases, emphasizing that by issuing three separate memos covering such issues, he has attempted to provide some guidance to practitioners in advance of formal Board decisions, which to date have yet to issue in any of these cases. With regard to his most recent "social media" memo that issued at the end of May, Mr. Solomon noted that the memo focused exclusively on employer rules and policies governing the use of social media by employees. The memo details seven cases involving such policies, six of which found some provisions of the employer's social media policy to be unlawful. In the seventh case, which involved Walmart, the entire policy was found to be lawful.

The presentation became quite lively as a result of Mr. Solomon's discussion of the Board's recent decision in *DR Horton*, 357 NLRB No. 184 (Jan. 3, 2012), in which a class action waiver in an arbitration agreement was found to violate Section 8(a)(1). Mr. Solomon discussed several recent cases in which he authorized complaint based upon *D.H. Horton*, including one case containing overly broad "employment at will" restrictions. Because of the widespread use of such waivers among non-unionized employers, Mr. Solomon addressed in detail the concern expressed by several audience members over the potential impact of such rulings.

How to File a Representation Petition:

An NLRB Information Officer can assist you in completing a petition form. If you complete the petition yourself, keep in mind these helpful tips:

- Prepare your petition on our website at: www.nlr.gov (filing instructions detailed).
- Know the job titles used by the Employer and the employee shift schedules.
- Provide the Region with authorization/membership cards (or other proof of interest) signed and dated by at least 30 percent of the employees in the petitioned-for unit.
- Be prepared to enter into a stipulated election agreement or to attend a hearing. The hearing is typically held within 7-10 days from the filing date of the petition.
- Be prepared for the election to be conducted promptly after the election agreement or the hearing.

[More News from the NLRB in Washington](#)

NLRB launches protected concerted activity web page

On June 18, 2012, the NLRB in Washington 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.nlr.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 case that arose in the Hartford Regional Office involving 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." That right has been upheld in numerous decisions by appellate courts and by the U.S. Supreme Court over the years. Non-union concerted activity accounts for more than 5% of the agency's recent caseload.

"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."

Region 34 Representation Statistics - FY 2011:

- Representation elections were conducted in 38 cases.
- 92% of elections were achieved by way of an election agreement between the parties.
- 97.5% of elections were held within 56 days from the filing of the petition.
- Elections were conducted in a median of 39 days from the filing of the petition.

Region 34 Unfair Labor Practice Statistics - FY 2011:

- 410 unfair labor practice charges were filed.
- 42% of the charges were found by the Hartford Regional Office to be meritorious.
- All but a few of the meritorious cases were settled prior to hearing.
- 100% of litigated cases that were decided in FY11 were won before an administrative law judge or the NLRB.

[More News from the NLRB in Washington](#)

Board invites briefs in several high profile cases

The NLRB has granted review in [two cases](#) that ask whether graduate student assistants seeking to be represented by a union are employees covered by the National Labor Relations Act. The Board also has [invited briefs](#) from interested parties in the cases: *New York University*, Case [2-RC-23481](#); and *Polytechnic Institute of New York University*, Case [29-RC-12054](#). In its invitation, the Board listed four questions to be addressed, including whether the Board should modify or overrule the [2004 decision in *Brown University*](#), which held that graduate student assistants are generally not statutory employees. The *Brown* decision itself overruled the [2000 decision in *New York University*](#), which held that the assistants are employees. Chairman Mark Gaston Pearce and Members Richard Griffin and Sharon Block ruled in favor of granting review in the cases, while Member Brian Hayes dissented.

The Board also invited briefs from interested parties on the question of whether university faculty members seeking to be represented by a union are employees covered by the National Labor Relations Act or excluded managers. The case is [Point Park University \(06-RC-012276\)](#). At this Pittsburgh-based university, faculty members petitioned for an election and voted in favor of representation by the Communications Workers of America, Local 38061. However, the university challenged the decision to hold the election, claiming that the faculty members were managers and therefore ineligible for union representation.

The case ultimately was presented to the U.S. Court of Appeals for the D.C. Circuit, which remanded it to the Board for a fuller explanation of its original conclusion that the faculty's role at the university is not managerial. Specifically, the court asked the Board to identify which of the factors set forth by the Supreme Court in its 1980 decision in *NLRB v. Yeshiva University* are most significant in deciding whether faculty members are statutory employees or managers.

After a new decision by an NLRB Regional Director again concluded that the Point Park faculty members were statutory employees, the Board granted the University's request to take up the issue once more. To aid the Board in addressing the matters raised in the court's remand, the Board has invited briefs. In its [Notice and Invitation to File Briefs](#), the Board listed eight questions that the briefs should address, and invited submissions of empirical and practical evidence. Briefs should be filed with the Board on or before July 6, 2012.