

NLRB Region 1



Outreach



Summer 2008

Second Edition

Tip O'Neill Federal Building (617) 565-6700

10 Causeway Street

fax (617) 565-6725

Boston, MA 02222

Region1.newsletter@nlrb.gov www.nlrb.gov

In This Issue:

- Did you know?

History of the National Labor Relations Board

- **Recent Litigation Involving Region 1**
Five Star Transportation
- **Recent Compliance News**
- **Recent Representation Case News**
- **Speakers Available**
NLRB staff are available to speak to any group
- **October 16, 2008 Annual NLRB/DOL Conference**
- **Staff Changes**

Did you Know?

What We Do

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.

What is the National Labor Relations Act?

Congress approved the National Labor Relations Act in 1935 to encourage a healthy relationship between private-sector workers and their employers, which policy makers viewed as vital to the national interest. The NLRA was designed to curtail unlawful work stoppages, strikes, and general labor strife, which were viewed as harmful to the U. S. economy and to the nation's general well-being. The NLRA extends many rights to workers who are represented by a union or seeking union representation; and to workers who join together as a group (two or more employees) without a union seeking to modify their wages or working conditions, which is known as protected concerted activity.

The NLRA also extends rights to employers, protecting commercial interests against unfair actions committed by labor organizations, and extends rights to labor organizations, protecting organizational and collective-bargaining representative interests against unfair actions committed by employers.

➤ How to File a Charge:

- Anyone may file an unfair labor practice charge with the NLRB. To do so, they must submit a charge form to any Regional Office. The form must identify the parties to the charge and provide a brief statement of the basis for the charge. The charging party must also sign the charge.
- Forms are available for download from the NLRB website. They may also be obtained from an NLRB office. NLRB offices have information officers available to discuss charges in person or by phone, to assist filling out charge forms, and to mail forms.
- You must file the charge within 6 months of the unfair labor practice.

➤ When a Charge is Filed:

- The NLRB Regional Office will investigate. The charging party is responsible for promptly presenting evidence in support of the charge. Usually evidence will consist of a sworn statement and documentation of key events.
- The Region will ask the charged party to present a response to the charge and will further investigate the charge to establish all facts.
- After a full investigation, the Region will determine whether or not the charge has merit.

Recent Litigation Involving Region 1

Five Star Transportation, Inc., 1-CA-41158, 349 NLRN No. 8.

In a published opinion that issued on April 1, 2008, and is available on the Court's website, www.ca1.uscourts.gov, as well as Westlaw, the First Circuit denied the Employer's petition for review and enforced the Board's Order in full. The Court, writing extensively and helpfully, agreed with the Board that the Employer, which was awarded a contract to provide bus services to a school district, violated Section 8(a)(1) by refusing to hire, or even consider for hire, six school bus drivers, who were then employed by the private bus company that was about to lose the school district contract, because they wrote critical letters and email messages to the school district in an effort to dissuade it from granting the contract to the Employer. Rejecting the Employer's claim that the letter-writing campaign was not protected concerted activity, the Court agreed with the Board that "the discriminatees' letters to the school district were reasonably necessary to carry out their lawful aim of safeguarding their then-current employment conditions" and did not lose the Act's protection on the ground they were disloyal because, in response to the "reasonably perceived threat [to their employment conditions], the drivers' letter-writing campaign was narrowly tailored to effectuate the drivers' aims: the drivers' letters were addressed solely to the District, not the public at large; the letters only requested that the award of the contract be reconsidered or rebid to preserve the drivers' then-current pay and work conditions; and the discriminatees' letters" concerned primarily working conditions and avoided needlessly tarnishing the Employer's image."

Board decisions and Administrative Law Judge decisions are posted on the NLRB website, <http://www.nlr.gov/research/decisions/index.aspx>.

➤ **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 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 appeal to a federal court.



**Region 1 Unfair Labor Practice Statistics From
October 2007 through April 2008:**

- 479 unfair labor practices were filed.
- 49.9% of the cases were found to be meritorious
- 93.5% of the meritorious cases were settled prior to hearing

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

Recent Compliance News:

Discriminatees' Search for Work

Under on a recent Board decision, discriminatees are urged to keep careful records of when and where they sought employment.

On September 11, 2007, the Board issued its decision in *Grosvenor Orlando Associates, LTD., d/b/a The Grosvenor Resort, and its general partners Grosvenor Properties, Ltd., Donald E. Werby and Robert K. Werbe*, 350 NLRB No. 86. In this decision, the Board found "that reasonably diligent discriminatees should at least have begun searching for interim work at some time within the initial 2-week period." Thus, a discriminatee will lose backpay if there is more than a 2-week period after the termination, layoff, or refusal to hire in which the discriminatee does not engage in a search for work. However, even if the discriminatee fails to search for work during this 2- week period, the backpay period does not stop. If a discriminatee unreasonably delays an initial search, the Board will stop the right to backpay until such time as a reasonably diligent search begins.

As a result of this decision, it is important to remember that if backpay and/or other reimbursement is due as part of the remedy for the unfair labor practice, as in an unlawful discharge or refusal to hire, the Board requires discriminatees to mitigate or offset the backpay by promptly beginning to look for another job in the same or similar line of work. If a discriminatee is unable to establish that they actively sought to mitigate damages, the discriminatee may face the risk of having whatever money is owed reduced.

Region 1 Compliance Statistics from October 2007 through April 2008:

- **Over \$1,000,000 Backpay was distributed to Discriminatees.**

➤ **How to File a Representation Petition:**

- Filing NLRB representation petitions can be simple and convenient. An NLRB Information Officer can assist you in completing a petition form. Our contact information is on page one. 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 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 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.

Representation Case News:

In recent elections involving bargaining units in excess of 100 employees, unions were selected as employees' representative in cases involving various types of employees. For instance, bus drivers and monitors at the Nashua, New Hampshire, location of First Student selected Teamsters Local 633; clerical employees employed by Northrup Grummond Technical Services in St. Albans, Vermont, selected UE Local 56; engineers, control operators and technicians employed by Fox TV in Dedham, Massachusetts, selected IBEW Local 1228; and operations and maintenance employees employed by Coventa Energy, in Wareham, Massachusetts, selected Utility Workers Local 369.

New Rules for Voluntary Recognition

In September 2007, the Board issued a decision in *Dana Corp.*, 351 NLRB No. 28. That case set forth a new procedure, whereby an employer and a union that engage in voluntary recognition can be insulated from challenge for a reasonable period of time only if the Board posts a notice to employees for 45 days informing employees of their right to challenge that recognition. The Region has begun implementing that policy and to date has administered seven such "*Dana* postings." In no case has a decertification petition been filed during the 45- day posting period.

Display of Flag During Elections

Since assuming his position, General Counsel Ronald Meisburg has emphasized the importance of protecting employee free choice on the question of collective bargaining. Whether employees decide in favor of or against representation, that choice must be protected.

Our elections are often the forum in which these choices are made, and, for that reason, it is essential that we do all in our power to conduct our elections with the solemnity they deserve. One way to enhance the solemnity of our elections and to accord them the dignity of a Federal proceeding is to display the American flag in the polling place. For many of the voters in our elections, including some immigrant workers, voting in a secret-ballot NLRB election may be their first experience with the democratic process. For all employees who cast ballots for or against representation, our elections present a rare opportunity to emphasize that the Government is truly serious about the promise of Section 7 of the Act.

Learn More:

The NLRB website, www.nlr.gov, contains a great deal of additional information about the protections of the Act, Board policies and procedures, and how to contact the nearest Regional Office.

Contact the Region:

There is always an information officer available at an NLRB Regional Office to answer general inquiries or to discuss a specific workplace problem or question. The information officer can offer information about the Act and advice as to whether it appears to be appropriate to file an unfair labor practice charge. If filing a charge does appear to be appropriate, the information officer can assist in completing the charge form.

The information officer may be reached by telephone at:

1-617-565-6700

Puede comunicarse con un oficial de información que hable español llamando al 1-617-565-6700.

Please e-mail region1.newsletter@NLRB.gov if you wish to subscribe or unsubscribe to future newsletters.

Region 1 Representation Statistics from October 2007 through April 2008:

- Representation elections were conducted in 68 cases.
- 94.7% of elections were achieved by way of an election agreement between the parties.
- Approximately 93.8% of elections were held within 56 days from the filing of the petition.
- Initial elections were conducted in a median of 41 days from the filing of the petition.

Speakers Available

Under General Counsel Ronald Meisburg, the Agency is making a special effort to reach community groups with information about the NLRB. Members of the Region's staff are available to make presentations before any group, such as classroom groups, and the staff of a legal services clinic or a service agency, as well as those members of the public that they serve, to describe what the Act's protections cover, how the Region investigates and resolves unfair labor practice charges, or any NLRB topic of interest.

To arrange for a speaker and to discuss possible topics, please do not hesitate to telephone Deputy Regional Attorney Scott Burson (617) 565-6704; or Board Attorney Lucy Reyes (617) 565-6778.

Varios miembros de la Región 1 están disponibles para hacer presentaciones a cualquier grupo acerca de nuestro trabajo o de otro tópico de interés acerca de la Junta Nacional de Relaciones del Trabajo. Estas presentaciones pueden hacerse en español.

Attend Our October 16, 2008 National Labor Relations Board/U.S. Department of Labor Annual Conference

Date: Thursday, October 16, 2008

Location: Suffolk University Law School, 120 Tremont St., Boston, MA

Time: 12:30 PM - 5:30 PM, followed by a reception

Be sure to mark your calendar for the 36th Annual Labor Law Conference. Solicitor of Labor for the U.S. Department of Labor Gregory Jacob and Deputy Associate General Counsel, Division of Advice of the National Labor Relations Board, Ellen Farrell are the keynote speakers. More details about this conference will be available in the next issue.



NEW ARRIVALS

Region One is pleased to announce two experienced additions to our staff, Field Attorney Daniel Fein and Field Examiner Jessica Foley. Dan arrived on August 6, 2007, after seven years in the Division of Advice. Jessica arrived on January 7, 2008, after three and a half years in Region 31, Los Angeles and before that an internship in Region 3, Buffalo.

Retirements

After more than 37 years of dedicated service to the NLRB, Office Manager Nancy Schoenfeld and Deputy Regional Attorney Roy Schoenfeld retired at the end of May 2008.

Nancy and Roy will be missed by all their co-workers and the public they so effectively served. They both were responsible for training many professional and support staff members who benefitted from their knowledge, good judgment, and analytical skills.

Nancy Schoenfeld started in Region One as a clerical employee, served as Assistant Office Manager for 27 years, and became Office Manager in 2005.

Roy Schoenfeld began his NLRB career in Washington and transferred to Region One as a Field Attorney. Roy was promoted to the position of Supervisory Attorney in 1977 and became Deputy Regional Attorney in 1991.