



# NLRB NEWS: NEW ENGLAND



## REGION 1 (BOSTON) SUBREGION 34 (HARTFORD)

**October 2013**  
*Second Edition*

### Subregion 34 – Hartford

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### *NLRB Finally Has Five Senate Confirmed Members*

For the first time in over 10 years, the NLRB has a full complement of five Senate confirmed members. Four new members, all nominated by President Barack Obama and confirmed in August by the U.S. Senate, have been sworn into office. NLRB Chairman Mark Gaston Pearce was also confirmed to an additional five year term on the Board. Biographies of the five members of the Board are below:

- **Mark Gaston Pearce** is currently Chairman, a position he has held since August 2011. Mr. Pearce was a founding partner at Creighton, Pearce, Johnsen & Giroux and previously a partner at Lipsitz, Green, Fahringer, Roll, Salisbury & Cambria LLP. From 1979 to 1994, he was a district trial specialist for the NLRB in Buffalo, NY. He has taught labor studies courses at Cornell University's School of Industrial Labor Relations Extension. Mr. Pearce received a B.A. from Cornell University and a J.D. from State University of New York at Buffalo.
- **Nancy Schiffer** was Associate General Counsel to the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) from 2000 to 2012. Previously, she was Deputy General Counsel to the United Auto Workers (UAW) from 1998 to 2000. She also worked as Associate General Counsel for the UAW from 1982 to 1998. Earlier in her career, Ms. Schiffer was a staff attorney in the NLRB's Detroit Regional Office and worked as an attorney in private practice. Ms. Schiffer received her B.A. from Michigan State University and her J.D. from the University of Michigan Law School.

**Contact the Region:**

There is always an information officer available between 8:30 am and 5:00 pm at the Boston Regional Office or the Hartford Subregional office, by phone at 617-565-6710 (Boston) or (860) 240-3522 (Hartford) or in person at 10 Causeway St. in Boston or 450 Main St. in Hartford, to answer general workplace questions or to discuss a specific workplace problem. 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 an election 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](http://www.nlr.gov), which has a link to the Boston Regional Office and Hartford Subregional Office webpages featuring newsletters, news releases and local cases and decisions.

- **Harry I. Johnson, III** was a partner with law firm Arent Fox LLP, a position he held since 2010. Previously, Mr. Johnson worked at the Jones Day law firm as a partner from 2006 to 2010 and as an associate from 1994 to 2005. In 2011, he was recognized by The Daily Journal as one of the "Top Labor & Employment Attorneys in California". Mr. Johnson received a B.A. from Johns Hopkins University, an M.A.L.D. from Tufts University's Fletcher School of Law and Diplomacy, and a J.D. from Harvard Law School.
- **Kent Hirozawa** was chief counsel to NLRB Chairman Mark Pearce. Before joining the NLRB staff in 2010, Mr. Hirozawa was a partner in the New York law firm Gladstein, Reif and Meginniss LLP, where he advised clients on a variety of legal and strategic issues, including Federal and state labor and employment law matters. Mr. Hirozawa previously served as a field attorney for the NLRB from 1984 to 1986. He was a pro se law clerk for the U.S. Court of Appeals for the Second Circuit from 1982 to 1984. He received a B.A. from Yale University and a J.D. from New York University School of Law.
- **Philip A. Miscimarra** was a partner in the Labor and Employment Group of Morgan Lewis & Bockius LLP, a position he held since 2005. Since 1997, Mr. Miscimarra has been a senior fellow at the University of Pennsylvania's Wharton Business School. Mr. Miscimarra worked at Seyfarth Shaw LLP as a partner from 1990 to 2005 and as an associate from 1987 to 1989. Mr. Miscimarra received a B.A. from Duquesne University, an M.B.A. from the University of Pennsylvania's Wharton School of Business, and a J.D. from the University of Pennsylvania Law School.

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

- Anyone may file a ULP charge within 6 months of the ULP 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. Although charges may be filed by mail or fax, they may not be filed electronically.
- Forms are available on the NLRB website, or may be obtained from any NLRB regional office. The Boston Regional Office and the Hartford Subregional Office have information officers available to assist with the filing of charges.

**When a Charge is Filed:**

- The NLRB Regional Office will investigate. As the charging party, be prepared to provide a sworn affidavit in support of the charge within 7 to 14 days of the filing, and arrange to promptly present additional witnesses and any documents relevant to your case.
- 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.

***\*\*Upcoming Conferences\*\****

**NLRB | U.S. DEPARTMENT OF LABOR**  
**40th Annual Robert Fuchs Labor Law Conference**  
**Thursday, October 24, 2013, 1-5 p.m.**  
**Suffolk University Law School, Boston, Massachusetts**

The 40th Annual Robert Fuchs Labor Law Conference is being held at a time of great change. The interim resolution of the dispute over the United States Senate's confirmation process has enabled the National Labor Relations Board to have a full complement of confirmed members for the first time during President Obama's administration. It also enabled the Senate to confirm a new Secretary of Labor. Highlighting this year's conference is new Board Member Kent Hirozawa and the new Secretary of Labor, Thomas E. Perez or Solicitor of Labor Patricia Smith. These officials will discuss with the bar and the public their outlook for the coming year, notably the major issues awaiting resolution and any new enforcement priorities. Our panel of lawyers and academics will consider the practical implications of the upcoming *Noel Canning* decision and the likely challenges facing labor and employment law practitioners over the next year, with particular emphasis on anticipated developments in the areas of concerted activity, whistle blowing, and the Sarbanes-Oxley Act.

**For more information,** please visit [www.law.suffolk.edu/als](http://www.law.suffolk.edu/als) or call 617.573.8627. Please refer to code# 2774 when calling.

**CONNECTICUT BAR ASSOCIATION**  
**LABOR & EMPLOYMENT LAW SECTION**  
**2013 Labor and Employment Law Conference**  
**Thursday, December 12, 2013 9 – 5 p.m.**  
**Farms Country Club, Wallingford, Connecticut**

Program topics include NLRB Practice & Procedure; U.S. Supreme Court update; Affordable Care Act; Immigration; Wage and Hour; and Employment Investigations. The NLRB topic will provide practitioners with an overview of the NLRB's casehandling procedures and substantive law as it applies to the processing of unfair labor practice charges and representation petitions. To view the program brochure go to [www.ctbar.org](http://www.ctbar.org) and click "Search CLE". Or contact the CBA Member Service Center at (860) 223-4400.

**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 issue a formal complaint and 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 a United States Circuit Court of Appeals.

***Recent ALJ Decisions from Region 1***

In *Springfield Day Nursery a/k/a Square One*, 1-CA-062517 et al, JD-18-13 (3/21/13), Administrative Law Judge (ALJ) Michael Rosas held that the Company violated Section 8(a)(5) by installing surveillance cameras in Company vans and changing vacation and sick leave policy without giving the Union prior notice and an opportunity to bargain, by unreasonably delaying in providing information in response to the Union's requests, and by failing to provide contract benefits to substitute van drivers and substitute teachers. The judge further held that the Company violated Section 8(a)(1) by compelling employees to disclose in a questionnaire their communications with their labor representative regarding their compliance with the Company's seatbelt policy, and violated Section 8(a)(3) by discharging an employee because she signed a union authorization card. Field Attorney JoAnne Howlett litigated the case for Region One.

In *Southcoast Hospitals*, 1-CA- 067303, JD(NY)-29-13 (6/12/13), ALJ Kenneth Chu held that the Company violated Section 8(a)(3) by maintaining and enforcing a discriminatory policy with respect to the consideration, selection, employment and hire of transfer applicants that deprives employees of job opportunities on the basis of whether their current position is or is not a union represented position. Field Attorney Alejandra Hung litigated the case for Region One.

In *Good Samaritan Medical Center*, 1-CA- 082367 and *1199SEIU United Healthcare Workers East*, 1-CB-082365, JD(NY)-39-13 (8/8/13), ALJ Raymond Green held that the Company violated Sections 8(a)(1) and (3) by discharging a newly hired employee because he questioned whether employees are required to join the Union, and by applying its Workplace Civility Policy to that employee's conduct; and that the Union violated Section 8(b)(1)(A) and 8(b)(2) by causing or attempting to cause the Company to discharge that employee because he questioned or objected to having to become a union member as a condition of employment, and by threatening employees with unspecified reprisals for exercising their rights under Section 7 of the Act. Field Attorneys Kevin Murray and Karen Hickey litigated the case for Region One.

In *Berklee College Of Music*, Case 01-CA-089878, JD-64-13 (9/20/13), ALJ Susan A. Flynn held that the Company violated Section 8(a)(5) by failing to afford the Union prior notice and an opportunity to bargain over the effects of its decision to change the minimum course population policy in August 2012. In order to remedy the violation, the ALJ ordered a limited backpay remedy designed to make any affected bargaining unit members whole for any losses they suffered as a result of the failure to bargain, per the NLRB's decision in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968). Field Attorney Emily Goldman litigated the case for Region One.

## 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](http://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.

## ***Compliance News from Region One***

Two recent cases from the Boston Regional Office demonstrate the Region's consistently outstanding compliance efforts.

***Bradford Printing and Finishing, LLC***, Case No. 01-CA-046524, involved a Rhode Island textile finishing plant that had a collective bargaining agreement with UNITE/HERE covering a unit of 32 employees. In November 2010, the Region issued a Complaint alleging numerous violations of Section 8(a)(5), including unilateral changes to wages and health insurance benefits and premiums. Bradford entered into an informal Board Settlement Agreement requiring the installment payment of over \$127,000 in backpay. After Bradford repeatedly defaulted on the installment payments, the Region secured a \$110,000 default judgment from the Board for the remaining backpay obligations, which was subsequently enforced by the U.S. Court of Appeals for the First Circuit in April 2013. Meanwhile, the Region learned that Bradford had been placed into receivership under Rhode Island law. The Region filed a proof of claim in early 2013 and then worked closely with the Receiver to secure the payment of \$50,000 in backpay in advance of distribution to general creditors. The Region then engaged in an extensive search for the employees, many of who had relocated during the course of this case, and all of the backpay has now been distributed.

***Solutia, Inc.***, Case No. 01-CA-045447, involved the consolidation of two chemical testing labs located in Springfield, Mass., each of which was represented by a different union. The Board decided in 2011 that Solutia violated Section 8(a)(5) by failing to bargain with the unions prior to the consolidation, and ordered that the closed lab be reopened and the laid off employees reinstated to their jobs with backpay. The Board's Decision was enforced by the U.S. Court of Appeals for the First Circuit in November 2012. Solutia subsequently reopened the closed lab and offered reinstatement to the laid off employees. The Region then worked closely with the parties to resolve numerous complex backpay and reinstatement issues, including retirement determinations, mitigation efforts, disability entitlement, and 401(k) contributions. This resulted in a Compliance Agreement calling for the installment payment of almost \$434,000 representing backpay, interim expenses, medical expenses, disability payments, and union dues.

Regional office staff who contributed to the successful resolution of these cases include Compliance Officer Claire Powers, Field Examiner Jarad Krantz, Field Attorneys' Elizabeth Vorro and Joanne Howlett, and Deputy Regional Attorney Scott Burson.

**Region 1/Subregion 34  
Representation Statistics -  
FY 2013:**

- 116 Representation elections were conducted.
- 87% of elections were achieved by way of an election agreement between the parties.
- 92% of elections were held within 56 days from the filing of the petition.
- Elections were conducted in a median of 38 days from the filing of the petition.
- 10 Regional Director Decisions in contested representation cases issued in a median of 29 days.
- 2 post-election proceedings with a hearing issued in a median of 45 days, and 3 post-election proceedings w/o hearing issued in a median of 55 days.

**\*\*\*\*OUTREACH\*\*\*\***

***NLRB and Mexico Sign Letter of Agreement to Strengthen Collaborative Efforts***

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The NLRB and the Ministry of Foreign Affairs of the United Mexican States signed a letter of agreement on August 1, 2013 designed to strengthen their collaborative efforts to provide Mexican workers, their employers, and Mexican business owners in the United States with information, guidance, and access to education regarding their rights and responsibilities under the National Labor Relations Act.

Under the agreement, the NLRB and the Mexican Embassy in Washington, D.C., as well as NLRB Regional Offices and Mexican Consulates nationwide, will cooperate to provide outreach, education, and training, and to develop best practices. The framework has been used by other federal labor agencies, including the Department of Labor and the Equal Employment Opportunity Commission, which have similar agreements with the Mexican Embassy and its consulates. Acting NLRB General Counsel Lafe Solomon indicated the agreement will “promote a broader awareness within the Mexican community of the rights and responsibilities of employees and employers, along with the services that the NLRB provides.”

Mexican Consulate Officials observed the signing ceremony on August 1 via video conference at the NLRB’s Boston Regional Office, followed by an introductory meeting to plan the implementation of the agreement in the Boston area. On August 26, the first day of Labor Rights Week, Regional Director Jonathan Kreisberg, Regional Attorney Ron Cohen, Deputy Regional Attorney Bob Redbord, and Field Attorney Emily Goldman addressed a group of Mexican workers at the Mexican Consulate in Boston regarding their rights under the National Labor Relations Act. It is anticipated that similar events will be held throughout the Boston area pursuant to the Letter of Agreement.

**Region 1/Subregion 34  
Unfair Labor Practice  
Statistics - FY 2013:**

- 1005 unfair labor practice charges were filed.
- 41.5 % of the charges were found to be meritorious.
- 92% of the meritorious cases were settled prior to hearing.
- Unfair Labor Practice hearings were held in a median of 88 days from the issuance of Complaint.
- \$1.7 million in backpay distributed to employees
- 31 employees accepted reinstatement to their former jobs, and 46 declined reinstatement.

**\*\*\**BREAKING NEWS*\*\*\***

***Specialty Healthcare Decision Upheld on Appeal***

In *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), the NLRB overruled its 1991 decision in *Park Manor*, which had adopted a special test for bargaining unit determinations in nursing homes, rehabilitation centers, and other non-acute health care facilities. Instead, the NLRB returned to applying its “traditional community of interest approach” to nursing homes, and clarified the criteria used in cases where a party argues that a proposed bargaining unit is inappropriate because it excludes certain employees. Thus, where an employer argues that a proposed unit inappropriately excludes certain employees, the employer will be required to prove that the excluded employees share “an overwhelming community of interest” with employees in the proposed unit. Applying its new approach, the Board found that the Certified Nursing Assistants sought by the petitioning union at Specialty’s nursing home comprised an appropriate unit without including all other nonprofessional employees, as argued by the employer. The Board subsequently applied the Specialty Healthcare decision in several other cases, including *Odwalla, Inc.*, 357 NLRB No. 132, *Northrop Grumman Shipyard*, 357 NLRB No. 163, and *DTG Operations, Inc.*, 357 NLRB No. 175.

On August 14, 2013, the U.S. Court of Appeals for the Sixth Circuit upheld the Board’s *Specialty Healthcare* decision. In doing so, the court deferred to the Board’s conclusion as to the appropriateness of the bargaining unit because the Board cogently explained its reasons for adopting the “overwhelming community of interests” test, which was based on prior Board precedent, and thus it was not an abuse of its discretion to do so. The court further noted that in making a unit determination, the Board is not required to select the *most* appropriate unit, but rather must only select *an* appropriate unit from among what is often a range of appropriate units. Finally, the court noted that “[i]t is within the Board’s purview . . . to develop standards for ascertaining whether one unit is more appropriate than another.”

**Contacte a la Region:**

Siempre hay un agente de guardia disponible entre las 8:30 a.m. y las 5:00 p.m. en la Oficina Regional de Boston o en la Oficina Subregional de Hartford, por telefono al 617-565-6710 (Boston) o al 860-240-3522 (Hartford) o en persona en el 10 Causeway St. en Boston o en el 450 Main Street, Hartford, para contestar preguntas generales que se refieren al lugar de trabajo o para discutir algun problema especifico del trabajo. El oficial de informacion puede ofrecer informacion acerca del NLRB y aconsejar, si es que es apropiado; archivar un cargo de practica laboriosa injusta. Si se archiva una peticion que aparece inapropiada, el agente de informacion le asistira a llenar el formulario del cargo o la peticion.

Tambien hay informacion disponible en la pagina electronica de informacion de la Junta, al [www.nlr.gov](http://www.nlr.gov), la cual tiene una conexion a la Oficina Regional de Boston y a las paginas de la Oficina Subregional de Hartford, cuales paginas proporcionan notas de informacion, noticias y casos locales asi como decisiones tomadas.

**Region 1 Professional Staff Directory**

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**Subregion 34 Professional Staff Directory**

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