



NLRB NEWS: CONNECTICUT



NLRB REGION 34

January 2010

Third Edition

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REGIONAL DIRECTOR PETER B. HOFFMAN RETIRES

Following a distinguished career with the NLRB spanning almost 42 years, Hartford Regional Director Peter B. Hoffman retired on March 3, 2009. Peter was given a rousing sendoff by his family, friends and colleagues on February 24 at a reception and dinner hosted by the Labor and Employment Law Section of the Connecticut Bar Association. Over 100 people attended, many of whom worked with Peter throughout his career with the Agency, including NLRB Chairman Wilma Liebman, Deputy General Counsel John Higgins, Associate General Counsel Barry Kearney, Assistant General Counsel Jim Paulsen, Director of the Office of Representation Appeals Lafe Solomon, former NLRB Member Marshall Babson, Region One Regional Director Rosemary Pye, former Regional Directors' Victoria Aguayo, Allen Benson, Gary Kendellen, and Dan Silverman, and former Hartford Assistant Regional Director John Sauter. Peter closed the evening by thanking his family, friends and colleagues for the outstanding support they gave him throughout his 42 years with the Agency.

After receiving his undergraduate degree from the Cornell University School of Industrial and Labor Relations, and a law degree from George Washington Law School, Peter began his career with the NLRB in 1967 as a Field Attorney in Region 6 (Pittsburgh). He was promoted to Supervisory Attorney and eventually moved to NLRB headquarters as a Deputy Assistant General Counsel. In 1979, Peter was selected as the first Officer-in-Charge of the newly-created Subregion 39 in Hartford. When the Subregion was elevated to full regional office status in 1988, Peter became the first (and only) Regional Director of Region 34. Peter was also an adjunct instructor at the Cornell ILR Extension Center in New York City, and the Labor Education Center at the University of Connecticut. He also served as a past Chair of the Labor and Employment Law Section of the Connecticut Bar Association.

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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 280 Trumbull 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 Act and 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.

Jonathan Kreisberg Appointed Regional Director

On May 18, 2009, Jonathan Kreisberg was appointed the new Regional Director of the Hartford Regional Office. A native of Bayside, Queens, New York, Jonathan earned his B.S. degree in 1974 from Cornell University’s School of Industrial and Labor Relations, and his J.D. degree in 1977 from American University’s Washington College of Law.

Jonathan began his career with the Agency in 1976 as a law student intern in the NLRB’s Judges Division in Washington, D.C. He then served for three years as staff counsel to former Board Member John Penello. In December 1979, Jonathan transferred to the newly created Subregion 39 in Hartford, where he served for five years as a Field Attorney. He was promoted to the position of Supervisory Attorney in 1985, and, shortly after the Hartford office was upgraded to the status of a Regional Office in 1988, Jonathan was appointed its first Regional Attorney. Jonathan and his family have lived for the past 30 years in the small Eastern Connecticut Town of Coventry, where he has been actively involved in several local community groups, including service on the Coventry Planning and Zoning Commission, Inland Wetlands Agency, the Board of Education, and the School Building Committee.

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On July 8, 2009, approximately 100 family, friends, co-workers, and members of the Connecticut labor-management community gathered at the University of Connecticut Law School for Jonathan’s formal installation as Regional Director. Visiting dignitaries included NLRB General Counsel Ron Meisburg, NLRB Chairman Wilma Liebman, Associate General Counsel Rick Siegel, Deputy Assistant General Counsel Yvette Hatfield, Region One Regional Director Rosemary Pye, and former NLRB Member Marshall Babson. The Honorable Robert N. Chatigny, Chief Judge of the United States District Court for the District of Connecticut, administered the oath of office.

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Following the administration of the oath, Jonathan addressed the assembled guests. Recognizing the formidable challenge he faces in succeeding the legendary Peter Hoffman as Regional Director in Hartford, Jonathan noted that he comes from a long line of “tough cookies” who overcame great challenges, including his father’s parents who immigrated from Eastern Europe through Ellis Island on their way to living the American Dream, and his mother’s parents who both served as Marines in World War I. Finally, Jonathan noted that having spent the past 30 years working for Peter Hoffman, he was more than ready and eager to tackle the challenge of leading the Hartford office into the future.

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 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.
- within 6 months of the

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.

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

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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

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AGENT	TELEPHONE	E-MAIL - @nlrb.gov
Jonathan Kreisberg, Regional Director	860-240-3004	Jonathan.Kreisberg
John Cotter, Deputy Regional Director	860-240-3003	John.Cotter
Michael Cass, Supervisory Examiner	860-240-3524	Michael.Cass
Terri Craig, Supervisory Attorney	860-240-3532	Terri.Craig
Dina Emirzian, Compliance Officer	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
Patrick Daly, Field Attorney	860-240-3527	Patrick.Daly
Jennifer Dease, Field Attorney	860-240-3376	Jennifer.Dease
Rick Concepcion, Field Attorney	860-240-3374	Rick.Concepcion
Douglas Peary, Field Examiner	860-240-3556	Douglas.Peary
Andrew Starr, Field Examiner	860-240-3567	Andrew.Starr
Heather Williams, <u>Co-op Student</u> ,	860-240-3545	April.Williams

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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

with a final decision subject to appeal to

Unfair Labor Practice News

A common issue affecting both unionized and non-unionized employees involves employer rules that impact on the right of employees to engage in union activities or other group activities to improve their working conditions, wages and benefits (commonly referred to as protected concerted activities). These rules are often set forth in employee handbooks, although there is no requirement that the rule be in writing for it to violate the NLRA. When an unfair labor practice charge is filed that involves the maintenance or enforcement of such rules, the Hartford Regional office will make the initial determination whether a particular employer rule is unlawful because it interferes with the right of employees to engage in union and other protected concerted activities.

“Confidentiality” rules are commonly found to unlawfully interfere with the right of employees to engage in union and other protected concerted activities. See Cintas Corp., 344 NLRB 943 (2005). Thus, it is unlawful to restrict the right of employees to discuss their working conditions, wages and benefits with other employees, or with persons not employed by their employer, such as the media, unions, and the employer’s customers. See Trump Marina Assocs., 354 N.L.R.B. No. 123 (2009); NLS Group, 352 NLRB 744 (2008); Leather Center, 312 NLRB 521 (1993).

Employer rules may lawfully restrict solicitation and the distribution of written materials in the workplace, but the rule may not prohibit employees from distributing written materials during non-working time in non-working areas, and generally may not prohibit employees from soliciting other employees anywhere in the workplace during non-working time. See Stoddard-Quirk Manufacturing Co., 138 NLRB 615 (1962). A rule prohibiting employees from talking about unions or other protected concerted activities while they are working is unlawful if the employer permits employees to talk about other non-work related matters, such as sports. See Emergency One, 306 NLRB 800 (1992).

Rules restricting the wearing of buttons or items of clothing (such as T-shirts and hats) bearing union insignia or protesting employer conduct related to working conditions, wages and benefits are also commonly found to unlawfully interfere with the right of employees to engage in union and other protected concerted activities. See Register Guard, 351 NLRB 1110 (2007); Walmart, 340 NLRB 637 (2003); Escanaba Paper Co., 314 NLRB 732 (1994). More recently, rules restricting employees from using the employer’s e-mail system to engage in union or other protected concerted activities have been found unlawful where the employer permits employees to use the e-mail system for other non-work related matters. See Richmond Times Dispatch, 346 NLRB 74, 76 (2005).

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Region 34 Unfair Labor Practice Statistics - FY 2009:

- 379 unfair labor practice charges were filed.
- 41% of the charges were found by the Hartford Regional Office to be meritorious.
- 99% of the meritorious cases were settled prior to hearing.
- 100% of litigated cases were won before either an administrative law judge or the NLRB.

Video Testimony

In 2008, a video testimony pilot program was instituted aimed at enhancing the NLRB’s ability to process representation cases more efficiently. Since then, Regions have used video conference equipment in pre and post- election hearings to take oral testimony of witnesses not able to appear in person at a hearing. Recently, the pilot program was extended to unfair labor practice investigations to secure evidence where a face to face affidavit is not necessary. A survey of Regions utilizing this equipment noted that many of the stakeholders, the public we serve, were not aware of the availability of video conference equipment. We are taking this opportunity to notify you of the availability of video testimony. We encourage our stakeholders to suggest the use of this technology in appropriate representation and unfair labor practice case proceedings.

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NLRB Speakers are Available for Your Group

The Hartford Regional Office staff is available to make presentations before any employer, employee or union group, professional associations, local, state and federal agencies, worker advocacy groups, student groups and schools, non-profit entities, elected officials, veterans groups, community organizations, and other members of the general public. Such presentations may include a description of the NLRA’s protections, how the Region investigates and resolves unfair labor practice charges and processes representation petitions, or any other NLRB topic of interest. To arrange for a speaker and to discuss possible topics, please contact Regional Outreach Coordinator John Cotter at 860-240-3003 or by e-mail at John.Cotter@nlrb.gov.

Region 34 Compliance
Statistics - FY 2009:

- Almost \$1.5 Million in backpay was distributed to employees.
- 24 employees were reinstated to their previous jobs, and 7 employees declined reinstatement.

Compliance News

The Compliance function in the Hartford Regional Office is responsible for ensuring that the parties satisfy voluntary or NLRB-imposed obligations. Compliance cases sometimes involve lengthy negotiations to insure that all portions of a case are resolved. In some instances the successful resolution of compliance cases is directly related to the willingness of the parties to explore creative means for resolving backpay and other compliance issues.

In a recent case, the Hartford Regional Office and the parties utilized such creative efforts to resolve a longstanding dispute arising out of the Board's decision in *Downtown Hartford YMCA*, 349 NLRB 960 (2007). In that case, the Board held that the YMCA had violated Section 8(a)(3) of the NLRA when it discriminatorily refused to hire 12 Union-represented housekeeping employees who had been employed by the company that previously performed the housekeeping and janitorial functions at its downtown Hartford facility, and violated Section 8(a)(5) when it set the initial terms of employment for those employees who it hired to perform the housekeeping and janitorial functions. The parties were at odds over the amount of backpay due the 12 former employees and the 14 other employees who had been hired by the YMCA, as well as a method to resolve the reinstatement rights of the 12 former employees.

After initial efforts at resolving the case following the Board's Order were unsuccessful, the case was sent to the United States Court of Appeals for the Second Circuit for enforcement of the Board's Order. During a mediation session with the Second Circuit Court of Appeals, the parties agreed to take another crack at resolving the case. Following a round of intensified negotiations under the supervision of the Hartford Regional Office's compliance staff, the parties agreed to a compromise. The Union agreed to limits on certain Union benefit fund contributions owed by the YMCA, and the YMCA agreed to pay full backpay and make pension contributions for all employees covered by the Board's Order, and to reinstate the former employees by hiring a unionized subcontractor to perform the housekeeping and janitorial functions.

As a direct result of the parties' willingness to explore creative methods for resolving their dispute, the employees received backpay, benefits and reinstatement without further delay, while the parties were spared the expense and stress of additional litigation.

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 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.

E-Filing Comes to the NLRB

E-gov" is the mandate to federal agencies to establish procedures for Internet-based access to government services. There is a link to E-gov on our website (www.nlr.gov). From there, you can establish your own personal account with us to access Regional and Board case information and submit documents to us electronically, called "e-filing." We encourage parties to submit acceptable documents to us electronically. And for those e-filers who establish their own accounts, the e-filing system will automatically fill in data fields on e-file forms through the use of new portal technology, while the expanded e-filing program will allow users to file documents electronically with the field offices, as well as the Division of Judges, General Counsel's Office of Appeals, and the Board's Executive Secretary's Office.

Although **petitions, charges and voluntary recognition notifications cannot yet be filed electronically**, most other documents can—making e-filing the easy way to do business. The list of approved documents can be found on the Agency's website under the E-Gov tab, E-Filing option in the pull-down menu.

Since all documents submitted in a case will eventually be scanned and stored electronically, receiving documents in an electronic form, preferably in pdf format, will save considerable Agency resources. In an effort to encourage parties to consider e-filing documents, the Board, in a press release dated February 19, 2009, announced three changes to its e-filing program designed to simplify and promote electronic filings:

1. The Board and the General Counsel will now accept electronic filings up to 11:59 p.m. local time at the receiving office on the due date. Documents filed by other means, such as U.S. mail, personal service or facsimile, will continue to be due at the close of business at the receiving office on the due date. The close of business in Region 34 and for the General Counsel and the Board offices in Washington, D.C. is 5:00 p.m., Eastern Time.
2. The Board and the General Counsel will now require parties who e-file documents to serve the documents on other parties to the case by e-mail whenever possible.
3. The Board and the General Counsel will no longer require parties to provide physical copies of long documents that they file electronically. In addition, the 15-page limit for E-Filings has been eliminated. E-filed documents can now be as large as 20 megabytes.

Finally, the Agency also revised the manner in which decisions are distributed to the parties. In April 2009, the Agency began issuing Administrative Law Judge Decisions electronically to registered parties. Registration can be accomplished on the Board's website under the E-Gov tab.

**Region 34 Representation
Statistics - FY 2009:**

- Representation elections were conducted in 43 cases.
- 96% of elections were achieved by way of an election agreement between the parties.
- 100% of elections were held within 56 days from the filing of the petition.
- Initial elections were conducted in a median of 37 days from the filing of the petition.

NLRB Releases Videos On Website

The National Labor Relations Board has added three videos to its internet site (www.nlr.gov): one providing a guided tour of the agency's website ("Introduction to the NLRB Public Website"), the second explaining how to use the agency's electronic legal research database ("How To Use CiteNet"), and the third presenting, in English and Spanish, a portrayal of the various phases of a representation case, including the organization campaign, the filing of a petition, the election, the pre-election hearing and post-election objection process, as well as a description of the Agency's Information Officer program that explains the various ways the Agency can be contacted.

The "Introduction to the NLRB Public Website" video provides viewers with a guided tour of the Agency's website pointing out many of its user-friendly features. The video explains how to navigate the Agency's website while at the same time explaining to viewers how to avail themselves of the Agency's services to enforce rights under the National Labor Relations Act. The video also explains the Agency's outreach and public information programs.

The "How to Use CiteNet" video explains how to use the Agency's electronic legal research database of Board and court decisions dating from 1992. CiteNet is a free public service offered by the Agency to assist labor law professionals and the public with their legal research needs. CiteNet offers advantages over less specialized databases because it includes only cases where substantive issues have been discussed, and thereby allows users to find cases with strong precedential value. The classification headings used in CiteNet are very specific, which facilitates finding cases that are on point. In many cases, CiteNet provides a direct link to the case itself.

The "Representation Case" video is designed to inform the public, including potential voters, employers, and unions about the role of the Agency in conducting elections. The video uses narrators and actors in vignettes to chronologically depict an organizing campaign, the filing of a petition, and an election. The Hartford Regional Office will distribute DVD copies of the video to employers, employer associations, labor organizations, and other entities in connection with regional outreach activities. In addition, the video will be posted as a streaming video on the Agency's internet website (www.nlr.gov).

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