NLRB NEWS: CONNECTICUT

NLRB REGION 34

November 2010

Fourth Edition

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In This Issue:

New Digs for Region 34

After almost 25 years at the same location on the 21st floor at 280 Trumbull Street in Hartford, Region 34 relocated to the A.A. Ribicoff Federal Building at 450 Main St. in Hartford effective May 17, 2010. The newly designed and renovated space provides enhanced, state-of-the-art security and facilities for the Region's employees and the visiting public. Because of the location within the Ribicoff Federal Building, all visitors are advised that they will be subject to a full search upon their entry to the building, similar to boarding an airplane. In addition, because the sole public entrance to the building closes at 5:00 p.m., all visitors to the Regional office after that time must make advanced arrangements with a Board agent to secure entry to the building. So far this has not caused any problems for visitors to our office.

Comings and Goings in 2010

2010 saw the retirement of two senior members of the Hartford Regional Office staff, Field Examiner Douglas Peary and Field Attorney Patrick Daly. As a result of their retirement, and to alleviate ongoing staffing shortages, four new employees were added to the Hartford staff: Field Examiner Heather Williams, and Field Attorneys Sheldon Smith, Claire Sellers, and Catalina Arango.

75th Anniversary Open House

In recognition of the NLRB's 75th Anniversary and the relocation of the Hartford Regional Office, the Region will host a 75th Anniversary Open House on Friday, December 3, 2010 between 10:00 a.m. and Noon, providing the public with an opportunity to tour the new office space and familiarize themselves with the new location and procedures for entry to the building, as well as meeting our new staff members. Information will also be available concerning the Board's 75th anniversary.

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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 Act 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.

Liaison Meeting with Connecticut Bar Assn.

The Labor and Employment Law Section of the Connecticut Bar Association will hold a liaison meeting at the Hartford Regional Office on December 3, 2010 at 9:00 a.m. to discuss matters of interest with Regional Director Jonathan Kreisberg and his staff involving Regional Office operations, including both substantive and procedural issues, as well as recent developments emanating from the NLRB and the Office of the General Counsel in Washington. Please forward to Peter Janus at pjanus@siegeloconnor.com or Nicole Bernabo at nbernabo@rc.com any proposed topics or issues you would like to see addressed at the meeting so that the Regional Director and his staff can be prepared to respond to them.

Recent Developments at the NLRB in Washington

The office of the General Counsel oversees the Regional offices, and in June President Obama appointed longtime NLRB employee Lafe Solomon as the Acting General Counsel. A recipient of the 2010 Presidential Rank Award, Lafe Solomon has actively sought to strengthen and streamline Agency operations; his Section 10(j) injunction initiative is discussed later in this issue.

During the summer, NLRB Chairman Wilma B. Liebman and now former member Peter Schaumber, and newly appointed members Craig Becker, Brian Hayes, and Mark G. Pearce, issued many new decisions, including some that had been held up for many years while the Board limped along for 27 months with only two Members. Several of those decisions are discussed later in this issue.

As noted above, from January 2008 to April 2010, the Board operated with only two members, but nevertheless issued almost 600 decisions. However, on June 17, 2010, the Supreme Court ruled in *New Process Steel*, 130 S.Ct. 2635, that the two-member Board was not authorized to issue those decisions. Since that time, the Board has been quite busy considering cases that were returned to the Board as a result of the Supreme Court's decision. To date, the overwhelming majority of those decisions that were returned to the Board have either been re-issued by a lawfully constituted 3-member Board panel or been closed out for other reasons. You can review the status of cases affected by New Process Steel on our website (www.nlrb.gov) and click where it says "Information on Two Member Board Decisions" in the center of the home page.

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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.

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.nlrb.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.nlrb.gov

Region 34 Professional Staff Roster

AGENT	TELEPHONE	E-MAIL - @nlrb.gov
Jonathan Kreisberg, Reg. Dir.	860-240-3004	Jonathan.Kreisberg
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Michael Cass, Supervisory Examiner	860-240-3524	Michael.Cass
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Heather Williams, Field Exam.	860-240-3545	April.Williams
Grant Dodds, Field Examiner	860-240-3567	Grant.Dodds

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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 has appeal rights, including a right to a hearing, with a final decision subject to the Federal Circuit Court of Appeals.

Regional Office Unfair Labor Practice News

Complaint alleges Connecticut company illegally fired employee over Facebook comments

A Complaint issued by the Hartford regional office on October 27, 2010 alleges that an ambulance service illegally terminated an employee who posted negative remarks about her supervisor on her personal Facebook page. The complaint also alleges that the company, American Medical Response of Connecticut, Inc., illegally denied union representation to the employee during an investigatory interview, and maintained and enforced an overly broad blogging and internet posting policy. When asked by her supervisor to prepare an investigative report concerning a customer complaint about her work, the employee requested and was denied representation from her union, Teamsters Local 443. Later that day from her home computer, the employee posted a negative remark about the supervisor on her personal Facebook page, which drew supportive responses from her co-workers, and led to further negative comments about the supervisor from the employee. The employee was suspended and later terminated for her Facebook postings and because such postings violated the company's internet policies.

The Regional office investigation found that the employee's Facebook postings constituted protected concerted activity, and that the company's blogging and internet posting policy contained unlawful provisions, including one that prohibited employees from making disparaging remarks when discussing the company or supervisors and another that prohibited employees from depicting the company in any way over the internet without company permission. Such provisions constitute interference with employees in the exercise of their right to engage in protected concerted activity.

A hearing on the case is scheduled for January 25, 2011.

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Region 34 Unfair Labor Practice Statistics - FY 2010:

- 407 unfair labor practice charges were filed.
- 35% of the charges were found by the Hartford Regional Office to be meritorious.
- 84% of the meritorious cases were settled prior to hearing.
- 100% of litigated cases were won before either an administrative law judge or the NLRB.

New Initiative for Section 10 (j) Injunctions

On September 30, 2010, Acting General Counsel Lafe Solomon announced an initiative to strengthen and streamline the Agency's Section 10(j) injunction program with respect to allegations of discriminatory discharges in the context of an organizing drive. General Counsel Memorandum 10-07, which is available on the Agency website, describes the new enhancements to the Agency's Section 10(j) injunction program. In this GC Memo, Acting GC Solomon explains the seriousness of discriminatory discharges that occur in the context of an organizing drive. He describes these violations as "the most serious 'nip-in-the-bud' violations of the Act." As noted by Acting GC Solomon, unremedied discriminatory discharges can have the following consequences: a message is sent to other employees that they too risk retaliation if they exercise their Section 7 rights; remaining employees are deprived of the leadership of active union supporters; discharged employees are likely to no longer desire reinstatement with the passage of time; and the ultimate Board order would be ineffective to protect rights guaranteed by the Act.

Under this new Section 10(j) initiative, the General Counsel's office will consider seeking a federal injunction in all "nip-in-the-bud" discharge cases found to be meritorious. The injunction would compel an employer to offer reinstatement to fired workers pending litigation of the underlying unfair labor practice case. New timelines and procedures have been created to expedite the processing of these cases. Pursuant to the directive of GC Memo 10-07, Regions are to immediately investigate allegations of unlawful discharges in connection with organizing drives and, if merit is found, to promptly submit them to the office of the General Counsel.

Under the NLRB processes, the General Counsel must obtain authorization from the Board before seeking a 10(j) injunction. Chairman Wilma Liebman has indicated that the Board is examining its procedures for reviewing these requests in an effort to expedite their process as well.

The Hartford Regional Office has put into place procedures that will ensure compliance with the requirements of this new initiative. Accordingly, the Region will be seeking to take the lead affidavits within seven calendar days from the filing of a "nip-in-the-bud" discharge case and to obtain all of the charging party's evidence within 14 days from the filing of the charge. Therefore, Charging Parties in these cases should be prepared to present their evidence in these cases at the time they file their charges. In cases where the charging party's evidence points to a prima facie case on the merits and suggests the need for injunctive relief, the Region will promptly notify the charged party that the Region is considering 10(j) relief and will seek a position statement from the charged party with respect to the appropriateness of Section 10(j) relief, in addition to the Region's request for evidence and a statement of position concerning the merits of the charge. Thus. it is vitally important that all parties cooperate by timely submitting their evidence and statements of position in these cases.

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Region 34 Compliance Statistics - FY 2010:

- Almost $2.1 Million in backpay was distributed to employees.
- 8 employees were reinstated to their previous jobs, and 5 employees declined reinstatement.

Regional Office Compliance News

In April 2010, Hartford Regional Director Jonathan Kreisberg approved a compliance settlement that provides $2.55 million in back pay, interest and pension credits to 133 current and former employees of Church Homes, Inc., a nursing home and extended care facility in Hartford. The settlement brings an end to a decade-long dispute involving Church Home's failure to reinstate workers who offered unconditionally to return to work from a strike. The case dates back to November, **1999,** when employees represented by District 1199 of the New England Health Care Employees Union began a strike against Church Homes, which subsequently hired permanent replacements but did not advise the Union until more than half of the strikers had been replaced. After an investigation, the Hartford Regional Office issued a Complaint alleging that the Employer's hiring of permanent replacements in secret was meant to punish the strikers and dilute support for the union in violation of the National Labor Relations Act.

A series of rulings and appeals followed. An Administrative Law Judge ruled in favor of the Union but was reversed by the NLRB in Washington in 2004. In turn, the United States Court of Appeals for the Second Circuit vacated the NLRB's decision and remanded the case to the NLRB for further consideration. In June 2007, the NLRB issued a Supplemental Decision in which it concluded that Church Homes had unlawfully failed to reinstate the striking employees. The Supplemental Decision was approved by the Second Circuit on December 29, 2008, and the U.S. Supreme Court refused to hear the Employer's appeal in 2009. The case is significant because it is the first time the NLRB has decided whether an employer may replace striking employees "secretly" without providing the Union an opportunity to consider ending a strike or changing tactics. All of the striking employees were eventually re-hired. Thus, the settlement resolved the amount of back pay and benefits due to them.

In announcing the approval of the settlement, Regional Director Kreisberg commended the parties for their cooperative efforts in reaching the settlement that provides tangible and significant benefits to more than 130 employees. Mr. Kreisberg personally congratulated former Regional Director Peter B. Hoffman and the staff of Region 34, noting in particular the exemplary work of Field Attorney Thomas E. Quigley for the manner in which the case was investigated and litigated, Compliance Officer Dina M. Emirzian for her comprehensive backpay investigation and computations, and Supervisory Examiner Michael **C.** Cass for his significant role in ultimately securing the compliance settlement.

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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.nlrb.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 within 10 days from date of filing.
- Be prepared for the election to be conducted within 42 days from the date of filing.

Hot Off the Presses . . . Recent NLRB Decisions

On August 27, 2010, the Board issued a decision in *Machinists Local Lodge 2777 (L-3 Communications)*, 355 NLRB No. 174, that resolved the issue of whether a union violates its duty of fair representation by requiring nonmember dues objectors to restate their position every year, despite an expressed desire to have the objection continue from year to year. In that case, the Board decided that the Union's requirement that dues objections had to be restated annually was unlawful, but that there could be cases in which such a requirement could be found lawful. One such case that arose out of the Hartford Regional Office involving the UAW and Colt's Manufacturing Co. is currently pending before the Board.

Another issue pending before the Board that was recently resolved relates to the practice by unions of displaying large stationary banners at the situs of a labor dispute. In several recent cases, the Board concluded that the Respondent unions did not violate Section 8(b)(4)(ii)(B) of the NLRA by displaying stationary banners announcing a labor dispute at a secondary employer s business. See, Carpenters Local 1506 (Eliason & Knuth of Arizona, Inc.), 355 NLRB No. 159 (August 27, 2010); Carpenters Local 1506 (AGC San Diego Chapter), 355 NLRB No. 191 (September 22, 2010); and Carpenters Local 1506 (Marriott Warner Center Woodland Hills), 355 NLRB No. 219 (September 30, 2010). In these cases, the Board concluded that the peaceful display of the stationary banners bearing a message directed to the public did not constitute unlawful picketing. The Board found that absent the use of traditional picket signs, patrolling, blocking of ingress or egress, or some other evidence of coercion, the display of banners in these cases was not coercive and therefore did not violate the NLRA.

The newly-constituted Board has indicated a willingness to revisit important cases previously decided by the Board. For example, the Board has invited parties to file briefs in connection with two cases that raise a *Dana* issue. In Dana Corp, 351 NLRB 434 (2007), the Board held that when an employer voluntarily recognizes a union based on signed authorization cards, it must post a notice advising employees that they have a right, within 45 days of the notice, to file a petition for an election to decertify the union or in support of a rival union; if the notice is not posted, the union and employer may not later claim that a contract bars a petition for decertification or by a rival union.

The Board also invited interested parties to file briefs in connection with a set of cases that raise the issue of a successor bar doctrine. These cases will provide the Board with an opportunity to reconsider *MV Transportation*, 337 NLRB 770 (2002), which held that a successor employer's obligation to recognize and bargain can be challenged by the employer, employees, or a rival union. Under case law prior to *MV Transportation*, an incumbent union was entitled to a reasonable period of time to bargain without challenge to its status.

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Region 34 Representation Statistics - FY 2010:

- Representation elections were conducted in 55 cases.
- 91% of elections were achieved by way of an election agreement between the parties.
- 96% of elections were held within 56 days from the filing of the petition.
- Initial elections were conducted in a median of 38 days from the filing of the petition.

More Red-Hot NLRB Decisions

In a pair of decisions made public on October 25, 2010, the NLRB adopted two new remedial policies: adding daily compound interest to backpay and other monetary awards and requiring many employers and unions to notify workers electronically of NLRB orders in unfair labor practice cases. The Board's stated goal was making Board remedies more effective and in line with current legal and workplace practices.

Going forward, interest on backpay and all other monetary awards will be compounded daily, following the evolving practice of other legal regimes including the Internal Revenue Code. The decision in *Kentucky River Medical Center*, 356 NLRB No. 8, was unanimous. "Our primary focus must be on making employees whole," the Board noted in its decision in *Kentucky River*. "After careful consideration, and based on the Board's experience in the decades following the initial decision to order interest on backpay awards, we have concluded that compound interest better effectuates the remedial policies of the Act than does the Board's traditional practice of ordering only simple interest and that, for the same reasons, interest should be compounded on a daily basis, rather than annually or quarterly."

Also, employers who customarily communicate with their employees electronically, either through e-mail or an Internet or Intranet site, will be required to post remedial notices the same way, in addition to posting a paper notice to a bulletin board. The same will hold true for union respondents who customarily communicate with their members electronically. The decision in *J. Picini Flooring*, 356 NLRB No. 9, was 3-to-1, with Chairman Wilma Liebman and Members Craig Becker and Mark Pearce in favor and Member Brian Hayes dissenting.

Finally, the Office of the General Counsel recently authorized the issuance of a Complaint alleging that Minneapolis-based Regis Corporation, which operates 10,000 hair salons under various names including Master Cuts, Cost Cutters, and Mia and Maxx, illegally solicited its employees to promise in writing that they would not sign union authorization cards in the future. The complaint also alleges that, in a DVD played to employees across the country, the company's CEO warned that hair stylists would be blacklisted from the industry if they supported a union, and he exhorted employees to sign a "Protection of Secret Vote Agreement", which would prospectively revoke any union authorization cards signed in the future. A district manager later threatened employees with job loss if they refused to sign the agreement. The remedy sought in the Complaint includes an order requiring the corporation to produce a new DVD in which the CEO will read an NLRB notice about the illegal acts, to be played to all employees.