



NLRB Region 7 Outreach

Stephen M. Glasser
Regional Director



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McNamara Federal Building
Room 300, 477 Michigan Ave
Detroit, Michigan 48226 -2569

Grand Rapids Resident Office
110 Michigan St., NW—Room 299
Grand Rapids, Michigan 49503-2363

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Contact Us:
(313) 226-3200

Agency Website:
www.nlr.gov
Toll Free:
(866) 667-6572
Hearing Impaired:
(866) 315-6572

DETROIT REGION CONDUCTS BERNARD GOTTFRIED LABOR LAW SYMPOSIUM



Participants at the Region 7 Bernard Gottfried Memorial Labor Law Symposium included (left to right) M. Elizabeth Bunn, Secretary Treasurer of the UAW, Jeffrey Wilson (management attorney), Regional Director Stephen Glasser, Samuel McKnight (union attorney), Amy Bachelder (union attorney), William Karges (union attorney), Region 7 Group Supervisors Patricia Zane and Patrick Labadie, Region 7 Field Examiner Ethan Ray, Kraig Schutter (management attorney) and Region 7 Field Attorney Joseph Canfield. (Picture courtesy of Detroit Legal News, John Meiu, photographer)

Detroit Regional Director **Stephen Glasser** and newspaper publisher **Keith Crain** joined academics and practitioners who spoke at the 17th annual Bernard Gottfried Memorial Labor Law Symposium held at Wayne State University Law School in Detroit on October 15, 2009. The Symposium, conducted by the Detroit Region and Wayne State Law School in sponsorship with the State Bar of Michigan Labor and Employment Section, is held each year in memory of **Bernard Gottfried**,

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LABOR LAW SYMPOSIUM

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who served as Regional Director of the Detroit Region from 1973 until his passing in 1992. Director Gottfried also taught labor law at Wayne State University Law School as an adjunct professor.

Regional Director Glasser and Law School Dean Robert Ackerman each made opening remarks to welcome an audience that included attorney practitioners from management and labor, academics, Regional personnel and students. The first listed topic for discussion was titled "Board Cases of Recent Vintage, Here Today-Gone Tomorrow?" Group Supervisor Patrick Labadie provided an overview to the audience of the Board decisions that could be reconsidered by a full Board. A practitioner from the labor and management side each provided views on the Board's decisions that they thought could be reconsidered by a full Board. Field Attorney Joseph Canfield, who is also an adjunct professor at Wayne State University Law School, then moderated a spirited discussion between panels of labor and management practitioners titled "Labor Law Reform- If Not Now, When?"

Newspaper publisher Keith Crain, in a luncheon address discussed the challenging issues that labor and management face nationally and particularly in the State of Michigan and proposed ways of resolving those issues. Following the address, the Region conducted two special sessions. Group Supervisor Patricia Zane discussed the duty of fair representation and the relevant Board case law. Field Examiner Ethan Ray discussed the process of filing and pursuing an unfair labor practice charge with the NLRB. He also gave practical tips and background on the investigative process.

The Region 7 Detroit office is located on the third floor of the Patrick V. McNamara Federal Building located at the corner of Michigan Ave. and Cass Ave. in downtown Detroit.

The Detroit office is open from 8:15 a.m. to 4:45 p.m. Monday through Friday. Telephone (313) 226-3200 Fax (313) 226-2090

The Grand Rapids Resident Office handles cases on the west side of the lower peninsula of Michigan.

It is open from 8:15 a.m. to 4:45 p.m. Monday through Friday.

Telephone (616) 456-2679 Fax (616) 456-2596

The Resident Officer is Chester H. Byerly, Jr..

The Resident Office is located at:

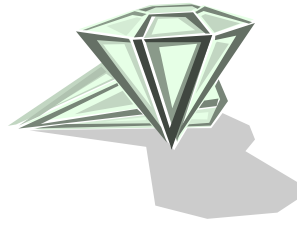
Gerald R. Ford Fed. Bldg. Room 299 110 Michigan St., N.W. Grand Rapids, MI 49503-2363



Regional Director Stephen M. Glasser addresses the symposium participants

Keith Crain discussed labor and management issues and proposed ways of resolving them.





AGENCY CELEBRATES ITS 75TH ANNIVERSARY

On July 5, 1935, Franklin Roosevelt signed what has been called the Magna Carta of labor in this country. Flanked by Senator Robert Wagner and the first female Secretary of Labor, Francis Perkins, Roosevelt signed the Wagner Act (now known as the National Labor Relations Act) which established in Section 7 of the Act the right of employees to “self organization, to form join or assist labor organizations.” Region 7 will be scheduling its own event to commemorate the 75th anniversary of the Agency in the fall at the time of the Gottfried Symposium. Stay tuned!

SPEAKERS AVAILABLE



GC MEISBURG REPORTS THAT CASELOAD STEADY IN FY2009 DESPITE DROP IN REPRESENTATION ELECTIONS

On December 1, 2009, General Counsel Ronald Meisburg issued a summary of activities for Fiscal Year 2009 indicating that the Agency’s overall caseload remained steady while union election petitions dropped significantly. The year end report stated that the Agency’s 51 Regional offices conducted 1,690 initial representation elections in FY2009 compared to 2, 085 initial elections in FY2008. The Agency took in a total of 2, 912 representation cases in FY 2009 compared to a total of 3, 400 in FY2008, a 14.4% decrease.

The total number of unfair labor practice charges filed in FY2009 increased to 22, 941 compared to 22, 501 the previous fiscal year.

The GC also reported these other statistics of note for FY2009:

- * A total of \$77,611, 322 was recovered in backpay for employees
- * 1, 549 employees were offered reinstatement
- * Regional offices conducted 95.5% of all initial elections within 56 days of the filing of the petition
- * Regional offices won 89.8% of Board and Administrative Law Judge unfair labor practice and compliance decisions in whole or in part in FY 2009

Members of the Region’s staff are available to make presentations before any employer or union group, classroom group, legal services clinic or service agency, and labor relations association, to describe the Act’s protections, how the Region investigates and resolves unfair labor practice charges, processes representation petitions, or any NLRB topic of interest.

To arrange for a speaker and to discuss possible topics, please do not hesitate to telephone Regional Outreach Coordinator Patrick Labadie at (313) 226-3213.

SUPREME COURT TO REVIEW TWO-MEMBER BOARD DECISIONS



On November 2, 2009, the Supreme Court granted certiorari in the case of **New Process Steel V. NLRB** regarding the issue of two-member Board decisions .

On December 20, 2007, the Board, anticipating the loss of two members when Congress adjourned in January 2008, delegated its authority to Members Leibman, Peter Schaumber and Peter Kirsanow. Chairman Robert Battista's term expired on December 16, 2007. The terms of Board members Dennis Walsh and Peter Kirsanow, both of whom were recess appointments, expired with the adjournment of Congress in January, 2008. Members Liebman and Schaumber, as a quorum of the three remaining on the Board, issued decisions and orders in unfair labor practice cases and representation cases.

On January 18, 2008, the Board issued its first two-member panel decision, **Aluminum Casting & Engineering Co.**, 352 NLRB 1 (2008). In the decision the Board affirmed a backpay compliance specification and noted at footnote 7 of the decision that pursuant to the delegation of authority, Members Liebman and Schaumber constitute a quorum of the Board members who were delegated the authority to issue decisions.

Since the delegation of authority, the Board has issued over 500 published and unpublished decisions and orders in unfair labor practice and representation cases with a two-member Board. At present, courts of appeal in six circuits have issued decisions as to the authority of the two-member Board to issue decisions. Five circuits (the 1st, 2nd, 4th, 7th, and 10th) have found that the Board could so operate. One circuit, the District of Columbia Circuit, in **Laurel Baye Halthcare of Lake Lanier Inc. V. NLRB**, found the Board's delegation of authority to be invalid.

Petitions for certiorari were filed with the Supreme Court by respondent employers and the Court granted certiorari in **New Process Steel** to resolve the conflict among the courts on the meaning of Section 3(b) of the Act and the validity of the Board's delegation of authority to the two-member quorum.

The parties in the **New Process Steel** case have submitted briefs and the case is set for oral argument before the Court on March 23, 2010.

NLRB NOMINATIONS—AN UPDATE

In July, 2009, President Obama nominated to the Board Craig Becker (D), Mark Pearce (D) and Brian Hayes (R). The Senate on February 9, 2010, defeated by a 52-33 vote a cloture motion to end debate on the nomination of Craig Becker, falling eight votes short of the 60 needed to proceed to a final vote on the nomination. The two other nominations, those of Mark Pearce and Brian Hayes, remain pending after being approved by the Senate Health, Education, Labor and Pensions Committee in the fall 2009. They have been held over for the 2010 session under a unanimous consent agreement. President Obama has stated that if the nomination of Craig Becker continues to be blocked he will consider a recess appointment. If the President makes a recess appointment, the appointment(s) would serve until the end of the 2011 congressional session. The Senate is scheduled to take its next recess from March 29 to April 9, 2010.

OUTREACH CORNER

This section highlights some of the Outreach activities performed by Region 7 staff over the last several months.

- * October 7, 2009: Senior Field Examiner **Thomas Good** gave a presentation to a labor law class at Cooley law School in Grand Rapids
- * October 26, 2009: **Thomas Good** gave a presentation to a graduate labor relations class at Michigan State University
- * November 19, 2009: Group Supervisor **Patrick Labadie** attended a Call to Serve job fair and conference at the University of Detroit Mercy
- * January 22, 2010: Regional Director **Stephen Glasser** chaired a meeting of the Practice and Procedure committee of the local bar association to discuss with them issues related to Region 7 matters
- * February 18, 2010: Group Supervisor **Patricia Zane** attended a Call to Serve job fair and conference at the University of Detroit Mercy

Our office is ready and willing to appear at your events to explain what our agency does under the National Labor Relations Act. If you are interested in having someone from our Region speak to your group, please contact Outreach coordinator Patrick Labadie at 313-226-3213 or by e-mail at patrick.labadie@nlrb.gov.

RICK YORKE RETIRES FROM THE NLRB

Region 7 personnel bade a fond farewell to field examiner Richard (Rick) Yorke who retired on March 3, 2010. Rick started with the Agency in 1978. He graduated with a Masters in Labor Relations from Michigan State University and obtained his law degree from Wayne State University Law School. Rick worked his entire career in Region 7 where he investigated unfair labor practices and conducted representation hearings and elections. He has one daughter, Allison, who lives in New York.

The last few weeks before his retirement, Region 7 personnel took Rick out to numerous lunches to celebrate his retirement where he regaled office personnel with his many humorous tales drawn on his years of work experience. He was known for his resounding “Hey buddy!” salutation which he used throughout the workday to greet various employees in the office. Rick said that he is looking forward to his retirement and spending it in his favorite pastime: playing golf.

FORE!!



ADMINISTRATIVE LAW JUDGE ISSUES DECISION IN DOUGLAS AUTOTECH CASE



On January 5, 2010, ALJ Paul Buxbaum found that Douglas Autotech Corporation lost the right to discharge its workers for their unprotected strike when the managers responded to their return-to-work offer with mixed signals, and unlawfully refused to meet and bargain with the Union. The Employer, a western Michigan parts manufacturer had discharged its entire unionized workforce at its plant in Bronson, Michigan in August 2008, claiming that the employees lost the protection of the Act because of a brief strike called at the plant three months earlier. UAW Local 822, which represents the workers, had called the strike after protracted contract negotiations but quickly realized that the strike was not protected because certain timely notice was not given under Section 8(d)(3) of the Act. The Union then made an unconditional offer to return to work. The Employer did not accept the return-to-work offer and locked out the workers and resumed negotiations with the Union. Then the Employer changed its position and informed all union-represented employees, including those who did not participate in the strike—that they were discharged.

The ALJ found that the Employer lost the right to discharge the workers for the strike when managers responded to the return-to-work offer with mixed signals—a lockout and continued bargaining. The judge found that the discharge violated Section 8(a)(3) of the Act and required that the Employer offer reinstatement to the discharged workers, pay backpay, and meet and bargain in good faith with the Union.



MICHIGAN BEER DISTRIBUTORS PAY \$41 MILLION TO EMPLOYEES FOR BAD FAITH BARGAINING

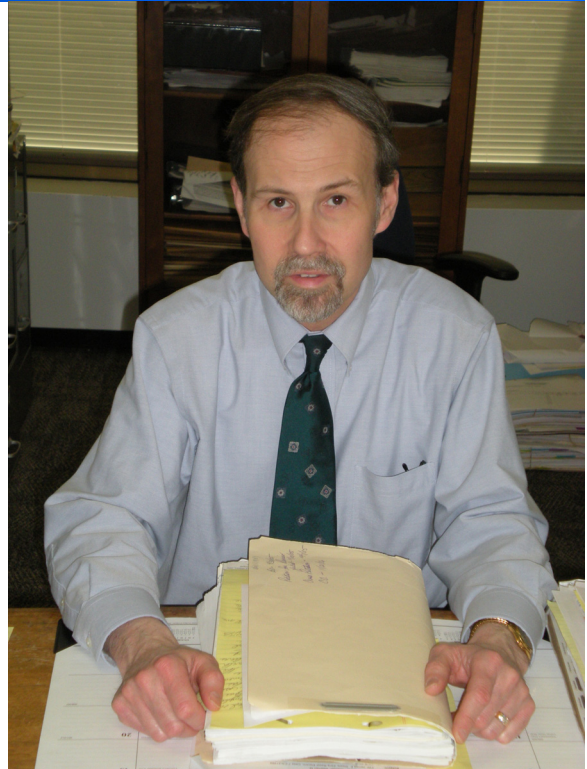
An illegal arrangement by five Southeastern Michigan beer distributors in bargaining with the Teamsters union has resulted in backpay of \$41 million, one of the largest on record for the NLRB.

The Board found that the five employers entered into an illegal “mutual aid pact” for negotiations with Teamsters Local 1038. Each employer declared impasse after a period of unproductive bargaining and imposed a new contract, which reduced the employees’ income and benefits. Local 1038 filed charges with the Agency and Region 7 issued complaint. An administrative law judge found that violations occurred, as did the Board and the Sixth Circuit Court of Appeals. The employers appealed to the Supreme Court, which declined to hear the matter in 1999.

Region 7 undertook an extensive investigation to determine what the workers would have received if not for the unfair labor practices. Four employers, Don Lee Distributor, Inc., Powers Distributing Co., Inc., Eastown Distributors Co. and Oak Distributing Co. agreed to settlement terms by 2003. Hubert Distributors litigated the amounts it owed and appealed to the Sixth Circuit, which denied its appeal in August 2006. The Region conducted an exhaustive search for the 300 affected workers and their heirs, where necessary, which concluded in the fall of 2009.

Individual backpay varied widely depending on the work performed and the amount of time covered by the backpay period. The largest single payment to an individual employee was \$282, 000.

**REGION 7 EMPLOYEE
PROFILE:
MARK BAINES,
COMPLIANCE OFFICER**



Mark Baines is the compliance officer in Region 7. He oversees compliance by respondents with settlement agreements, administrative law judge decisions, Board decisions, and Sixth Circuit Court of Appeals decisions involving Region 7 matters. Mark started with the Agency on April 23, 1990. He worked as a field examiner in the Region until he assumed the compliance officer position in January 2006.

Mark spent four years in the US Army, stationed in the Federal Republic of Germany in an armored cavalry unit that patrolled the East/West German border. He attended the State University of New York College at Buffalo and obtained a degree in journalism and has a law degree from the University of Missouri School of Law. He also has a Masters of Labor and Industrial Relations from Michigan State University. He was a graduate assistant to Professor Jack Stieber with whom he co-authored *The Michigan Experience with Employment at Will*, 67 Nebraska Law Review 140 (1988). During the late 1980's Mark worked as a consultant in employment and labor relations to law firms, labor relations consultants, cities, townships and counties in Michigan.

Mark has a daughter, Heather, who is a sophomore honors student and who was selected as a Great Lakes Scholar while in elementary school. She figure skates and assists in teaching Learn-to-Skate at the St. Clair Shores Civic Arena.

**BOARD'S GENERAL COUNSEL REACHES
OUT TO EDUCATE LABOR LAW PRACTITIONERS**

General Counsel of the National Labor Relations Board, Ronald Meisburg, during a March 3 speech at an American Bar Association conference, emphasized the importance of communicating with stakeholders by means of memoranda posted on the Board's website (<http://www.nlrb.gov>) that explain "prosecutorial policy in certain categories of cases" in response to major new decisions by the Board or appeals courts.

The memos offer guidance to labor law practitioners on how the General Counsel is interpreting new decisions and guidance to Regional Office personnel on how to apply new case law and when to send cases to the General Counsel's Division of Advice, Meisburg said. He asserted that the memos "are critical in advising the public not simply on what we are doing, but also on what we are thinking on a particular topic."

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Region 7
Room 300 Patrick V. McNamara Federal Building
477 Michigan Avenue
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