



NLRB REGION 7 OUTREACH



STEPHEN M. GLASSER, REGIONAL DIRECTOR

September 2010
No. 9

MCNAMARA FEDERAL BUILDING
477 MICHIGAN AVE—ROOM 300
DETROIT, MICHIGAN 48226 -2569

GRAND RAPIDS RESIDENT OFFICE
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GRAND RAPIDS, MICHIGAN 49503-2363

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SAVE THE DATE !

THURSDAY

OCTOBER 14, 2010

THE BERNARD GOTTFRIED MEMORIAL LABOR LAW SYMPOSIUM

WAYNE STATE UNIVERSITY LAW SCHOOL
SPENCER M. PARTRICH AUDITORIUM

Topics include:

- * Privacy In The Workplace: Section 7 vs Employer Rights
- * Improving the NLRB by Administrative Change

ALSO: Luncheon Speaker: Board Member **Craig Becker** and a 75th Anniversary Reception with Former Board Chairman **Robert Battista**, Former Board Member **Dennis Devaney** and Former General Counsel **Leonard Page**

Registration forms have been mailed. For more information contact Region 7, Group Supervisor Patrick Labadie at (313) 226-3213, or email, patrick.labadie@nlrb.gov.

Contact Us:
(313) 226-3200

Agency Website:
www.nlrb.gov
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(866) 667-6572

Hearing Impaired:

BOARD MAJORITY FINDS ANNUAL RENEWAL REQUIREMENT FOR DUES OBJECTORS UNLAWFUL

The Board ruled in *Machinists Local Lodge 2777 (L-3 Communications)* 355 NLRB No. 174, (Aug. 27, 2010) that a union violated its duty of fair representation when it required nonmember dues objectors to renew their objections annually despite their express desire to have their objections continue from year to year.

(Continued on page 4)

REGION 7 OFFICES

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



SUPREME COURT RULES THAT TWO MEMBER BOARD LACKED AUTHORITY TO ISSUE DECISIONS—AND THE BOARD'S RESPONSE



On June 17, 2010, the U.S. Supreme Court ruled that the two-member Board composed of Chairman Wilma B. Liebman and Member Peter C. Schaumber was not authorized to issue decisions during the 27 month period when three of the Board's five seats were vacant.

The Board operated with only two members from January, 2008 to late March, 2010. During this period it issued about 600 decisions relying on Section 3(b) of the Act and an opinion issued by the Department of Justice Office of Legal Counsel for its authority for doing so.

The case in question, *New Process Steel, LP v. NLRB*, involved a steel processing plant in Indiana that unilaterally withdrew recognition from the International Association of Machinists as the representative of its employees. The two-member Board ordered the Employer to recognize the Union and bargain.

On July 1, 2010, the Board outlined its plans for handling returned cases following the Supreme Court's *New Process Steel* decision. As of July 1, there were 96 two-member decisions pending on appeal before the federal courts: six at the Supreme Court, and 90 in various Courts of Appeals. The Board sought to have each of those cases remanded to the Board. The Board stated that each of the remanded cases would be assigned to a three-member panel which will include Chairman Liebman and then Member Schaumber (whose term expired on August 27, 2010). The other Board members not on the panel would have an opportunity to participate in the decision if they desire.

On August 5, 2010, the Board issued its first decisions in cases that were returned to it by the Courts of Appeals following the *New Process Steel* decision. On the same date, the Agency made public a database of all contested cases that were decided by the two-member Board. The list of cases is available on the Agency website at www.nlr.gov and includes links to original documents and case status updates that will be refreshed daily.

One of the first four decisions issued by the Board on August 5 was a Region 7 case: *SPE Utility Contractors, LLC*, 7-CA-50767, found at 355 NLRB No. 60.

BOARD MEMBERS— COMINGS AND GOINGS

On March 27, 2010, President Obama appointed **Craig Becker** as a recess appointment to the Board. He was sworn in as a Board member on April 5, 2010. Member Becker has served as Associate General Counsel to both the Service Employees International Union and the AFL-CIO. He earned his law degree from Yale Law School.

On June 21, 2010, the Senate confirmed the nominations of **Mark Gaston Pearce** and **Brian Hayes** as members of the Board. Member Pearce had been recess appointed by the President in April 2010. However, with Senate confirmation his term will expire in August 2013. Member Pearce was a founding member of the Buffalo New York law firm of Creighton, Pearce, Johnson & Giroux where he practiced union side labor and employment law. From 1979 to 1994 he was an attorney with the NLRB at its Region 3 Office in Buffalo, New York. Member Pearce received his law degree from State University of New York and his undergraduate degree from Cornell University.

Member Hayes served as the Republican Labor Policy Director for the U.S. Senate Committee on Health, Education, Labor and Pensions. He will fill a term expiring in December 2012. Member Hayes has been in private practice for 25 years representing management clients in labor and employment law. He earned his law degree from Georgetown University and his undergraduate degree from Boston College.

The term of Member **Peter C. Schaumber** expired on August 27, 2010. Member Schaumber was nominated by President George W. Bush and served two terms. He took his seat on the Board in December 2002. He was named the Board's Chairman in April 2008 and held that position until January 20, 2009.



Wilma B. Liebman



Craig Becker



Brian Hayes



Mark G. Pearce

OUTREACH SPEAKERS AVAILABLE



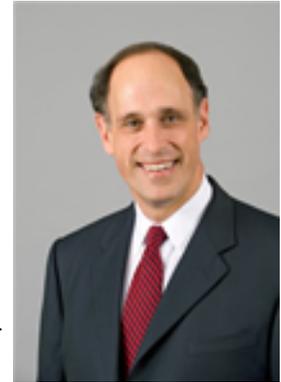
Members of the Region's staff are ready and willing to appear at your events to explain what our Agency does under the National Labor Relations Act. If you are interested in having someone from our Region speak to your group, and to discuss possible topics, please telephone Regional Outreach Coordinator Patrick Labadie at (313) 226-3213 or by email at: patrick.labadie@nlrb.gov

VETERAN NLRB ATTORNEY LAFE SOLOMON NAMED AS ACTING GENERAL COUNSEL

President Obama has named Lafe Solomon to serve as Acting General Counsel of the Agency. The appointment became effective on June 21, 2010. As the Agency's top investigative and prosecutorial position, the General Counsel has supervisory authority over all Regional offices and guides policy on issuing complaints, seeking injunctions and enforcing the Board's decisions.

Mr. Solomon has worked for the Agency since 1972 when he began as a field examiner in the Seattle region. After taking a break to pursue a law degree, he returned as an attorney in the Office of Appeals. He transferred to the Appellate Court Branch in 1979. Two years later, he left the General Counsel side of the Agency to join the staff of former Board Member Don Zimmerman. He went on to work for another nine Board members. For the last decade he has directed the NLRB's Office of Representation Appeals. A native of Helena, Arkansas, Mr. Solomon received a B.A. degree in Economics from Brown University and a J.D. from Tulane University.

The previous General Counsel, Ronald Meisburg, resigned effective the weekend of June 20, 2010 to join the law firm of Proskauer Rose. His term was to expire in August 2010.



OUTGOING GENERAL COUNSEL REPORTS ON INJUNCTION ACTIVITY

Prior to the end of his term with the Agency, General Counsel Ronald Meisburg issued a report on the injunction activity by the Agency during his term as General Counsel. During his four-and-a-half years on the job, 112 injunction proceedings were authorized under Section 10(j). The Agency seeks injunctive proceedings from federal courts to preserve the rights of employees during lengthy Board administrative proceedings.

The report by the General Counsel stated that the most commonly sought injunctions were those cases where employers interfered with organizing campaigns, withdrew recognition from an incumbent union, undermined a bargaining representative, or refused to recognize a union that already existed in a workplace that was purchased.

The Agency won injunctions in 42 cases and lost in 12 others. Another 40 cases were settled or withdrawn before formal injunction proceedings commenced; 14 were not filed and four were pending.

ANNUAL BECK REQUIREMENTS *(Continued from page 1)*

The case arose out of the Supreme Court decision *Communications Workers of America v. Beck* where the Court held that unions may charge members and nonmembers fees relating to the union's collective bargaining and contract administration activities but cannot require nonmembers to pay fees unrelated to collective bargaining. Nonmembers have the right to object and unions must calculate the share of dues money used for collective bargaining and require the nonmember to pay only that share.

An employee of L-3 Communications Vertex Aerospace represented by the International Association of Machinists objected to paying full dues. In 2003, he informed the union in writing that he wished his objection to continue indefinitely. The union responded that he had to renew his dues objection each year, and when the employee failed to do so, the union charged him the full dues amount.

The Board, noting that this was a case of first impression, stated that as established by the Board in *California Saw & Knife Works*, 320 NLRB 224 (1995) the legality of union procedures to implement *Beck* objections is to be measured by using the duty-of-fair representation standard. Chairman Wilma Liebman and Member Craig Becker found that the annual renewal requirement was "arbitrary," but not discriminatory or in bad faith. In their separate opinions Members Schaumber and Hayes agreed that the rule was arbitrary but they would also find it discriminatory. In dissent, Member Mark Pearce found that the union had presented reasonable justification for the rule. The decision can be found at the NLRB website, www.nlr.gov, and click on "Board Decisions."

FEATURED EMPLOYEE

Joseph P. Canfield, Senior Trial Attorney

Joseph (Joe) Canfield, a Senior Trial Attorney in Region 7, is from McAdoo, Pennsylvania. After service in the U.S. Army, during which he was stationed in Korea, Joe attended King's College in Wilkes-Barre, Pennsylvania and graduated with a degree in business administration. He started with the Agency as a field examiner in 1968. He attended law school at night, graduated from the Detroit College of Law in 1981 and converted to a field attorney with the Agency.

Joe has also served as an adjunct professor in labor law at Wayne State Law School for almost 20 years. For the last five years he has served as a moderator for panel discussions at the Gottfried Symposium, which is held each October at Wayne State Law School. Joe has also served as an adjunct in the MERA program at Wayne State University and Oakland University.

Joe has three children, Brian (a grade school principal), Emily (a very happy mother and homemaker)



and Brendan (an attorney with the Police Officers Labor Council). He has four grandsons, Tyler, Mason, Carter and Cooper and one granddaughter, Reese.

OUTREACH CORNER

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

- ☞ *March 3:* Senior Field Examiner **Ethan Ray** gave a presentation to a labor law class at Michigan State University
- ☞ *March 10:* Group Supervisor **Patrick Labadie** and Regional Attorney **Dennis Boren** attended the Call to Serve Job Fair at Eastern Michigan University and met with students and job seekers about the NLRB
- ☞ *April 14:* Group Supervisor **Patricia Zane** gave a presentation to a Marketing class of high school seniors
- ☞ *April 12:* Senior Field Examiner **Thomas Good** gave a presentation at the Construction Management Club at Ferris State University about the Agency.
- ☞ *April 27:* Group Supervisor **Patrick Labadie** and Regional Director **Stephen Glasser** attended a seminar in Clare, Michigan for union representatives and gave a presentation about the Agency.
- ☞ *April 27:* Senior Field Examiner **Thomas Good** gave a presentation to a business law class at Kellogg Community College
- ☞ *April 30:* Regional Director **Stephen Glasser**, Group Supervisors **Patrick Labadie**, **Patricia Zane** and Field Attorney **Sarah Karpinen** attended the NAACP Freedom Weekend Job Fair at Cobo Hall in Detroit
- ☞ *May 3:* Regional Attorney **Dennis Boren** and Supervisory attorney **Andrew MacEachern** attended a Law Day event at the Detroit Federal Courthouse
- ☞ *May 10:* Regional Director **Stephen Glasser** met with representatives of the Michigan Employment Relations Commission and gave a presentation about the Agency
- ☞ *August 19:* Senior Field Examiner **Thomas Good** appeared on a local radio program, "West Michigan Labor Speaks" and took questions and calls about the NLRB and the law it enforces.

NLRB RULES THAT UNION “BANNERING” IS PERMITTED



On August 27, 2010, the Board ruled in three cases that “banning” at a secondary employer was not coercive and does not violate labor law. The cases, involving the United Brotherhood of Carpenters and Joiners of America, Local 1506, in Arizona, arose when union carpenters held 16-foot banners near establishments—two medical centers and a restaurant—to protest work performed for the owners by construction contractors that the union claimed paid substandard wages and benefits. Two of the banners declared “SHAME” while a third urged customers not to eat at the restaurant.

The Board majority, Chairman Wilma Liebman and Members Craig Becker and Mark Pearce, found that the bannering was not coercive. Dissenting Members Peter Schaumber and Brian Hayes found that it was. The cases are *Eliaison and & Knuth, Inc.*, 28-CC-9555, *Northwest Medical Center*, 28-CC-956 and *RA Tempe Corporation*, 28-CC-957 with a citation of 355 NLRB No. 159. The charges were filed in 2003, but vacancies at the NLRB delayed the decision making process. To read the decisions, go to the Board’s website, www.nlr.gov and click on “Board Decisions.”

NINETEEN CASES ARE CLOSED IN FIVECAP, INC. AFTER PAYMENTS TO 11 FORMER EMPLOYEES IN WESTERN MICHIGAN

On July 29, 2010, Region 7 closed 19 cases involving 11 former employees of FiveCAP, Inc., a non-profit corporation which operates Head Start programs, energy assistance and housing programs, and meal assistance and related programs in Western Michigan. These cases stemmed from unfair labor practice charges filed by General Teamsters Union Local No. 406, International Brotherhood of Teamsters, between May 4, 1995, and March 4, 1998. The charges alleged numerous violations of the National Labor Relations Act involving employer threats, coercion, and restraint of employees, as well as discrimination against them, and the failure to bargain with the union over numerous unilateral changes in the union-represented employees’ wages, hours, and other terms and conditions of employment.

After issuance of several consolidated complaints and two favorable decisions and orders by the National Labor Relations Board in 2000, the United States Court of Appeals for the Sixth Circuit enforced the Board Orders on June 28, 2002. The Agency then conducted further extensive investigations regarding the amounts owed to the 11 discriminatees. This resulted in the Board issuing another decision and order on September 12, 2006, as to the owed amounts and the United States Court of Appeals for the Sixth Circuit issuing a judgment enforcing the Board’s Order on July 31, 2008.

Meanwhile, in April 2006, FiveCAP, Inc., filed for Chapter 11 Bankruptcy protection. This necessitated numerous agents from the Board’s Detroit Regional Office as well as its Resident Office in Grand Rapids engaging in extensive efforts to recoup as much backpay owed to the discriminatees as possible. Their efforts paid off at the end of December 2009, when the bankruptcy trustee authorized the issuance of a check in the amount of \$210,000. This resulted in further investigation into the whereabouts of the discriminatees, a number of whom had moved over the course of the 15 years that had elapsed. All of the 11 discriminatees were found by the end of June 2010 and expressed their appreciation for the Agency’s efforts in pursuit of their backpay.

NLRB GRANTS REVIEW AND INVITES BRIEFS IN CASES INVOLVING VOLUNTARY RECOGNITION AGREEMENTS AND SUCCESSOR EMPLOYERS



On August 31, 2010, the Board issued a Notice and Invitation to File Briefs in two sets of cases involving significant issues before the Board. In one set of cases, *Rite Aid Store #6473* and *Lamons Gasket Co.*, the Board may reconsider the 2007 decision in *Dana Corp.* 351 NLRB 434. In *Dana*, the Board majority held that when an employer agrees to voluntarily recognize a union, 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. If the notice is not posted, the union and employer may not later claim that their contract bars a petition by a rival union or a decertification petition.

Pursuant to the *Dana* decision, as of August 18, 2010, the Agency has received 1,111 requests for voluntary recognition notices. In connection with those requests, 85 petitions were filed, which resulted in the Board conducting 54 elections. In 39 of the elections, the voluntarily recognized union prevailed. In 15 elections, the employees voted against the voluntarily recognized union, including 2 instances in which a petitioning union was selected over the recognized union. In the other 31 petitions, one is blocked and the other 30 have either been withdrawn or dismissed.

In each of the cases before the Board, at least one party has asked the Board to reconsider the *Dana* decision or its application to the particular facts. The parties and amici are invited to file briefs addressing the issues raised in the cases, including whether the Board should modify or overrule *Dana*. The briefs must be filed by November 1, 2010, with responsive briefs due by November 15.

In the second set of cases, *UGL-UNICCO Service Company* and *Grocery Haulers, Inc.*, the Board may reconsider its 2002 decision *MV Transportation*, 337 NLRB 770 on the duty of a successor employer—one that takes over its predecessor's business and hires primarily from its workforce—toward an incumbent union. In *MV Transportation*, the Board held that an incumbent union in a successorship situation is entitled to only a rebuttable presumption of continuing majority status, which does not bar a decertification, rival union or employer petition or other valid challenge to the union's majority status. Prior Board law had held that a union in a successorship situation was entitled to a reasonable period of time for bargaining without challenge to its majority status.

In *UGL-UNICCO Service Company* the Intervenor has asked the Board to reconsider its decision in *MV Transportation* and return to the successor bar doctrine. In *Grocery Haulers, Inc.*, the Intervenor has, among other things, questioned whether *MV Transportation* applies in a "perfectly clear" successor situation. The parties and amici are invited to file briefs addressing the issues raised in the cases, including whether the Board should reconsider or overrule *MV Transportation* and how should the Board treat the "perfectly clear" successor precedent. The briefs must be filed by November 1, 2010, with responsive briefs due by November 15.

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REGION 7 OUTREACH



Celebrating 75
Years of the
National Labor
Relations Act