

Democracy at Work

National Labor Relations Board
Region 9

June 2014 Volume 5, Issue 1



Proposed Amendments to Representation Case Procedures

by Daniel Goode

As it did in June of 2011, the Board, by a 3-2 vote, has announced proposed changes to the processing of representation cases. On February 5, 2014, the Board announced proposed amendments to its rules and regulations governing representation case procedures, and that a Notice of Proposed Rulemaking would appear in the Federal Register the following day. After announcing its intentions to amend the representation case procedures, the Board invited comments on the proposed changes and held public meetings on April 10-11, 2014.



In substance, the proposed amendments are identical to the representation procedure changes first proposed in 2011. The majority believes the amendments will eliminate “unnecessary delay and inefficiencies” of the representation case processes. Current representation case petitions and important case documents cannot be electronically filed or transmitted. The proposed changes

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ACCOLADES FOR ATKINSON

by Carolyn Fath

Assistant to the Regional Director Laura E. Atkinson retired as of May 2, 2014, after 40 years of varied and dedicated service with the NLRB. She began her career in August 1973 as a Field Examiner in the NLRB’s Region 7, Detroit, Michigan office. She drove in and around the Detroit area for 15 years. Laura recalled that the last affidavit she took was in Flint, Michigan at midnight and, upon reflection, she stated that she didn’t really miss the travel after leaving Detroit and relocating to Region 1 in 1988. When moving to Region 1’s Boston, Massachusetts office, Laura became the Compliance Office and focused her

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Proposed Amendments to Representation Case Procedures

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would allow petitions, election notices, and voter lists to be filed electronically. Instead of the current system that allows parties to request Board review of a Regional Director's pre-election rulings, the proposed changes would consolidate all challenges to a Regional Director's rulings through a single, post-election request. Additionally, the proposed amendments would require final voter eligibility lists to be produced in electronic form when possible, and done so in two working days instead of seven days currently required. The proposed changes would set a pre-election hearing seven days after a hearing notice is served, and give the Board discretion to permit Regional Directors to make final decisions (without Board review) regarding post-election disputes. The Board has proposed changes addressing pre-election voter eligibility litigation, especially when voter-eligibility issues do not always affect the outcome of the election. Under the proposed changes, the parties will be allowed to raise such issues through the challenge ballot procedure during the election, and would allow litigation of eligibility issues involving less than 20 percent of the bargaining unit to be deferred until after the election.

According to the majority, the proposed changes will modernize and simplify representation-case procedures and render them more transparent and uniform across regions. The dissent, Members Miscimarra and Johnson, said that rather than a wholesale revision "the Board should closely examine the particular reasons that have contributed to those relatively few elections that have involved unacceptable delay."

A more complete summary of the proposed changes can be found [here](#).

BOARD AUTHORIZED 10(j) INJUNCTIONS

by Daniel Goode

The Region recently petitioned for Section 10(j) injunctive relief against Cobalt Coal Ltd., Westchester Coal, L.P., and Cobalt Coal Corp. Mining, Inc., a single employer enterprise. In this case, a complaint issued on December 10, 2013 alleging that the single employer enterprise committed several egregious violations of the Act, including unlawfully contracting out former bargaining unit work in retaliation for its employees' selecting the Union Mine Workers of America as their bargaining representative, and failing and refusing to notify and afford the Union an opportunity to bargain about the decision and effects of contracting out the work. Additionally, the complaint alleged that the Employers failed and refused to bargain in good faith with the Union, met and bargained with the Union with no intentions of reaching an agreement and failed and refused to provide the Union with necessary and relevant information. After receiving Board authorization, the Region filed a petition seeking Section 10(j) relief on February 4, 2014 in the United States District Court, Southern District of West Virginia (Civil Action Nos. 1:14-07350).

Subsequently, the administrative hearing was held before Administrative Law Judge Paul Bogas on February 12, 2014, where the Employers withdrew their answers to the complaint, thereby admitting to the allegations levied against them. Prior to a scheduled District Court hearing on the Region's 10(j) petition, the Board adopted Judge Bogas' findings and conclusions, and ordered the single employer enterprise to comply with Judge Bogas' recommended Order. Significantly, the employers are required, *inter alia*, to rescind their contractual agreement with a neutral third party performing the work, reinstate the bargaining unit work, reimburse all bargaining unit members for their lost wages, benefits, and expenses, and commence meaningful bargaining with the Union. Since the Board Order issued prior to injunctive relief, the 10(j) petition was rendered moot the 10(j) petition and the Region obtained voluntary dismissal of the petition without prejudice.

Board Invites Briefs In Northwestern/College Athletes Players Association Decision

by Joseph Tansino

On January 28, 2014, the College Athletes Players Association (CAPA) filed a petition with the National Labor Relations Board in Case 13-RC-121359, seeking to represent a bargaining unit comprised of approximately 85 football players receiving grant-in-aid athletic scholarships from Northwestern University. Hearings regarding the petition were conducted on February 12, 18-21, and 25. On March 26, Regional Director for Region 13, Peter Sung Ohr, issued a Decision and Direction of Election finding that the grant-in-aid scholarship football players are employees under the Act and directed an election to take place. Regional Director Ohr's Decision is posted on the NLRB webpage and can be found [here](#).



On April 9, 2014, Northwestern University filed a Request for Review of Regional Director Ohr's Decision with the Board. On April 24, the Board granted Northwestern's Request for Review. The next day, an election was conducted but the ballots were impounded pending the Board's decision affirming, modifying or reversing the Regional Director's decision. On May 12, 2014, the Board issued a Notice and Invitation to File Briefs establishing a schedule for the filing of briefs on review and amicus briefs. Briefs may be filed with the Board on or before June 26. The parties and amici were specifically invited to address one or more of several questions including what test should be applied and what policy considerations are relevant in determining whether grant-in-aid scholarship football players are "employees", the applicability of the Board's decision in *Brown University*, 342 NLRB 483 (2004) and the potential impact of outside constraints on the ability of the parties to engage in collective bargaining as to certain terms and conditions of employment. The notice and invitation to file briefs can be read [here](#).

Tech Tips: Hyperlinks and Mobile App

by David Morgan

In *Durham School Services, L.P.*, 360 NLRB No. 85 (April 25, 2014), the Board adopted the Administrative Law Judge's finding that the employer violated Section 8(a)(1) and (3) of the Act by discharging an employee and that the election results should be set aside because of the employee's discharge and the employer's objectionable off-duty access and social networking policies. The remedial order includes a new form of notice to employees that the Board explained would be utilized in future cases. The revised notice contains a hyperlink to the Board's decision and order on the Agency's website, an

electronic address where employees may obtain a copy of the decision, and an address and telephone number that employees may use to obtain a hard copy of the decision. In addition, the revised notice contains the Agency's Quick Response (QR) Code for downloading the NLRB mobile app (Apple's App Store or Google Play). The QR Code is also appearing on some of our docketing letters. If you haven't downloaded the app, give it a try:



RECENT BOARD DECISIONS

by Liz Macaroni



The Board issued several decisions of interest since our last update regarding matters such as Facebook, information requests, *Weingarten* and work rules.

In *Amalgamated Transit Union, Local Union No. 1433, AFL-CIO (Veolia Transportation Services, Inc., Phoenix Division)*, 360 NLRB No. 44 (February 12, 2014), the Board found that a union was responsible for an executive board member's comments about workers risking less favorable representation if they didn't support a strike vote. However, the union was not obligated to remove or disavow allegedly threatening comments that union members posted on the Union's Facebook page.

On February 28, 2014, the Board issued *American Federation of Teachers New Mexico, AFL-CIO*, 360 NLRB No. 59, unanimously adopting the ALJ's findings that the union, as an employer, violated the Act by creating an impression that an employee's union activities were under surveillance, threatening an employee because he engaged in union activity, and denying an employee's request for union representation during an investigatory interview. The Board also affirmed the ALJ's finding that the employer violated Section 8(a)(1) by maintaining an overly broad provision in its collective-bargaining agreement that prohibits employee participation in its "internal politics," including "the lobbying of AFT-NM Executive Council members on any items that are likely to come before them to be voted on

including personnel matters." Dissenting, Member Johnson concluded that the negotiated provision is intended to prevent employees from interfering with the union's internal politics, not to interfere with employees' Section 7 rights.

In *Chapin Hill at Red Bank*, 360 NLRB No. 27 (January 10, 2014), the Board affirmed the ALJ's conclusion that the employer violated Section 8(a)(1) and (5) by failing and refusing to furnish the union with requested information. The Board agreed with the ALJ's finding that the union's request was not rendered moot by the resolution of a grievance the union had filed on behalf of a unit employee. The Board found that the requested information has present and continuing relevance for the union to police the parties' collective-bargaining agreement.

"finding that the union's request was not rendered moot by the resolution of a grievance"

Citing longstanding precedent, the Board also affirmed the ALJ's finding that deferral to arbitration was inappropriate. Similarly, the Board adopted the ALJ's findings that the employer violated Section 8(a)(1) and (5) by failing and refusing to provide relevant information requested by the union in *Endo Painting Service, Inc.*, 360 NLRB No. 61 (February 28, 2014). The Board rejected the employer's argument that it was not required to provide the requested information because the pending grievance was not permitted under the parties' agreement, finding that it is well established that an employer is required to provide relevant requested information regardless of the potential merits of the grievance. Member Miscimarra noted that although he thinks deferral to arbitration may be appropriate in some information request cases, deferral is not appropriate in this case.

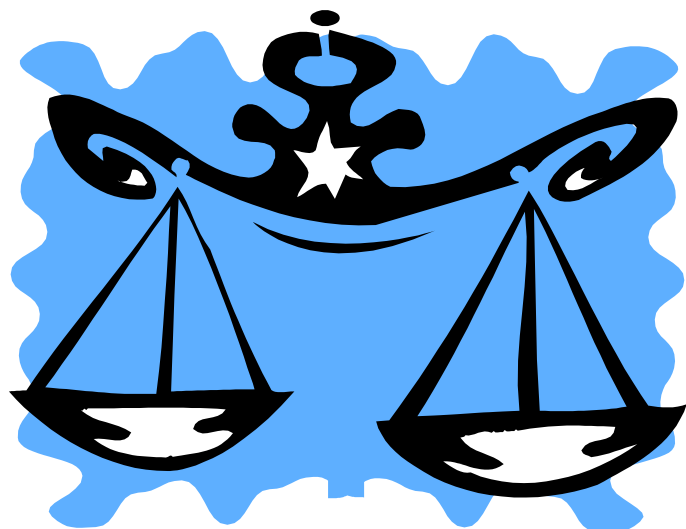
On March 12, 2014, in *Greater Omaha Packing Co., Inc.*, 360 NLRB No. 62, the Board adopted the ALJ’s finding that the employer violated Section 8(a)(1) by discharging three employees for organizing a work stoppage to protest certain terms and conditions of employment. Contrary to the ALJ, however, the Board found that separate 8(a)(1) allegations—rhetorical questions asked during the discharge meetings—coercively conveyed the employer’s displeasure with an employee’s protected activity. The Board also decided that the employer unlawfully created the impression that it was monitoring employees’ protected concerted activity when its managers told two employees that they were aware of the employees’ role in organizing the work stoppage. Member Johnson disagreed that the statements created an impression of surveillance, noting that employees often worked in close proximity to their supervisors and openly discussed the walkout at the workplace.

In another March case, *Murtis Taylor Human Services Systems*, 360 NLRB No. 66, the Board found that the employer violated Section 8(a)(1) and (3) by suspending and warning the employee because his conduct in representing a fellow employee did not fall outside the permissible scope of representative activity under *Weingarten*. The Board noted that the employee’s conduct, including interruptions and objections, were mainly attempts to clarify the issues being investigated. Moreover, the Board found that the employer violated Section 8(a)(1), (3) and (5) by adopting a requirement that employees sign its notes of investigative interviews in order to attest to the veracity of those notes and by discharging an employee for refusing to sign the notes.

The facial validity of three workplace rules was addressed by the Board in *Hills and Dales General Hospital*, 360 NLRB No. 70 (April 1, 2014). The Board adopted the ALJ’s findings that the employer violated Section 8(a)(1) by maintaining rules that employees will “not make negative comments

about fellow team members [which included coworkers and managers],” and that employees will “not engage in or listen to negativity or gossip.” The Board noted that the General Counsel did not allege that the prohibition of gossip was unlawful. The Board, however, reversed the ALJ and found unlawful the employer’s rule that that employees will “represent [the employer] in the community in a positive and professional manner in every opportunity.”

“requirement that employees sign its notes of investigative interviews”



Region 9 Roundup

by David Morgan

Board Decisions & Administrative Law Judge Decisions

The Board issued decisions in thirteen Region 9 cases since the fall. In addition, two favorable Administrative Law Judges' Decisions issued.

In *The Ardit Company*, 360 NLRB No. 15 (December 12, 2013), the Board granted the Acting General Counsel's motion for summary judgment in a test of certification case on the basis that the employer's answer admitted the crucial factual allegations of the complaint that it refused the Union's request to bargain following the Union's certification in Case 09-RC-083978. Further, the Board rejected the employer's argument that the Acting General Counsel lacked the authority to issue the complaint based on the circumstances of his appointment. The Board ordered the employer to bargain with the union and this matter is currently in compliance.

The Board adopted the ALJ's finding in *Mike-Sell's Potato Chip Co.*, 360 NLRB No. 28 (January 15, 2014), concluding that the employer violated Sec. 8(a)(1) and (5) by unilaterally implementing the terms of its final offers without first bargaining with the Union to a good-faith impasse. The Board noted that it would reach the same result even if it did not rely upon the ALJ's finding that the employer set an arbitrary deadline for reaching a new agreement, or upon any consideration of bargaining concessions

“ordered the employer to bargain with the union on request concerning terms and conditions of employment”

offered by the union after the employer's unilateral implementation of its terms. The employer has filed a petition for review in the D.C. Circuit.

The Board granted the General Counsel's motion for summary judgment in a test-of-certification case in *UC Health*, 360 NLRB No. 71

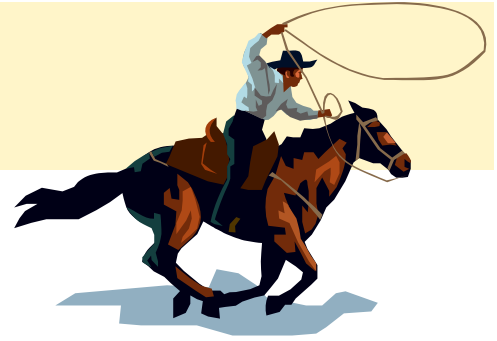
(March 31, 2014). The Board found that the employer's

answer admitted the crucial factual allegations of the complaint and that the employer's argument that the Board lacked a quorum at the time the Regional Director certified the union lacked merit. The Board ordered the employer to bargain with the union on request concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement. The employer has filed a petition for review in the D.C. Circuit.

In *DHL Express (USA), Inc.*, 360 NLRB No. 87 (April 30, 2014), the Board adopted the ALJ's findings that the employer violated Section 8(a)(1) by prohibiting the distribution of literature in its cafeteria and threatening to escort employees from the facility unless they ceased distributing literature there. The Board also adopted the ALJ's finding that the Respondent violated Section 8(a)(1) and (3) by discharging an employee for supporting the union.

On May 5, 2014, the Board issued a Decision and Determination of Dispute in *Laborers International Union of North America, Local 265 (Henkels & McCoy, Inc.)*, 360 NLRB No. 102. In this jurisdictional dispute under Section 10(k) of the Act, the Board awarded the work in dispute to employees represented by the Laborers International Union of North America, Local 265, based on the factors of employer preference, area and industry practice, and economy and efficiency of operations. The work involved the operation of miniexcavators and skid steers on Duke Energy gas service lines in the Cincinnati, Ohio area that the International Union of Operating Engineers, Local 18 also asserted should be awarded to employees it represents.

Several of the Board decisions were unpublished or not contested. On September 17, 2013, the Board adopted hearing officer Joseph F.



Tansino’s overruling of objections regarding the alleged supervisory status of the petitioner in *Pennington Plumbing and Heating*, Case 09-RD-090337, and certified that a majority of the valid ballots had not been cast for the union. Similarly, no exceptions were filed regarding hearing officer Zuzana Murarova’s overruling of objections to an election concerning alleged promises and defacing and removal of campaign literature in *Miami Valley Hospital*, Case 09-RC-113461. The Board found that a Certification of Results of Election should be issued. Two uncontested Board decisions were closed in compliance: *Constellium Rolled Products Ravenswood, LLC*, Cases 09-CA-060235, et al., an order directing the employer to cease and desist from failing to provide the union with information that is relevant and necessary for the union to fulfill its role as the exclusive bargaining representative; and, *Advanced Metal Technologies of Indiana, Inc.*, Cases 09-CA-083508, et al., an order adopting Administrative Law Judge David I. Goldman’s Decision that the employer engaged in various unlawful conduct and that the union was entitled to an extension of the successor bar period and reimbursement for its costs and expenses associated with bargaining. In *Greenville Federal Financial Corporation d/b/a Greenville Federal*, Cases 09-CA-075284, the Board denied the General Counsel’s Motion for default judgment. The Board concluded that since there were conflicting representations of the parties, genuine issues of material fact existed that prevented a final determination as to whether the terms of the settlement agreement had been breached. Following this Decision, the Region’s determination that further proceedings were not warranted was sustained by Appeals.

In *Voith Industrial Services, Inc.*, JD-02-14 (January 23, 2014), Administrative Law Judge Paul Bogas found that the employer violated Section 8(a) (1), (3) and (5) of the Act by warning employees not to tell supervisors or others in the office that they were going to press employees’ workplace complaints by bringing them to the attention of the NLRB or OSHA, issuing discipline and terminating

employees because of their union activities, because they engaged in protected concerted activities and because of their participation in the Board’s processes, and unilaterally implementing new policies regarding attendance and loading rail cars. Judge Bogas recommended that the discipline and discharge of the employees be removed from the employers’ files, that the discharged employees be offered full reinstatement to their former jobs and be made whole for all losses suffered as a result of the discrimination against them and, at the request of the union, that the unilaterally implemented policies be rescinded. On March 12, 2014, the employer filed exceptions to the ALJ Decision.

Regional Director Decisions

West Liberty Nursing & Rehabilitation Center, Case 09-RC-120950, February 20, 2014. The employer is engaged in the operation of a long-term nursing home in West Liberty, Kentucky. The union petitioned for a unit of full-time and part-time RNs, PRNs, LPNs, Aides, CNAs and Dietary employees. The employer asserted that the RNs, LPNs and a maintenance manager are supervisors within the meaning of the Act. The Regional Director found that

“the Regional Director found that these individuals were not supervisors”

these individuals were not supervisors noting that there was insufficient evidence that they exercised independent judgment in assigning work or were held accountable if employees failed to

perform tasks, and that they lacked any disciplinary authority. Since RNs are traditionally viewed as professional employees, a *Sonotone* election was directed. The parties agreed to election arrangements, a majority of the RNs voted to be included with the nonprofessionals and a majority of all eligible employees that voted cast their ballots in favor of the union. On March 27, 2014 a Certification of Representative issued.

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Accolades for Atkinson

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talents on obtaining affirmative results for discriminatees and charging parties.

Laura was the Compliance Officer for 5 years in Boston until 1993 when she was selected to fill the vacant position of Assistant to the Regional Director here in Cincinnati's Region 9. She observed that she had always enjoyed elections and the issues that come with representation-cases so she was pleased to be selected. In 1996, Laura managed the Region's first "R case team" and taught many young and senior agents the finer points in obtaining election agreements, problem solving on-the-spot election issues, and conducting a thorough and concise representation-case hearing. Laura reminisced about one of her achievements -- organizing an election for a large hospital group that entailed the use of all Regional office personnel, save for

three managers and a receptionist, and borrowing a few agents from another Region. That election encompassed voting sites at five hospital locations, satellite facilities, and nursing homes. Her finesse and organizational ability, led to timely mailings of notices, smooth running and sufficiently staffed polling places, and resulted in no objections.

Many of the Region's staff and labor-management community have expressed their appreciation over the years for Laura's firm even-handed approach to representation-case matters and the parties involved. Laura was as complimentary of those she worked with as they were of her. She noted that when she first arrived in the Cincinnati office she felt unsure what to expect and was pleasantly surprised by the welcoming nature of her co-workers and the labor-management community at large. Her gentle demeanor, experience, and expertise brought 20 years of stability to our staff and those who processed representation-cases in our Region.

Although the staff here at Region 9 will miss Laura, her dogs, Kassie and Kobi, said it's their turn to enjoy her company. Laura plans on exercising Kassie and Kobi (or vice-a-versa), gardening, and trying new things. Her love of opera, the theater, the symphony, and adventurous dining will keep her busy with friends and family. Laura would like everyone to know that the thing she will miss the most about her job is the people -- her co-workers and those she worked with outside the office.



Promotions & Additions

by Carolyn Fath

Matthew Denholm

Matthew T. Denholm has been selected as the Region's new Assistant to the Regional Director. Far from being new to our staff, Matt began investigating cases in 1977 for Region 9 as a Field Examiner. In 2000 he was selected to fill the Compliance Officer's position where his penchant for detail was utilized to its fullest. In 2001 he was selected to become a Supervisory Field Examiner so that he could pass along his skills to other Regional employees while he continued to shepherd the compliance department. An avid reader with a mind like a steel trap, Matt's skills will suit his new position well as he assists the staff, public, and labor-management community in sorting out their representation-case issues.



Alaina Gibson

Although fresh-faced and youthful in appearance, new staff member Alaina Gibson brings a Master's Degree in Labor Relations and 3 years' experience with her from San Francisco's Region 20. Alaina began her career with the NLRB as a co-op in Region 21's downtown Los Angeles office. After a 6-month stint as a co-op, she was hired as a full-time Field Examiner and moved to San Francisco. As a Muncie, Indiana native, joining the Cincinnati office was like coming home for Alaina and her charm and personality fit right in with the Region 9 family. Alaina loves that her job here is anything but routine and that by effectuating the NLRA she is able to have a direct impact on people's lives.

Jodie Suber

Jodie Suber joins our staff after spending 10 years in the NLRB Winston-Salem office. She was initially employed in the Cleveland office as an administrative professional. After 2 years in Cleveland, Jodie transferred to the Boston office where she worked for 4 years. Not one to let the grass grow under her feet, Jodie transferred to the Hartford office where she successfully completed the Bridge program and was converted to a Field Examiner. She then found her place in the sun in Miami, Region 12's Resident office, followed by her tour of duty in Winston-Salem. Now Jodie has brought her 26½ years of experience to Region 9. She intends to continue her goal of helping people through her work at the NLRB. Jodie is also looking forward to exploring the cultural opportunities available in Cincinnati and the surrounding region.

Region 9 Roundup

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Appalachian Regional Healthcare, Inc., Case 09-UC-119730, March 24, 2014. The employer operates non-profit acute care hospitals and other ancillary medical facilities in eastern Kentucky and southern West Virginia. The union is recognized by the employer as the exclusive collective-bargaining representative for certain employees at these facilities and asserted that newly hired LPNs and physician office/medical assistants working under physicians employed by the employer belong to the established bargaining unit by virtue of their unit classifications and work location at one of the facilities. The employer maintained that the parties' Agreement defines the unit by medical group, not facility, and that the physicians are a separate newly-created medical group whose employees can only be included in the existing unit by accretion. The Employer further claimed that these employees do not share a sufficient community of interest with employees in the existing unit to constitute an accretion. The Regional Director dismissed the petition, concluding that the unit is facility based and that the disputed employees are already employed in a defined unit classification consistent with the contract language and the parties' practice. On April 7, 2014, the employer filed a Request for Review.

Central Ohio Gaming Ventures, LLC d/b/a Hollywood Casino-Columbus, Case 09-RD-126599, May 14, 2014. The employer operates a casino in Columbus, Ohio. On April 15, 2013, the union was the certified bargaining representative of a unit of all full-time and regular part-time armed and unarmed security officers, security/EMTs and Security/Dispatchers performing guard duties as defined in Section 9(b)(3) of the Act. The employer and the union claim that the petition was barred by the Board's "contract bar" doctrine but the petitioner asserted that the contract was not signed and finalized until after the petition was filed. The purported contract contains substantial terms and conditions of employment, clearly encompasses the employees

involved in the petition and covers an appropriate unit. The union signed the contract before the petition was filed and the employer accepted the union's offer to enter into the contract without knowledge that the petition had been filed. Under these circumstances, even though a typical formalized agreement did not exist, the Acting Regional Director concluded that union's offer and the employer's acceptance via email warrants a finding of contract bar and dismissal of the petition.

Investigative Subpoenas

The Region has been involved in several investigative subpoena proceedings before the Board and District Court. On December 26, 2013 and January 22, 2014, respectively, the Board denied the employer's petitions to revoke investigatory subpoenas duces tecum in *Caterpillar Logistics, Inc.*, Cases 09-CA-110247 and 09-CA-110687. The Board concluded that the subpoenas sought information relevant to the matters under investigation, described with sufficient particularity the evidence sought and the employer had failed to establish any other legal basis for revoking the subpoenas. On September 16, 2013, an Application for Order Requiring Obedience to Subpoenas Ad Testificandum was filed with the United States District Court, the Southern District of Ohio in *Gary W. Muffley, On Behalf of the National Labor Relations Board v. Gary Rodgers and Kenton Beaty*, Case No. 3:13-MC-12. The proceedings were necessary in order to compel neutral witnesses to provide relevant testimony regarding allegations raised in the investigation of ULP charges. One of the individuals cooperated after the filing of the Application. On November 22, 2013, the Court issued its Order directing the second individual to make arrangements to appear before the Region and give testimony and required that the United States Marshal personally serve the Order. Following that service, the second individual cooperated and gave testimony. In *Muffley v. Elmo Greer & Sons, LLC*

and *Greer Mining, Inc.*, Civil Nos. 14-20-GFVT and 14-21-GFVT, (January 27, 2014), the Region sought enforcement of Subpoenas Duces Tecum before the United States District Court, Eastern District of Kentucky. The Subpoenas were seeking information related to charges filed by the union alleging that the employers, as a single employer/alter ego, engaged in various conduct violative of Section 8(a)(1) and (5) of the Act. The Court scheduled a Show Cause hearing but the parties resolved the underlying charges and the

matter was voluntarily dismissed. Subpoena enforcement proceedings are pending in the United States District Court, the Southern District of Ohio in *Muffley v. Joseph Heck and Scott Gebhart*, Case No. 3:14-mc-00005 and *Muffley v. Joseph Poor*, Civil No. 1:14-cv-338.

INVITATIONS FOR BRIEFS

by **Liz Macaroni**

The National Labor Relations Board occasionally invites the parties and interested *amici* to file amicus briefs in cases of significance or high interest. Listed below are some recent invitations.



Browning-Ferris Industries ([Case 32-RC-109684](#))

To address the Board's joint employer standard: whether the Board should adhere to its existing joint employer standard as articulated in *TLL, Inc.*, 271 NLRB 798 (1984), *enfd. mem.* 772 F.2d 894 (3d Cir. 1985), and *Laerco Transportation*, 269 NLRB 324 (1984) or adopt a new standard.

Briefs are due by June 26, 2014. [Click here to read the notice and invitation to file briefs.](#)

Purple Communications, Inc. ([Case 21-CA-095151](#), [21-RC-091531](#) and [21-RC-091584](#))

To address the issue of whether the Board should reconsider its conclusion in *Register Guard*, 351 NLRB 1110 (2007), *enfd. in relevant part and remanded sub nom. Guard Publishing v. NLRB*, 571 F.3d 53 (D.C. Cir. 2009), that "employees have no statutory right to use the[ir] Employer's e-mail system for Section 7 purposes."

Briefs are due by June 16, 2014. [Click here to read the notice and invitation to file briefs.](#)

Pacific Lutheran University ([Case 19-RC-102521](#)).

To address two questions: whether a religiously-affiliated university is subject to the Board's jurisdiction, and whether certain university faculty members seeking to be represented by a union are employees covered by the National Labor Relations Act or excluded managerial employees.

Briefs were due on March 28, 2014. [Click here to read the notice and invitation to file briefs.](#)

Babcock & Wilcox Construction, Inc. ([Case 28-CA-022625](#))

To determine whether the Board should continue, modify or abandon the *Olin/Spielberg* standard for deferral to arbitration awards.

Briefs were due on March 25, 2014. [Click here to read the notice and invitation to file briefs.](#)

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WE ARE AT YOUR SERVICE

For assistance in filing a charge or a petition, call the Regional Office at (513) 684-3632 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

ESTAMOS A SU SERVICIO

Para asistencia de someter una carga o petición
Llame la oficial de información en oficina regional a
(513) 684-3686.

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

Comments or Questions?



In addition to the topics we may choose to feature, we would like to invite your comments and suggestions concerning specific items of interest, regional policies, practices, or procedures that you would like to see discussed, or whether you would prefer a Spanish version, an electronic format or to be deleted from our mailing list altogether. We can make it

happen and your comments would be greatly appreciated. Please contact Supervisory Field Examiner David Morgan at david.morgan@nlrb.gov or by phone at 513-684-3643.

SPEAKERS AVAILABLE!

Need a speaker for a training conference or class instruction? The Agency actively promotes increased knowledge and understanding of the National Labor Relations Act through the vigorous promotion of its Outreach Program. The Outreach Program offers experienced Board Agents to employers, labor organizations and learning institutions for presentations and training regarding the Board's mission, organization, structure and function. Presentations have included mock representation elections, exposure to the Board's hearing processes and instruction tailored fit to a party's particular issue/need. Recent Outreach Educational Program engagements included programs designed for the International Brotherhood of Electrical Workers, the American Federation of Federal, State, County and Municipal Employees, the University of Kentucky School of Law, and Northern Kentucky University. If you have an interest in the Outreach Program, please contact Assistant Regional Director Matthew T. Denholm at (513) 684-3625 or matthew.denholm@nlrb.gov.

