

Democracy at Work

National Labor Relations Board
Region 9

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Garey Lindsay Takes the Helm of Region 9

by Patricia A. Enzweiler



Garey E. Lindsay, with his Wife Katie and Daughter Asia, accepting his appointment as Regional Director from General Counsel Richard F. Griffin, Jr. & Chairman of the Board Mark Gaston Pearce

On April 9, 2015, the National Labor Relations Board installed Garey E. Lindsay as Regional Director of Region 9 in Cincinnati, Ohio. Garey is only the eleventh director of the Region since the inception of the National Labor Relations Act on July 5, 1935.

In a ceremony held at the Cincinnati Bar Association, NLRB Board Chairman Mark Pearce administered the Oath of Office before a large audience that included Garey's wife Katie and daughter Asia, family members and friends, numerous labor and management practitioners, members of the Region 9 staff and retirees. Guest Regional Director from Atlanta, Claude "Chip" Harrell, congratulated Garey and recounted memories and stories of earlier times when he worked with Garey as a Field Examiner and Supervisor in Region 9.

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Garey Lindsay Takes the Helm of Region 9

From Cover

A native of Detroit, Michigan, Garey Lindsay earned both his undergraduate and law degrees from Wayne State University. In 1977, he joined the Region 9 staff as Field Attorney, and was promoted to Deputy Regional Attorney in 1990. He served in that position until 2007, when he was selected to be Regional Attorney.

Throughout his career, Garey contributed to numerous agency-wide programs, especially to attorney trial training, case handling manual revisions, and numerous outreach projects. In his remarks, General Counsel Richard Griffin Jr., made special note of his contributions and emphasized how strongly Garey came recommended for the job by outgoing Regional Director Gary Muffley.

Hard work and concern for others is reflected in Garey's involvement in a number of activities throughout the community as well. He is a board member of the charitable organization Power Inspires Progress, which provides disadvantaged inner city adults with opportunities to obtain the educational and job skills necessary to become productive members of the community.

Mr. Griffin also highlighted Garey's membership and participation in the Cincinnati Classical Roots Choir, a musical organization composed of members from various churches in the Cincinnati area, and which performs annually with the Cincinnati Symphony Orchestra. Alongside Garey as one of the musical leaders for the Choir is newly-appointed Regional Attorney Eric Oliver, who, in his remarks, respectfully advised Garey not to quit his day job.

In a speech to the audience, Garey said that he admired the words of his former supervisor, James Murphy, who reminded the staff that the work of the NLRB was important and to read the Preamble of the Act. Garey then read the Preamble recalling the mission of the Agency set forth in its words, and ended his speech by emphasizing, "I am a true believer in the purposes and policies of the Act." Garey expressed his firm commitment to uphold the principles of the NLRA as he embarks upon enforcing the NLRA in the 129 counties that make up Region 9's jurisdiction in Ohio, Kentucky, Indiana and West Virginia.

Garey is preceded as Regional Director in Cincinnati by the following:

Gary W. Muffley (2004-2014)
Richard L. Ahearn (1995-2003)
D. Randall Frye (1990-1994)
Emil C. Farkas (1974-1990)
John C. Getreu (1958-1974)
Charles M. Ryan (1956-1957)
Jack G. Evans (1947-1955)
Martin Wagner (1943- 1946)
Phillip G. Phillips (1937-1942)
Ralph A Lind (acting, 1936).

BOARD AUTHORIZED 10(j) INJUNCTIONS

by Gideon Martin

The Region received authorization from the Board to seek injunctive relief in three cases. *Koch Foods of Cincinnati, LLC*, Case 09-CA-136483 et al. involved several charges filed between September 10, 2014 and December 16, 2014. These charges alleged a host of unfair labor practices in retaliation for union organizing activity. As a result of the investigation, the Region issued a Second Consolidated Complaint on December 24, 2014. The complaint alleged that the Employer, among other things, interrogated an employee about the employee's support for the Union, threatened employees if they supported the Union and suspended and discharged several employees because of their support of the Union. Thereafter, on January 26, 2015, the Board authorized that Section 10(j) proceedings be initiated. However, prior to filing the 10(j) petition in District Court, the parties entered into an informal settlement agreement fully remedying the allegations contained in the complaint including the payment of backpay to the discharged employees, all of whom waived reinstatement, rescinding of all discipline and a notice reading.

The second authorization for injunctive relief was granted in *Wausau Paper Corp.*, Cases 09-CA-142922 and 09-CA-142943, involving charges that were filed on December 16, 2014. This case involved another union organizing matter and a Consolidated Complaint issued on April 9, 2015. The complaint alleged, among other things, that at various times the Employer threatened an employee with discharge for engaging in union activities, removed union literature from bulletin boards, interrogated an employee about the employee's union activity and disciplined and discharged an employee because of the employee's union activity. On May 4, 2015, the Board authorized that Section 10(j) proceedings be initiated. After receiving this authorization, the Region filed a petition seeking Section 10(j) relief on May 13, 2015 in the United States District Court, Eastern District of Kentucky (Civil Action No. 5:15-CV-133-KKC). Subsequently, the parties entered into an informal settlement agreement that included the payment of backpay to the discharged employee, who waived reinstatement, rescinding of all discipline and a notice reading.

The final authorization for injunctive relief involves a successor employer that allegedly refused to recognize and bargain with the incumbent union. On August 26, 2015, a complaint issued in *Parallel Employment Group, Inc.*, Case 09-CA-148072, alleging that it is the continued employing entity and successor, as well as a perfectly clear successor, to a predecessor employer, and that it has refused to recognize and bargain with the Union, implemented unilateral changes and refused to provide the Union with requested information. On September 1, 2015, the Board authorized the institution of 10(j) proceedings and, on September 4, the Region filed the petition in the United States District Court, Southern District of Ohio at Dayton (Civil Action No. 3:15-cv-311). The trial before the ALJ is scheduled to commence on November 4, 2015.



RECENT BOARD DECISIONS

by Zuzana Murarova



The Board issued several significant decisions since our last update regarding matters such as Board jurisdiction, the joint employer standard, the right to use employer email systems, Union dues checkoff after the expiration of a collective-bargaining agreement, and the standard for deferral to arbitration awards.

In *Northwestern University*, 362 NLRB No. 167 (Aug. 17, 2015), the Board unanimously declined to assert jurisdiction over Northwestern University grant-in-aid scholarship football players and dismissed the representation petition filed by the Union. In explaining its decision, the Board first noted that even when it has the statutory authority to act, it can properly decline to do so when it concludes that asserting jurisdiction over a particular case would not effectuate the purposes of the Act. The Board determined that, even if the scholarship players were statutory employees (an issue the Board emphasized it was not deciding), it would not effectuate the policies of the Act to assert jurisdiction.

In deciding that it should decline to assert jurisdiction, the Board principally focused on two factors. First, the Board observed that NCAA Division I Football Bowl Subdivision (FBS) football resembles a professional sport. The Board noted that in previous cases involving professional sports, it has stated that it would be difficult to imagine any degree

of stability in labor relations if the Board were to assert jurisdiction over only one team, and that in practice all previous Board cases involving professional sports involve league wide bargaining units. Second, the Board noted the structure of FBS football itself and emphasized that of the approximately 125 colleges and universities that participate in FBS football, all but 17 are state-run institutions over which the Board cannot assert jurisdiction, and that Northwestern is the only private school that is a member of the Big Ten Conference. The Board stated that in such a situation, asserting jurisdiction would not promote stability in labor relations due to the variety of state labor laws that would apply to football teams at state-run institutions. As an additional consideration, the Board commented that the terms and conditions of Northwestern's

“declined to assert jurisdiction over Northwestern University grant-in-aid scholarship football players”

players have changed markedly in recent years, and that there have been calls for the NCAA to undertake further reforms that may result in additional changes to the circumstances of scholarship football players. The Board stated, however, that subsequent changes in the treatment of scholarship players could outweigh the considerations that motivated its decision to decline jurisdiction in this case.

By way of conclusion, the Board emphasized that its decision applied only to football players at Northwestern University, and that it was not addressing what the Board's approach might be to a petition for all FBS scholarship football players or at least those at private universities. And the Board noted that a decision to decline jurisdiction does not preclude a reconsideration of the issue in the future.

In *Pacific Lutheran University*, 361 NLRB No. 157 (Dec. 16, 2014), the Board reexamined the standard it will apply for determining, in accordance with *Catholic Bishop*, when the Board should decline to exercise jurisdiction over faculty members at self-identified religious colleges and universities, and reexamined the standard by which it will determine the managerial status of faculty pursuant to *Yeshiva University*.

The Board majority adopted a new jurisdictional test under *Catholic Bishop*. That test requires that when it is argued that the Board cannot exercise jurisdiction because the university is a religious university, the university “must first demonstrate, as a threshold requirement, that First Amendment concerns are implicated by showing that it holds itself out as providing a religious educational environment.” Once that threshold requirement is met, the university “must then show that it holds out the petitioned-for faculty members themselves as performing a specific role in creating or maintaining the college or university’s religious educational environment, as demonstrated by its representation to current or potential students and faculty members, and the community at large.”

“prohibits employees’ non-business use of its email network”

The Board majority also refined the standards under *Yeshiva University* to determine whether faculty actually or effectively exercise control over decision-making pertaining to central university policies by examining the faculty’s participation in the following decision-making areas: academic programs, enrollment management policies, finances, academic policies, and personnel policies and decisions, and giving greater weight to the first three areas than the last two.

Applying the new jurisdiction test, the Board majority found that while the University met the threshold requirement of holding itself out as providing a religious educational environment, the Board may assert jurisdiction because the University failed to establish that it holds out its petitioned-for contingent faculty members as performing any religious function. Further, applying the refined standards under *Yeshiva University*, the Board majority concluded that the University failed to demonstrate that full-time contingent faculty members are managerial employees because there was insufficient evidence that the faculty were substantially involved in decision-making affecting



First Photo of Board in session, May 1955. From left, Philip Ray Rodgers, Abe Murdock, Chairman Guy Farmer, Ivar H. Peterson, and Boyd S. Leedom

RECENT BOARD DECISIONS

Continued from Page 5

the areas of academic programs, enrollment management policies, and finances. Even in the secondary areas of academic policies and personnel policies, the Board majority found that the full-time contingent faculty members' authority was limited to their own classrooms or departments.

In *Purple Communications*, 361 NLRB No. 126 (December 11, 2014), the Board reviewed the ALJ's finding that the Respondent's electronic communications policy, which prohibits employees' non-business use of its email network, was lawful and not objectionable under *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). A Board majority overruled *Register Guard*'s holding that employees have no statutory right to use their employer's email system for Section 7 purposes. The majority concluded that an employer that gives its employees access to its email system must presumptively permit the employees to use the email system for statutorily protected communications during nonworking time. But an employer can rebut the presumption by showing that special circumstances make its restrictions necessary to maintain production and discipline.

“Employers may still monitor email use for legitimate management reasons”

The majority concluded that *Register Guard* had focused too much on employers' property rights and too little on the importance of email as a means of workplace communication. Instead, the majority adopted an analysis that accommodates the competing rights under an approach based on that of *Republic Aviation*, 324 U.S. 793 (1945). The majority rejected arguments that *Republic Aviation*'s presumption should apply only if employees would otherwise be entirely deprived of their statutory right

to communicate and that employees' alternative means of communication (such as by personal email or social media accounts) made the presumption inappropriate. The majority also explained that its decision was limited: it applies only to email, only to employees who use their employer's email system for work, and only to employees' nonworking time. Employers may still monitor email use for legitimate management reasons and tell employees that they have no expectation of privacy when they use the email system. The majority rejected claims that the decision violates employers' free-speech rights.

Rather than ruling on the Respondent's electronic communications policy at this time, the Board remanded the case for the Respondent to present evidence of special circumstances justifying its restrictions on employees' use of the email system.

On December 14, 2014, the Board modified its previous *Spielberg/Olin* standard for deferral to arbitration awards in *Babcock & Wilcox Construction Co, Inc.*, 361 NLRB No. 132. The Board majority found that the existing standard did not adequately balance the protection of employee rights under the Act and the national policy of encouraging arbitration of disputes over the application or interpretation of collective-bargaining agreements. The majority reasoned that the existing standard created excessive risk that the Board would defer when the arbitrator had not adequately considered the unfair labor practice issue, or when it was impossible to tell whether he or she had done so.

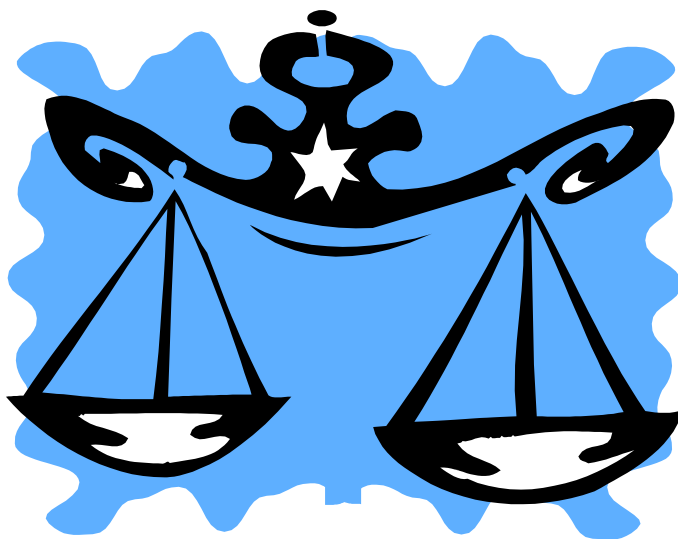
Based on these concerns, the majority adopted a new post-arbitral deferral standard. The new standard retains the *Spielberg* requirements that the arbitral proceedings appear to be fair and regular and that all parties have agreed to be bound. In addition, the new standard places the burden on the party urging deferral to show that 1) the arbitrator was explicitly authorized to decide the unfair labor practice issue (either by the collective-bargaining agreement or by the parties themselves); 2) the

arbitrator was presented with and considered the statutory issue (or was prevented from doing so by the party opposing deferral); and 3) Board law reasonably supports the arbitral award.

On July 6, 2015, Board invited the filing of briefs in order to allow parties and interested *amici* an opportunity to address issues raised in *Miller & Anderson, Inc.* Case 05-RC-079249, including whether the Board should adhere to its decision in *Oakwood Care Center*, 343 NLRB 659, which disallowed inclusion of solely employed employees and jointly employed employees in the same unit absent consent of the employers, and if not, whether the Board should return to the holding of *M.B. Sturgis, Inc.*, 331 NLRB 1298, which permits the inclusion of both solely and jointly employed employees in the same unit without the consent of the employers. Briefs were to be submitted by August 5, 2015. The next day, the Board suspended an invitation for briefs on, among other issues, whether parties and *amici* believed the Board should adopt a rule permitting unions to collect fees from nonmembers for grievance processing. The General Counsel and the Respondent filed a joint motion withdrawing exceptions to the decision of the administrative law judge in *United Steel, Paper and Forestry Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1192 (Buckeye Florida)*, Case 12-CB-109654.

The Board issued two decisions of note on August 27, 2015, including the highly publicized joint employer issue in *Browning-Ferris Industries*, 362 NLRB No. 186 (Aug. 27, 2015). There, the Board refined its standard for determining joint-employer status. The Board held that two or more entities are joint employers of a single workforce if (1) they are both employers within the meaning of the common law; and (2) they share or codetermine those matters governing the essential terms and conditions of employment. In evaluating whether an employer possesses sufficient control over employees to qualify as a joint employer, the Board will – among other factors -- consider whether an employer has exercised control over terms and conditions of employment indirectly through an intermediary, or whether it has reserved the authority to do so. In *Lincoln Lutheran*

of Racine, 362 NLRB No. 188 (Aug. 27, 2015), the Board overruled *Bethlehem Steel* and found that an employer’s duty to abide by union dues checkoff provisions survives the expiration of the relevant collective bargaining agreement. The Board majority said no good reason exists for treating dues checkoff provisions differently from other mandatory subjects of bargaining that an employer cannot unilaterally change after a contract expires. The Board further explained that *Bethlehem Steel* was inconsistent with policy condemning unilateral changes, and was contradicted by the plain language and legislative history of the only provision addressing dues checkoff.



Region 9 Roundup

by Daniel Goode

Board Decisions & Administrative Law Judge Decisions

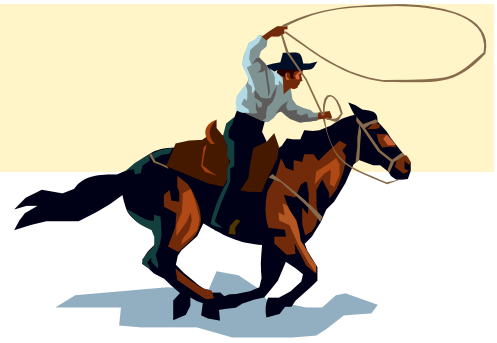
The Board and Administrative Law Judges issued several favorable decisions in Region 9 cases this past year.

The Board upheld a majority of the ALJ's findings in *Caterpillar Logistics, Inc.*, 360 NLRB No. 49, (March 30, 2015), concluding that the Employer violated Section 8(a)(1) and engaged in objectionable conduct by: announcing and granting employees a safety bonus; announcing the construction of smoking shelters for employees; and, interrogating employees. The Board also affirmed the judge's finding that the Respondent violated Section 8(a)(3) and (1) by discharging an employee for conduct that occurred during the course of his protected concerted activity. Contrary to the judge, the Board found that the Respondent also violated Section 8(a)(1) and engaged in objectionable conduct by creating the impression of surveillance. The Employer has filed a petition for review in the Sixth Circuit.

On May 20, 2015, in *Columbus Show Case Company d/b/a CSC Worldwide*, 362 NLRB No. 90, the Board granted, in part, the General Counsel's Motion for Default Judgment based on the Employers' failure to file a timely and sufficient answer to the second amended complaint and

“discharging an employee for conduct that occurred during the course of his protected concerted activity.”

compliance specification. The Board found that CSC Worldwide and CSC Specialty Retail Group, as a single employer, violated Section 8(a)(5) and (1) by dealing directly with unit employees and by failing to pay certain arbitration fees, failing to remit certain pension fund contributions, and failing to pay unit



employees for certain unused and accrued leave. The Board denied

the General Counsel's motion with respect to the allegation regarding the use of managers and supervisors to perform unit work and severed and remanded that portion of the proceeding to the Region. The Board ordered the Employers to pay the arbitration fees they owed, remit pension fund contributions, and pay unit employees for unused vacation hours, unused sick leave, and accrued vacation hours.

The Board upheld most of the ALJ's Decision in *Print Fulfillment Services LLC*, 361 NLRB No. 144, (December 16, 2014), finding that the Employer committed several violations of Section 8(a)(1), (3), and (5) of the Act, both before and after a representational election. The Board adopted the judge's findings that the Employer violated Section 8(a)(1), under the circumstances, when a supervisor, before the election, told an employee "I'm disappointed" when he saw the employee's picture on a pro-Union campaign leaflet; and when a supervisor, after the election, told another employee that he could not be given a raise "because of the union proceedings." Further, the Employer violated Section 8(a)(3) when it gave an employee a disciplinary warning for a production error; and violated Sections 8(a)(3) and (5) when it initiated, without bargaining, a practice of stricter enforcement of its disciplinary policy for production errors. With respect to a remedy, because the Union had essentially waived its right to bargain over the Respondent's unilateral decision to lay off four employees and attempted to bargain only about the layoff's effects, the Board substituted a limited *Transmarine* remedy for the reinstatement of those employees, instead of the full backpay recommended by the judge. In addition, contrary to the judge, in view of the Employer's numerous violations, the Board included a notice-reading requirement. This

matter was closed in compliance on July 30, 2015.

In *Tri-State Wholesale Building Supplies, Inc.*, 362 NLRB No. 85, (April 30, 2015), the Board upheld the ALJ's finding that the employer unlawfully discharged 10 employees who engaged in an economic strike in protest of the employer's failure to pay them promised holiday pay before they were permanently replaced. The Board agreed with the judge that the Employer failed to prove a mutual understanding between itself and the replacements that they were permanent. Accordingly, the Board directed the Employer to reinstate the strikers and discharge any replacements currently in positions previously held by the discharged strikers. The Employer has filed a petition for review in the Sixth Circuit.

On November 14, 2014, the Board issued *Conagra Foods, Inc.*, 361 NLRB No. 113, upholding the ALJ's determination that the employer violated Section 8(a)(3) and (1) by discriminatorily disciplining an employee because she informed two employees that she had placed authorization cards in their locker while on working time. The majority found that the employee's statement did not constitute solicitation and, therefore, was protected and not subject to the Respondent's no-solicitation policy. The majority also adopted the judge's finding that the Employer violated Section 8(a)(1) by posting an overly broad notice concerning its solicitation policy, which employees would reasonably construe as prohibiting discussions about unions on working time. The Board granted the General Counsel's Motion for Default Judgment finding the employer violated the terms of a prior settlement agreement as a result of this post-settlement conduct. The Employer has filed a petition for review in the Eighth Circuit.

The Region was also successful in its request for special permission to appeal a ruling by the ALJ in *MPE, Inc.*, Cases 09-CA-084228 and 09-CA-084595. The Board found that the judge erred in denying the motion to allow video testimony, as the General Counsel has demonstrated that a key witness in this matter was unavailable to testify in person because he was incarcerated in federal prison. The Board was persuaded by the General Counsel

that the GLOWPOINT video conference technology used by the Board and by the Federal Bureau of Prisons is acceptable for video testimony, subject to appropriate procedural safeguards to preserve the due process rights of the parties. The Board stated that its order is without prejudice to the judge striking the video testimony if the judge determines that the actual circumstances of the video testimony do not provide the parties with a meaningful opportunity to examine and cross-examine the witness, or give the judge the appropriate ability to assess the witness's demeanor for the purposes of assessing his credibility.

The Board issued some decisions that were uncontested. On April 3, 2015, the Board adopted hearing officer Tamilyn A. Thompson's overruling of objections regarding alleged improper conduct during the critical period in *Aramark Educational Services, LLC at Morehead State University*, Case 09-RC-142590, and certified that a majority of the valid ballots had not been cast for the Union. Similarly, no exceptions were filed regarding hearing officer Naima Clarke's overruling of objections to an election

“employee’s statement did not constitute solicitation”

concerning alleged unlawful actions during the critical period in *Mercury Ambulance, Inc. d/b/a Rural Metro*, 9-RC-122685, and the Board found that a Certification of Results should be issued.

The Region obtained two favorable decisions from ALJs this past year. In *Danite Holdings, LTD d/b/a Danite Sign Company*, JD-57-14 (September 26, 2014), the judge found that the Employer violated Sections 8(a)(1) and (5) of the Act by failing and refusing to fully provide presumptively relevant information requested by the Union. *Euro Builders, Ltd.*, JD-61-14 (October 24, 2014), involved an employer that committed numerous violations of Section 8(a)(1). In addition, the Administrative Law Judge concluded that the Employer violated Section 8(a)(3) by: refusing to hire or consider for hire two individuals because of their union membership; laying off about 15 employees because of their union activities; and failing to recall two employees from layoff because of their union

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Region 9 Roundup

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activities. The Board adopted both of these decisions after no exceptions were filed.

While the Region enjoyed many successful decisions before Administrative Law Judges and the Board, the Board did dismiss complaints filed by the Region in *International Union of Operating Engineers Local 18*, 362 NLRB No. 176 (August 20, 2015), and *American Electric Power*, 362 NLRB No. 92 (May 28, 2015). Additionally, ALJ Keltner W. Locke dismissed a complaint filed by the Region in *Custom Food Products, LLC*, JD-13-15, (August 4, 2015).

R Case Rule Stats & Regional Director Decisions

On April 14, 2015, the modified rules regarding the processing of representation cases went into effect. While the new rules did not establish timeframes for conducting elections or issuing decisions, one effect of the modified rules has been quicker turnarounds between the filing of petitions and elections being scheduled. From October 2014 through April 2015, the median number of days between a petition being filed and the election was approximately 41 days. That number has decreased to a median of 24.5 days from May 2015 through early September 2015.

Additionally, three Regional Director's decisions have issued this past year. In *Paragon Systems, Inc.*, Case 09-RC-155533, July 21, 2015, the Regional Director found that the Petitioner, The Protection & Response Officers of America, Inc. (PROA), was not barred by Section 9(b)(3) of the Act from being certified as the representative of the guards in the petitioned-for-unit as no evidence was adduced to show PROA was directly or indirectly affiliated with an organization which admits to membership employees other than guards. Accordingly, the Regional Director directed an election where employees of the Employer would choose whether or not they wanted to be represented

by the PROA or the incumbent union. The majority of valid ballots were cast for the PROA, and a Certification of Representative issued on August 26, 2015.

In *Total Distribution, Inc.*, Case 09-RC-146320, the Union petitioned to represent a unit consisting of all full-time warehouse employees, forklift operators, drivers, and drummers employed by the Employer at facilities in Nitro and Belle, WV. The Employer asserted that in-plant drivers at the Belle, WV plant should not be included in the unit, as they did not share a community of interest with the other employees at the Nitro facility. Applying traditional community of interest factors, the Regional Director found that the in-plant drivers at the Belle facility shared a substantial community of interest with the employee working in the Nitro facility. Specifically, several factors weighed heavily in favor of including the in-plant drivers in the unit including: functional integration; commonality of wages, benefits, and other terms and conditions of employment; and, common immediate supervision. After the Regional Director's Decision and Direction of Election issued, the Union withdrew the petition.

Another community of interest case, *Faurecia Emissions Control Technologies USA, LLC*, Case 09-RC-139624, issued on November 24, 2014. The Employer is engaged in manufacturing automobile parts at its Louisville, KY facility. The Union petitioned to represent the Employer's full-time and regular part-time production, maintenance and warehouse employees. Contrary to the Union, the Employer asserted that the appropriate unit should also include quality assurance technicians and engineering technicians. The Regional Director found that the traditional community of interest factors did not support excluding the quality assurance technicians and the engineering technicians. He found there to be a substantial amount of functional integration between the quality assurance technicians, the engineering technicians, and the proposed unit employees. Similarly, the Regional Director found several other factors weighed heavily in finding a substantial community

of interest such as significant work-related contact, employee interchange, strong commonality of wages, benefits and other terms of employment, and common immediate supervision.

General Counsel Urges Board to Reconsider *Spruce Up*

Pursuant to General Counsel Memorandum 14-01 (found [here](#)), General Counsel Richard F. Griffin, Jr. has asked Regional Offices to submit to the Division of Advice cases involving the issue of whether a perfectly clear successor should have an obligation to bargain with a union before setting initial terms and conditions of employment, as opposed to only narrow exceptions as enunciated in *Spruce Up Corp.*, 209 NLRB 194 (1974), enforced 529 F.2d 516 (4th Cir. 1975). In General Counsel Memorandum 15-

05 (found [here](#)), a summary of questions and answers discussed at the Annual Midwinter meeting of the Practice and Procedure Committee of the ABA Labor and Employment Law Section held in early March of this year, the General Counsel stated that there have been at least 10 cases in which Regions have been authorized to argue for reconsideration of *Spruce Up*, but most have either settled or are in the process of settling. Currently, the Region is processing two cases that involve the question of whether the purported successors are in fact perfectly clear successors, *Parallel Employment Group, Inc.*, Case 09-CA-148072, and *Data Monitoring Systems, Inc.*, Case 09-CA-145040. Complaints have issued in each case, and each is presently set for hearing before an Administrative Law Judge.

Tech Tips: E-Filing Charges & Petitions

by Tamilyn Thompson

That's right! You can now e-file new charges and petitions. Blank fillable PDF forms are available on the agency's website, www.nlr.gov, using the [Forms](#) link under Resources on the right side of the page. After the form is filled out and saved to your computer, you can e-file it. File just one copy and there is no need to follow up with paper copies of the forms. Do not add other documents to the charge or petition file. If you have additional documents to file with your charge or petition, you can e-file those by clicking "Yes" when asked "Do you want to upload more documents?" after you upload the charge or petition form. Refer to [Form NLRB-4812 - Description of Procedures in Certification and Decertification Cases](#) for a list of forms that must be e-filed with an e-filed Petition.

A demonstration video is available for viewing after you accept the terms and conditions of e-filing by clicking on the [Try Live Demo](#) link on the right of the Contact Information screen.

E-filing is a three-step process. Be sure to complete all three steps to ensure your documents are filed correctly and received by our office. First, enter your contact information and upload the document(s). Second, review your submission and confirm it. Third, receive a receipt with your confirmation number. After you complete these steps the Regional Office will review the e-filed documents and either accept or reject them. You will be notified by email regarding whether the documents have been accepted.

On September 1, 2015, the General Counsel issued GC15-08 [Guidance Memorandum on Electronic Signatures to Support a Showing of Interest](#) announcing that effective immediately parties are able to submit electronic signatures in support of its showing of interest. Section III.A. of this memorandum lists the requirements for acceptance of electronic signatures in support of a showing of interest.

Promotions & Additions

Newbies in the News and Nicely Done!

Eric Oliver, Regional Attorney

Our new Regional Attorney is Eric V. Oliver. Regional Attorney Oliver is responsible for the final review and fine-tuning of the majority of the Region's complaints and litigation-related documents. As a well-seasoned litigator, Eric also functions as the Region's sounding board for trial attorneys and the go-to person for novel and complex cases. Additionally, Eric, a 31-year NLRB veteran, provides a levelheaded and thoughtful approach to settlements as the Region's settlement coordinator.

Naima Clarke, Supervisory Field Attorney

Naima Clarke has advanced to the position of Supervisory Attorney. Naima is a veteran litigator who has worked for the Agency for 20 years. As a new manager, Clarke will guide her own team of attorneys and examiners. She fondly recalls her first experience with the NLRB and Region 9 working as a docket clerk in our office while a young college student. Little did she know that her college employment experience, along with her love of collaboration while advocating for others, would lead her to a career as an attorney for the NLRB.

Patricia Enzweiler, Supervisory Field Examiner

Patricia Enzweiler has been promoted from Compliance Officer to Supervisory Examiner. Patricia's expertise will now be shared with a team of examiners and attorneys and with 40 years of experience she has plenty to share. With her wealth of experience, she also is an office treasure-trove of investigative technique. Patricia credits all her vim and vigor to keeping up with her three delightful grandchildren, Grant, Luke and Emma, who she will have trained in the fine art of asking 'why' in no time!

Ann Behrle, Compliance Officer

Not to worry compliance fans, Ann Behrle has taken over the mantle of Compliance Officer from Ms. Enzweiler. With 30 years of experience, Ann's can-do attitude and direct approach get to the heart of any issues that may arise in the compliance phase of case processing. Although a respondent may think there are no funds available, she is there to help them say, 'Yes, I can.' Ann's favorite work activities are cutting red tape, issuing backpay checks, and closing cases on compliance.

Erik Brinker, Field Attorney

Attorney Erik Brinker is a homegrown Cincinnati. He is a commissioned officer in the Marine Reserves. While deployed to Afghanistan with the Marines in 2010, he decided to apply to law school and was ultimately accepted into UC's program. Erik brings with him experience gained as an intern for Judge Spiegel and Judge Cooper, which gave him a broad perspective on the workings of State and Federal Courts. As a father of three, and soon-to-be four, Erik knows how to navigate opposing parties with finesse (and a time-out if necessary).

Gideon Martin, Field Attorney

Gideon Martin joins our staff as a bi-lingual attorney, conversant in Spanish. Originally hailing from Boston, Massachusetts where he developed a love of fresh seafood, Gideon attended law school in Brooklyn, New York (and ate *real* pizza). Before law school, he worked for a New York State Assembly Member for 2 years. When it comes to the NLRA, Gideon not only challenges opposing sides, but himself as well, as he analyses case issues. As a newbie to the area, Gideon is immersing himself in all things Cincinnati.

Patrice Tisdale, Field Attorney

Patrice Tisdale moved to the Cincinnati area due to her husband's transfer. She brings a fresh perspective to her work as a Jamaican native, who lived in Toronto, and then New Jersey before settling in Cincinnati. Her prior experience includes working with constitutional issues and prisoner rights. As an attorney and investigator, Patrice feels she benefits from both parties' viewpoints during investigations and relishes the chance to advocate for employee rights when going to trial. Although liking the area, Patrice sure misses those Jamaican winters!



NLRB field Examiner interviews prospective witness in unfair labor practice case, Cairo, Ill, Christmas 1939

Contributors

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For assistance in filing a charge or a petition, call the Regional Office at (513) 684-3686 and ask for the information officer. The information officer will discuss the situation and assist you in filling out a charge or petition. Information is available during office hours, Monday to Friday, 8:30 a.m. to 5:00 p.m., or at www.nlr.gov

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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 Supervisory Field Examiner David Morgan at (513) 684-3643 or David.Morgan@nlrb.gov.

