



Region 10 PERSPECTIVE

VOLUME 8, NO. 2

WINTER 2014/15''''''

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CHIP'S CORNER



Regional Director C.T. "Chip" Harrell, Jr.

In Search of Meaningful Remedies

Default or No-Default??

Charges are filed, cases are investigated, and determinations are made. If the determination is that there is probable cause that the Act has been violated, settlement efforts are initiated. Settlements range from conditional dismissals where a charge is held for 6 months and subsequently dismissed if no additional violations are committed during that time frame, to adjusted withdrawals when parties reach private agreements resolving charges, all the way up to formal settlements which lead to the entry of Board and Court Orders. In between, there are informal settlements as discussed more fully below.

Settlements are meant to be remedial rather than punitive. However, they must be effective. Accordingly, in every case, a judgment has to be made as to what type of settlement is necessary to meaningfully remedy the violations found. In making these judgments, we consider the nature and the type of violations, the history, if any, of prior unfair labor practices committed by the Charged Party, and the likelihood that additional violations will occur. We also consider where we are in the process, i.e. whether a proposed settlement is pre-determination, post-determination, or after a complaint has actually issued. Obviously, the strength of the case and other potential litigation issues are considered when judging whether to take less than an ideal settlement. (Continued on page 12)

NEW BOARD MEMBER APPOINTED

On December 17, 2014, Lauren McFerran was sworn in as a National Labor Relations Board Member for a five year term ending on December 16, 2019. She succeeds Nancy J. Schiffer, who served on the Board since August 2, 2013, and whose term expired on December 16. Ms. McFerran was confirmed by the Senate on December 8, 2014. Ms. McFerran previously served as Chief Labor Counsel for the Senate Committee on Health, Education, Labor, and Pensions (HELP Committee) and had also served the Committee as Deputy Staff Director. She began on the HELP Committee as Senior Labor Counsel for Senator Ted Kennedy and Senator Tom Harkin in 2005 and served in that capacity until 2010. Before her work in the United States Senate, Ms. McFerran was an associate at Bredhoff & Kaiser, P.L.L.C. from 2002 to 2005. She served as a law clerk for Chief Judge Carolyn Dineen King on the United States Court of Appeals for the Fifth Circuit from 2001 to 2002. Ms. McFerran received a B.A. from Rice University and a J.D. from Yale Law School.

BREAKING NEWS!

Shortly prior to press time, there were a number of cases issued and announcements made by the Board. We will have more information about these and other significant Board cases that have issued in the past year in our next edition. However, in the interim please note:

On December 12, 2014, a Board majority adopted a final rule amending its **representation-case procedures** to modernize and streamline the process for resolving representation disputes. The rule will be published in the Federal Register on December 15, and will take effect on April 14, 2015.

On December 15, 2014, in **Babcock & Wilcox**, 361 NLRB No. 132, a Board majority changed the standard for post-arbitral deferral, and made related changes in the standards for pre-arbitral deferral and deferral to grievance settlements. The regions will be receiving guidance regarding implementation of the principles in **Babcock & Wilcox**, as well as the impact of its non-retroactivity.

On December 11, 2014, in **Purple Communications, Inc.** 361 NLRB No. 126 a Board majority overruled a prior decision in **Register Guard**, 351 NLRB 1110, which had held that employees have no statutory right to use their employer's email system for Section 7 purposes.

PROMOTIONS AND APPOINTMENTS

Nancy Wilson Chosen as Assistant Regional Director

ARD Nancy Wilson Nancy graduated from Rutgers University in 1987 with a master's degree in Industrial Relations. She began her NLRB career shortly after her graduation as a Field Examiner in Region 22 (Newark). She worked in that office until June, 2004, when she accepted a transfer to Region 11 in Winston-Salem, NC. Soon, thereafter, in February 2006, Nancy was promoted to Supervisory Field Examiner, the position she held at the time of promotion to ARD. Nancy's hobbies include playing tennis, art, and reading. Since her family's move to NC, she has enjoyed vacationing at the beaches and visiting the mountains. She also keeps very busy with her sons Kevin (9) and Conor (18) and Sean (21) who are attending college at Catholic University of America in Washington, D.C. As ARD, Nancy manages the Birmingham and Nashville offices as well as overseeing all representation and compliance work.

Scott Thompson Selected as Officer in Charge

Scott Thompson is our new Officer-in-Charge of Subregion 11 in Winston-Salem. Upon his arrival, subregional personnel quickly noted Scott's auspicious initials, SCT. Scott received his law degree from Western New England College School of Law, located in Springfield, Massachusetts. In January 1985, he started working as a Board attorney on the staff of Board Member Patricia Diaz Dennis, followed briefly by a stint on Board Member Mary Cracraft's staff. In April 1987, Scott transferred to Region 4, Philadelphia. As a trial attorney, Scott's most memorable litigation was DuPont, in 1993, which was the companion case to Electromation, the landmark Board decision involving quality teams. Scott also litigated numerous 10(l) and 10(j) cases in the Eastern and Middle Districts of Pennsylvania, and the District of New Jersey. In Region 4, Scott was promoted to Supervisory Attorney in 1993, and Deputy Regional Attorney in 1997, a position he held at the time of his promotion to Officer-in-Charge. Scott admitted that he missed good Philly cheese steaks, and that he is surprised about the friendliness of the people he encounters in North Carolina. In his spare time, Scott enjoys listening to folk music.

Stacee Smith Named Resident Officer in Nashville

Stacee Smith has been promoted to the position of Resident Officer in the Nashville Resident Office. Stacee received her Bachelor of Science in psychology and a Masters of Business Administration from Middle Tennessee State University. She joined the Agency in 2000 as a field examiner in the Nashville office, where she has remained throughout her career. Stacee is married and her "children" are several cats that she adores. She has always lived in Tennessee and loves to travel. In her spare time, Stacee tends to her flower garden and enjoys going to the movies. Congratulations, Stacee!.

Meet the Region's New Staff Members

Atlanta

Matthew Turner was hired as a Field Attorney by the NLRB in 2010. He started his career in Region 5 -Baltimore with a wealth of experience obtained during internships as a Peggy Browning Fellow in the Washington, DC office of the Agency's Division of Judges and in Region 5. This graduate of University of Florida and University of Virginia School of Law transferred to Region 10's Atlanta office in January 2014.

Board Agent **Zachary Austin Long** joined the Atlanta Regional Office on July 1, 2014. Zach was hired in August 2006 as a Field Examiner in Region 29-Brooklyn and transferred to Region 16-Fort Worth in April 2010. Zach earned a Masters Degree in Human Resources and Industrial Relations from the University of Minnesota's Carlson School. He worked in Human Resources for a hotel and a manufacturing company during school until he began working for the NLRB. His interests away from the office include eating, travelling, movies, running and biking. He recently purchased a pair of Racerblade Rollerblades (from the early 90's, at which time he was an avid rollerblader), which he hopes to use often around the Atlanta metro area's parks and trails.

Anna Cobb joined the Agency as a co-op in Region 13-Chicago in May 2012 and was hired as a Field Examiner in December 2012. In June 2014, she transferred to Region 10. Anna graduated from the University of Iowa in 2003 with a BA in Art Education and received her Masters in Public Administration from the University of Illinois at Chicago in 2012. She previously worked in schools and for nonprofit organizations in Boulder, Colorado, and Oakland, California, and became interested in labor relations while working as a supervisor at a time when several employees, including her, lost their health benefits. Also, while working as a graduate employee at UIC, she was a department steward and active in the Graduate Employees Union. Anna enjoys playing soccer and hiking in all the beautiful areas around Atlanta.

Meike Ziegler was first hired by the NLRB in June 2002 when she worked as a co-op in Region 13 Chicago. Ziegler completed her Master of Labor Relations and Human Resources degree at Michigan State University in May 2003, then began working full-time for the NLRB in Region 16-Fort Worth in July 2003. In 2008, Ziegler left the Agency to pursue work experience in Human Resources. From February 2008 to December 2010, she worked as a Senior Human Resources Generalist for the Oregon Lottery and for a pipeline engineering company in Chile, South America. In December 2010, Ziegler returned to work for the NLRB in Fort Worth. In October 2014, she transferred to Region 10's Atlanta Office and has enjoyed getting to explore the area.

NEWSLETTER CONTENT

If you have suggestions or ideas for topics that you would like us to cover in future additions of the Perspective, please feel free to pass your ideas to OIC Scott Thompson at Scott.Thompson@nlrb.gov.

Meet the Region's New Staff Members (cont.)

Winston-Salem SR11

Field Attorney, **Timothy (Tim) Mearns** joined the Subregion in June 2014. Tim grew up in North Carolina and graduated from Elon University School of Law, where he was third in his class. During law school, Tim's major extracurricular activity was moot court competition. Prior to coming to the Subregion, Tim worked at two non-profit legal services organizations that provide services to indigent clients and children (specifically, focusing on disabilities, immigration, and juvenile justice). Tim is fluent in Spanish—a badly needed skill in the Subregion. He double majored in Spanish and politics during his undergraduate work and honed his skills during a year abroad in Spain. Tim notes the tremendous education and training he has obtained regarding labor law in his almost six months on the job, the fast-paced environment, and wide variety of cases he has already received. In his free time, Tim enjoys hiking, gardening, and spending time with his husband, Dorian Castro, and his dog, Dolley.

Office Automation Assistant, **Briana Ray**, began working in the Winston-Salem subregional office in June 2014. Briana is originally from Panama City, Florida., but most recently lived in Atlanta. Briana has two children - a 14 year old son and a 9 year old daughter. In her free time, Briana enjoys family outings, swimming, art festivals and concerts.

Birmingham

Field Attorney, **Joseph Webb** is a native of Decatur, Alabama. He graduated from the University of Alabama in Huntsville in 2009 with a Bachelor of Science in Business Administration and a Minor in Political Science. Joseph moved to Birmingham, Alabama in 2010 and received his Juris Doctorate from Cumberland School of Law in 2013. He is a member of the Alabama State Bar and the American Bar Association.

While in law school, Joseph served on the Moot Court Board and was recognized as a Scholar of Merit. He also worked as an extern with the National Labor Relations Board's Birmingham Resident Office in 2012. Joseph's passion for Labor Law, and the National Labor Relations Act, began during his 2012 externship. His experience as an extern was published in the October 2012 issue of All Aboard. Following law school, Joseph continued to pursue his passion for Labor and Employment Law and worked in private practice for the Birmingham area law firm of Waldrep, Stewart & Kendrick, where he specialized in federal labor and employment law.

Although Joseph enjoyed his time in private practice, he has dreamed of returning to work for the Board since the day his 2012 externship ended. He is returning to the National Labor Relations Board and began serving in the Birmingham Resident Office as a Field Attorney on December 1, 2014.

NEWSLETTER CONTRIBUTORS

Our thanks to the many contributors to our newsletter including OIC Scott Thompson, ARD Nancy Wilson, RO Belinda Bennett, RO Stacey Smith, DRA Lisa Shearin, DRA Gaye Hymon, SFA Lisa Henderson, and SFA Shannon Meares.

RETIREMENTS AND OTHER DEPARTURES

Officer-in-Charge Jane North retires in Subregion 11



We've said farewell to Officer-in-Charge Jane North, whose last day at the office was March 27, 2014.

Jane graduated magna cum laude in 1984 from the University of Tennessee College of Law in Knoxville, Tennessee. Honors received during her law school tenure included the Robert L. McKnight Labor Law Scholarship; Order of the Coif; Outstanding Graduate in 1984; publication of two law review articles; and graduating third in her class.

North first came to then-Region 11 in 1988 as a Field Attorney. Prior to that she worked in private practice for several years. During her tenure as a Field Attorney, North served as co-counsel or lead counsel on several major trials. According to North, her most memorable solo trial was Naomi Knitting, which was a Gissel case with various 8(a)(1) allegations and a challenging post-election discharge. Although we lost on the Gissel, North successfully convinced the Board to reverse most of the Judge's adverse rulings.

North was promoted to the position of Supervisory Attorney in 2000, and, thereafter, a veritable alphabet soup of titles followed—DRA, RA, DRD, Acting RD, and finally, OIC, a position she held until retirement. During the consolidation and beyond, North worked hard to advocate for the Region and to successfully integrate Region 11 into a larger Region containing Atlanta, Birmingham, and Nashville, as it transitioned to Subregion 11. (continued on page 7)

Jane North retires (continued)

Asked to reflect among her many legal milestones, North cited a non-labor achievement as her most significant. In that regard she stated that the law changed in Ohio and other states when the courts adopted the reasoning of her 1984 law review article in which she argued for the abolition of the assumption of risk defense in products liability litigation filed by injured workers.

In reflecting upon her long career, North noted that the most difficult thing about working for the Board was being part of a bureaucracy. The most satisfying part of the job was working with intelligent but under-educated individuals who were going up against often powerful workplaces in an effort to create better lives for themselves. She would give the same advice to new as well as seasoned Board agents: work hard, act in good faith, and everything will be ok in the end.

The Subregion celebrated North's retirement on April 10, 2014, with a potluck lunch. The hearing room was festooned with decorations including many rabbits of various shapes and sizes. In that regard, we were paying homage to North's oft-said metaphor that it is necessary to chase all of the rabbits (tie up loose ends) in order to be thorough. The festivities were well attended, including RD Harrell from Atlanta, former RD Clark, and a host of retirees. Among other things, RD Harrell presented North with a plaque commemorating 26 years of service, and DRA Shearin read an original poem called "Ode to Jane."

North is very excited about retirement and looks forward to spending much-needed time with her two children, Megan and Will; grandson Elias; and brother Don and sister Molly; as well as many friends. She is especially looking forward to traveling, tending to her garden and apple orchard, walking her dogs, and exercising. She plans to stretch her brain by learning Spanish as well as immigration law. We wish her the best!

Jasper Brown

Subregion 11, Winston-Salem also bids a fond farewell to Field Attorney Jasper Brown, Jr., a native South Carolinian. Jasper retired in September 2014, with just over 40 years of Agency service. Jasper received his law degree from Catholic University School of Law, Washington, DC. Jasper was initially employed by the Agency's Advice Branch in 1974, but spent the majority of his career in then-Region 11, now Subregion 11. A born storyteller and never at a loss for words, he liked to regale management and employees with war stories from his long career. In that vein, regional personnel can note with a smile, that no matter the topic, Jasper could and did manage to work Moncks Corner, South Carolina, into a conversation to make his points. Jasper had a very long and prolific litigation career. One of the highlights was *Holly Farms Corp. v. NLRB*, which went to the Supreme Court in 1996. In that case, the Court agreed with the Board that live-haul workers were employees under that National Labor Relations Act, rather than exempt agricultural workers. At his retirement, Jasper was presented with a coffee cup, commemorating a large multi-million dollar settlement. However, it was his first litigated case, that of Willie Griffin, who stood up for what he believed in and epitomized what Jasper held dear, that he spoke of most fondly. Jasper was well-known in the Subregion for many things including his green thumb, sports talk, and famous fish fries. We understand that in retirement Jasper is enjoying gardening and the several libations thrust upon him as he departed.

More Retirements and Departures

SR11 also had to say goodbye to long-term Field Examiner **Jodi Suber** in February 2014. Jodi, a Pennsylvania native, started in Region 8, Cleveland, as a docket clerk in 1988. Jodi attended the University of Connecticut but prior to graduating she transferred to Region 12's Miami office. In addition to Regions 8 and 12, she also worked in Region 1, Boston, and Region 34, Hartford. Jodi graduated from the Agency's Bridge program, and became a Field Examiner in 2001. In 2003, Jodi transferred to then-Region 11 from the Agency's Miami office, and enjoyed an 11 year stint in the Region. In February 2014, Jodi transferred to Region 9, Cincinnati, to be closer to her family. Jodi enjoys working as a field examiner because she has a very strong sense of social justice. When she is not working, Jodi enjoys spending time with her family and exploring Cincinnati and the surrounding areas, and is very enthusiastic about all the area has to offer, particularly in the arts. She misses Southern hospitality, Salem Creek, her friends, the Subregion's family atmosphere, her office window, and free parking. She does not miss North Carolina humidity or the bugs.

Birmingham loses FX Linn McCarty to Retirement

After over 34 years of government service at the NLRB, the Birmingham Resident Office wishes a fond farewell to Field Examiner **Patrick "Linn" McCarty (a.k.a. "P. Linn")** upon his well deserved retirement. The Birmingham Resident Office wishes Linn and Sheila all the best and we know that Linn's smile will be even broader now that he has more time to spend with friends, family and most especially, the grandchildren. Linn will be greatly missed.

Random thoughts come to mind about Linn's neat desk top at days' end, his well-stocked and envied election kit, how he could always be counted on to be the "Mr. Fix-it" if anything broke in the office, or how smoothly he handled multi-agent elections and how he used his accounting background to analyze economic defenses in cases, or how completely and patiently he answered questions from the public we served and representatives with whom he dealt, but the lasting memories will be of the three F's of Linn.....Family, Father and Friend.

Linn is from a large family and he and Shelia always hosted the assembled Thanksgiving gathering to his quiet joy. Most important in Linn's life are his children, Melanie and Patrick. Both are now doctors and those of us that really know Linn realize how much of himself he gave to see them to this point. It is in his role as father that Linn has given so completely. And, for those of us that count themselves among his friends, we all know that he will give of himself to us when we need a friend.

Linn, enjoy retirement.
C Douglas Marshall
Resident Officer (Retired)

I wish Linn the happiest retirement with his beloved family, and I will continue to cherish his friendship.

John D. Doyle, Jr., Deputy Assistant to the General Counsel

Significant Regional Settlements

In **Corsicana Bedding**, 10-CA-116714 et al, filed by Trabajadores Unidos de Corsicana en Shelbyville, the Region found the Employer terminated seven employees for engaging in protected concerted activities. The Region also found the Employer had made threats, interrogations, and promises of benefits. The parties reached a settlement that consisted of a Notice posting and the seven employees being returned to work and made whole for their losses. Their backpay totaled \$37,000.

In **Fisk University**, 10-CA-108391 et al, filed by UAW Local 737, the Region found the Employer had failed to provide requested information to the Union, made unilateral changes, and failed to bargain in good faith. The parties reached a settlement that included a total of \$27,653 in backpay divided among eleven employees to remedy the unilateral changes. A Notice was posted in the University and on the University's intranet as well as emailed to employees. Further, the parties signed a new collective-bargaining agreement.

In **Bowling Green Metalforming**, 10-CA-125985 and 10-CA-126547, filed by an individual, the Region found the Employer had engaged in surveillance, interrogation, and terminated an employee because the employee engaged in protected concerted activities. The parties agreed to a settlement that included a Notice posting and \$16,000 to the terminated employee who declined reinstatement.

In **Taylor's Motors, Inc.**, 10-CA-105174 the Region issued a complaint alleging that Respondent violated the Act by repeatedly soliciting employee complaints and grievances, impliedly promising to improve terms and conditions of employment and misrepresenting the extent to which employee rights to bring issues to management would be limited if they selected the Union to represent them. The Region determined that the Respondent's conduct, occurring so soon after a prior settlement of very similar conduct, warranted seeking 10(j) relief. The Board subsequently authorized seeking such relief. Prior to any formal proceedings, the Employer agreed to enter into a formal settlement stipulation and in so doing, obviated the need to seek 10(j) relief. A notice reading was part of the agreement. A Board Order issued on July 1, 2014, approving the formal settlement. Thereafter, on September 23, 2014, the United States Court of Appeals for the Eleventh Circuit issued a Consent Order enforcing the Board's Order.

In **Autoneum**, 10-CA-132174, the Region approved an informal settlement agreement remedying a number of alleged acts of 8(a)(1) conduct, including, interrogation, threats of discharge and surveillance of employees' union activities. Because the Employer posted notices to employees via a television bulletin posting system, the settlement required the Employer to post the notice on that system, as well as in other locations, where notices are posted. A 60-day posting period also applied to the television posting. In addition to the above, the settlement required the plant manager to read the notice to employees.

Significant Regional Settlements

Supreme Beverage, 10-CA-124579 et al. (settled 06/27/2014). This case involved the mass discharge of 17 night shift warehouse employees on March 14 - two days after they concertedly complained about a gas leak. Examination of the employee handbook revealed an explicit prohibition on the circulation of petitions, in addition to several overly broad provisions. It settled pre-complaint, non-Board, with offers of reinstatement to all 17 discharged employees (five accepted, 12 waived), back pay totaling over \$117,000, revision of the rules, and posting of a private notice using standard Board remedial language

EBI, LLC, 10-CA-088242. The Region issued complaint alleging the unlawful layoff of one employee and the refusal to recall, hire/consider for hire 23 employees because of union activity. Prior to the hearing, the Employer agreed to pay backpay, expunge the employees' records, post and mail a notice, and reinstate the three employees who desired reinstatement.

Harsco Rail, 10-CA-115101 et al. In Harsco Rail, the Region issued a consolidated complaint alleging that the employer, prior to the election, threatened employees with termination and, following the election, it followed through on its threats by disciplining and discharging two prominent union supporters and laying off and refusing to recall a third prominent supporter. Although the union lost the election, it communicated a desire to return and organize the employees; therefore, we sought, with Board approval, 10(j) injunctive relief. After we filed the 10(j) petition, but before the administrative hearing, the parties entered into an agreement under which the Employer agreed to reinstate the three discriminatees with backpay.

Heede Southeast, 10-CA-125723. In Heede, the Region issued a consolidated complaint alleging that the employer terminated two employees because they demanded a wage increase, voiced concerns regarding their working conditions, and complained when they were asked to sign a policy prohibiting them from discussing or comparing their wages. The complaint also alleged that the employer maintained an unlawful rule prohibiting the discussion and comparison of wages and that it terminated the two discriminatees pursuant to the unlawful rule. Prior to an administrative hearing, the parties reached a non-board settlement whereby the two discriminatees waived reinstatement and they were paid backpay. In addition, the employer agreed to rescind its policy prohibiting the discussion and comparison of wages and posted and mailed a Notice to Employees remedying the unlawful rule allegation.

Origin Food Group, LLC 10-CA-121769 et al. In Origin, the Region issued a consolidated complaint alleging that the employer unlawfully withdrew its recognition of the union following the certification year, engaged in direct dealing with bargaining unit employees, and made several unilateral changes. Due to the nature of the violations, the Region sought an extension of the certification year. This case settled, pre-hearing, with a posting and reading of a Notice to Employees, a make whole remedy to those employees affected by the unilateral changes and the Employer's agreement to recognize and bargain with the union if a majority of employees voted for the union's representation in a related RD petition/election. Following the notice posting period, the Region conducted the representation election and a majority of the employees cast their ballots in support of the union.

Significant Regional Settlements

ABM, 10-CA-117679 (settled 07/17/2014). The RWDSU represents a unit of about 60 housekeeping employees at Golden Living nursing homes in Central Alabama. When ABM took over the subcontracted housekeeping operations from the predecessor, it told the unit employees that nothing would change. ABM then implemented drastic changes in health insurance coverage and cost contributions, pay, and leave, among other things. Needless to say, the parties did not get anywhere with collective bargaining for a first contract with the new employer. Complaint issued against ABM alleging that it was a “perfectly clear” successor, and seeking a remedy which would compensate employees for lost pay and benefits, restore the status quo, and get the parties back to the bargaining table. A hearing was set to begin on July 23. The Union and the Region hammered out the details on back pay, restoration of lost leave, and out-of-pocket medical costs, and ABM identified a replacement insurance plan on par with the one they had terminated. On July 17, the parties signed off on a global settlement agreement which provided over \$20,000 in back pay and reimbursed medical costs, resumption of dues check-off, restoration of health insurance coverage and company premium contributions, resumption of collective bargaining, and posting of a remedial notice.

Region 10's Use of Collection Procedures in Obtaining Compliance

Region 10 has recently successfully used collection procedures under the Federal Debt Collection Procedures Act (FDCPA), which outlines procedures that a federal agency may use to recover debts owed to that agency, and the Treasury Offset Program (TOP), a centralized program to collect delinquent debts owed to federal agencies and states, in order to obtain compliance from Respondents who had earlier refused to comply with the payment of backpay owed to discriminatees.

The Region was recently successful in initiating collection procedures under the FDCPA against a Respondent who failed to comply with a liquidated Court Judgment providing for the amount of backpay owed a discriminatee who had engaged in protected concerted activity by complaining about Respondent's changes to the method of calculating pay. In this case, Respondent, a small trucking company, refused to comply with a Supplemental Board Order and a liquidated Court Judgment which fully adopted the amount of backpay claimed in the Region's compliance specification. Accordingly, the Region initiated collection proceedings under the FDCPA through a Motion with the U.S. District Court, South Carolina, seeking a Writ of Garnishment. The Court issued the Writ in November 2013, and the Region immediately served it on the Employer's banking institutions and customers. The Region ultimately reached a compliance settlement in this case in January 2014, allowing the small employer to remain in business while satisfying the Agency's interest of obtaining compliance with the rights guaranteed under the Act.

In Search of Meaningful Remedies (continued from page 1)

Default or no Default??

Depending on the nature of the violations found, to obtain meaningful relief we consider whether special remedies such as a reading of the Notice to Employees by an official of the Charged Party or a Board agent are warranted. Where the conduct is such that we believe that there will be remedial failure absent some quick relief, we also consider asking a district court to issue an injunction ordering an immediate cessation of the unfair labor practices until such time as a Board order issues in the case.

The most common settlement is called an informal settlement, many of which include non-admissions clauses. Since 2011, regions have been instructed to routinely incorporate default language into these agreements. This language provides for the entry of a **default** judgment in the event of a failure to comply or future violations. Why, you ask, is such language necessary? The short answer is that, without such language, if the settlement is breached our only recourse would be to set the settlement aside, issue a complaint and go to trial – often many months after the case was initially settled and presumably resolved. The language is necessary to ensure a charged party actually follows through on its commitment to settle the case – and to save us the cost of unnecessary litigation if it fails to do so.

On April 10, 2014, in Memorandum OM 14-48 Regional Directors were given additional discretion as to the appropriateness of approving informal settlements with default language temporally limited to periods of a year or six months, geographic limitations to a particular plant or facility or, in some instances, to omitting such language entirely where the settlement is pre-determination or where the unfair labor practices were isolated and there is no history of unfair labor practices by the Charged Party. In all other instances, changes in default language must receive approval from Operations.

In determining whether the Region will agree to omit default language from a settlement, we consider the same criteria we use in determining what type of settlement to seek, with particular emphasis on the context of the unfair labor practices and the likelihood that additional violations of the Act will occur if such language is omitted. Thus, it would be rare instance in which I would agree to waive default language in a case involving unfair labor practices in the context of an on-going organizing campaign.

We are often advised that a charged party does not wish to enter into a settlement containing default language because of a concern that any purported breach of the agreement, no matter how minor, would lead to our seeking a default judgment. That is not the case. Region 10 does not play “gotcha”. Should there be an alleged breach of a settlement, we will not seek default unless we believe there is a significant or deliberate breach of the settlement.

Region 10 Board and ALJ Decisions in 2014

In **Taft Coal Sales**, 360 NLRB No. 19, which issued on January 10, 2014, the Board affirmed the Administrative Law Judge's decision finding that Walter Energy, Walter Minerals and Taft Coal Sales are a single employer and that Respondents violated Section 8(a)(1) of the Act by interrogating employees about their union activities and threatening to close a mine if employees chose the Union as their collective-bargaining representative. Further, the Board found that Respondents violated Section 8(a)(5) by failing to bargain with the Union concerning an economic layoff at the mine.

On May 29, 2014, the Board issued a decision in **Greenbrier VMC, LLC, d/b/a Greenbrier Valley Medical Center**, 360 NLRB No. 127, finding that the employer had violated Section 8(a)(1) and (3) of the Act by issuing and extending a performance improvement plan to an employee, issuing a written warning to the employee, and changing the employee's work hours in retaliation for his being selected as a union representative. The Board ordered Respondent to remove from its files any reference to the unlawful PIP, warning and schedule change.

The Board issued its decision in **Laurus Technical Institute**, 360 NLRB No. 133, on June 13, 2014. The Board affirmed the Administrative Law Judge's findings that Respondent unlawfully discharged an employee for engaging in protected concerted activities by talking to other employees about concerns about terminations and future employment, and by maintaining and applying an overly broad no-gossip policy.

The Board issued its decision in **Murphy Oil**, 361 NLRB No. 72, on October 28, 2014. In this long-awaited decision, the Board reaffirmed the *D.R. Horton* rationale and applied it to find that Respondent violated Section 8(a)(1) of the Act by requiring its employees to agree to resolve all employment-related claims through individual arbitration and by taking steps to enforce these unlawful agreements in federal district court after employees filed a collective claim under the Fair Labor Standards Act.

In **Mercedes-Benz**, 361 NLRB No. 120, which issued on November 26, 2014, the Board upheld an administrative law judge's finding that Mercedes had violated the Act. The Board Order requires Mercedes to update its employee handbook to allow employees to discuss union issues during non-work times and to allow them to solicit their colleagues in mixed-use areas like team centers and atriums. Mercedes must also post notices at the plant near Tuscaloosa to acknowledge the violation and to reaffirm that management won't "interfere with, restrain, or coerce" workers seeking to unionize the plant.

RECENT REGION 10 REPRESENTATION DECISIONS

Crew One, 10-RC-124620: In this case, the issues involved whether petitioned for unit employees were independent contractors and what eligibility formula based on entertainment industry's modified Davis-Paxton formula should be used. A mail ballot election began on May 19, 2014, with 407 eligible voters on Excelsior list plus several more to vote under challenge bring total number of voters to about 440. Also, Notices were mailed to voters because they do not regularly report to the employer's work location. A request for review was filed by both parties. Thereafter, the ballots were impounded. On August 21, 2014, the Board denied the requests for review. Following a ballot count, a certification of representative issued on September 4, 2014.

Senior Living and Litchfield Retirement, 10-RC-125988: In this case, the region issued a Decision and Direction of Election finding a unit appropriate for bargaining but "sitters" vote subject to challenge. Following issuance of the Decision and Direction of Election, the region was successful in working with parties on entering into Stipulation and Waiver in which they agreed to include the sitters and waived their rights to file a request for review. Consequently, a timely election was conducted which resulted in the Union's certification.

G4S, 10-RC-126849: This case involved a 5-day Hearing conducted over the supervisory status of the petitioned for unit of Sergeants and Lieutenants. The Decision and Direction of Election held the petitioned for employees were not supervisors. The Employer filed a Request for Review and, as no decision had been issued by the close of the election, the ballots were impounded. Subsequently, the Board granted review only with respect to the lieutenants. We are currently awaiting a decision.

Carolina Construction and MCI, 10-RC-127658: This was an unusual case in that Petitioner was seeking a unit of 7 sheet metal workers who were jointly employed on a project not scheduled to last more than 3-6 months from date the petition was filed. A Decision and Direction of Election issued ordering the petition be dismissed. No request for review was filed.

Duke Energy, 10-RC-133990. In this case, the issue involved whether a single unit location was appropriate or whether the standard utility wide presumption should apply. The Decision and Direction of Election was 40 pages in length and determined that the presumption of an employer wide unit continued to apply. No exceptions to the decision were filed.

Pac Tell, 10-RC-101166. This was a very difficult case involving a supervisory issue which was unresolved even after a Decision and Direction of Election issued. The determination of the merits of the objections depends on the supervisory status of the individuals alleged to have engaged in the conduct. In this case, the Regional Director disagreed with the findings of the hearing officer who determined the individuals to be supervisors. The Board granted review (on a 2-1 decision), but only on issue as to whether the 4 putative supervisors were in fact supervisors based on assignment of work and granting of wage increases. On September 22, 2014, the Board unanimously sustained the Regional Director's findings that the individuals were not supervisors and remanded the case for processing in accordance with its decision.

Paragon, 10-UC-138113, involved a request to clarify four separate units into a single unit because the government had recently issued a contract to the Employer for the entire state of Alabama. Two of the four units were represented by the Petitioner while the other two were represented by different labor organizations and for which there were separate contracts and differing contract ending dates. It was concluded that a unit clarification proceeding was inappropriate and the petition was accordingly dismissed. The case is currently pending before the Board on a request for review.

SIGNIFICANT CERTIFICATIONS OF REPRESENTATIVE

Case Number	Case Name	Election Held Date	Unit	Labor Org 1 Name
10-RC-124620	CREW ONE PRODUCTIONS, INC.	5/19/2014	408	INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES
10-RC-127103	Hostess Brands, LLC	5/30/2014	199	Bakery, Confectionery, Tobacco & Grain Millers, International Union, AFL-CIO Local 42
10-RC-134510	Steel Fab, a division of Samuel Pressure Vessel Group, Inc.	9/18/2014	199	International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers, AF
10-RC-131193	L-3 Army Sustainment, LLC	7/24/2014	162	International Association of Machinists and Aerospace Workers
10-RC-135675	American Red Cross Blood Services, Southern Region	10/10/2014	126	UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKE
10-RC-125988	Senior Living Communities, LLC, and Litchfield Retirement, LLC, a Single Employer and Live Long Well	5/23/2014	102	United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Worke
10-RC-115724	PALMETTO PRINCE GEORGE OPERATING, LLC D/B/A PRINCE GEORGE HEALTHCARE CENTER	12/6/2013	88	United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Worker
10-RC-136486	Aramark Educational Service, LLC at Mercer University	9/29/2014	85	Southern Region Workers United SEU
10-RC-132608	Mayfield Dairy Farms, LLC	8/22/2014	61	Teamsters Local 728 affiliated with the International Brotherhood of Teamsters
10-RC-115293	Sodexo, Inc.	11/15/2013	60	Southern Region Workers United SEU
10-RC-135767	L & A Security A JV	10/2/2014	60	INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA)
10-RC-123711	First Transit, Inc.	4/16/2014	48	INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND TRANSPORTATION WORKERS (SMART)
10-RC-112410	L'hoist North America of Tennessee, Inc.	10/10/2013	44	UNITED MINE WORKERS OF AMERICA, LOCAL UNION 1582
10-RC-136089	HME, Inc.	10/8/2014	38	INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 312
10-RC-132624	Mayfield Dairy Farms, LLC	8/22/2014	32	Teamsters Local 728 affiliated with the International Brotherhood of Teamsters
10-RC-124239	Stellar Management Group III, Inc. d/b/a QSI	4/17/2014	31	RETAIL WHOLESALE AND DEPARTMENT STORE UNION SOUTHEAST COUNCIL
10-RC-123776	Southern Crescent Personnel, Inc.	4/3/2014	30	INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 465, AFL-CIO
10-RC-128340	Performance Food Group, Inc. d/b/a Vistar Carolina	6/20/2014	27	International Brotherhood of Teamsters, AFL-CIO, Local 391
10-RC-121720	Northrop Grumman Technical Services, Inc.	3/10/2014	26	INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO
10-RC-114839	Iron Mountain Incorporated	11/22/2013	24	International Brotherhood of Teamsters, Local 728
10-RC-128042	ADT LLC d/b/a ADT Security Services	6/5/2014	20	International Brotherhood of Electrical Workers Local Union #776 AFL-CIO
10-RC-131365	URS Federal Services, Inc.	7/23/2014	20	INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

Region 10 Conducts Historic Volkswagen Election



Pictured left to right: Sarah Bencini (Winston-Salem, Field Attorney), Ingrid Jenkins (Winston-Salem, Field Examiner), Jill Adkins (Nashville, Field Examiner), David Watkins (Nashville, Field Examiner), and Stacey Smith (Nashville, Resident Officer).

From February 12-14, 2014, agents from Region 10's Nashville and Winston-Salem office, last minute substitutes for agents from Atlanta who had been snowed in, conducted an election at Volkswagen in Chattanooga, Tennessee. The UAW lost the election by a vote of 626 yes and 712 no. Thereafter, the union filed objections alleging that state and federal officials had engaged in conduct which made the holding of a fair election impossible. The objections were later withdrawn shortly prior to a scheduled hearing on the issues and a certification of results issued.

Pursuant to New Horizons for the Retarded, 283 NLRB 1173 (1987), the rate used to calculate interest on back pay and other monetary remedies provided for in Board Orders is to be based upon the "short-term Federal rate," i.e., the rate assessed by the Internal Revenue Service on the underpayment of taxes. The rate assessed for the first quarter of Fiscal Year 2015, October 1 through 12/31/14 is 3 per cent.

A list of rates to be used to calculate interest on Board monetary awards from April 1, 2001, to the present may be found in Operations Management (OM) Memo 14-83, posted under "Publications" on the agency's website, www.nlr.gov.

AGENCY OFFERS PARTIES CONVENIENT E-FILING

The NLRB strongly encourages parties to use the Agency's E-Filing Program to file documents with the Regional offices, the Office of Appeals, the Division of Judges, and the Office of the Executive Secretary. The E-filing system provides an easy way to file most case documents electronically. The case number is required for all documents uploaded through the E-file system. Please enter the case number in this format — 2 digits, dash, 2 characters, dash, 6 digits, i.e. 10-CA-000000. For consolidated cases, it is sufficient to E-File the document solely under the lead (lowest) case number in order to file in all the cases. For complete information about E-filing, please click [here](#).

The E-filing system accepts most documents allowed under Board rules, including:

- Answer to Complaint/Compliance Specification
- Appeal Filings
- Amicus Brief or Reply to Amicus Brief, Post Hearing Brief, Briefs in Support of Motions
- Disclaimer of Interest
- EAJA Applications
- Evidence
- Excelsior List
- Exceptions or Cross Exceptions
- Exhibits
- Extension of Time Request
- Formal Settlement Agreement
- Letter
- Motions, Oppositions to Motions, and Replies to Oppositions to Motions
- Motion to Stay Election
- Notice of Appearance
- Objections to Election
- Petition to Revoke Subpoenas or Response
- Position Statement
- Request for Review and Oppositions to a Request for Review
- Request for Special Permission to Appeal
- Requests to Proceed with Election
- Questionnaire
- Settlement Agreement
- Service Documents
- Withdrawal Request

Documents that may NOT be E-Filed include:

- Unfair Labor Practice Charges
- Representation Petitions
- Petitions for Advisory Opinions
- A document that is more than twenty (20) megabytes in size



A NOTE FROM THE EDITOR

Region 10 Perspective always encourages your questions, suggestions, comments and feedback. Please feel free to contact OIC Scott Thompson at Scott.Thompson@nlrb.gov.

Scott Thompson
Officer in Charge, SR11 Winston-Salem

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The **National Labor Relations Board** is an independent federal agency created by Congress in 1935 to administer the National Labor Relations Act, the primary law governing relations between unions and employers in the private sector. The statute guarantees the right of employees to organize and to bargain collectively with their employers, and to engage in other protected concerted activity with or without a union, or to refrain from all such activity. The NLRA extends rights to most private sector employees, to their employers, and to unions/labor organizations. The NLRA protects workers who form, join, support or assist unions, and protects groups of workers (two or more employees) without a union who engage in protected concerted activities seeking to modify their wages or working conditions. The Act protects non-union and union employees against employer and union discrimination based on union-related activities or other protected concerted activities.

Employees wishing to pursue workplace organization issues or allegations of unfair labor practices may seek assistance from the nearest regional NLRB office. Employers and unions who wish to pursue allegations of unfair labor practices may do the same. The Agency has 51 regional, sub-regional, or resident offices to serve the public.



NLRB Speakers are Available for Your Group

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

To arrange for a speaker and to discuss possible topics, please do not hesitate to contact Regional Outreach Coordinators Elaine Robinson-Fraction or Scott Thompson.

If you would like to be added to our mailing list and receive future copies of the newsletter by email, please notify us at NLRBRegion10@nlrb.gov.

