



National Labor  
Relations Board

**Region 17**

# **Kansas City Strip**

News from and about Region 17



**Shuttlecock Nelson Atkins Museum of Art  
Kansas City**

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## **Agency Website**

[www.nlrb.gov](http://www.nlrb.gov)

For an  
electronic  
version of this  
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## **NLRB Releases Videos On Website**

The National Labor Relations Board has added three videos to its internet site ([www.nlrb.gov](http://www.nlrb.gov)): one providing a guided tour of the agency's website ("Introduction to the NLRB Public Website"), the second explaining how to use the agency's electronic legal research database ("How To Use CiteNet"), and the third presenting, in English and Spanish, a portrayal of the various phases of a representation case, including the organization campaign, the filing of a petition, the election, the pre-election hearing and post-election objection process, as well as a description of the Agency's Information Officer program that explains the various ways the Agency can be contacted.

The "Introduction to the NLRB Public Website" video provides viewers with a guided tour of the Agency's website pointing out many of its user-friendly features. The video explains how to navigate the Agency's website while at the same time explaining to viewers how to avail themselves of the Agency's services to enforce rights under the National Labor Relations Act. The video also explains the Agency's outreach and public information programs.

The "How to Use CiteNet" video explains how to use the Agency's electronic legal research database of Board and court decisions dating from 1992. CiteNet is a free public service offered by the Agency to assist labor law professionals and the public with their legal research needs. CiteNet offers advantages over less specialized databases because it includes only cases where substantive issues have been discussed, and thereby allows users to find cases with strong precedential value. The classification headings used in CiteNet are very specific, which facilitates finding cases that are on point. In many cases, CiteNet provides a direct link to the case itself.

The "Representation Case" video is designed to inform the public, including potential voters, employers, and unions about the role of the Agency in conducting elections. The video uses narrators and actors in vignettes to chronologically depict an organizing campaign, the filing of a petition, and an election. The Agency's Office of Employee Development will distribute DVD copies of the video to regional offices for distribution to employers, employer associations, labor organizations, and other entities in the connection with regional outreach activities. In addition, the video will be posted as a streaming video on the Agency's internet website.

## Unlawfully Discharged Employees Receive Reinstatement, Backpay, and Union Representation

### Investigation and Complaint

On November 13, 2008, **United Steelworkers** filed unfair labor practice charges against **Cenveo Corporation**, alleging that Cenveo discharged two employees because they solicited employee support in favor of the Steelworkers' organizing efforts. After an investigation into the Steelworkers' allegations, Region 17 issued a complaint.

### Hearing and Decision

On March 3 and 4, 2009, Administrative Law Judge George Carson II, conducted a hearing, and, by decision dated May 6, 2009, Judge Carson found that Cenveo violated Section 8(a)(1) and (3) of the National Labor Relations Act by discharging both employees because of their union activities. As required by the Judge's Recommended Order, Cenveo reinstated both employees to their former positions, agreed to pay back wages to them from the date of their unlawful discharges, and agreed to post a notice informing employees of their rights under the National Labor Relations Act.

### Remedy, Election and Certification

On June 18, 2009, after both employees returned to work, Steelworkers' representatives filed a petition for an election to determine whether Cenveo's employees desired union representation. On July 24, 2009, Region 17 conducted an election among Cenveo's employees, who elected union representation. The Regional Director certified the results of the election on August 3, 2009.

### US District Court for Nebraska Temporary Injunction

Region 17 recently obtained a temporary injunction pursuant to Section 10(j) of the Act requiring **Crete Cold Storage, LLC**, located in Crete, Nebraska, to recognize and bargain collectively and in good faith with the **United Food and Commercial Workers International Union, AFL-CIO, CLC, Local No. 271** pending final disposition by the National Labor Relations Board of a case concerning the Employer's April 1, 2009 withdrawal of recognition from the Union. The Order granting the temporary injunction was issued on September 24, 2009, by the United States District Court for the District of Nebraska, and also requires the Employer to furnish the Union with requested information and to post copies of the District Court's Order in both English and Spanish at the Employer's facility in Crete, Nebraska.

On August 17, 2009, an administrative law judge issued a decision finding that Crete Cold Storage failed to meet its burden under *Levitz Furniture Co. of the Pacific*, 333 NLRB 717 (2001) of showing that the Union lost majority support of bargaining unit employees at the time the Employer withdrew recognition from the union and that the withdrawal of recognition from the Union violated Section 8(a)(1) and (5) of the Act. (JD(ATL)-19-09)

#### Kansas City Strip Board of Editors

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## Proposed Rule Will Require Contractors to Notify Employees of Rights under NLRA

On August 3, 2009, the Department of Labor's Office of Labor-Management Standards proposed regulations to implement Executive Order 13496, which was signed by President Obama on January 30, 2009. See Notification of Employee Rights Under Federal Labor Laws, 74 Fed. Reg. 38,488 (2009) (to be codified at 29 C.F.R. pt. 471) (proposed August 3, 2009).

Executive Order 13496 requires nonexempt Federal departments and agencies to include within their Government contracts provisions that require contractors and subcontractors with whom they do business to post notices informing their employees of their rights under Federal labor laws, including the National Labor Relations Act. Executive Order 13496 states that Federal Government interests and industrial peace are best achieved when workers are well informed of their rights under Federal labor laws.

The proposed rule gives the Office of Federal Contract Compliance the authority to evaluate a contractor's compliance and to impose penalties that could include cancellation, suspension, or termination of a contract after offering the head of the contracting agency an opportunity to object in writing. The Department of Labor has received public comments and will proceed with its consideration of the rule.

### E-Filing Now

The Agency strongly encourages parties to submit letters and documents to Regional offices through the Agency's e-filing system on its web site [www.nlr.gov](http://www.nlr.gov). We still take paper but are trying to begin the transition to the new system.

**Although petitions, charges and voluntary recognition notifications cannot be filed electronically, most other documents can.**

When you send documents electronically, you save copy and handling time as well as delivery charges. Once we get the hang of this, we'll wonder how we managed all the paper shuffling.

Through the e-filing section on our website, you can file documents electronically with Region 17 in Kansas City, with the Tulsa Resident Office, as well as with the Office of Appeals and the Division of Judges.

**ELECTRONIC FILINGS MUST BE TIMELY.** Date-sensitive electronic filings must be submitted through the Agency website so that transmission is received by the close of business in the office where it is due. Failure to timely file or serve a document will not be excused if the website is off-line or unavailable.

If you have questions, consult the e-filing section of our website and ask an information officer.

**REGION 17 STAFF**

**Kansas City**

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Stan Williams — Deputy Regional Attorney

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Jane Stewart — CATS Program Analyst

**Tulsa**

Chuck Hoskin — Resident Officer

Brett Huckell—Compliance Officer

Amy Novara — Field Examiner

Regina Tyler — Case Processing Assistant

**La Ley y Su Derechos**

• La sola función de la Agencia es administrar La Ley Nacional de Relaciones del Trabajo. Este Ley les protegé los derechos de los obreros para organizar una unión, participar en los actividades de la unión o abstenerse de los actividades de una unión, y protegé empleados quien participen en actividades convenidos para mejorar el sueldo, salarios, horas o otra condiciones de trabajo.

Tambien, por la Ley, los patrones estan requerido negociar con las uniones que representan una mayoría de sus obreros, y estas uniones estan requerido representar imparcialmente los obreros.

- Tiene el derecho archivar un cargo de practicas ilícitas si quiere contra su union o patron.
- Si decide archivar un cargo, debe mandar una copia completa a nuestra oficina.

Si requiere ayuda para completar la forma, debe llamar nuestra oficina a (913) 967-3000, y pregunte hablar con la Oficial de Informacion, o "Information Officer." La Ley Nacional de Relaciones del Trabajo requiere que archiva su cargo antes de seis meses han pasado desde que la practica ilicita

La Ley define los derechos basicos de trabajadores en la manera siguiente:

- De organizarse
- De formar, ingresar, o ayudar a sindicatos obreros
- De negociar colectivamente a traves de representantes seleccionados por ellos
- De participar en otras "actividades concertadas" protegidas, es decir, de actuar juntos con el propósito de ayuda protección mutua
- De abstenerse de participar en cualesquiera de estas actividades.

**The Law and Your Rights**

• The sole function of the Agency is to administer the National Labor Relations Act. This law protects the rights of workers to organize a union, to participate in union activities or abstain from union activities, and protects employees who want to participate in concerted activities in order to improve their wages, salaries, hours or other working conditions.

Also, under the Act, employers are required to negotiate with unions that represent a majority of the employees, and these unions are required to represent the workers fairly.

- You have the right to file a charge against your union or employer for committing unfair labor practices.
- If you decide to file a charge, you should send a complete copy of the charge to our office.

If you require assistance in completing the charge, you should call our office at (913) 967-3000, and ask to speak with an information officer.

The National Labor Relations Act requires that you file your charge before six months have passed from the date of the illegal practice.

The law defines the rights of workers as follows:

- To organize
- To form, join, or assist other workers
- To negotiate collectively through representatives of their own choosing
- To participate in other protected "concerted activities," which is to say, to act together for each others' mutual aid and protection
- To abstain from participation in any of these activities.

## White House Announces Three NLRB Nominations

On July 9, 2009, the White House announced that it sent to the Senate the nominations of Craig Becker, Mark Gaston Pearce, and Brian Hayes to be members of the National Labor Relations Board. If they are confirmed by the Senate, the Board will be at its full complement of five members for the first time since December 2007.

Mr. Becker currently is Associate General Counsel of the Service Employees International Union and the AFL-CIO, and is nominated for a term on the Board ending December 16, 2014.

Mr. Pearce, is currently in private practice with a Buffalo, New York law firm and previously worked as a field attorney with the NLRB in the Buffalo regional office from 1979 to 1994. He is nominated to fill a term on the Board ending August 27, 2013.

Mr. Hayes currently serves as the Republican Labor Policy Director to the U.S. Senate Committee on Health, Education, Labor and Pensions. Mr. Hayes is nominated to fill a term on the Board ending December 16, 2012.

If confirmed, the three nominees will join current Board members Chairman Wilma Liebman, whose term expires on August 17, 2011 and Member Peter Schaumber, whose term expires on August 27, 2010. By tradition, three of the five seats on the Board are filled by the same political party as the President.

## NLRB Earns an "A" in 2008 Ombudsman's Report to Congress

For the sixth year in a row, the NLRB was awarded an overall rating of "A" by the U.S. Small Business Administration, Office of the National Ombudsman (ONO) in its 2008 Report to Congress. The ONO was created by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The law's provisions pertain to all small businesses that receive or are subject to any enforcement-related communication or contact by the Federal government, including audits, on-site inspections, and agency compliance assistance.

The National Ombudsman's primary mission is to assist small businesses when they experience excessive or unfair federal regulatory enforcement actions, such as repetitive audits or investigations, excessive fines, penalties, threats, retaliation or other unfair enforcement action by a federal agency. The ONO rates Federal agencies on a variety of performance areas relating to their treatment of small businesses including: timeliness of response, quality of response, agency non-retaliation policy, agency regulatory enforcement compliance assistance, SBREFA notice, and agency participation in RegFair hearings wherein individuals and small business owners can voice their concerns about Federal agency enforcement actions. The Board received "A" ratings in all of ONO's rating elements.

## NLRB Requests Supreme Court To Settle Authority Of Two-Member Board

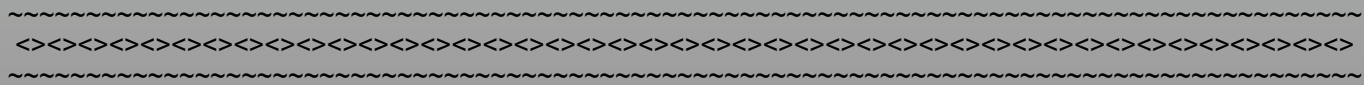
On September 29, 2009, the Solicitor General of the United States, on behalf of the Board, requested that the Supreme Court settle the question of whether the Board is authorized to issue decisions while three of its five seats remain vacant.

The request was made in two actions: a petition for certiorari in *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F. 3d 469 (C.A.D.C., May 1, 2009) and a response to a certiorari petition filed by an employer in *New Process Steel, LP v. NLRB*, 564 F. 3d 840 (C.A.7, May 1, 2009).

The Board has operated with only two members since the appointments of two Board members expired on December 31, 2007. The two remaining Board members – current chairman Wilma B. Liebman, a Democrat, and Member Peter C. Schaumber, a Republican – have continued to issue decisions in matters on which they agree. The two member Board continued to issue decisions based on the advice of the U.S. Department of Justice’s Office of Legal Counsel, which concluded that “if the Board delegated all of its powers to a group of three members, that group could continue to issue decisions and orders as long as a quorum of two members remained.” The Board made such a delegation in December 2007, and since that time, the two member Board, acting as a quorum of the group of three members, has issued nearly 500 decisions.

While many of the 500 decisions have been accepted by the parties, a number of decisions have been appealed to the federal courts of appeal on the question of the authority of the two-member Board to act, and the federal courts of appeal decisions have been split. The U.S. Courts of Appeal for the First, Second and Seventh Circuits have all held in favor of the Board, while the District of Columbia Circuit, in *Laurel Baye*, held that the Board did not have the authority to act. In *New Process Steel*, the Seventh Circuit held that, “The plain meaning of the statute...supports the (Board's) delegation procedure.” The filings on behalf of the NLRB request the Supreme Court to affirm the findings of the First, Second, and Seventh Circuits and to reverse the contrary holding of the District of Columbia Circuit.

Board Chairman Leibman stated that “We continue to believe that our position is correct, and hope that a decision from the high court will bring some finality to these cases”. Member Schaumber added “It is critical to the agency’s mission that this issue be decided”. In July 2009, President Obama nominated three additional members to the Board, and they are currently waiting for Senate confirmation.



## Region 17 Assists Other Regions

Periodically, a Regional Office will find itself overloaded with cases. When this situation persists and another office can assist, it does under the Interregional Assistance Program. The purpose of case transfer is to reduce or eliminate delays in processing charges. Only cases amendable to investigation telephonically are transferred.

In the last year, Region 17 has provided assistance to three other regions: Region 16 (Forth Worth, Texas), Region 31 (Los Angeles, California), and Region 32 (Oakland, California). Currently, Region 17 is providing assistance to Region 31.

## UNITE HERE Update

### **Board Upholds Regional Director's Conclusion: Union Split Does Not Raise a Question Concerning Representation**

By Order dated July 28, 2009, the Board affirmed the administrative dismissal of a petition for an election filed by Gateway Packaging Company of Missouri (Gateway). (*Gateway Packaging Co. of Mo.*, NLRB, Case 17-RM-864, *unpublished order 7/28/09*). The petition sought an election to determine whether Gateway's employees wish to continue their representation by Local 393T after Chicago Midwest Regional Joint Board disaffiliated from UNITE HERE. Although the Regional Director made no findings about whether the Joint Board properly disaffiliated from UNITE HERE and refrained from deciding Local 393T's proper affiliation, he concluded, "there has been no change in Local 393T's identity as the bargaining agent of the unit." Rejecting Gateway's argument that the Joint Board's disaffiliation from UNITE HERE and its attempted affiliation with Workers United resulted in competing representational claims, the Regional Director explained:

Although the facts reasonably suggest that the Joint Board's disaffiliation from UNITE HERE was the result of a basic intra-union conflict, the evidence fails to establish that the disaffiliation has caused confusion in the bargaining relationship between the Employer and Local 393T. Based on the administrative investigation, it appears that the purported disaffiliation has not altered the continuity of representation of the unit by Local 393T. Local 393T, which, with the assistance of a Joint Board representative, served as the employees' bargaining representative prior to the disaffiliation, continues to maintain the same role. Local 393T's officers, who unanimously supported the disaffiliation of the Joint Board from UNITE HERE, have remained the same since the disaffiliation, and their duties have not changed. (citation omitted) Local 393T continues to process grievances with the assistance of a Joint Board representative, union dues have remained constant, and employees were not required to pay an initiation fee after the disaffiliation. As it did prior to the disaffiliation, Local 393T, which does not maintain a bank account, relies on the Joint Board to fund its activities.

Following several Joint Boards' disaffiliation from UNITE HERE, a number of employers have filed similar petitions seeking an election to determine the appropriate bargaining representative of their employees. To date, a regional office has yet to direct an election based on an Employer's petition regarding a Joint Board's disaffiliation from UNITE HERE.

**More  
Newsletters**

Region 17 is not the first nor the only Region to put out a newsletter. To see other Regions' newsletters, go to our web-site at [www.nlrb.gov](http://www.nlrb.gov) where you will find the newsletters of 21 other Regions along with our back issues.

**Estamos  
A Su Servicio**

**Para asistencia de someter**

Una carga o petición,  
**Llame**

La oficina Regional  
a 1-866-667-6572 oprima 2  
(913) 967-3000

o

llame (913) 967-3000

Y marquee O y pida por

**La oficial de información.**

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 — Viernes,**  
**8:15 a.m. to 4:45 p.m.**  
o 24/7/365 a  
[www.NLRB.gov](http://www.NLRB.gov)

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At Your Service**

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