

Region 18 HOT DISH

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HOT DISH
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Update on Recent Agency Initiatives

By Regional Director Marlin Osthus

While Congress averted a government-wide shutdown at the last minute, which of course would have meant the closure of all regional offices, as well as most functions in headquarters, we were unable to avoid the need to begin preparation for the shutdown. Instructions on the orderly shutdown of offices were sent to regional offices; and notices to post on the door, voice mail messages for callers using Region 18's general telephone number, and some postponement of work scheduled for April 11 were completed. It also appears that employees, unions and employers were preparing for the shutdown as an unusually high number of charges were filed during the week of April 4. Fortunately a shutdown was avoided — at least for the time being. While the Agency's budget for fiscal year 2011 (October 1, 2010 through September 30, 2011) was cut, the reduction should not interfere with the ability of the regional offices or headquarters to investigate charges, to process petitions, to resolve or litigate merit charges, and to conduct elections where employees are voting on union representation.

With the threat of a shutdown averted, Regional personnel could once again focus their efforts solely on case handling, including recent Acting General Counsel initiatives designed to improve both the efficacy of our remedies and the processing of cases. In this article, I intend to focus on three of those initiatives, which are described in detail in General Counsel Memoranda GC 11-01, GC 11-04 and

GC 11-07.

GC 11-01, issued on December 20, 2010, focuses on effective remedies when unfair labor practices are committed during union organizing campaigns. In addition to emphasizing again the need to seek 10(j) relief in all discriminatory discharge cases during organizing campaigns, the memorandum authorizes regions to require notice reading (either by a management official or by a Board Agent in the presence of management officials); to require that offending employers provide unions access to their bulletin boards for the display of union information; and/or to require employers to provide the names and addresses of employees the union seeks to organize, in the event employers commit unfair labor practices during an organizing campaign that suggest such remedies are warranted. Thus far, Region 18 has required notice reading in one case involving an employer with ten facilities that a union was seeking to organize. The notice was read to employees by various Board Agents at each of the facilities in the presence of the employer's managers.

GC 11-04, issued on January 12, 2011, requires regions to include default language in all settlement agreements. This default language allows regions to seek summary judgment on the allegations covered by the settlement agreement in the event charged parties breach the settlement agreements. Because there has been some confusion regarding the impact of the default language, carefully review GC 11-04. It makes clear that in the event charged parties fail to honor their commitments made in the settlement agreement, the default language will permit regions to seek summary judgment on the allegations covered

by the settlement agreement. On the other hand, if charged parties commit new unfair labor practices in violation of the cease and desist provisions of the settlement agreement, charged parties are still entitled to hearings before administrative law judges with regard to the new unfair labor practices. In the event an administrative law judge finds that the new unfair labor practices occurred, then a region will file for summary judgment on the allegations contained in the settlement agreement. While Region 18 has no option but to litigate cases where charged parties refuse to agree to the default language, keep in mind that it is rare for settlement agreements to be breached.

GC 11-07, issued on March 11, 2011, authorizes regions to seek reversals of current Board law on backpay mitigation and to rely on state unemployment benefit payments as proof that a discriminatee has conducted a reasonable search for work. More specifically, regions are authorized to issue compliance specifications requiring the payment of backpay even if a discriminatee fails to initiate a search for new work within two weeks of discharge, as currently required by *Grosvenor Resort*, 350 NLRB 1197 (2007). Rather, the standard to be applied is whether a discriminatee has been reasonable in seeking interim under the totality of the circumstances. In addition, regions are authorized to argue that the requirement that General Counsel produce evidence of a reasonably diligent search for work once the respondent has shown the availability of suitable jobs for the



“The Agency’s website now features a webpage for each regional office.”

We’re on the Web!
www.nlr.gov

New Regional Webpage

If you’ve recently visited www.nlr.gov, you may have noticed that the Agency overhauled its old website and created a whole new design in an effort to provide more information to the public in a user-friendly way. The Agency’s website was restructured to provide new content and to allow the public easier access to case pages, graphs and data, information regarding the NLRB process and unpublished Board decisions. The Agency’s website now features a webpage for each regional office.

If you’re on the Agency’s main webpage, you’ll notice a large image of the United States in the right-hand corner of the page. One way you can reach the Minneapolis/Des Moines re-

gional office homepage is to click on the large image of the United States. This will re-direct you to the Regional Office page which lists each regional office. You can scroll down and find our regional office or click the inside border of our region located on the image of the United States.

While you’re visiting the Minneapolis/Des Moines regional homepage, you’ll find our banner and contact information, regional newsletters, event notices, and regional news – this is where NLRB news releases linked to individual regions will appear, in addition to the news room located on the Agency’s main webpage.

If you’re interested in finding out what is going

**By Melissa Bentivolio,
Regional Web Editor**

on in our region, check out our regional webpage. The Region will post upcoming private and public events in an effort to reach community groups with information about the NLRB. We hope this will give you and the public a sense of the types of outreach services we offer.

I would encourage you to visit www.nlr.gov and take the time to become familiar with the new website. There is a lot of helpful information and resources available to you. We hope you enjoy the new user-friendly NLRB website!

Recent Agency Initiatives, cont.

Continued from Page 1

discriminatee (currently the law under *St. George Warehouse*, 351 NLRB 961 (2007)) is incorrect, and that the Board should return to longstanding principles that the burden of proof is on respondent to show a failure to seek

interim employment.

Finally, regions are authorized to argue in compliance proceedings that if a discriminatee receives unemployment benefits, this fact establishes a *prima facie* case that the discriminatee engaged in a reasonable search for work.

These and other General Counsel memoranda are on the Agency’s website. I urge you to read the above memoranda carefully for more details regarding the above initiatives. In addition, you will find other initiatives not highlighted in this article.

E-FILING — available and ready for you to use!



Let's save paper, shall we?

The NLRB is encouraging parties to file documents electronically whenever possible. It isn't as hard as it sounds! Go to our

website: **www.NLRB.gov** and on the right-hand side of the home page you will see a list of Resources. Click on the tab marked "File Case Documents" and it will take you into the NLRB e-filing system.

If you know the number of your case, you can enter it into the box on this page, and the process will be streamlined. There is also a video tutorial for you to watch if you want to learn more about the e-filing process and make sure you do it correctly.

Please remember that there are several documents that may NOT be e-filed, including unfair labor practice charges, representation petitions, and requests for advisory opinions. Pretty much every other document can and should be e-filed.

New Field Examiner: Mattie Armstrong

Our newest field examiner is Martha ("Mattie") Armstrong, who began work at Region 18 this past January. Mattie earned her Bachelor's degree at the University of Illinois, majoring in International Studies with an emphasis in International Law. In 2010, Mattie completed her Master's degree in Human Resources and Industrial Relations at the University of Illinois School of Labor and Employment Relations.

During graduate school, Mattie worked as a Coordinator for the America Reads, America Counts tutoring program. She also enjoyed volunteering for the Intensive English Institute, acting as a mentor for exchange students at the University. She was involved in the Student Society for Human Resources Management (SSHRM) and the Labor and Industrial Relations Association (LIRA), and served as the Academic Affairs Committee Chair. Through her studies,

Mattie became interested in labor and employment law.

During the summer of 2010, she completed a three month internship with Region 18 as a Field Examiner Co-Op, after which she was pleased to accept a position with the Region full-time.

Outside of work, one of Mattie's passions is traveling. As an undergraduate, Mattie studied abroad for a semester at the University of Seville in Spain. This experience helped cultivate her passion for studying languages, particularly Spanish and Portuguese. In addition to Spain, Mattie has visited France, Portugal, Italy, Ireland, England, Morocco, Switzerland and Mexico. Mattie continues to use her Spanish skills at Region 18, where she occasionally assists Spanish-speaking witnesses and affiants. Some of Mattie's other hobbies include reading, drawing, outdoor summer activities and racquetball. We're glad to have her aboard!



The Triangle Shirtwaist Fire

By Marlin Osthus, Regional Director



The Asch Building on fire

One hundred years ago – on March 25, 1911 – a tragic fire claimed the lives of 146 garment industry workers, and was one of several historic events that helped solidify support for workers’ unions and laws protecting employees in the workplace. The fire, which occurred at the Triangle Waist Factory located on the eighth, ninth and tenth floors of the Asch Building in the heart of Manhattan, occurred at what was at the time a typical sweatshop, where mostly young female recent immigrants struggled to support their families by sewing garments.

The Triangle Waist Company produced shirtwaists for the garment industry. As was typical in the garment industry, the owners subcontracted much of the work to individuals who in turn hired the employees, at whatever wages they wished. In 1911 most of the garment workers were unorganized because the young immigrant women working in the industry were intimidated – not only by their employers but also by their surroundings. At the time of the fire, the Triangle Waist Company employed between 500 and 600 workers, some as young as 14 years of age. In fact most of the workers were young women from 16 to 24 years of age. They were among the many truly “working poor” who were desperate to hang onto the jobs they had – re-

gardless of the working conditions or exploitation by their employers.

There were several tragic ironies that occurred on March 25, 1911 that were partly the cause for the number of deaths. One irony is that the fire occurred in a supposedly fire proof building. In fact, once the fire was over (in less than 45 minutes), the Asch Building appeared intact. It was however, the contents of the sweatshop that wreaked havoc and spread the flames quickly. Hanging on lines above the workers were highly flammable shirtwaists. Littering the floors crowded with sewing machines were shirtwaist trimmings and cuttings. Another tragic irony is that the fire, which was discovered at 4:40 p.m. on the eighth floor, occurred just minutes before the workers were scheduled to be done for the day. Had the fire occurred only slightly later, it is likely few if any lives would have been lost. Finally, workers trapped

by the flames who thought to go up to the roof were saved. Both they and the owners of the Triangle Waist Company were rescued in part by the efforts of students of New York University who assisted the fleeing workers and owners across to the roof of the building housing New York University.

On the other hand, there was also widespread belief that the owners themselves were responsible for the tragic loss of life. It is clear for example, that there was only one viable escape route, and once that route became engulfed by flames, employees were trapped. Worker after worker testified after the fire that the door to the Washington Place exit was locked because the owners forced employees to use one exit as a way to prevent employees from stealing. In fact, each day as employees left the sweatshop, their purses and bags were inspected. Dozens of workers perished at the door leading to the Washington

Place exit, unable to escape the flames because of the locked doors. There was also only one fire escape for the building – and it was an interior one that bent under the weight of escaping workers, and it quickly became unusable when flame cut it off. In fact the Fire Department to the Building Department for the City of New York had reported the building as unsafe even before the fire because of the insufficiency of its exits. However, there were no regulations in place to require that sufficient exits be in place and that exits not be blocked. The Triangle Waist Company had never had a fire drill, and most employees did not know the way to the roof because they had the habit of using two freight elevators – one of which was not in service on March 25, 1911.

Samuel Gompers (president of the American Federation of Labor), Senator Robert F. Wagner

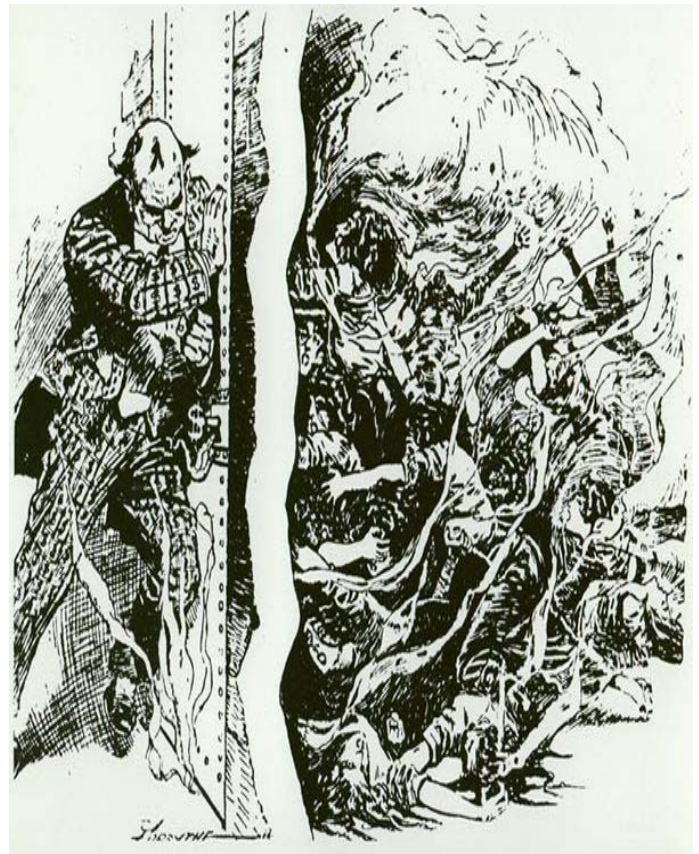
The Triangle Shirtwaist Fire, continued

(who eventually authored the Wagner Act which created the National Labor Relations Board), and Alfred E. Smith (who eventually served as governor of New York and advocated for welfare legislation and reform of the State's labor laws) headed a commission called the Factory Investigating Commission to investigate the fire. As a result of their findings and as a result of public outcry, the Triangle Waist Company fire changed the regulation of business by the government. The public demanded regulation of the workplace to ensure employee safety. Once the New York legislature enacted safety laws, other states followed suit.

As a result of the fire, workers also began to look to unions to voice their concerns over safety and pay. Rose Schneiderman, an immigrant from Poland who started working at age 16 in a cap factory and who would later be a member of President Franklin Roosevelt's brain trust and serve as Secretary of the New York State Department of Labor, spoke at a memorial service held at the Metropolitan Opera House for the 146 garment workers. In the gallery were members of the working class; and in the box seats were the wealthy matrons of New York society. Schneiderman told them, "I would be a traitor to those poor burned bodies if I came here to talk good fellowship. We have tried you good people of the public and we have found you wanting ... I can't talk fellowship to you who are gathered here. Too much blood has been spilled. I know from my experience it is up to the working people to save themselves. The only way they can save themselves is by a strong working-class movement."



Scores of workers jumped to their deaths.



The widespread belief was that the owners' greed and negligence caused the tragedy.

Election Perspectives

By Field Examiners Melissa Bentivolio and
Mattie Armstrong

On March 11, 2011, three board agents, Roger Czaia, Melissa Bentivolio and Martha Armstrong, ran an election for employees of Albert Lea Select Foods. The petitioning Union was the United Food and Commercial Workers Union Local 6. The following are the impressions of the two junior field examiners, Melissa (MB) and Mattie (MA):

PRE-ELECTION:

MB: Perhaps a seasoned field agent might wince at the thought of conducting an election at a pork processing plant. However, as a newer employee, I was thrilled when I was handed a representation election where there would be over 450 eligible voters. Adding to the challenge was the fact that the initial processing revealed the need for election notices and ballots in multiple languages as English was not the first language of a number of employees.

MA: Like Melissa, I was excited to be a part of this large-scale election with such a diverse voting unit. I was aware that Melissa had spent a great deal of time and care working with the parties to ensure the election would go as smoothly as possible, so I looked forward to being a part of the process.

MB: Election notices were provided to the Employer for posting in six different languages: English, Spanish, Burmese, Thai, and two dialects of Karen: Pa'o and Sgaw. What's more remarkable is that the actual ballot itself was 8.5 inches wide and 14 inches in height to include the multiple languages of the employees. I had never seen such a large ballot.

MA: This was also the longest ballot I had seen. It was interesting to see the words "National Labor Relations Board" represented in so many different languages and characters.

MB: It was arranged that there would be two polling sessions, and voters were to be released by department. The first session included about twelve departments and the second session had about nine. Agent Roger Czaia would be responsible for taking the teams to release employees, while Mattie and I would be in charge of the polling area. Roger had to wear a protective uniform, helmet and goggles because he would be walking the plant floor.

MB: The pre-election conference was scheduled for the day before the election and lasted almost two hours! The parties went over the voter list and mutually agreed to add or remove employees. We also discussed the procedure for releasing employees and other important pre-election details. We wanted to conduct the best election possible and our goal was to minimize any issues that might arise during the election.

MA: Because there were a number of representatives for each party, the room in which we held the pre-election conference was quite full. The parties' representatives, their release employees, and the polling observers for each voting shift all listened attentively as Melissa explained the election process and then as the parties' representatives reviewed the eligible voter list.

ELECTION DAY:

MB: We arrived promptly at 6:00 a.m. and the plant was full of activity as employees were preparing to begin their shifts and we were preparing for the polls to open at 6:30 a.m. Since the pre-election conference was the evening before, we were focused on setting up the room as efficiently as possible. When the polls opened, I assisted the Employer and Union observers in identifying employees on the Excelsior list and Mattie was responsible for handing out the ballots once the employees were identified.

MA: It was good foresight to hold the pre-election conference the night before. On the morning of the election, things ran smoothly, because all the details had already been ironed out. The polling area was efficiently arranged and we were ready to receive the many eager voters who had gathered to wait in the employee cafeteria.

MB: As the polls opened, we were immediately in full swing. Roger was releasing employees, and before we knew it there was a long line of employees waiting to cast their ballots. We were feeling the pressure to thoroughly and carefully identify each employee while simultaneously making sure employees cast their votes in the time provided. After a little while, Mattie began asking employees in line to have their ID badges out and ready to show to the observers, to decrease the time it took to identify employees on the Excelsior list. Now, you're probably wondering why this was of such concern. A significant number of employees had very unique names and there were a number of employees who had the same first and last name. To make it more complicated, sometimes there would be employees who had the same name but with a different spelling or an employee whose first name matched another employee's last name. The first polling session ended at 9:00 a.m.

MA: When the polls first opened, I gave each voter individual instructions as I handed the voter his or her ballot. But as more voters were released and the line began to grow, I started giving instructions to small groups of people at a time. I addressed the first four or five people in line and explained the ballot and voting process. This was more effective. With my initial technique (explaining the instructions to each individual), by the time someone voted they had heard me repeat the instructions quite a few times.

MB: The second polling session was from 4:00 p.m. to 6:00 p.m. and by this time we had our technique mastered. There were still a significant number of employees who voted during the second session, but the line was not as long as it had been during the morning session.

TALLY OF BALLOTS:

MB: We had a good audience when it was time to count the ballots. This is always the critical part of the day and part where everyone is the most silent. First we discussed the challenges and the parties were able to resolve all but two. Each party had their observer tally as I counted the ballots. However, many people in the room were keeping tally including Mattie (you can never have too many). You could feel the tension in the room. Once we reached 50 "yes" votes or 50 "no" votes Roger recounted those ballots to verify the tally (and to give my voice a break as there were 421 votes cast). There were approximately 449 voters. There were 215 votes cast **for** the United Food and Commercial Workers Union Local 6 and 206 votes cast **against** the labor organization.

MA: In a matter as polarizing and emotional as a certification election, whatever the outcome, one side may be unhappy with the outcome. Despite that fact, after the tally of ballots at Select Foods, both parties seemed to feel the election was conducted smoothly even if everyone was not happy with the results. We were kindly thanked by representatives from each party as we cleaned up and departed.

MB: With all of the different languages and unique employee names, the election was challenging but overall a great experience. It's amazing how much you can learn during the handling of one representation case. I look forward to my next large election.

NOTE: This case is currently before the Board on objections.

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