The Bridge

Newsletter for NLRB Regions 20, 32, and Subregion 37
An Agency of the United States Government

Winter 2017 Region 20 (415) 356-5130 Region 32 (510) 637-3300

In This Issue

Injunctive Relief Granted in Holiday Inn Express

Sacramento, CA -- On January 12, 2017, Region 20 obtained a preliminary injunction in U.S. District Court against Manas Hospitality, LLC, which operates the Holiday Inn Express Sacramento Convention Center in Sacramento, California. (*Frankl v. Manas Hospitality LLC*, Case No. 2:16-cv-02782-GHW (E.D. Cal.)) The injunction requires Manas Hospitality to stop threatening employees with discharge and other unspecified consequences for supporting Local 49 or refusing to sign a decertification petition and, among other things, requires Manas Hospitality to bargain in good faith with Local 49 as the exclusive representative of the employees in the bargaining unit. The District Court also ordered Manas Hospitality to post copies of its Order in English and Spanish at the hotel, and to either read the Order or permit an NLRB agent to read the Order in the presence of its supervisors and managers at a mandatory meeting for bargaining-unit employees.

The case was heard by U.S. District Court Judge George H. Wu, visiting from the Central District of California. In granting the injunction, the Court noted that the Regional Director would likely be able to prove that Manas Hospitality's managers "cornered new employees to sign a petition to decertify the Union" and that the circumstances surrounding this conduct "reinforce the inference that [Manas Hospitality] systematically orchestrated and campaigned for a decertification effort." Turning to the allegation of failure to bargain in good faith, the Court concluded that the Region was likely to prevail on the merits in an unfair labor practice proceeding where Manas Hospitality's overall conduct indicated an intent not to reach a collective-bargaining agreement, including the request for an initial delay in starting the bargaining while simultaneously engaging in efforts to decertify the Union; the lack of meaningful progress during the bargaining process, particularly on the critical issue of wages; and Manas Hospitality's concomitant efforts at decertifying the Union in apparent violation of an earlier settlement agreement with Region 20. The Court then found that interim relief was necessary to prevent the likely irreparable harm to the Union's ability to represent the employees. *(cont. page 2)*

To arrange for a presentation about the National Labor Relations Act, Workers Rights Under the Act, or Training the Trainer: the Nitty Gritty of the NLRA, contact Region 20's Outreach Coordinator, Kathleen Schneider at 415-356-5130, or Region 32's Jeff Henze at 510-637-3300. *For questions about The Bridge, contact Newsletter Editor, Fi*eld Attorney Carmen León at: 415-356-5130. For more information: http://www.nlrb.gov/

Section 7 of the National Labor Relations Act (NLRA) gives employees the rights to:

- Form, join, or assist a union
- Choose representatives to bargain with your employer on your behalf
- Act together with other employees for their benefit and protection
- Choose not to engage in any of these protected activities

Holiday Inn Express *(cont. from page 1)*

The underlying administrative proceeding, Kalthia Group Hotels and Manas Hospitality LLC d/b/a Holiday Inn Express Sacramento, a single employer, Cases 20-CA-176428, 20-CA-178861, and 20-CA-182449, was tried on January 12, 2017 by Region 20 Field Attorneys Yaromil Ralph and Joseph Richardson and investigated by Region 20 Field Examiner Norma Pizano. Attorney Richardson represented the Board in the 10(j) proceeding.

Board Adopts ALJ Decision Ordering Production of Medical Records

Honolulu, HI -- On February 22, 2017, the Board adopted, in the absence of exceptions, the January 10, 2017, decision of Administrative Law Judge Jeffrey D. Wedekind that Queen's Medical Center (QMC) violated Section 8(a)(5) of the Act by failing and refusing to provide to the Hawai`i Nurse's Association (HNA) patient medical records requested in order to process a grievance.

This was no ordinary information case. HNA had requested from QMC the medical records of a patient at the center of a grievance over the suspension of a bargaining unit employee. QMC had partially complied with the information request when, in an unrelated case, the Hawai`i State Supreme Court issued a decision in *Pacific Radiation Oncology, LLC vs. The Queen's Medical Center*, 138 Hawaii 14, 375 P.3d 1252 (June 13, 2016), ruled that the Hawai`i State Constitution affords greater privacy protection to patient medical records than federal law and barred the use and production of patient medical records in litigation where the patient is not a party, absent a compelling state interest. The Hawai`i State Supreme Court further held that patient medical records could not be used or produced in litigation even if de-identified. The Court held that there was no compelling state interest in the PRO case, which was essentially a contract dispute between the parties. Subsequently, QMC, citing the PRO decision, refused to produce to HNA the requested patient medical records. QMC notified HNA that it wanted to seek guidance from the NLRB regarding its obligation to produce the patient medical records in light of the PRO decision. In response, HNA filed Charge 20-CA-175202.

In his decision, ALJ Wedekind found QMC violated the NLRA by not producing the requested patient medical records. Citing *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959), and *Brown v. Hotel & Restaurant Employees Local 54*, 468 U.S. 491(1984), ALJ Wedekind found that in the event of an actual and substantive conflict, the NLRA preempts the Hawai`i State Constitutional privacy protections. The ALJ ordered QMC to produce the requested information to HNA. ALJ Wedekind found that QMC had a legitimate and substantial confidentiality concern about producing the patient medical records and thus had a duty to offer and bargain in good faith over a reasonable accommodation with the burden on the employer, not the union, to propose a precise alternative to providing the information without redaction or restriction. ALJ Wedekind found that QMC failed to propose a reasonable accommodation and rejected QMC's argument that the PRO decision prevented it from making a reasonable accommodation. ALJ Wedekind found that the Board, citing *Kaleida Health, Inc.*, 356 NLRB 1373 (2011), can order an employer to produce medical information to a union in de-identified form and subject to restriction on further disclosure. ALJ Wedekind ordered QMC to produce the requested medical records to HNA in de-identified form and subject to agreement by HNA not to share the information outside the processing of the grievance. *(cont. page 3)*

Unfair Labor Practice Charge Procedures

Anyone may file an unfair labor practice charge with the NLRB. To do so, they must submit a charge form to any Regional Office. The form must be completed to identify the parties to the charge as well as a brief statement of the basis for the charge. The charging party must also sign and date the charge.

Once a charge is filed, the Regional Office begins its investigation. The charging party is responsible for promptly presenting evidence in support of the charge, which often consists of sworn statements and key documents.

The charged party is then required to respond to the allegations, and will be provided an opportunity to furnish evidence in support of its position.

After a full investigation, the Regional Office will determine if the charge has merit. If there is no merit to the charge, the Region will issue a letter dismissing the charge. The charging party has a right to appeal that decision. If the Region determines there is merit to the charge, it will issue complaint and seek an NLRB Order requiring a remedy of the violations, unless the charged party agrees to a settlement.

Queen's Medical Center *(cont. from page 2)*

SubRegion 37 Field Attorney Scott E. Hovey, Jr. investigated and litigated the case (20-CA-175202).

ALJ Finds Employer Maintained and Enforced Unlawful Rules Regarding Facebook Posts

San Francisco, CA -- The Region garnered another win in Registry of Interpreters for the Deaf, Inc. RID, as it is known, is a trade and professional association for interpreters of deaf individuals. While it only employs about 20 persons, its dues-paying membership totals over 16,000 people located across the country. RID's members are not employed by RID, but some portion of its members are at all times Section 2(3) employees of other entities.

As part of the services it provides to its members, RID hosts Facebook pages. The Facebook pages are open only to members and are designed to cater to specific "member sections" organized by industry or interpretation focus (such as the Video Interpreter Member Section, or VIMS). In October 2015, a RID member posted a message on RID's VIMS Facebook page sharing her negative experiences working for a particular employer in the video interpretation industry. Many other members posted in solidarity, with some suggesting unionization as a potential solution.

After several days, RID removed the posts and made its own post on the VIMS Facebook page. Citing to its Antitrust and Civility policies, RID admonished the VIMS members that inappropriate aspects of the removed posts "include[d] the references to the union, referral to its website, photos of the union leaders, and specifically naming companies and their practices." RID stated more broadly that communications on VIMS "cannot promote unionization or ways to restrict competition," and provided a link to its Antitrust policy and related questions and answers. The Antitrust policy forbids discussion of wages and salaries. The Civility policy serves to enforce the Antitrust policy and otherwise prohibits comments that "harm the reputation of any person or organization." At least eight of the RID members who participated in the VIMS posts were Section 2(3) employees of Purple Communications.

Pacific Media Workers Guild soon after filed ULP charges alleging that RID maintains unlawful Antitrust and Civility policies and had unlawfully targeted protected conduct when it removed the October 2015 VIMS Facebook posts.

Based on a stipulated record, ALJ Joel P. Biblowitz issued his decision on December 29, 2016, finding that RID violated Section 8(a)(1) by maintaining unlawful policies and by unlawfully enforcing those policies. Contrary to RID's argument, ALJ Biblowitz concluded that employees' Section 7 rights are not limited in scope to their relationship with a direct employer. Rather, because at least some of the VIMS Facebook posters were employees of other employers; and because RID hosted the Facebook forum and invited known employees to participate, they could not maintain and enforce policies targeted specifically to infringing rights protected by Section 7.

RID has filed exceptions to the ALJ's decision. The case is now pending before the Board. The case was tried by Region 20 Field Attorney Richard McPalmer.

Representation Case Procedures

The National Labor Relations Act provides the legal framework for private-sector employees to organize into bargaining units in their workplace, or to dissolve their labor unions through a decertification petition.

The filing of a petition seeking certification or decertification of a union should be accompanied by a sufficient showing of interest to support such a petition. Support is typically demonstrated by submitting dated signatures of at least 30% of employees in the bargaining unit in favor of forming a union, or to decertify a currently recognized union.

Any union, employer or individual may file a petition to obtain an NLRB election.

The NLRA does not include coverage for all workers, excluding some employees such as agricultural and domestic workers, those employed by a parent or spouse, independent contractors, supervisors, public sector employees, and workers engaged in interstate transportation covered by the Railway Labor Act.

ALJ finds Bauer's Discriminated Against Drivers following Settlement Agreement

San Francisco, CA -- On November 25, 2016, Administrative Law Judge Ariel Sotolongo issued his decision in the second set of charges brought by the Board against Bauer's Intelligent Transportation (Bauer's). ALJ Sotolongo found the employer violated Sections 8(a)(1), (3), and (4) of the Act by twice suspending and ultimately discharging a commuter driver employee, and Sections 8(a)(1) and (3) by suspending and then reassigning to a different location another commuter driver employee.

As you may recall, in April 2015, Teamsters Local 665 (Local 665) filed a petition to represent commuter drivers at the employer, case 20-RC-150089. In addition to the petition, Local 665 also filed charges alleging unlawful surveillance of employees' union activities, as well as the creation and domination of an in-house union, Cases 20-CA-148119 and 20-CA-151225. After the Region filed for injunctive relief, in September 2015, the Board accepted a Formal Settlement Agreement, including special remedies, such as allowing Teamsters Local 665 access to employees at the worksite and access to the employer's bulletin board.

A few days after signing the Formal Settlement Agreement, Bauer's discharged a commuter driver, one of the General Counsel's witnesses and a vocal opponent to the in-house union, after having issued him two three-day suspensions. This commuter driver promptly filed a charge with the Regional Office regarding his suspensions and discharge. About two weeks after the parties signed the Formal Settlement Agreement, the Region administered a closely-contested election. Local 665 filed objections to the election and charges alleging unlawful statements, threats, and coercive conduct by Bauer's, as well as the unlawful suspension and reassignment of another pro-union employee and commuter driver. The Region issued complaint in Cases 20-CA-160321, 20-CA-161534, and 20-CA-167627 alleging Bauer's unlawfully threatened and coerced employees leading up to the election, suspended and discharged one commuter driver, and suspended and reassigned another commuter driver to a less desirable route. The election objections were consolidated with the unfair labor practices for trial.

Between the filing of briefs and the ALJ's decision, Bauer's agreed to recognize Local 665, and the parties reached a collective-bargaining agreement covering some of the employees. Local 665 filed motions to withdraw its objections and charges, which ALJ Sotolongo ultimately granted in part, permitting the withdrawal of the objections and allegations of unlawful statements, threats, and other coercive conduct preceding the election. Although ALJ Sotolongo's decision ultimately did not reach legal conclusions as to whether the conduct was unlawful, it did evaluate the evidence and credit relevant testimony to conclude the CEO had personally made a series of statements to employees preceding the election that he had built his company and did not want the Union coming in and taking over or telling him how to run it; that drivers who did not like it at the company or who preferred benefits offered by a unionized competitor could go work there or elsewhere; that drivers who supported the Union were ungrateful or disloyal; that he felt betrayed by employees' Union support or activities; that he asked employees what else he could do for them; that if the Union came in, commuter drivers would not be able to make extra money driving retail routes; that with the Union he would not be able to do "extra things" such as having parties and picnics; and that supporting the Union would be futile. He also found that Bauer's, by other agents, had solicited grievances, interrogated employees about their union activity, and granted gifts or benefits in the face of Union organizing. *(cont. page 5)*

Bauer's *(cont. from page 4)*

In reaching his conclusions regarding the actions against the discriminatees, ALJ Sotolongo found there was an abundance of evidence to support the General Counsel's case. Although he did not reach legal conclusions regarding Bauer's statements and the other alleged unlawful conduct in the lead up to the election, he did consider these facts as evidence of the employer's animus against Local 665. He found evidence of animus in the timing of the employer's actions in light of the Union's campaign and legal proceedings by the General Counsel, and he thoroughly considered the company's past disciplinary practices to conclude the employer could not meet its burden to prove that it would have taken the same actions against these employees in the absence of their protected activities. No exceptions were filed to ALJ Sotolongo's decision, and on January 17, 2017, the Board issued an order adopting the decision in absence of exceptions. The cases were investigated by Region 20 Field Attorney Marta Novoa and litigated by Region 20 Field Attorneys Novoa and Cecily Vix.

Region 32's New Regional Director is Valerie Hardy-Mahoney

Oakland, CA – National Labor Relations Board (NLRB) Acting Chairman Philip A. Miscimarra and General Counsel Richard F. Griffin, Jr. have named Valerie Hardy-Mahoney the new Regional Director for the Agency's Region 32 Office in Oakland, California. With 35 years of service to the NLRB, Ms. Hardy-Mahoney most recently served as the Regional Attorney in the Oakland Regional Office, a position she has held since 2014. She succeeds George Velastegui who recently retired from the Agency.

A native of New Orleans, Louisiana, Ms. Hardy-Mahoney received her B.A. from the University of Notre Dame and her J.D. degree from the University of California, Berkeley School of Law. She began her career at the NLRB's Oakland Regional Office in 1982, as a Field Attorney. She was promoted to Supervisory Field Attorney in 2008 and later to Deputy Regional Attorney in 2010.

Valerie states that she worked for wonderful Regional Directors, Acting Regional Directors, and Regional Attorneys over her career with the Agency, all of whom serve as inspiration for her now. As an intern in San Francisco, she worked for the legendary Regional Director Natalie Allen. After graduating from law school, Valerie was hired in Oakland by Regional Director James Scott, whose dedication and passion to the Agency's mission was matched by his extraordinary skills and record as a litigator.

The Regional Attorney at that time was Paul Eggert, who had a keen sense of justice and inspired Field Attorneys to develop zeal for their job and respect for all working people. Eggert was later appointed as Regional Director in Seattle. When Scott retired, Veronica Clements was appointed as Acting Regional Director and did an outstanding job serving in that position for several months. Clements, a gifted legal scholar and theoretician, was a highly respected role model for the entire staff. As the first and only woman in a supervisory/managerial role in Region 32 for many years, she was a trailblazer. Regional Director Alan Reichard followed Clements as a first-rate leader who ushered in a new style and direction for the Region, successfully focusing on

(Cont. page 6)

Region 32's New RD *(cont. from page 5)*

effectiveness and efficiency. Regional Director William Baudler followed Reichard as another outstanding manager known for his compassionate leadership style and exceptional writing gifts. Valerie is particularly grateful for her predecessor, Regional Director George Velastegui, who was highly regarded for his sound judgment and technical expertise. His patience, guidance, and direction during his tenure as Regional Director were invaluable to her.

The staff of Region 32 is pleased to welcome Valerie to the helm.

Region 20 RD Joe Frankl Retires From the NLRB

San Francisco, CA -- On December 2, 2016, the Region bid a fond farewell to its Regional Director, Joe Frankl. Joe is retiring after six years as Regional Director and more than 37 years with the NLRB.

A native of New York City, Joe received his A.B. degree in economics from the University of Michigan in 1975 and his J.D. degree from Northeastern University School of Law in 1979. He worked as a legal assistant in the NLRB's Boston office while a law student, and after graduating, joined the Agency's Division of Advice in Washington. Joe went on to serve in a variety of capacities at the NLRB, including as staff aide to three General Counsels –Fred Feinstein, Leonard Page and Arthur Rosenfeld. He served briefly as Acting Deputy General Counsel in 2000-2001. Between 2005 and 2010, Joe served as Assistant General Counsel in the Division of Operations- Management, where he oversaw the work of numerous regions, including the San Francisco office.

In 2010, Region 20 welcomed Joe within its ranks, and has thrived under his leadership. Throughout his tenure with the Region, Joe has been an inspired leader in pursuing cutting edge labor law litigation including overseeing the prosecution of new theories on arbitration agreements containing class action waivers, successorship, joint employer status, special remedies, and questions of employee status under Section 2(3) of the Act. Under his leadership, the Region's Outreach initiatives have surged and have included educational initiatives with the Mexican and Philippine Consulates.

On the occasion of his retirement, Joe remarked, "Being a Regional Director was the capstone of my career at the NLRB. I was able to take everything I learned over the preceding 30 years and apply it to the work of the Region. But none of whatever success I enjoyed would have been possible without the incredible work of Region 20's phenomenally dedicated and talented staff in San Francisco and Honolulu. I shall miss them all dearly and I wish them all the best in the interesting times that lie ahead."

Upon retiring Joe plans to launch an arbitration practice and remain active in the Northern California labor law community.

Thank you Joe! The Region will miss your expertise and guidance. We wish you all the best on the road ahead!

Stay tuned for our next issue introducing Region 20's new RD and this year's Constitutionality Day observation.