ALJ Win on the Heels of 10(j) Injunctive Relief in Queen of the Valley Medical Center

San Francisco, CA - On February 28, 2018, Administrative Law Judge Sharon Steckler (the ALJ) issued her decision in *Queen of the Valley Medical Center, 20-CA-191739*, et al. finding that that Queen of the Valley Medical Center (the Employer) violated Section 8(a)(5) of the Act by unlawfully withdrawing recognition from the National Union of Healthcare Workers (the Union) and refusing to bargain with the Union with regard to the bargaining unit, the non-professional and technical workers employed at the Employer’s Napa facilities. The ALJ also found that the Employer unlawfully threatened employees, denied them union representation during an investigatory interview, refused to provide information to the Union, and made unilateral changes to the employees’ working conditions. In addition to the traditional remedy of requiring the Employer to bargain with the Union, the ALJ also recommended enhanced remedies including an extension of the certification year per *Mar-Jac Poultry*, 136 NLRB 785 (1962).

**Read More...**

Board Affirms YP Advertising & Publishing LLC, Violated the Act

San Francisco, CA - On May 16, 2018, the Board affirmed *YP Advertising & Publishing LLC, 20-CA-147219*, et al. in large part, finding that YP Advertising & Publishing LLC, (the Employer) violated Section 8(a)(5) and (1) of the Act by dealing directly with unit employees concerning their working conditions and in seeking agreement from bargaining unit employees to accept a reduced compensation rate for its ypDirect product sales. The Board found that the Employer further violated the Act by unreasonably delaying furnishing relevant information to the employees’ bargaining representative IBEW Local 1269.

Region 20 Field Attorney David Reeves and Field Examiners Norma Pizano and Samuel Hoffman, investigated and Field Attorney Jason Wong litigated the case.
ALJ Finds SBM Site Services Unlawfully Terminated Janitors at Genentech

San Francisco, CA – On October 5, 2017, Administrative Law Judge Amita Tracy (the ALJ) issued her decision in *SBM Site Services, LLC*, 20-CA-157693, et al. finding that SBM Site Services, LLC (the Employer) unlawfully suspended and/or terminated three out of four alleged discriminatees in retaliation for their union activity at a client’s worksite. The ALJ found that the Employer, a maintenance service provider who provides janitorial services, unlawfully suspended and terminated a lead shop steward under a *Burnup & Sims*, 379 U.S. 21, 23–24 (1964), analysis. A *Burnup & Sims* analysis is applied when the very conduct for which an employee is discharged is the employee’s protected activity, thus making the employer’s motivation a nonissue. The ALJ recommended that this employee along with two other fellow-shop stewards be reinstated with backpay. This case is currently pending before the Board.

Region 20 Field Attorney Yasmin Macariola investigated and Field Attorneys Carmen León and Min-Kuk Song litigated the case.

ALJ Finds Holiday Inn Express Interfered with Employees’ Section 7 Rights and Unlawfully Assisted in Union Decertification Efforts

Sacramento, CA – On September 8, 2017, Administrative Law Judge John T. Giannopoulos (the ALJ) issued his decision in *Kalthia Group Hotels, Inc. and Manas Hospitality LLC D/B/A Holiday Inn Express Sacramento* (the Employer) (20-CA-176428), finding that the Employer unlawfully refused to bargain with UNITE HERE! Local 49 (the Union), assisted in the circulation of a decertification petition, and threatened employees with job loss if they did not sign a decertification petition, among other violations. The ALJ considered the unlawful decertification efforts in determining the bad faith bargaining allegation and found that “the evidence shows that [the Employer] pursued tactics designed to delay and prolong negotiations while at the same time trying to undermine support for the Union and soliciting employee signatures to decertify the Union.” The recommended remedy includes a Notice posting and the affirmative obligation to bargain at the Union’s request.

The Employer was already subject to an injunction issued on January 12, 2017 by U.S. District Court Judge George H. Wu pursuant to Section 10(j) of the Act, enjoining the Employer from threatening employees with discharge and other unspecified consequences for supporting Local 49 or refusing to sign a decertification petition, among other things.

Region 20 Field Examiner Norma Pizano investigated and Field Attorneys Yaromil Ralph and Joseph Richardson litigated the case. The case is now pending before the Board.

Oakland Regional Office
1301 Clay Street
Room 300-N
Oakland, CA 94612
(T) 510-637-3300
(F) 510-637-3315

Honolulu Subregional Office
300 Ala Moana Boulevard
Room 7-245
Honolul, HI 96850
(T) 808-541-2814
(F) 808-541-2818

Practical Tips
For the latest NLRB news check out https://www.nlrb.gov/news-outreach/news-releases

Questions to the Editor
If you have questions or content you would like addressed in upcoming issues of the newsletter, please email those questions to carmen.leon@nlrb.gov
Honolulu, HI - On February 20, 2018, Administrative Law Judge Amita Tracy (the ALJ) issued her decision in Matson Terminals, Inc., 20-CA-178312, finding that Matson (the Employer) violated Section 8(a)(5) of the Act. The Employer is the largest shipping and cargo company in Hawai‘i and operates on all the major islands. Prior to 2014, the Employer’s dock workers were exclusively represented by the ILWU. However, in May 2016, the Hawai‘i Teamsters Local 996 was certified as the collective-bargaining representative of supervisors at the Employer’s Big Island operations. The Region and Board concluded that the supervisor job classification at issue was not a “supervisor” under Section 2(11) of the Act. That same day, the Employer made the decision to transfer barge menu work away from Teamsters – represented employees to employees represented by the ILWU, and a month later made the transfer. Barge menu work, which includes communicating with operators and drivers, is the main job duty of supervisors at the Employer’s Big Island operations and had been exclusively performed by supervisors for decades. The Employer did not notify or bargain with the Teamsters prior to making the change. The case was presented to the ALJ on a stipulated record. Though admitting that barge menu work had previously been exclusively performed by the supervisors and that it transferred the work without notifying or bargaining with the Teamsters, the Employer argued that it was contractually required to assign barge menu work to ILWU-represented employees. ALJ Tracy rejected the Employer’s defenses and found the transfer of the barge menu work to be a mandatory subject of bargaining and that the Employer violated Section 8(a)(5) of the Act when it transferred the work away from the supervisors without first notifying and bargaining with the Teamsters. The case is currently pending before the Board on appeal.

Subregion 37 Field Attorney Scott Hovey investigated and tried the case.

Oakland, CA – On May 8, 2018, Goodwill Central Coast, (Cases 32-CA-172761 and 32-CA-172762) closed in compliance with a full remedy for the violations. This case stems from the May 17, 2017 Decision issued by Chief Administrative Law Judge Gerald Etchingham finding that two employees were unlawfully terminated in retaliation for engaging in protected concerted activities. Thereafter, the case went to the Board on exceptions. The Employer sought alternative dispute resolution (ADR), which resulted in a substantial Informal Settlement Agreement and Notice that included reinstating employees, back pay, and Notice posting. Region 32 Field Attorney Angela Hollowell-
Fuentes investigated and then litigated the case together with former-Field Attorney Brenda Rosales.

**Board Affirms Ports America Out Harbor Unlawfully Recognized ILWU and ILWU Unlawfully Accepted the Recognition**

**Washington, D.C.** – On May 2, 2018, the Board affirmed the ALJD in *Ports America Out Harbor, LLC and ILWU*, (Cases 32-CA-110280 and 32-CB-118735) that the Employer violated Section 8(a)(2) and (5) of the Act and that the ILWU violated Section 8(b)(1)(A) and (2) of the Act. The Employer was found to be a successor employer of unit employees who performed marine terminal maintenance and repair work, who then unlawfully refused to recognize and bargain with the Machinists Union (the Charging Party) in violation of 8(a)(5) of the Act, and unlawfully recognized the ILWU in violation of 8(a)(2) of the Act. The ILWU in turn was found to have unlawfully accepted such recognition in violation of Section 8(b)(1)(A) and (2) of the Act. The Employer was ordered to withdraw recognition from ILWU, recognize the Machinists, and ILUW was ordered to not maintain or enforce their CBA with the Employer, decline recognition, and reimburse all present and former unit employees their initiation fees, dues, and other monies paid to the ILWU. Region 32 Field Attorney Victor Sella-Villa investigated and Field Attorneys Amy Berbower and David Willhoite litigated the case.

**COMPLIANCE CORNER**

**5th Circuit Enforces Board Order Against Adams and Associates – Parties Settle**

Readers will recall that the Board issued its order in this case on July 29, 2016, and found that Adams and Associates (the Employer) violated Sections 8(a)(3) and (1) of the Act by discriminatorily refusing to hire five incumbent employees in order to avoid an obligation to bargain with Sacramento Job Corps Federation of Teachers, AFT Local 4986, American Federation of Teacher (the Union); and violated Sections 8(a)(5) and (1) by unilaterally imposing initial terms and conditions of employment on the unit employees and banning the employee Union president from the worksite. *Adams and Associates, Inc., 363 NLRB No. 193 (May 17, 2016).* The Board further found that MJLM and Adams were joint employers and were jointly and severally liable for the aforementioned violations. On September 15, 2017, the Circuit Court denied the Employer’s petition for review and granted the Board’s cross-petition for enforcement of the Board order. Following the Circuit Court’s enforcement, the Region issued a Compliance
Specification. Prior to a hearing, the parties entered into a non-Board settlement which included backpay for discriminatees.

The case was investigated and litigated by Region 20 Field Attorney Joseph Richardson. All compliance matters were handled by Compliance Officer Karen Thompson.

**On April 19, 2018, Regional Directors of the NLRB and members of the union- and management-sides of the labor bar discussed recent Board cases at the California Lawyers Association 35th Labor and Employment Annual Meeting held in San Francisco, California.**

*From left to right: Speakers Caren Sencer, Shareholder at Weinberg, Roger and Rosenfeld; Valerie Hardy-Mahoney, Regional Director of Region 32; Jill Coffman, Regional Director of Region 20; Thomas Lenz, Partner at Atkinson, Andelson, Loya, Ruud & Romo, and; Christy Kwon, Regional Attorney of Region 32, moderator.*

**Regions 20, 32, and Subregion 37 Celebrate Constitutionality Day**

On April 12, 2018, Regions 20, 32, and Subregion 37 celebrated the 81st anniversary of Constitutionality Day. April 12th marks the day in 1937 when the Supreme Court held the National Labor Relations Act (or the Wagner Act as it was known then) constitutional in the seminal case *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).

Regional staff members visited historic labor sites to mark the occasion.
Region 20 staff at the corner of 5th and Market Streets in downtown San Francisco, site of the 1948 Labor Day Parade.
Region 32 staff at the site of the 1946 General Strike in Oakland.
The NLRB is an independent federal agency that protects the rights of most employees to engage in concerted activity, union activity or to refrain from engaging in these activities. Additional information can be found on the San Francisco Regional page.