NLRB, Region 20 Roundup

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In This Issue

2009 WAS A BANNER YEAR FOR REGION 20'S INJUNCTION LITIGATION PROGRAM

San Francisco, CA – 2009 was quite a busy and successful year for Region 20's injunction litigation program. Since March 2009, Region 20 and Subregion 37 have petitioned U.S. District Courts for temporary injunctions in five unfair labor practice cases. The National Labor Relations Act, through Sections 10(j) and 10(l), authorizes District Courts to grant temporary injunctions pending the Board's final resolution of unfair labor practice proceedings. These provisions reflect Congressional recognition that, because of the length of time necessary to complete the Board's administrative proceedings, an employer or union may be able in certain instances, to accomplish its unlawful objective before being placed under any legal restraint, unless the NLRB can obtain interim relief through an injunction. Section 10(l) of the Act provides that injunctive relieve shall be petitioned for in cases alleging certain unlawful conduct by unions under Sections 8(b)(4), (7), and 8(e) of the Act, after the Regional Office has determined that a complaint should issue. Section 10(j) also provides that the Board may petition for injunctive relief in unfair labor practice cases arising under other Sections of the Act in which the Board deems such relief appropriate. In the Ninth Circuit, District Courts will grant injunctive relief when the NLRB petitioner has established that: (1) the Agency's General Counsel is likely to succeed in proving that the respondent committed the unfair labor practices as alleged; (2) irreparable injury will be suffered if injunctive relief is not obtained; (3) the balance of hardships on the respective parties supports granting an injunction; and (4) the public interest will be advanced by granting injunctive relief.

In March 2009, Regional Director Joseph P. Norelli petitioned the US District Court for the Eastern District of California for an injunction requiring Fremont-Rideout Medical Center and Hospital to recognize and bargain with the California Nurses Association (CNA) as the exclusive representative of approximately 450 registered nurses, and requiring the respondent to rescind certain unilateral changes. While bargaining for an initial contract, Fremont-Rideout withdrew recognition from CNA based upon an anti-union petition. (General Counsel Ronald Meisburg has given special consideration for Section 10(j) relief in initial bargaining situations, because he has noted "employees are highly susceptible to unfair labor practices intended to undermine support for their bargaining representative." See General Counsel Memorandum 06-05, available at www.nlrb.gov.) The Court granted the temporary injunction on April 9, 2009. Field Attorneys Kathleen C. Schneider and Cecily Vix represented Petitioner Norelli.

In another Section 10(j) case, Acting Regional Director Timothy Peck petitioned for injunctive relief from the Eastern District on July 1, 2009. Acting RD Peck was petitioning for a temporary injunction from the Court that would require the Sacramento Job Corps Center, which had taken over a federal contract to operate a U.S. Job Corps Center, to recognize and bargain

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

Non-Union Protected Concerted Activity

Q: Does the NLRA protect activity with other employees for mutual aid or protection, even if you don't currently have a union?

A: Yes. For instance, employees not represented by a union, who walked off a job to protest working in the winter without a heater, were held by the Supreme Court to have engaged in concerted activity that was protected by the NLRA.

with the union representing its employees, the Job Corps Federation of Teachers, American Federation of Teachers Local 4986. The Court granted the requested relief on July 7, 2010. Field Attorney Micah Berul represented Petitioner Peck. (The Board Order that subsequently issued is discussed in an article below.)

The Section 10(j) work has continued already into 2010. On January 7, 2010, RD Norelli, on behalf of SubRegion 37, Honolulu, petitioned the U.S. District Court, District of Hawaii, for an injunction requiring the Pacific Beach Hotel to recognize and bargain with ILWU, Local 142, as the representative of the hotel's employees, pending a final Board order in the case. (As described in a separate article below, the SubRegion successfully proved to an administrative law judge that the hotel has engaged in numerous violations of the Act.) Through his petition to the Court, RD Norelli seeks to require the hotel to recognize the union, resume contract negotiations, and rescind some of the unilateral changes, while the appeal is pending before the Board. Oral argument is scheduled for March 8, 2010. Petitioner Norelli is represented by the Officer in Charge of SubRegion 37, Thomas W. Cestare, and Field Attorneys Dale K. Yashiki and Trent K. Kakuda.

The Region also had a very successful year in Section 10(l) cases, achieving the petitioned-for relief in two cases. In May 2009, RD Norelli petitioned the Eastern District for an injunction requiring Teamsters, Local 43, to cease picketing a Ralphs Grocery store (a neutral employer) because the union's primary dispute was with Scully Distribution. A union is permitted to picket a primary employer with whom it has a labor dispute but runs afoul of Section 8(b)(4)(B) of the Act if it pickets a secondary or neutral employer with a proscribed object of enmeshing the neutral employer in a controversy not its own. Before the Court ruled on the Region's petition for an injunction, the union agreed to cease and desist from engaging in the conduct alleged to be unlawful. Field Attorney Cecily Vix represented Petitioner Norelli. Similarly, in September 2009, Acting Regional Director Timothy Peck petitioned for an injunction in the Eastern District that would prohibit the International Union of Elevator Constructors, Local 8, from refusing to allow its members to perform stand-by work at certain construction projects for the purpose of pressuring general contractors to cease doing business with a particular subcontractor, and for the purpose of assigning elevator floor installation work to Local 8 members. After Acting RD Peck filed the petition and, before the Court ruled, the union agreed to cease and desist from the activity that the Region had found to be unlawful. Field Attorney Matt Peterson represented Petitioner Peck in this matter.

Region 20's injunction litigation program is supervised by Regional Attorney Olivia Garcia and Deputy Regional Attorney Jill Coffman.

Administrative Law Judge Finds that Pacific Beach Hotel Committed Numerous Unfair Labor Practices

Honolulu, HI – On September 30, 2009, an administrative law judge found that HTH Corporation, Pacific Beach Corporation, and KOA Management, doing business as the Pacific Beach Hotel, constituted a single employer under the National Labor Relations Act, and committed multiple unfair labor practices to attempt to avoid having to recognize and bargain with International Longshore and Warehouse Union, Local 142. The story in this case began in 2002, when the Union initiated a drive to organize the hotel's approximately 565 employees. A first election was conducted on July 31, 2002, and the results were overturned by the Board because of the hotel's objectionable conduct. A second election was ordered and held on August 24, 2004, and the Board ruled that certain challenged ballots should be opened and counted, and that if the revised tally did not reveal a majority

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.

supported the union, a third election would be held in light of the hotel's additional objectionable conduct. When the challenged ballots were opened and counted, the revised tally of ballots showed that the union had won by one vote. The union and the hotel then began negotiating their first contract in November 2005 and met for 37 sessions until December 2006. The Judge found that during this time, the hotel engaged in an elaborate scheme to attempt to rid itself of the union by entering into an agreement with another entity to manage the hotel and bargain collectively with the Union, but cancelled its agreement with that entity when it informed the hotel of its intention to enter into a contract with the union. The judge also concluded that the three companies constituted a single employer. Under Board law, four factors are considered in determining whether multiple companies constitute a "single employer." Those factors examine whether there is: (1) common ownership; (2) centralized control of labor relations; (3) common management; and (4) functional interrelation of operations. The Judge found that as a single employer, the companies refused to bargain in good faith with the union; unlawfully withdrew recognition from the union; made numerous changes to employees' terms and conditions of employment without bargaining to a good faith impasse or agreement with the union; unlawfully discharged employees because of their support for the union; and interrogated and threatened employees concerning their union activities. As discussed above, RD Norelli has petitioned the U.S. District Court for the District of Hawaii to require the hotel to recognize the union, resume contract negotiations, and rescind some of the unilateral changes while the hotel's appeal is pending before the Board. Field Attorneys Dale K. Yashiki and Trent K. Kakuda were Counsel for the General Counsel in this case.

Administrative Law Judge Finds that A-1 Door Unlawfully Refused to Furnish Information

Sacramento, CA – On November 24, 2009, an administrative law judge ruled that A-1 Door and Building Solutions violated the NLRA by failing and refusing to provide the Millmen Union, Local 1618 relevant and necessary information. The judge also determined that the company unlawfully delayed providing the union with information. In advance of arbitration, to test the company's reasons for selecting a senior employee for layoff, the union requested personnel files and evaluations of the laid off employee and two others. A-1 refused to provide the personnel files of the two retained employees and the evaluations of all of the employees. At the arbitration hearing, which was held prior to the NLRB hearing, the arbitrator viewed the personnel files *in camera* and then determined that the union could review them. The employer then introduced as an exhibit in the arbitration the 2005-2008 evaluations of all of the employees but did not provide to the union the 2002-2005 evaluations. In the NLRB case, the judge determined that A-1 violated the Act by refusing to produce 2002-2005 evaluations and the personnel files in advance of the arbitration, and by delaying in producing the 2005-2008 evaluations. The judge concluded that the information the company refused to provide, or delayed in providing, was relevant and necessary for the union to fulfill its statutory duties as bargaining representative, and his recommend order to the Board requires the company to cease and desist from engaging in this unlawful conduct. Field Attorney Cecily Vix served as Counsel for the General Counsel in this case, which was investigated by Field Examiner Craig Wilson.

Board Adopts Administrative Law Judge's Finding that Sacramento Job Corps Unlawfully Refused to Recognize and Bargain with Union

Washington, D.C. – On October 8, 2009, the Board adopted an administrative law judge's finding that Horizons Youth Services LLC, *dba*

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.

Sacramento Job Corps, unlawfully refused to recognize and bargain with the union representing the employees of the Sacramento Job Corps Center. On Aug. 12, 2009, the administrative law judge found that Horizons Youth Services, which took over a contract to operate a U.S. Job Corps center, was a successor employer under the National Labor Relations Act, and was therefore required to recognize and bargain with Job Corps Federation of Teachers, American Federation of Teachers Local 4986. As established by the U.S. Supreme Court, a successorship under the Act is found when a majority of a company's employees, consisting of a substantial and representative complement in an appropriate bargaining unit, are former employees of the predecessor company, and if there is substantial continuity between the two enterprises. The union represented two units of employees at the center: a unit of resident advisers and a unit of instructors. Adopting the judge's findings, including his finding that Horizons was a joint employer with a second company, Insights Training Group, because the two companies co-determined terms and conditions of employment of a portion of the instructors unit, the Board ordered the employer to recognize the union and, upon request, to bargain with the union in good faith. The Board also adopted the judge's recommended remedy for the employer to distribute by email a copy of the NLRB Notice to Employees. As noted above, in July 2009, a United States District Court Judge granted Acting Regional Director Timothy Peck's petition for temporary injunctive relief in this case under Section 10(j) of the Act while the underlying Board case was pending. Field Attorney Micah Berul handled the litigation and investigation of this case.

Region 20 Issues Complaint Against SEIU, Local 87, Alleging Union Did Not Provide Sufficient Notice of Dues Arrearage to Employee Before Seeking to Enforce Union-Security Clause

San Francisco, CA – On February 10, 2010, an administrative law trial was held concerning the Region's complaint allegations against SEIU, Local 87. The Region's complaint, which issued on November 20, 2009, alleges that Local 87 unlawfully requested and caused Township Building Services not to schedule an employee for work because of dues arrearages without giving the employee adequate notice of his dues arrearages. Under the National Labor Relations Act, a union may, pursuant to a lawful union-security clause, require the payment of periodic dues and fees, as a condition of employment. A union, however, is held to a strict fiduciary duty when enforcing a union-security clause, and must provide an employee with notice of the precise amount of dues in arrears, the time period for which the dues are owed, its method of calculation, the deadline by which required payments must be made (a reasonable amount of time to pay must be provided), and notice that failure to pay would result in a cessation of employment. After thoroughly investigating an unfair labor practice charge filed by the employee charging party in this case, the Region determined that the union had not provided the legally required notice to the employee before seeking to enforce the union-security clause. Field Attorneys Jason Wong and Christy Kwon were Counsel for the General Counsel in this case, which was investigated by Field Attorney Matt Peterson.

German Motors (Now Doing Business as BMW of San Francisco) Compliance Update

San Francisco, CA – Full compliance has been achieved by the Agency in these unfair labor practice charges, which were filed against the company (then known as German Motors) in 1989. The Region ultimately collected over $4.5 million in backpay, trust fund contributions, and back dues pursuant to settlements reached between the company and the three unions

To learn more about the National Labor Relations Board and the National Labor Relations Act, please visit the Agency's website at:

http://www.nlrb.gov

To arrange for a presentation about the NLRB in the Bay Area and throughout Northern California, contact Region 20's Outreach Coordinator, Mark Berman, or Field Attorney Carmen Leon at: **415-356-5130**

or visit us online at the Internet address above and click on the speakers link.

For questions about *NLRB, Region 20 Roundup*, contact Newsletter Editor, Field Attorney Micah Berul at:

415-356-5169

involved, Automotive Machinists Lodge Local 1305, Teamsters Automotive Local 665, and the Auto, Marine and Specialty Painters, Local1176. The settlements were reached in 2007, just before the Region was scheduled to litigate the backpay specification. The Region insisted on a security agreement because the private settlements called for installments to be paid for more than 4 years. The employer thus executed a Personal Guaranty, backed by collateral (four pieces of real property). The company achieved full compliance with the last payment in August 2009, and approximately 300 employees receiving backpay. Several trust funds received payments as did the three unions for back dues and legal fees. The Region's persistence in obtaining this significant remedy over this extended period of time demonstrates that the NLRB will not rest until its remedies are effectuated. Field Attorneys Paula Katz and Christy Kwon, along with Compliance Officer Karen Thompson, together with the assistance of an NLRB administrative law judge, all were instrumental in obtaining the substantial relief in these cases.

Celebrate the Act's 75th Anniversary in L.A. on April 1, 2010

Los Angeles, CA – Join NLRB General Counsel Ronald Meisburg and Region 21 staff members in celebrating 75 years of effectuating the purposes and policies of the National Labor Relations Act. General Counsel Meisburg and Senior Board Agents will provide updates on the latest changes to law and procedure during this exciting time in the Board's history. Don't miss out on this special opportunity to meet the General Counsel in an up-close and informal setting. Region 21 Director James Small and Region 31 Director James McDermott will also be available to answer your questions and concerns. Coffee and other refreshments will be served. Make your reservation now, by contacting Assistant to the Regional Director Bruce Hill at 213-894-5210 or bruce.hill@nlrb.gov because space is limited.

Congratulations to Deputy Regional Attorney Robert J. Buffin on 40 Years of Public Service

San Francisco, CA – On February 9, 2010, Regional Director Joseph P. Norelli presented Deputy Regional Attorney Robert J. Buffin with an award for 40 years of public service with the federal government. Buffin (Bob), as he is called by his colleagues, began his career in public service with the Peace Corps, first as a volunteer in Venezuela from 1966-1968. Before starting law school in 1973 at the University of Wisconsin, Bob worked for the Peace Corps in Washington, D.C., as a Special Assistant for the East Asia Pacific Region, as well as in Denver, coordinating the Peace Corps' recruitment efforts in Colorado, Wyoming, Utah and New Mexico.

Bob came to the NLRB in 1975, initially as an extern in Region 30, Milwaukee, while he was earning his J.D. in Madison. Returning to his hometown of San Francisco, Buffin was hired as a Field Attorney in Region 20 in 1976. He was promoted to Supervisory Attorney in 1984, and was named Deputy Regional Attorney in 1993. Over his career, Bob has had substantial experience with every aspect of the Agency's work, and for many years supervised the Region's decision writing and injunction litigation programs, while also supervising his team of attorneys and examiners.

In addition to his outstanding legal reputation, Bob is known as the Region's "renaissance man." For a number of years Bob had a regular "gig" as a singer/guitarist in a local San Francisco venue; has been well-received as an actor in local stage productions; serves on the Board of Directors of a land trust; and is an award winning wine-maker.

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