



The Bridge

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

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Region 20 (415) 356-5130

Region 32 (510) 637-3300

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Yuba Skilled Nursing Center Pays Workers \$1,000,000 in Backpay

San Francisco, CA - The San Francisco Regional Office of the National Labor Relations Board (NLRB) received \$1,000,000 from the owners of the Yuba Skilled Nursing Center in Yuba City, California to compensate current and former employees for the loss of pay and benefits that occurred when the owners unlawfully refused to hire them in 2011.

The Service Employees International Union, United Healthcare Workers West (the Union) represented employees at the nursing center before it was purchased by Nasaky, Inc. (the Employer) in 2011. Under the National Labor Relations Act, new owners, who hire a majority of employees previously employed by the former owner, are obligated to recognize and bargain with the existing union as a successor employer. The Union alleged in charges filed with the NLRB that the new owners failed to hire the longtime employees in order to avoid that obligation.

The Region issued complaint and a hearing was held before Administrative Law Judge Gerald M. Etchingham, who found that the Employer unlawfully refused to hire employees in order to avoid its obligation to recognize and bargain with the Union. In September 2012, the Board ordered a comprehensive remedy for the unlawful conduct, requiring the nursing center to: offer jobs to employees of the former owner, restore the terms and conditions of employment that existed before the successor employer assumed control of the business, recognize and bargain with the Union, and pay backpay. Thereafter, the successor employer made offers of employment to these employees, many of whom are currently working at the nursing center, and recognized the Union as the employees' bargaining representative. However, there remained a dispute over the backpay amount.

The \$1,000,000 settlement concludes an extensive investigation into the Employer's finances by NLRB Region 20 agents, with assistance from its Division of Legal Counsel in Washington, D.C., including the issuance of dozens of investigative subpoenas, depositions of the Employer's accountant and operating officers, and proceedings in a U.S. District Court. The original case was investigated by Region 20 Field Attorney David Reeves, and tried before an Administrative Law Judge by Region 20 Field Attorneys David Reeves and Joseph Richardson; the compliance investigation was completed by Region 20 Field Attorney Richardson and Region 20 Compliance Officer Karen Thompson.

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

Board Affirms ALJ Decision that Union is Entitled to Information

Washington, D.C. -- On February 28, 2014, the Board issued its Decision and Order holding that Respondent Endo Painting Service, Inc. violated Section 8(a)(5) and (1) of the National Labor Relations Act when it refused to provide information requested by the International Union of Painters and Allied Trades, Painters Local Union 1791 on April 24, 2012. The Board also affirmed the ALJ's finding that Respondent violated 8(a)(1) when it failed to inform the Union for three months that it did not have an organizational chart, which was one of the items requested by the Union.

Agreeing with Administrative Law Judge Gerald A. Wacknov, the Board rejected the Respondent's argument that the Union was not entitled to the information it requested because it filed a class grievance, which it argued was precluded under the Labor Agreement between the parties. The Board found it unnecessary to address whether the Labor Agreement in fact provided for class action grievances because it found that the Union was entitled to the information, citing well-settled Board law, regardless of whether class action grievances were allowed under the agreement. This case was investigated by Subregion 37 Field Attorney Scott Hovey, Jr. and tried by Subregion 37 Field Attorney Dale Yashiki.

Board Upholds ALJ Finding that Employer Hat Policy Was Overbroad

Washington, D.C. – On February 14, 2014, the Board issued a decision and order upholding Administrative Law Judge William Nelson Cates' finding that the Employer, World Color, a subsidiary of Quad Graphics, Inc., violated Section 8(a)(1) of the Act by enforcing a hat policy that prohibited employees from wearing any hats other than company caps. The Board found that the Employer's policy on its face prohibited employees from engaging in the protected activity of wearing caps bearing union insignia. The Board affirmed the judge's finding that the prohibition was not part of the Employer's company uniform policy and that the employer's asserted special circumstances for the prohibition lacked merit. The Board further concluded that it would have reached the same result even if it had accepted the employer's argument that the hat policy was part of the Employer's uniform policy, because under the well-established special circumstances standard, "an employer cannot avoid the 'special circumstances' test simply by requiring its employees to wear uniforms or other designated clothing, thereby precluding the wearing of clothing bearing union insignia." *Stabilus, Inc.*, 355 NLRB 836 (2010). The Employer has sought petition for review of the Board's decision and the case is pending before the Court of Appeals for the District of Columbia Circuit. The unfair labor practice charges were investigated by Region 32 Field Examiner Harrison Kuntz and Region 32 Field Attorney Yaromil Ralph tried the case.

Northern California Trucking Company Settles Labor Charges Agreeing to Pay Drivers \$260,000 in Backpay

San Francisco, CA - Nearly two years after Region 20 found that the Commodity Trucking Acquisition, LLC d/b/a Dispatch Transportation (the Employer) deliberately refused to recruit or hire the predecessor's unionized drivers in order to avoid its bargaining obligation with the Teamsters Local 137 (the Union), the Employer entered into a bilateral Board settlement agreement requiring it to recall the predecessor's drivers, with backpay, and bargain with the Union.

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.

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/>

For years, Valley Aggregate Transport, Inc., the predecessor employer, operated an aggregate hauling facility out of Yuba City, California. Shortly after the Union was certified as the bargaining representative, the predecessor announced that it would cease operating the facility. When the Employer assumed control and began operating the predecessor's facility, the Employer made it clear to the predecessor's drivers that it was not interested in operating a unionized facility and hired only a few of the predecessor's drivers. Thereafter, the Employer refused to recognize and bargain with the Union. After an investigation of a charge filed by the Union, the Region concluded that similar to *Love's Barbecue*, 245 NLRB 78 (1979), the Employer would have hired many more of the predecessor's drivers but for its desire to avoid a bargaining obligation, and that its subsequent refusal to recognize and bargain with the Union was therefore unlawful.

After the Region issued a complaint, the Employer and the Union entered into a Board settlement. By the terms of that settlement, the Employer will pay a total of \$262,000.00 in backpay wages, to be distributed to the discriminatees by the Regional office; restore the predecessor's policy of recalling and dispatching drivers by seniority; and extend the Union's certification of representation for another year. In addition to the settlement, the Employer and the Union recently signed a three-year collective-bargaining agreement. Region 20 Field Attorney Elvira Pereda and Region 20 Field Examiner Sam Hoffman investigated the case. Region 20 Field Attorneys Elvira Pereda and Richard McPalmer settled the matter.

ALJ Finds that Waikiki Hotel Must Reinstate and Pay Backpay to Housekeeper Terminated for Engaging in Protected Concerted Activity

Honolulu, HI -- On January 23, 2014, ALJ William L. Schmidt issued his decision finding that Modern Management Services, LLC d/b/a The Modern Honolulu committed various violations of Sections 8(a)(1) and (5) of the National Labor Relations Act, as amended. The case revolved entirely around the actions of the Hotel's housekeeping director towards workers in her department represented by UNITE HERE! Local 5. The ALJ found that the Hotel committed multiple violations of Section 8(a)(1) when the director interrogated employees, engaged in surveillance and gave employees the impression that their protected activities were under surveillance, and conducted an investigatory interview after ignoring an employee's request for a Weingarten representative.

In addition, the ALJ found that the Hotel unlawfully terminated a turndown room attendant for engaging in protected concerted activity during a department meeting in December 2011. The ALJ concluded that the employee was engaged in protected concerted activity when she attempted to ask the director about gossiping after the director had opened the meeting for employee questions. Gossiping was a type of conduct subject to disciplinary action under the Hotel's rules and also an issue raised by the director on several occasions prior to the department meeting. The Hotel claimed that it terminated the employee for acting insubordinately towards the director during the meeting, but the ALJ disagreed and found that the employee did nothing to lose the Act's protection. Accordingly, the ALJ concluded that the Hotel violated Section 8(a)(1) when it terminated the employee and ordered it to offer her reinstatement and to otherwise make her whole. A few months after the employee was terminated, Local 5 designated her as its agent to service bargaining-unit employees at the Hotel. The Hotel immediately barred the employee from its premises, and the ALJ concluded that this violated Section 8(a)(5) and (1).

Following issuance of the ALJ's decision, the Hotel filed exceptions to the ALJ's

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.

decision with the Board. Stay tuned! Subregion 37 Field Attorneys Trent Kakuda and Katrina Woodcock investigated and litigated the case.

[Administrative Law Judge Finds Employer's Mandatory Arbitration Policy Violates Board's Holding in *D.R. Horton*](#)

Oakland, California -- On October 23, 2013, Administrative Law Judge Eleanor Laws issued her decision finding that FAA Concord H, Inc. d/b/a Concord Honda violated Section 8(a)(1) of the National Labor Relations Act by maintaining and enforcing a mandatory arbitration agreement requiring its employees to resolve their employment-related disputes exclusively through arbitration proceedings, and by enforcing that agreement to preclude resolution of such disputes through class action. The Judge further found that Concord Honda violated Section 8(a)(5) of the Act during first contract bargaining with Automotive Machinists Local Lodge No. 1173 by unilaterally implementing a June 2011 bonus to employees; engaging in direct dealing by meeting with employees about alternative work week elections; unilaterally holding alternative work week elections; and unilaterally changing employees' work schedules based on these elections.

Concord Honda and the Union have been engaged in bargaining an initial collective-bargaining agreement for a unit of technicians since May 2010. During the course of bargaining, the Union discovered evidence leading it to conclude that Concord Honda had not properly held an employee election as required by California state law before it implemented an alternative work week schedule several years ago consisting of four days a week, ten hours a day. Based on this belief, several unit employees initiated claims for overtime with the California Department of Labor Standards Enforcement due to Concord Honda's apparent failure to abide by the state regulations. In response, Concord Honda sought to enforce its mandatory arbitration agreement to preclude the employees from bringing a class action lawsuit. Relying primarily upon the Board's decision in *D.R. Horton*, 357 NLRB No. 184 (2012), the Judge determined that the Employer violated Section 8(a)(1) of the Act by impinging on employees' rights to engage in collective legal activity. The Judge further concluded that the Employer's attempt to mitigate its damages from the potential class action overtime lawsuit by meeting with unit employees to discuss holding new alternative workweek elections and by subsequently holding two separate sets of such elections further violated Section 8(a)(5) of the Act because these actions were done unilaterally without notice or bargaining with the Union, and constituted unlawful direct dealing with employees. Both the Employer and the General Counsel have filed Exceptions to the Judge's Decision, as well as Answering Briefs to each of those Exceptions, which are currently pending before the Board. Region 32 Field Attorney Judy Chang investigated and tried these cases.

[Board Upholds ALJ finding that Anderson Lumber Unlawfully Withdrew Recognition](#)

Washington, D.C. -- On June 19, 2013, the Board upheld the ALJ's findings that Pacific Coast Supply, LLC d/b/a Anderson Lumber Company (the Employer) unlawfully withdrew recognition from Chauffeurs, Teamsters, and Helpers Local 150, International Brotherhood of Teamsters (the Union). After more than forty years of recognizing and bargaining with the Union, the Employer withdrew recognition based on eight separate written statements submitted by eight unit employees. The issue before the Board was whether pursuant to *Levitz Furniture Co. of the Pacific*, 333 NLRB 717, 725 (2001), each one of those eight written statements, on its face, constituted objective evidence that the employee was repudiating the Union as the collective-bargaining representative. In agreement

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.

with the ALJ, the Board found that four of the eight statements relied upon by the Employer did not reflect that those employees no longer wanted to be represented by the Union for purposes of collective bargaining. Thus, the withdrawal of recognition was unlawful as it was not based upon proof that the Union had actually lost the support of a majority of unit employees. The case was investigated by Region 20 Field Examiner Norma Pizano and tried by Region 20 Field Attorney Elvira Pereda.

New Management Team in Region 32



Left to right: Regional Attorney Valerie Hardy-Mahoney, Regional Director George Velastegui, and Assistant Regional Director Cynthia Rence.

Oakland, CA -- Region 32 has recently undergone a complete change in its upper management team and now welcomes a new Regional Director, Assistant Regional Director, and Regional Attorney.

In December 2013, the Board and the General Counsel named George Velastegui as the new Regional Director, replacing William A. Baudler, who retired about two and a half months earlier. A native of Quito, Ecuador, George immigrated to the United States in 1961. He received his law degree from UC Davis in 1982 and joined Region 32 as a staff attorney in 1983, where he has now worked for over 30 years. During his stint as a trial attorney, George established himself as a skilled trial attorney by litigating many of the Region's most difficult and high profile trials, including Kaiser Aluminum & Chemical Corporation, in which the Region prevailed and the New York Times reported as having the largest backpay award in NLRB history. He was promoted to Supervisory Attorney in 2006 and to Regional Attorney in 2011, before assuming his current post as Regional Director. When not recovering from some sports injury, George enjoys playing basketball, running, and hiking. Most of the time, however, he enjoys shuttling his kids to and from practice, games, and other important social and school events.

In March 2014, Valerie Hardy-Mahoney was promoted to the position of Regional Attorney in

To arrange for a presentation about the NLRB in the Bay Area and throughout Northern California, 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, Field Attorney Carmen León at: 415-356-5130.

Region 32. She was born in New Orleans, Louisiana and moved to San Francisco in 1955. She attended the University of Notre Dame, South Bend, Indiana, as an undergraduate and earned her law degree from UC Berkeley School of Law in 1981. She started her career with the Agency as a summer law clerk in Region 20 and, in 1982, was hired as a Field Attorney in Region 32. In 2008, she was appointed to the position of Supervisory Attorney and, in 2010, she was appointed to the position of Deputy Regional Attorney. Some of Valerie's significant cases include American Licorice Company, Champion Home Builders, Teamsters Local 287 (Granite Rock), and Pacific Crane Maintenance Company. Valerie is looking forward to serving the public as Regional Attorney and sees the position as one of the best jobs in the Agency. She lives in Danville with her husband Robert and mother-in-law Dorothy. She is the proud mother of adult children Adam and Laura and, in her spare time, she enjoys traveling, cooking, working in her flower gardens, and watching her two cats.

In April 2014, Cynthia Rence was selected to be the new Assistant to the Regional Director, replacing retiring ARD Shelley Coppock. Cynthia received a Ph.D. in economics from UC Berkeley in 1978. She taught labor economics at Michigan State University prior to joining Region 32 in 1984 as a field examiner, where she has worked for thirty years. She was promoted to Supervisory Field Examiner in 2011. When not working, Cynthia enjoys knitting, cooking, photography, and traveling.

Congratulations to George, Val, and Cynthia!



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 20
901 MARKET ST – SUITE 400, SAN FRANCISCO CA 94103-1735