



NATIONAL LABOR RELATIONS BOARD

Newsletter for Regions 20, 32, and Subregion 37

R20 - San Francisco

R32 - Oakland

SR37 - Honolulu



September 2018

ALJ Finds Employer Unlawfully Withdrew Recognition

Honolulu, HI – On April 27, 2018, Administrative Law Judge (ALJ) Dickie Montemayor issued his decision in *Kauai Veterans Express Co.*, finding that Kauai Veterans Express Co. (the Employer) violated Section 8(a)(1) and (5) of the Act by unlawfully withdrawing recognition, failing to provide information that was relevant and necessary to bargaining, unlawfully polling employees and unilaterally ceasing to make dues deductions and trust fund payments for six employees without notifying Operating Engineers Local Union No. 3 (the Union) and/or giving the Union an opportunity to bargain. In determining that the withdrawal was unlawful, the ALJ found that the Employer, a trucking and hauling company, failed to rebut the presumption that the Union enjoyed majority support, given the document relied on by the Employer indicated a desire to cease membership rather than a desire not to be represented by the Union. Furthermore, relying on established Board law, the ALJ found that the withdrawal of recognition was tainted because the Employer provided more than ministerial support to employees seeking to resign from their union membership.

This case was investigated and litigated by Subregion 37 Field Attorney Meredith A. Burns. The case is now pending before the Board.

The Board Affirms and Reverses ALJ's Decision that Employee Suspension and Termination Not Violative of the Act

Washington, D.C. – On July 17, 2018, the Board issued its decision in *Windsor Redding Care Center, LLC*, (the Employer) five years after the original ALJD issued in December 2012. The Board reversed the ALJ's decision that one employee's suspension and termination were lawful. In so finding, the Board disagreed that the Employer, a long-term health care and rehabilitation services facility, had met its burden under a Wright Line analysis, and pointed out that in such an analysis, the "central question here is whether the Respondent established that it would have suspended and terminated [the employee's] employment absent her protected union activity, not merely that it could have done so." The Board highlighted the evidence of disparate treatment of the discriminatee and ultimately found that the employee's suspension and

Calendar of Events

- **November 1, 2018**
[BASF Careers in Law](#)
- **November 7-10, 2018**
[ABA 12th Annual Labor and Employment Law Conference](#)

Speaker Requests

The Regions are available to provide speakers for your organization.

To inquire about a speaker, please contact
Kathleen Schneider at
415-356-5130 or
Christy Kwon at
510-637-3300

Contact Us



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termination were unlawful. The Board also found that the Employer failed to bargain over the suspension of a merit raise program in violation of Section 8(a)(5) of the Act.

This case was litigated by former Region 20 Field Attorneys Sarah McBride (now of Region 19) and Elvira Pereda (now of Region 21).

The Board Affirms the ALJD in Holiday Inn Express Finding Employer Unlawfully Refused to Bargain and Assisted in Decert

Washington, D.C. – On June 25, 2018, the Board issued its decision in *Kalthia Group Hotels, Inc. and Manas Hospitality LLC D/B/A Holiday Inn Express Sacramento* (the Employer) ([20-CA-176428](#)), in which it affirmed the ALJD finding that the Employer 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 Employer was already subject to an injunction issued by the U.S. District Court in January 2017.

Region 20 Field Examiner Norma Pizano investigated the matter and Field Attorneys Yaromil Ralph and Joseph Richardson litigated the case. The case is now pending enforcement before the U.S. Court of Appeals for the Ninth Circuit.

ALJ finds Woodbridge Winery Employee’s “Cellar Lives Matter” Slogan Protected

Oakland, CA – On August 10, 2018, Administrative Law Judge Ariel L. Sotolongo (the ALJ) issued his decision in *Constellation Brands, U.S. Operations, Inc. D/B/A Woodbridge Winery*, ([32-CA-186238 & 186265](#)) finding that Woodbridge Winery (the Employer) violated Section 8(a)(1) of the Act by directing an employee not to wear a “Cellar Lives Matter” slogan to bring attention to then-current bargaining conditions. The primary issue was whether the slogan was so offensive that it lost the protection of the Act. The ALJ found that although the slogan was derivative of the arguably controversial “Black Lives Matter,” slogan, the ALJ rejected the argument that “Cellar Lives Matter” was inherently offensive and pointed out that “rights protected by Section 7, which have withstood the test of time, should not be judged pursuant to the whims of passing political correctness tests.” The ALJ also found a rule concerning bonuses issued to only non-union employees unlawful.

Region 32 Field Examiner Helen Yoon investigated, and Region 32 Field Attorney Lelia M. Gomez and Former Region 32 Supervisory Attorney Kenneth Ko, litigated the case.

Board Finds Union Entitled to Witness Names in Harassment Investigation

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Practical Tips

Law student interested in interning at one of our regional offices? Send resume and cover letter to:

kathleen.schneider@nlrb.gov in San Francisco

christy.kwon@nlrb.gov in Oakland

dale.yashiki@nlrb.gov in Honolulu

Please note, we generally consider students who have completed their 2nd year of law school.

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

Washington, D.C. – On July 31, 2018, the Board issued its decision in *American Medical Response West*, ([32-CA-147259](#) and [32-CA-149437](#)) finding that American Medical Response West (the Employer) violated Section 8(a)(5) by refusing to provide emails and witness names involved in the Employer’s investigation of harassment which lead to the termination of an employee. The Employer only provided witness statements that redacted the witness names. In finding United Emergency Medical Service Workers, AFSCME Local 4911 (the Union), the employees’ bargaining representative, was entitled to the witness names, the Board undertook the evaluation of the Employer’s “confidentiality claims” even though the Employer failed to take exceptions on a confidentiality defense. In doing so, the Board based its decision on the *Detroit Edison*, 440 U.S. 301 (1979), balancing test and ultimately found that the witness names were necessary and relevant to the Union’s ability to decide whether the termination grievance had merit, and that the Employer failed to meet its burden that there was a reasonable expectation the disclosure of names could lead to harassment of witness employees.

Former Region 32 attorney Emily Erdman and Region 32 Attorney Noah Garber litigated the case.

ALJ Concludes Kaiser’s Email Rule Violative of the Act

Oakland, CA – On August 24, 2018, Administrative Law Judge Lisa D. Thompson (the ALJ) issued the ALJD in *Kaiser Foundation Health Plan, Inc.*, ([32-CA-169979](#)) and found that a Kaiser Foundation Health Plan, Inc. (the Employer) rule restricting employees’ personal email use to usage that is “incidental [and] limited in frequency and scope” violated Board law under Purple Communications, 361 NLRB 1050 (2014), because the Employer failed to show “special circumstances” for limiting employees’ personal usage of email in this manner. The Employer argued that chain emails and other mass emails would disrupt their system but the ALJ rejected this argument because similar limitations were not placed on business emails that also are sometimes sent in mass. The ALJ also rejected the argument that the rule was about “personal use” rather than “Section 7 related use” by resolving ambiguities of the rule against the drafter.

Region 32 Field Examiner Alexander M. Hajduk investigated and Region 32 Field Attorney Judith Chang litigated the case.



COMPLIANCE CORNER

Last month, Region 20 closed GHC of San Fran, 180 LLC d/b/a Kindred Transitional Care and Rehabilitation, 20-CA-207863, in compliance following a bilateral settlement agreement between the Employer and Charging Party, Service Employees International Union, Local 2015. The settlement was the result of an investigation of 8(a)(1) and (3) allegations against the Employer, a successor, and its failure to hire certain employees. Ultimately, the settlement included a standard Notice posting and backpay to the alleged discriminatees.

Region 20 Field Attorney David Reeves investigated, Field Attorney Richard McPalmer handled the settlement, and Compliance Officer Karen Thompson closed out the case in compliance.

Region 20 Participates in the Mexican Consulate's Annual Labor Rights Week

Beginning on August 27, through September 4, 2018, San Francisco Regional Office staff participated in the San Francisco Mexican Consulate's Annual Labor Rights Week, and this year's theme was "All Workers Have Rights." Like every year, the event focused on educating the public served by the Mexican consulate, its partners, the Salvadoran and Guatemalan Consulates, and the public in general about labor rights and services provided by government agencies and non-profit organizations. This year, Region 20 staff engaged in informational tabling and public service announcements at the San Francisco, Mexican, Salvadoran, and Guatemalan consulates, and the Marcos Gutierrez radio show on KIQI 1010 AM.

Labor Law Class - A Wonderful Resource

Professor Ron Brown and his Labor Law class at the William S. Richardson School of Law at the University of Hawai'i at Manoa serve as rich resources for the Subregion 37 Office in Honolulu. Of the five attorneys who man the office, four are proud alumni of his labor law instruction and previously served as externs at the office. Professor Brown routinely invites Subregion 37 attorneys to address his classes to inform students about the National Labor Relations Act and its purpose. This outreach activity has spiked the interest of many students who have subsequently sought externship opportunities with the Honolulu office, which has proven beneficial for both students and Subregion 37.



Left to right: Subregion 37 Officer in Charge Dale Yashiki, Field Attorneys Jeff Beerman and Trent Kakuda, Professor Ron Brown, Field Attorneys Scott Hovey and Meredith Burns.

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](#).

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