



Special points of interest

- ◆ School Bus Cases
- ◆ Icahn School of Medicine at Mt. Sinai
- ◆ JFK Airport Case

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NLRB CONNECTIONS

Region 29 Welcomes Teresa Poor as the New Assistant Regional Director

On January 27, 2014, John Walsh, the Assistant Regional Director in Region 29 for 18 years transferred to the Board's Regional office in Newark, New Jersey (Region 22). Teresa Poor, a Supervisory Examiner in Manhattan (Region 2) has been promoted to the position vacated by Mr. Walsh. Teresa will join the staff of Region 29 on April 7, 2014.

Teresa is a native of Washington State. She received her undergraduate degree from Evergreen State College and her master's degree from Rutgers University. While pursuing her undergraduate degree she worked with the school's Labor Center. Teresa moved to New York in 1996. She began her career with the Agency as a Co Op Field Examiner in 1999 in Region 2. She converted to Field Examiner and subsequently was promoted to the positions of Compliance Officer and Supervisory Examiner.

Before Teresa began her career with the Agency she worked extensively in the area of labor and worker's rights for a variety of unions and research organizations. She served as the Public Action Assistant Director for the United Farm

Workers working on the campaign to get the first union contract for farm workers in Washington State. Teresa also worked as a Research Associate for the Center to Protect Workers Rights, a not-for-profit research arm of the Building Trades of the AFL-CIO. Teresa worked as a "Jazz representative" for Local 802, American Federation of Musicians.

Teresa's interest and commitment to labor and worker's rights extends beyond her career with the Agency. She teaches undergraduate and graduate students at Rutgers University in such courses as Labor History 1 and 2, Working Women in American Society, Perspectives on Labor Studies, and Labor and Women's: A Global Perspective.

Teresa resides in Fort Greene. The staff looks forward to working with Teresa in her new position ♦



Representation Roundup

Icahn School of Medicine at Mt. Sinai (Case No. 29-RC-112517)

A petition was filed by the Committee of Interns and Residents, Service Employees International Union, Local 1957 seeking to represent a unit of approximately 140 interns, residents, chief residents and fellows, collectively

referred to as "house staff," who perform work at Elmhurst Hospital. During a 5-day hearing Petitioner argued that Boston Medical Center Corp., 330 NLRB 152 (1999) controlled the situation and that the unit at issue were "employees" under the Act. Icahn contended that the house staff at Elmhurst differ from the house staff in Boston

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Unfair Labor Practice Litigation

REGION GAINS SUCCESSFUL OUTCOME IN SCHOOL BUS CASES

In *All American School Bus Corp., 29-CA-100827, et al.*, Region 29 attorneys Annie Hsu and Erin Schaefer litigated a series of cases involving the New York City school bus industry. The complaint in these cases alleged that a group of 28 school bus companies – which have contracts with the City of New York to provide transportation to public school children – prematurely declared impasse during negotiations for a successor contract with Local 1181-1061, Amalgamated Transit Union, AFL-CIO (the Union). The Union represents the majority of drivers and bus escorts employed by the Respondent companies. The negotiations at issue in these cases took place after a month-long strike by Local 1181. The complaint also alleged that the school bus companies unlawfully implemented their last and final offer, which resulted in steep wage cuts, elimination of wage accrual payments and other significant reductions in the wages and benefits of the approximately 8800 affected employees.

The investigation of the impasse allegations was accomplished quickly and the trial took place in July 2013. Following the close of the administrative hearing, the Region obtained injunctive relief pursuant to Section 10(j) of the Act in the Eastern District of New York. United States District

Court Judge Kiyo Matsumoto ordered the restoration of employees' terms and conditions of employment, and also ordered the parties back to the bargaining table. Shortly thereafter, in September 2013, Administrative Law Judge Raymond Green issued a Decision in which he con-

cluded that the Respondent bus companies violated the Act as alleged in the complaint by prematurely declaring impasse and implementing their final offer. All 28 of the bus company Respondents filed Exceptions to Judge Green's Decision with the Board, however, most of those bus companies have since withdrawn their Exceptions and agreed to remedy the violations. Thus far, the Region has collected several million dollars in backpay, and is in the process of distributing these amounts to the affected employees •



Region's Outreach Program

The Region's outreach program is designed to educate the general public about the Act. In connection with this program, the Region has sent speakers to employer conferences, worker advocacy groups and other organizations to inform them about their rights and obligations under the Act. Over the last four years, the Region has placed particular emphasis upon educating young people about the agency and its mission. To accomplish this, it has sent speakers to several high schools and colleges to teach students about Act, its history, and its relevance to the day to day situations students may encounter as they enter the work world. To

bring these situations to life, the Region has sometimes sent teams of agents to enact skits, some of them featuring the students as actors, involving union and concerted activity. The Region intends to continue working with high schools and colleges during the coming months. If your organization is interested in an outreach presentation, you should contact the Region's outreach director, Kevin Kitchen (Kevin.Kitchen@nlrb.gov, Telephone No. (718) 330-7724). If you wish future newsletters to address an issue not discussed here, you may bring it to our attention •

Representation Roundup Continued

Medical, and are more akin to graduate students. The Regional Director issued a Decision and Direction of Election in which he rejected the Employer's argument that because Icahn School of Medicine at Mount Sinai was the employer, this case was distinguishable from Boston Medical, in which the house staff at issue were employed directly by a hospital, not a graduate program. The Decision found this to be a "distinction without a difference." Furthermore, the Regional Director rejected the Employer's contention that residency programs have become more "educational" since Boston Medical was decided. The Regional Director directed an election to be conducted. An election is scheduled for late March 2014.

Airway Cleaners (Case No. 29-RC-099871)

A petition was filed by United Construction Trades and Industrial Employees Union, Local 621 seeking to represent cleaners, maintenance

employees and lead employees employed by Airway Cleaners, the Employer, and working at Terminal 8 at JFK Airport, where the Employer had recently begun operations after having contracts to clean other Terminals at JFK. The Employer argued that the petition was barred by a CBA that was in effect between the Employer and Local 660, United Workers of America, which covered all employees working in all of the terminals at JFK Airport. Local 660 and Service Employees International Union, Local 32BJ, intervened in the petition. A two day hearing was held, and during the hearing all parties stipulated to the Board's jurisdiction. On June 21, 2013, a Decision and Direction of Election issued finding that the two new groups of employees at Terminal 8 are not "accretions" to the pre-existing unit represented by Local 660 but, rather, separate appropriate units entitled to make their own choice regarding union representation. The Regional Director directed that elections (commonly

referred to as a "DDE") be conducted among the two following separate units of employees working at Terminal 8, 1) the Building cleaning (janitorial) unit and 2) the aircraft cleaning unit.

However, on July 5, 2013, after the DDE issued, the Employer filed a Motion for Reconsideration, asserting for the first time that the Employer was a common carrier subject to the Railway Labor Act, rather than an employer subject to the NLRA. Since a question concerning jurisdiction can be raised at any time, a hearing, limited to the question of jurisdiction was held before a hearing officer on August 6 and 7, 2013, in order to develop a record on the question of jurisdiction. The Board has referred the matter to the National Mediation Board (NMB) so that the NMB can determine if it has jurisdiction over the Employer as a common carrier under the RLA. A decision is pending. Elections were held among the units and ballots were impounded pending appeal of the DDE •

The Agency Goes Paperless

The NLRB's new electronic case filing system, called NxGen, has helped eliminate many antiquated systems and improved quality and efficiency of casehandling by providing uniform templates throughout the Agency. In connection with NxGen, the Agency has implemented an "e-filing" system that enables parties to file documents electronically through the Agency's website. Both new systems have reduced waste and expiated casehandling. We strongly encourage all parties to file all documents with Region 29, ALJ and the Board, through the e-filing system •



Asian-Pacific American Heritage Month

On May 21, 2013, Region 29 held a program in honor of Asian-Pacific American Heritage Month. The purpose of the program was to educate the agency about the Sikh religion and issues faced by Sikh Americans in the post-9/11 climate. The program began with Anisha Singh, legal fellow, explaining her own experiences as a Sikh American in the United States. Anisha then



introduced speakers Manmeet Singh from UNITED SIKHS and Sindhura Kodali from the Groundswell Movement. After the speakers, the program continued with a screening of the award-winning documentary, *Divided We Fall*, while everyone enjoyed Indian snacks.

Manmeet Singh, Attorney and International Civil and Human Rights Advocate for UNITED SIKHS, set the stage and spoke to us about what Sikhism was. He focused on the founding of the religion, beliefs held by its followers, and the importance of the turban. He then spoke on the post-9/11 climate for Sikhs in the United States along with some of his advocacy work on issues faced by Sikh Americans.

UNITED SIKHS is an organization representing Sikh victims of employment discrimination, hate crimes, bullying, and more. The organization also works towards policy change and justice for Sikh Americans in this country and around the world. During his time with UNITED SIKHS, Manmeet has filed civil rights complaints with the Department of Justice, Equal Employment Opportunity Commission, Department of Homeland Security, and Transportation Security Administration. He also put together the 2012-2013 Global Sikh Civil and Human Rights Report, which is the only report documenting Sikh issues around the world.

Following Manmeet, Sindhura Kodali spoke to us on her volunteer work with the Writer and Producer of the *Divided We Fall* film, Valarie Kaur, and engaged thought-provoking dialogue regarding issues which would be raised throughout the screening. She asked the agency to think of what it

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African American History Month Program 2014

On February 25, 2014, Region 29 came together to commemorate African-American History Month. The National theme selected this year by the Association for the Study of African Life and Culture is “Civil Rights in America.” The program was opened by Supervisory Attorney Kathy Drew King who read the Presidential Proclamation issued on January 31, 2014, in which the President proclaimed February 2014 as National African American History Month. In his proclamation, the President asked that we as American remember that “while many people came to our shores to pursue their own measure of freedom, hundreds of thousands arrived in chains.” The President also reminded us that through centuries of struggle African Americans have claimed rights long denied and the during National African American History Month, we should honor men and women at the heart of this journey. We were fortunate to learn the story of one such person who was at the heart this journey from our own Field Attorney Aggie Kapelman.



Kathy Drew King, James Paulsen, Marcia Adams, Kevin Kitchen, Wendy Scribner, Cynthia Jones, Ellen Farben and Aggie Kapelman (front row)

Ms. Kapelman provided us with the riveting talk about the “Scottsboro Boys” case—which is widely regarded as one of the cases that started the civil rights movement in this country—and her father’s involvement as a young attorney in handling a part of this case.

On March 25, 1931, nine African-American teenagers, ranging in age from 13 to 19, were pulled off a freight train heading south from Chattanooga, Tennessee. They were accused of raping two white teenage girls who had also been on the train. The nine teens were brought to the

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Asian-Pacific American Heritage Month

means to be an American, what it meant before 9/11, and who determines the development of American history.

Sindhura built a mentoring program for youth who had recently immigrated from South Asia and met the writer and producer of the film, Valarie Kaur, in 2006. In 2011, Sindhura began working with the Groundswell Movement, an organization started by Valarie Kaur. Sindhura currently helps provide research and outreach support for Valarie as she continues to document and share stories about hate crimes against Sikh Americans around the country.

The film itself grasped at the emotions of its viewers. *Divided We Fall* is a documentary which was filmed in the days after September 11, 2001. Valarie Kaur decided to take her video camera and travel the United States to follow hate crimes against the Sikh American community. Her goal was to document untold stories of Americans who became victims of 9/11 backlash. Her journey turned into an award-winning documentary film which has inspired a movement and began the much needed dialogue about race and religion across America. It has filmed in over 200 cities in the U.S. and around the world and has received standing ovations throughout. Among others, the film has won the Best International Documentary award at the 2007 ReelWorld Film Festival, Best Documentary by the New Jersey Independent South Asian Cine Fest in 2007, and got an Official Commendation from the Mayor in the City of Clovis, California.

In addition to the speakers and the film, Indian snacks such as vegetarian samosas, chole, and chicken tikka were provided by Taste Curritos. The owner is a Sikh American who opened the restaurant less than two years ago to promote the flavors and culture of Punjab, where Sikhism was founded. Their support for the event was visible through their delicious food.

Overall, the event was eye-opening for everyone. The Sikh religion and culture was brought to light while also bringing awareness to the struggles faced by Sikh Americans. educational programs such as this•

African American History Month Program 2014

courthouse in Scottsboro, Alabama near where the train had been stopped. Although there was no physical evidence of rape, with incompetent attorneys who had no time to investigate the case or confer with their clients, and the absence of African-American jurors, eight of the nine defendants were convicted and sentenced to death within two weeks of their arrest. The death sentences were upheld even after one of the two accusers later recanted. During the early 1930's, the case was front page news. Marches protesting the prejudice and racial hatred exhibited toward the teenage defendants were held throughout the country, as well as Europe. After the initial convictions, new attorneys represented the Scottsboro defendants, one of whom was Ms. Kapelman's father, a young attorney from New York. Ms. Kapelman played audio recordings of her father describing his experiences in the segregated South during

a very racially charged time in this country. Oftentimes his own life was in jeopardy. He valiantly served as a member of a team who systematically challenged the denial of due process to the nine teenagers.

Within the next several years, charges against five of the nine defendants were dropped. The United States Supreme Court issued two seminal decisions regarding this case, *Powell v. Alabama* and *Norris v. Alabama*. In the *Powell* case the Supreme Court held that the failure to provide effective assistance of counsel violates the due process clause of the 14th Amendment. In the *Norris* case the Supreme Court found that the systematic exclusion of African-Americans on juries denies African-American defendants equal protection of the law guaranteed by the 14th Amendment. The remaining four defendants were paroled over the years. Finally, in 1976 one of the four remaining defendants was pardoned. The three remaining defendants were given posthumous pardons by the current Governor of Alabama in 2013.

In ending the program, Ms. Kapelman urged that the Scottsboro defendants, nine African-American teenagers falsely accused of rape, must never be forgotten. James Paulsen, the Regional Director concluded the program echoing Ms. Kapelman's request to not forget the nine defendants and thanking her for sharing her father's contribution to the Civil Rights movement in the United States. The Region thanks Marcia Adams and Cynthia Jones, Members of the Region's Special Emphasis Program Committee for planning and hosting this program•

Legal Interns Learn About Life as Board Agents

Region 29 is lucky to have two bright interns from Brooklyn Law School this semester. Jessica Apter and Timothy Durbin, both 2Ls, spend about 10 hours a week in the Region observing Field Attorneys, assisting with ongoing litigation, and processing their own cases.

Jessica worked as a licensed massage therapist in the spa industry prior to law school. It was the experiences she had in the industry that pushed her to go to law school and to focus on labor and employment law. While in



law school, she has interned for the EEOC and has represented claimants at unemployment hearings with the Unemployment Action Center and Brooklyn’s Employment Law Clinic. She is getting ready to participate in the National Labor and Employment Law Moot Court Competition.

Timothy is also passionate about seeking justice for those who are victimized by their employers. He got experience with employment discrimination matters while interning at The Kurland Group, a boutique law firm focusing on LGBT clients. While at Brooklyn Law School, Timothy works on the Journal of Law and Policy and is on the Board of OUTlaws. Timothy is looking forward to using the skills he learns at Region 29 to help protect workers’ rights in his career after law school♦

Region 29 Participates in the 2014 NLRB Fitness Challenge

Fifteen people from Region 29 are participating in this year’s Fitness Challenge organized by the Division of Operations-Management. The team’s name, “The Wagner Warriors”, was created by combining Robert Wagner’s 1935 Act (that we all know and love!) with the 1979 film entitled The Warriors, which follows a gang of falsely accused Brooklyn youth as they make their way from a citywide summit in Van Cortland Park back home to Coney Island. (Hat tip to Brady for the name!)

Each week the team members log their activities in exchange for points for the team, using the Presidential Challenge online



tracking system. All activities count, from taking a walk in Prospect Park, to boxing class, or even shoveling snow, an activity that has occurred far too often this winter for some team members. The team also gets extra points by doing group activities such as Take A Walk Tuesday, where team members take a 30 minute walk around Downtown Brooklyn during their lunch break, or Stairs Friday, a vigorous climb to the 10th floor of this building that also involves ingenuity to not get locked in the stairwell. The Polar Vortex

has put a damper on Tuesday outdoor walks, but the team looks forward to the walks resuming as the weather warms up.

While there are no prizes for the team with the most points, Agency bragging rights are up for grabs. Team Captains Erin Schaeffer and Kimberly Walters wish that participants would wear patches like we did for the Presidential Physical Fitness tests in grade school, but will settle for bragging rights and not getting stuck in the stairwell♦

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