



NLRB NEWS:

CONNECTICUT

NLRB REGION 34



April 2011
Fifth Edition

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75th Anniversary Open House and Liaison Meeting

In recognition of the NLRB’s 75th Anniversary and the relocation of the Hartford Regional Office to the A.A. Ribicoff Federal Building at 450 Main St. in Hartford, the Region hosted a 75th Anniversary Open House on Friday, December 3, 2010. The open house provided the public with an opportunity to tour the new office space and familiarize themselves with the new location and procedures for entry to the building, as well as meeting our new staff members.

In conjunction with the open house, the Labor and Employment Law Section of the Connecticut Bar Association held a liaison meeting at the Hartford Regional Office to discuss matters of interest with Regional Director Jonathan Kreisberg and his staff involving Regional Office operations. The discussion included both substantive and procedural issues, as well as recent developments emanating from the NLRB and the Office of the Acting General Counsel in Washington. Approximately 30 practitioners participated in a sometimes lively discussion of several pending issues, including the AMR “Facebook” case discussed in more detail below.

New Staff Members

To alleviate ongoing staffing shortages, two new staff members were added to the Hartford regional office in January 2011: Field Examiner Grant Dodds and Field Attorney John McGrath. Grant previously served as a Co-op student in the Hartford office, and joined the staff immediately following his graduation from the Cornell University School of Industrial and Labor Relations. John previously served as a Student Volunteer in the Hartford office, and joined the staff following his graduation from the University of Connecticut School of Law.

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Contact the Region:

There is always an information officer available between 8:30 am and 5:00 pm at the Hartford Regional office, by phone at (860) 240-3522 or in person at 450 Main St. in Hartford, to answer general workplace related inquiries or to discuss a specific workplace problem or question. The information officer can offer information about the NLRA and advice as to whether it appears to be appropriate to file an unfair labor practice charge or a petition. If filing a charge or petition appears to be appropriate, the information officer will assist you in completing the charge or petition form.

Regional Office Unfair Labor Practice News

Settlement reached in Complaint alleging Connecticut company illegally fired employee over Facebook comments

A settlement has been reached in a case involving the discharge of a Connecticut ambulance service employee for posting negative comments about her supervisor on her Facebook page. The case received an extraordinary amount of attention from both local and national media, including MSNBC, CNN, ABC, NBC, NPR, Daily Mail (England), Associated Press, Politico, The New York Times, Washington Post, Seattle Times, NY Daily News, Hartford Courant, and local stations Channel 30 (NBC) and Channel 61 (Fox).

The Hartford Regional Office had issued a complaint against American Medical Response of Connecticut, Inc., on October 27, 2010, alleging that the discharge violated the National Labor Relations Act (NLRA) because the employee was engaged in activity protected under Section 7 of the NLRA when she posted the comments about her supervisor, and responded to further comments from her co-workers. Section 7 provides employees with the Federally protected right to discuss their wages, hours, and working conditions with their co-workers as well as others not associated with their employer, including unions. The complaint also alleged that the company maintained overly-broad rules in its employee handbook regarding blogging, Internet posting, and communications between employees, and that it had illegally denied union representation to the employee during an investigatory interview shortly before the employee posted the negative comments on her Facebook page.

Under the terms of the settlement approved by Hartford Regional Director Jonathan Kreisberg, the company agreed to revise its overly-broad rules to ensure that they do not improperly restrict employees from discussing their wages, hours and working conditions with co-workers and others while not at work, and that they would not discipline or discharge employees for engaging in such discussions. The company also promised that employee requests for union representation will not be denied in the future and that employees will not be threatened with discipline for requesting union representation. The allegations involving the employee's discharge were resolved through a separate, private agreement between the employee and the company.

Veteran Hartford Field Attorney Thomas Quigley was instrumental in negotiating the terms of the settlement.

How to File an Unfair Labor Practice (ULP) Charge:

- Anyone may file a ULP charge with the NLRB by submitting a charge form to any Regional Office. The form identifies the parties to the charge and includes a brief statement of the basis for the charge, and must be signed by the charging party.
- Forms are available on the NLRB website, or may be obtained from any NLRB regional office. The Hartford Regional Office has information officers available to assist with the filing of charges.
- You must file the charge within 6 months of the unfair labor practice.

When a Charge is Filed:

- The NLRB Regional Office will investigate. The charging party is responsible for promptly presenting evidence in support of the charge, which usually consists of a sworn statement and documentation of key events.
- The Region will ask the charged party to present a response to the charge, and will further investigate the charge to establish all facts.
- After a full investigation, the Region will determine whether or not the charge has merit.

WE ARE AT YOUR SERVICE

For assistance in filing a charge or a petition,
Call the Regional Office at

(860) 240-3522 and ask for the information officer.

The information officer will discuss the situation and assist you in filling out a charge or petition. Information is available during office hours, Monday to Friday, 8:30 a.m. to 5:00 p.m., or at

www.nlr.gov

ESTAMOS A SU SERVICIO

Para asistencia de someter una carga o petición
Llame la oficial de información en oficina regional a
(860) 240-3522.

La oficial de información discutirá su situación y le ayudará si desee
Someter una carga o petición. Información esta dispuesta a usted
mientras las horas de servicio - lunes a viernes, 8:30 a.m. to 5:00 p.m. o

www.nlr.gov

Region 34 Professional Staff Roster

AGENT	TELEPHONE	E-MAIL - @nlrb.gov
Jonathan Kreisberg, Reg. Dir.	860-240-3004	Jonathan.Kreisberg
John Cotter, Deputy Reg. Dir.	860-240-3003	John.Cotter
Michael Cass, Supervisory Ex.	860-240-3524	Michael.Cass
Terri Craig, Deputy Reg. Atty.	860-240-3532	Terri.Craig
Dina Emirzian, Compliance Off.	860-240-3006	Dina.Emirzian
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Margaret Lareau, Field Attorney	860-240-3561	Margaret.Lareau
Lindsey Kotulski, Field Attorney	860-240-3525	Lindsey.Kotulski
Catalina Arango, Field Attorney	860-240-3826	Catalina.Arango
Jennifer Dease, Field Attorney	860-240-3376	Jennifer.Dease
Rick Concepcion, Field Attorney	860-240-3374	Rick.Concepcion
Claire Sellers, Field Attorney	860-240-3557	Claire.Sellers
Sheldon Smith, Field Attorney	860-240-3539	Sheldon.Smith
Heather Williams, Field Exam.	860-240-3545	April.Williams
Grant Dodds, Field Examiner	860-240-3567	Grant.Dodds
John McGrath, Field Attorney	860-240-3527	John.McGrath

After the Region Makes a ULP Determination:

- If the Region determines that a charge has no merit—that the charged party has not violated the Act—it will dismiss the charge after giving the charging party the opportunity to withdraw. The charging party has the right to appeal a dismissal.
- If the Region determines that a charge has merit—that the charged party has violated the Act—it will attempt to settle the case. Unless there is a settlement, the Region will proceed to trial to obtain a finding of a violation and an order directing the charged party to undertake remedial actions. The charged party has appeal rights, including a right to a hearing, with a final decision subject to the Federal Circuit Court of Appeals.

Recent Initiatives from the Acting General Counsel

Continuing his initiative to ensure that unfair labor practices are more fairly and effectively remedied, Acting General Counsel Lafe Soloman issued a succession of guideline memoranda that will likely impact a broad range of casehandling activities in the Hartford Regional Office.

Following up on his previously announced initiative to seek effective Section 10(j) remedies for unlawful discharges during organizing campaigns (as discussed in the November 2010 edition of NLRB News: Connecticut), GC Memo 11-01 (Dec. 20, 2010) outlines effective remedies to be sought for non-discharge violations during organizing campaigns. Regions are authorized to seek the following remedies in settlements, and to plead such remedies in complaints: requiring an employer official to read the Board's Notice to assembled employees; requiring the employer to provide union access to employer bulletin boards; and requiring the employer to provide the union with an updated list of employee names and addresses. In addition, Regions are to submit recommendations to the Division of Advice seeking the following remedies: granting union access to nonwork areas during nonwork time; giving the union notice and equal time and facilities to respond to any address made by the employer regarding union representation; and affording the union the right to deliver a speech to employees on the employer's property.

Addressing the effectiveness of remedies sought through informal Board settlement agreements, GC Memo 11-04 (Jan. 12, 2011) requires the inclusion of "default" language in such agreements. Default language allows entry of a Court enforceable Board Order when the terms of the settlement agreement have been violated, in order to more timely and effectively remedy the violations encompassed by the settlement agreement.

Addressing the effectiveness of remedies in cases that have been deferred to the parties grievance-arbitration process, GC Memo 11-05 (Jan. 20, 2011) provides a new test for determining when it is appropriate to defer to an arbitral award involving violations of Section 8(a)(1) and (3) of the NLRA. Under the new test, the party urging deferral has the burden of establishing that the contract has a statutory right incorporated in it or that the parties presented the statutory issue to the arbitrator; that the arbitrator correctly enunciated the applicable statutory principles and applied them in deciding the case; and that the arbitral award is not clearly repugnant to the NLRA. The same test would also apply to pre-arbitration grievance settlements under the Board's decision in *Independent Stave Co.*, 287 NLRB 740 (1987).

**Region 34 Unfair Labor
Practice Statistics - FY
2010:**

- 407 unfair labor practice charges were filed.
- 35% of the charges were found by the Hartford Regional Office to be meritorious.
- 84% of the meritorious cases were settled prior to hearing.
- 100% of litigated cases were won before either an administrative law judge or the NLRB.

Recent Initiatives (continued)

Addressing remedies arising from Board Orders requiring the payment of backpay to employees, two separate memorandums were issued on March 11, 2011 providing guidelines for computing such backpay awards. GC Memo 11-08 outlines new methods for calculating backpay that includes daily compounded interest as recently ordered by the Board, and compensates for such things as expenses to search for employment and tax penalties for lump sum payments. GC Memo 11-07 authorizes regional offices to identify and proceed on cases that could be used as vehicles to ask the Board to reconsider two 2007 Board decisions (*Grosvenor Resort*, 350 NLRB 1197 and *St. George Warehouse*, 351 NLRB 961) that require illegally discharged employees to start looking for a new job within two weeks of being fired, and shifted the burden from the wrongdoer to the General Counsel to prove that they have diligently pursued work throughout the backpay period. Regions are also authorized to rely upon the receipt of unemployment compensation as prima facie evidence of a reasonable search for work, with the burden shifted to the employer to show that compliance with state requirements alone was not a reasonable search, or that there was noncompliance with such state requirements.

Addressing the issue of an employer's right to unilaterally cease dues-checkoff following contract expiration pursuant to the Board's decision in *Bethlehem Steel Co.*, 136 NLRB 1500 (1962), OM Memo 11-40 (Mar. 18, 2011) instructs the regional offices to contact the Division of Advice should they receive charges involving such allegations. Noting the Board's previous failure to address that issue in a recent case that had been remanded by the Ninth Circuit (*Hacienda III*, 355 NLRB No. 154), it is anticipated that the Acting General Counsel will seek to overturn *Bethlehem Steel* in an appropriate case in the future.

Finally, the Acting General Counsel has authorized the issuance of Complaint in several cases seeking to reverse the Board's holding in *Register Guard*, 351 NLRB 1110 (2007), that employees have no statutory right to use employer property or media for communications protected under Section 7 of the NLRA. Regions have also been authorized to issue Complaint seeking to reverse the Board's holding in *Anheuser Busch*, 237 NLRB 982 (1978), that employer's do not have to produce witness statements in the course of grievance processing.

**Region 34 Compliance
Statistics - FY 2010:**

- Almost \$2.1 Million in backpay was distributed to employees.
- 8 employees were reinstated to their previous jobs, and 5 employees declined reinstatement.

Board proposes posting of NLRA rights

The Board has submitted to the *Federal Register* a Notice of Proposed Rulemaking, which provides for a 60-day comment period on a rule that would require employers to notify employees of their rights under the NLRA. As the Notice states, the Board “believes that many employees protected by the NLRA are unaware of their rights under the statute. The intended effects of this action are to increase knowledge of the NLRA among employees, to better enable the exercise of rights under the statute, and to promote statutory compliance by employers and unions.”

Private-sector employers (including labor organizations) whose workplaces fall under the NLRA would be required to post the employee rights notice where other workplace notices are typically posted. If an employer communicates with employees primarily by email or other electronic means, the notice would be posted electronically as well. The notice would be available from the agency’s regional offices and could also be downloaded from the NLRB website.

The proposed notice is similar to one recently finalized by the U.S. Department of Labor for federal contractors. It states that employees have the right to act together to improve wages and working conditions, to form, join and assist a union, to bargain collectively with their employer, and to choose not to do any of these activities. It provides examples of unlawful employer and union conduct and instructs employees how to contact the NLRB with questions or complaints.

How to File a Representation Petition:

An NLRB Information Officer can assist you in completing a petition form. If you complete the petition yourself, keep in mind these helpful tips:

- Prepare your petition on our website at: www.nlr.gov (filing instructions detailed).
- Know the job titles used by the Employer and the employee shift schedules.
- Provide the Region with authorization/membership cards (or other proof of interest) signed and dated by at least 30 percent of the employees in the petitioned-for unit.
- Be prepared for a hearing by knowing: (1) the employer's operations; (2) the community of interests of various employee job categories; and (3) who the "supervisors" are. Hearings are typically held within 10 days from date of filing.
- Be prepared for the election to be conducted within 42 days from the date of filing.

Recent NLRB Decisions in Connecticut cases

OGS Technologies, 356 NLRB No. 92 (2/11/11). Respondent OGS Technologies purchased the assets of a button-making company and subsequently removed its die-engineers from the collective-bargaining unit of its production and maintenance employees, subcontracted their remaining die-cutting work, and eliminated the die-engineer classification. The Board majority (Chairman Liebman and Member Becker) found that OGS had acted unlawfully by excluding the die engineers from the bargaining unit, by subcontracting its die-cutting work, and by eliminating the die-cutting classification, all without giving the union notice and opportunity to bargain. The majority found that, under the Supreme Court's decision in *First National Maintenance v. NLRB*, 452 U.S. 666 (1981), the subcontracting at issue was not exempted from mandatory bargaining because it did not rise to the level of a change in the scope of the enterprise.

Regency House of Wallingford, 356 NLRB No. 86 (1/31/11). The Board found that Respondent, a nursing home, violated the Act by purposefully delaying rescission of a wage increase, which the Board had found unlawful in a prior case and which the union had demanded that the employer rescind; by denigrating the union in a manner that communicated that union representation was futile; and by soliciting employees' grievances and thereby impliedly promising to remedy them. The Board also found that Respondent violated the Act by refusing to furnish relevant information about wages and benefits, by conditioning bargaining over a successor agreement, by bypassing the union and dealing directly with unit employees, by withdrawing recognition from the union, and by unilaterally changing terms and conditions of employment.

Southern New England Telephone Co. d/b/a AT&T Connecticut, 356 NLRB No. 118 (3/24/11). A Board majority upheld an administrative law judge's decision finding that the employer violated Section 8(a)(1) of the NLRA by prohibiting employees from wearing the so-called "Prisoner" shirt in support of the union during collective bargaining for a successor contract, and by threatening and suspending employees who refused to comply. The Board agreed with the judge's conclusion that the shirt, which stated on the front "INMATE#" with a black box underneath, and on the back "PRISONER of AT\$T", was not reasonably likely, under the circumstances, to cause fear or alarm among the employer's customers and that the employer failed to demonstrate "special circumstances" justifying the prohibition of the shirt. The Board ordered that all of the disciplinary suspensions be rescinded and the affected employees be compensated for time lost due to the unlawful suspensions.

**Region 34 Representation
Statistics - FY 2010:**

- Representation elections were conducted in 55 cases.
- 91% of elections were achieved by way of an election agreement between the parties.
- 96% of elections were held within 56 days from the filing of the petition.
- Initial elections were conducted in a median of 38 days from the filing of the petition.

New NLRB Website launched in January

The NLRB in January launched a redesigned and re-imagined website, at www.nlr.gov, which builds on an overarching effort toward greater transparency and efficiency at the NLRB. Among highlights of the new site:

1. More case information is available more quickly than ever before. All Board decisions are now posted to the site at the time they are issued, rather than after a one-day holding period. The Board is also for the first time posting unpublished decisions, which do not appear in the official bound volumes of Board decisions.

2. A new case-management system that has been coming online at the agency for more than a year, and will be deployed to all regional offices by the end of this fiscal year. The new single system replaces 13 separate case tracking systems, and will allow for seamless searches that cover the entire life of a case at the agency.

3. For the first time, each Regional office, including Hartford, will have its own page on the website. An interactive map shows regional boundaries and allows visitors to quickly locate each regional office. One click away is a page for each region that lists top officials and features newsletters, news releases and local cases and decisions. Check out the new Hartford Regional Office page on the NLRB website!

4. A data section tracks NLRB activities over the years by the numbers. The section launches with eight charts and tables covering a variety of indicators, from charges filed to back pay collected. More charts and tables, with greater interactivity, will be added through the year.

5. Improved navigation will make it far easier for visitors to find their way, and new pages explain the NLRB processes and functions in accessible language. At the same time, all the case-handling manuals, memos and forms found on the old website will be available on the new one.

The new website is a reflection of Chairman Wilma Liebman's advocacy for a more open and engaged agency. Other recent developments to that end include increased use of press releases to describe activities in Washington and the regions, a subscription service that allows users to choose email delivery of press releases, decisions and memos, and active Facebook and Twitter accounts.