



NLRB NEWS:

CONNECTICUT

NLRB REGION 34



July 2011
Sixth Edition

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******BREAKING NEWS******

NLRB Proposes Amendments to Election Rules

On June 21, 2011, the NLRB proposed reforms of the procedures it follows prior and subsequent to conducting a secret ballot election to determine if employees wish to be represented for purposes of collective bargaining. The proposed amendments are intended to reduce unnecessary litigation, streamline pre- and post-election procedures, and facilitate the use of electronic communications and document filing.

The Board has periodically reviewed and revised its procedures in representation cases in order to efficiently carry out its duties under the NLRA. Since the NLRA was enacted in 1935, the Board has amended its representation case rules at least three dozen times, often in substantial ways. The proposed reforms represent the Board's latest effort to improve its service to the public.

The Board received comments on the proposal at a public Board hearing held on July 18 and 19 at the Board's headquarters in Washington. Written comments may be submitted electronically through www.Regulations.gov or by mail to the Board's Washington D.C. headquarters until August 22, 2011, with 14 days thereafter for replies.

The proposed amendments, which can be viewed in detail at nlrb.gov, are designed to fix flaws in the Board's current procedures that build in unnecessary delays, allow wasteful litigation, and fail to take advantage of modern communication technologies.

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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.

Information is also available on the Board's website at www.nlr.gov, which has a link to the Hartford Regional Office webpage featuring newsletters, news releases and local cases and decisions.

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

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Region 34 Professional Staff Roster

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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.

Regional Office Unfair Labor Practice News

Settlement reached in Complaints alleging Unfair Labor Practice Strike at Four Connecticut Nursing Homes

A Connecticut nursing home operator agreed to settle a case involving multiple allegations of unlawful suspensions, discharges and unilateral changes by offering reinstatement and backpay to all discharged and striking workers, and signing a new three-year collective bargaining agreement with its employees' union, New England Health Care Employees Union District 1199, SEIU.

The settlement, which was reached midway through a hearing before an NLRB administrative law judge in the Hartford Regional Office and approved by the judge in May, ends a long-running dispute which grew into a strike by almost 400 employees at four nursing homes in Connecticut operated by Spectrum Healthcare. Along with the contract and reinstatement of all employees, Spectrum agreed to pay \$545,000 in backpay and pension benefits to employees who were harmed by the unfair labor practices, and to expunge any disciplinary records related to the case. As a result, all NLRB charges against the company have been withdrawn. Spectrum admitted to no wrongdoing in the settlement.

Complaints issued by the Hartford Regional Office alleged that, beginning in the fall of 2009, several months after the prior collective bargaining agreement expired, Spectrum discharged seven employees and suspended three others to retaliate against their union activities and to discourage other employees from supporting the union. In addition, one employee was discharged and seven others were suspended after Spectrum unilaterally changed its tardiness discipline policy without first bargaining with the union. The complaints further alleged that in April 2010, employees at the four nursing homes -- in Derby, Ansonia, Winsted, and Hartford -- went on strike to protest the unfair labor practices. When the strikers offered unconditionally to return to work in late August, Spectrum refused to take them back. Under federal labor law, if a strike is called because of an unfair labor practice, employees are entitled to reinstatement after an unconditional offer to return to work.

Hartford Field Attorney Rick Concepcion investigated and litigated the case for the Hartford Regional Office, and was instrumental in securing the terms of the settlement.

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.

ALJ orders Connecticut Humane Society to reinstate workers fired during union organizing campaign

An NLRB Administrative Law Judge (ALJ) ordered that two employees of the Connecticut Humane Society be reinstated and awarded backpay because they were unlawfully discharged following an organizing campaign. The Employer intends to appeal that decision.

The two terminated employees had been active in the early stages of a union organizing campaign by Machinists District Lodge 26, which resulted in a December 9, 2009 election won by the Union by a vote of 18-15. The parties had agreed prior to the election that the two terminated employees would not be eligible to vote. The Employer admittedly fired the two employees shortly after the election because of their early support for the Union, claiming that such support conflicted with their purported supervisory or managerial obligations. The Employer also asked that the election results be set aside, under the claim that active support from supervisors and/or managers could amount to coercion of voters in favor of the Union.

Rejecting the Employer's claims, ALJ Steven Fish found that neither employee was a supervisor or a manager under the National Labor Relations Act, thereby making unlawful their discharge for engaging in activities in support of the union. In ordering the reinstatement of both employees, the judge also rejected the Employer's contention that the employees had lost their right to reinstatement as a result of their post-discharge criticisms of the Employer's operations, management representatives, and members of the Board of Directors. The judge further found that the Employer violated the Act in the course of the Union campaign by coercively interrogating employees about their union activities, creating the impression among its employees that their union activities were under surveillance, informing employees that they cannot participate in union activities, instructing employees to report the union activities of other employees, threatening employees with discharge for engaging in union activities, and informing employees that they were being terminated because of their union activities.

The judge also dismissed the Employer's objections to the election, which were based solely on its claim that the two terminated employees were supervisors/managers, and ordered that Machinists District Lodge 26 be certified as the employees' exclusive collective bargaining representative.

Hartford Field Attorney Tom Quigley both investigated and litigated the case for the Hartford Regional Office.

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.

ALJ orders First Student to reinstate employee fired for investigating work-related grievances

An NLRB Administrative Law Judge (ALJ) ordered that an employee of First Student who drove school buses for the Town of Weston, Connecticut be reinstated and awarded backpay because she was unlawfully discharged for investigating work-related grievances. The Employer intends to appeal that decision.

The terminated employee had been a Weston school bus driver for 14 years, and was the local union president of AFSCME Local 1303-416 of Council 4 at the time of her termination. While investigating an incident involving the alleged removal of bargaining unit work, she confronted the Town of Weston's Transportation Coordinator and a low-seniority unit bus driver preparing to drive the girl's softball team to an after school event in two vans owned by Weston. That driving assignment had originally been assigned to a senior bargaining unit driver, but was cancelled for unexplained reasons. The terminated employee took photos of the incident and had brief conversations with the driver and the Transportation Coordinator, and departed the area after the police arrived. The next day, the terminated employee posted copies of the photographs, along with a brief description of the incident, on the union bulletin board in the driver's lounge. Following a brief investigation, the Weston Board of Education requested that she be removed from driving in Weston based solely upon the incident described above, which resulted in her termination by First Student.

ALJ Mindy Landow rejected the Employer claims that the terminated employee lost the protection of the Act during the incident by yelling and shouting obscenities at the driver and the Transportation Coordinator in the presence of several students, crediting the terminated employee's testimony over the testimony proffered by several Employer witnesses. The ALJ further held that even if the terminated employee engaged in such conduct during the incident, it was not sufficiently egregious to cost her the protection of the Act. Finally, the ALJ ordered the terminated employee reinstated with full backpay to her driving position in the Town of Weston, rejecting the Employer's claim that its post-discharge offer of a driving position in another Town was sufficient, especially in light of the Town of Weston's objection to her driving in Weston.

Hartford Field Attorney Jennifer Dease both investigated and litigated the case for the Hartford Regional Office.

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.

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.

Parksite saga finally ends with Union contract

A four-year journey by a small group of dedicated Teamster members employed by The Parksite Group in South Windsor finally ended with the signing of a union contract in June 2011. The case began in 2007 when the drivers and warehousemen employed by Ryder at Parksite's South Windsor distribution center voted in an NLRB election to be represented by Teamsters Local 671. Shortly after Ryder and the Teamsters entered into a union contract covering those employees, Parksite terminated its contract with Ryder and took over all distribution operations at the South Windsor facility. Although Parksite hired a majority of the former Ryder employees, it refused to hire 10 employees who were the most active union supporters while employed by Ryder.

Following an administrative investigation, the Hartford Regional Office issued an unfair labor practice (ULP) complaint alleging that Parksite's refusal to recognize the union and hire the union supporters violated the National Labor Relations Act (NLRA). The Hartford office also took the highly unusual step of seeking an injunction in Federal District Court requiring Parksite to immediately recognize the Union and hire the 10 union supporters. The ULP allegations were tried before an NLRB administrative law judge (ALJ), who issued a decision in November 2008 finding that Parksite had violated the NLRA as alleged in the complaint. In January 2009, the Federal District Court granted the injunction request in full, ordering Parksite to immediately offer reinstatement to the 10 former Ryder employees who were not hired, displacing, if necessary, any other hired or reassigned employees, and to immediately recognize and bargain with the Union. In September 2009, the NLRB affirmed the ALJ's decision, finding that Parksite violated the NLRA as alleged in the complaint (reported at 354 NLRB No. 90). The NLRB's decision was subsequently enforced by the Second Circuit Court of Appeals in January 2010, effectively ending the lengthy legal proceedings.

Following almost a year of bargaining after the appellate court decision, as well as further ULP charges filed by the Union alleging that Parksite had engaged in bad faith bargaining during such discussions, Parksite and the Union entered into a signed collective bargaining agreement in June 2011, bringing the saga to a successful conclusion.

Hartford Field Attorney Jennifer Dease litigated the case on behalf of the Hartford Regional Office in both District Court and before the ALJ and the Board, and Hartford Compliance Officer Dina Emirzian was instrumental in securing compliance with the terms of the enforced Board and Court Orders.