

Labor Matters



NATIONAL LABOR RELATIONS BOARD-REGION 4

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Introducing NLRB Region 4— Who We Are/What We Do

This is the first of periodic newsletters Region 4 of the National Labor Relations Board (NLRB) will issue to keep our users informed of developments both in the Region and Agency wide with regard to casehandling procedures and legal decisions.

This first issue gives a historical review of the creation of the regional office, a brief summary of what we do and basic case processing procedures and provides basic details about how to contact us and obtain forms and information.

Also contained in this issue are several items of interest to the labor relations community.

We hope that you find **Labor Matters** to be interesting and helpful.

Dorothy L. Moore-Duncan,
Regional Director, Region 4

Who We Are - Our Territory

Thirty-eight professional employees and 15 support staff members work in Region 4, currently the third largest Regional Office in the country. We are charged with administering the National Labor Relations Act (the Act). We were established in 1936 as one of the original 21 Regional Offices. At that time, we covered nine New Jersey Counties (Mercer, Ocean, Burlington, Atlantic, Camden, Gloucester, Salem, Cumberland and Cape May), New Castle County, Delaware, and all of Pennsylvania "lying east of the eastern border of Potter, Clinton, Centre, Mifflin, Huntingdon and Franklin Counties." Region 4's territory is smaller at the present time. Mercer County is covered by Region 22 – Newark; Cumberland, York and Adams Counties are now covered by Region 5 – Baltimore;

and Tioga, Bradford, Lycoming, Sullivan, Union, Montour, Columbia, Northumberland and Snyder Counties are now covered by Region 6 – Pittsburgh.

What Do We Do?

The Region has two principal statutory functions: (1) to conduct secret-ballot elections providing employees with a free democratic choice as to whether they wish to be represented by a union in dealing with their employers and (2) to prevent and remedy unlawful acts called unfair labor practices, by employers or unions. We do not initiate cases in the exercise of either of these two functions. We process only those petitions for elections and charges of unfair labor practices filed in our Philadelphia office or those that have been referred or transferred to us from other Regional

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NLRB Modifies Its Recognition-Bar Doctrine by Divided Vote.

On September 29, 2007, in *Dana Corporation* and *Metaldyne Corporation*, 351 NLRB No. 28, the NLRB modified its long-standing recognition-bar doctrine. The Board (Chairman Battista, Members Schaumber and Kirsanow; Members Liebman and Walsh dissenting) now requires parties to a recognition agreement to notify the NLRB Regional Office of

the agreement. The Region will supply the employer with a Notice to Employees containing the name of the recognized union, the unit of employees and the date of Notice-posting. The posting starts a 45-day period during which the NLRB will process a rival-union or a decertification petition. If no petition is filed during the 45 day period, the voluntary rec-

ognition will bar a petition for a reasonable period and any collective bargaining agreement entered into will bar the petitions for up to three years. See OM 08-07, October 22, 2007, Dana Guideline for more detail.

Special points of interest:

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Could Less Be More? The Board's 2 become 3

The Board is operating with only Members Wilma Liebman and Peter Schaumber. On March 18, 2008, President Bush announced his intention to designate Member Schaumber as the Board's new Chairman. Still, you may wonder how a 2-member Board can be deciding cases. Here is the explanation in every Decision the Board has issued since January:

Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kir-

snow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

Through April 4, 2008, the 2-member Board has issued 48

Decisions. During the same period in 2007, the full Board issued 68 Decisions. Only three of the 2008 Decisions were in representation cases; two were Section 10(k) Decisions; 11 were Default Judgments and 6 were Summary Judgments

In order to issue any Decision, the two Board Members must agree on the outcome.

The Board issued a similar delegation of authority to the General Counsel in 1993 and 2001.

"...employers and labor organizations may decide that the tension associated with a traditional card signing campaign and the legal delay caused by unresolved pre-election issues are not in the interest of the employer, labor organization or employees." Catholic Healthcare Partners

Is RJ OK? Joint Representation Proposal Draws Comment

The NLRB's proposal for a new type of Board-conducted election procedure received less than overwhelming support during the month long comment period, which ended on March 27, 2008.

The proposal would allow a "consent" election within 28 days if a union and an employer jointly filed an "RJ" petition. No showing of interest among employees would be required.

The RJ petition would state the

agreed-upon unit and the date, place, and hours of the election. The parties would jointly designate the payroll period for eligibility to vote and state the full names and addresses of those eligible to vote. The Regional Director would notify the parties of approval of the petition within 3 days of docketing and send election notices to be posted at least 3 days before the election date.

Motions to intervene could be filed by rival unions within 14

days of the docketing. The Director would decide all election and postelection issues, with no appeal to the Board. The filing of unfair labor practice charges would not block the election or cause the ballots to be impounded.

Only Catholic Healthcare Partners endorsed the proposal without qualification. Others were opposed or suggested revisions.

Lawful Policy Prohibiting Employees' Use Of E-Mail System for "Non-Job-Related Solicitations" Held Lawful

In *The Guard Publishing Company, d/b/a The Register-Guard*, 351 NLRB No. 70 (December 16, 2007), a 3-2 majority of the NLRB held that the employer lawfully maintained a policy prohibiting employees from using the Employer's e-mail system for any "non-job-related solicitations." In practice, a number of nonwork-related employee e-mails were allowed, but there was no evidence that these

included e-mails urging support for groups or organizations. The majority, viewing employees as having no statutory right to use an employer's equipment for Section 7 purposes held inapplicable Supreme Court's *Republic Aviation* decision (ban on union solicitation during nonworking time unlawful absent special circumstances) because that Decision involved only face-to-

face solicitation, not the use of employer equipment. The majority noted that the use of e-mail "has not changed the pattern of industrial life at the Respondent's facility to the extent that the forms of workplace communication sanctioned in *Republic Aviation* have been rendered useless Consequently, we find no basis in this case to refrain from ap-

plying the settled principle that, absent discrimination, employees have no statutory right to use an employer's equipment or media for Section 7 communications."

The majority, adopting the reasoning of the 7th Circuit Court of Appeals, clarified that "discrimination under the Act means (continued on page 4)

Region 4's Trial Calendar (Monday trials start at 11 a.m. Trials starting Tuesday through Friday begin at 10 a.m.)

<i>Marjam Supply Company, Inc., 4-CA-35809, 35843</i>	<i>4/23/2008 (ppd)</i>
<i>PA Pride Insulation, Inc., 4-CA-35796, 35816, 35925, 4-RC-21360</i>	<i>4/30/2008</i>
<i>Hanson Aggregates BMC, Inc., 4-CA-35487, 35715</i>	<i>5/8/2008</i>
<i>George J. Hayden, Inc. and Michel Industrial Services, Inc., 4-CA-35618, 35621</i>	<i>5/12/2008</i>
<i>Atlantic Independent Union, (Courier-Post), 4-CB-9929</i>	<i>5/27/2008</i>
<i>Advance Stores Company Inc. d/b/a Advance Auto Parts, 4-CA-35755</i>	<i>5/29/2008 (ppd)</i>
<i>Fratelli Concrete, 4-CA-35830</i>	<i>6/2/2008</i>
<i>Quality Roofing 4-CA-35782, 4-CA-35789, 4-CA-35872</i>	<i>6/3/2008</i>
<i>Marjam Supply Company, 4-CA-35901</i>	<i>6/9/2008</i>
<i>Pallet Logistics Management, Inc., 4-CA-35756</i>	<i>6/11/2008</i>

Latest on the 2007 Elections at Atlantic City Casinos

Last Spring and Summer, the Region conducted nine elections at Atlantic City Casinos. Eight of these elections were based on representation petitions filed by the UAW, and one was filed by the Security, Police and Fire Professionals of America (SPFPA) seeking to be certified as the representative of some 250 security guards at Bally's Park Casino. In total, almost 4800 employees were eligible to vote in these elections. The results and status of these cases are shown in the chart.



Casino	Petitioner	Election	Voters	Results/Status
Boardwalk Regency (Caesar's Atlantic City) — Dealers	UAW	3/17/07	888	UAW Certified
Trump Plaza Hotel and Casino — Dealers	UAW	3/31/07	530	ALJ rejects Employer Objections. Exceptions pending before the Board
Trump Marina Hotel and Casino — Dealers	UAW	5/11/07	398	UAW Objections Consolidated with ULP case pending before ALJ
Atlantic City Hilton — Dealers	UAW	5/26/07	616	Results Certified
Bally's Park Place — Dealers	UAW	6/2/07	1129	Board rejects Employer Objections, UAW Certified (April 11, 2008)
Tropicana — Dealers	UAW	8/25/07	786	UAW Certified
Bally's Park Place — Security	SPFPA	6/3/07	250	SPFPA Certified
Boardwalk Regency (Caesar's Atlantic City) — Slot Technicians	UAW	8/23/07	33	UAW Certified
Boardwalk Regency (Caesar's Atlantic City) — Cashiers	UAW	9/1/07	158	Results Certified
Tropicana — Security	SPFPA	10/10/2007	130	ALJ sustains 2 SPFPA objections, directs second election. SPFPA withdraws
Tropicana — Slot Technicians	UAW	10/22/2007	21	UAW certified
Atlantic City Hilton — Receivers Store Room Employees	Teamsters 331	11/2/2007	14	Results certified

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offices. Since our inception, Region 4 has processed over 36,000 unfair labor practice charges and more than 21,400 representation petitions.

Current Performance

During fiscal year 2007 (October 1, 2006 through September 30, 2007 – FY '07), we handled 901 unfair labor practice charges and 178 representation petitions. In fiscal year 2008, thus far (October 1, 2007 through April 3, 2008 – FY '08) we have handled 585 unfair labor practice charges and 100 representation petitions. Unfair labor practice charges that are determined to have merit are either settled or prosecuted. Prosecution starts with the issuance of a formal Complaint. Unless settled before the hearing opens, the trial is held before an Administrative Law Judge. In FY '07, we issued 63 formal Complaints and went to hearing 11 times. Thus far in FY '08, we have issued 27 Complaints and gone to hearing six times. The General Counsel, the chief prosecutor of the NLRB, has an objective of holding trials within 100 days from the issuance of Complaint. Region 4 is meeting that objective. Of the decisions issued by the NLRB or its Administrative Law Judges during FY '08, we have won 80% in whole or in part. Almost 89% of the cases having merit were settled without the need for trial. In almost 90% of the cases, the Region is fully disposing of the representation petitions within 100 days.

Our Procedures

Representation Cases

The Region's Information Officer can answer your questions concerning representation petitions and can assist you in completing the petition forms. If you file a petition, you should be prepared to tell us the name and address of the employer and any unions involved. In addition, you will need to describe the unit of employees that is the subject of the petition, and the approximate number of employees in the unit. You will also need to tell us whether there is a collective-bargaining agreement in effect and provide a copy of the agreement if available. Your current address and phone number must be on the petition, unless you are being represented by someone else, in which case the same information must be included for the representative. You or your representative must sign the petition. A copy of the petition will be served on all parties involved. The petition must be supported by the dated signatures of 30 percent or more of the employees in the bargaining unit. It is our goal to hold elections within forty-two (42) days from the date of the filing of the petition.

Unfair Labor Practice Cases

The Information Officer can assist you in evaluating whether your concerns are of the type covered by of the National Labor Relations Act. Unfair Labor Practice charges may be filed by individual employees, unions or employers. After a charge is filed, a Board agent is assigned to investigate. Supporting evidence, including sworn statements, are taken from the charging party's witnesses. If the evidence points to a violation, the charged party (employer or union) is asked to provide its evidence and position. A decision is made to dismiss or issue Com-

plaint. Before a Complaint issues, an attempt to settle the case is made. Absent settlement, a hearing is held before an administrative law judge. The NLRB, and ultimately a United States Circuit Court of Appeals, may review the findings, conclusions and recommended remedy. If the charge is dismissed, a review of that action may be obtained from the Office of Appeals in the Board's headquarters in Washington, D.C.

The Region attempts to complete its investigation of unfair labor practice charges with 7, 9 or 11 weeks, depending on the type and nature of the allegations.

How to Access Us

Representation petitions and unfair labor practice charges may be filed with us by mail, fax, overnight delivery service or hand delivery. Petitions and charges may not be filed electronically but petition and unfair labor practice charge forms may be obtained electronically at the Board's official website, www.nlr.gov. You may also obtain specific information and instructions as to what documents may be filed electronically with the regional offices and with the NLRB in Washington, D.C., by accessing the official website; selecting the **E-Gov** on the home page and clicking on **E-Filing**. General information inquires may be directed to our offices where you will be able to speak to the assigned Information Officer of the day.

(Register-Guard, continued from page 2)

drawing a distinction along Section 7 lines." Applying its new standard, the majority found that the employer had permitted several personal, nonwork-related e-mails, but had never permitted e-mails to solicit support for a group or organization. Two of the emails in *Register Guard* were union solicitations, and could be prohibited. A third, was simply a clarification of facts surrounding a recent union event. Accordingly, the Employer unlawfully enforced the policy with respect to that e-mail.

The dissent argued that "given the unique characteristics of e-mail and the way it has transformed modern communication, it is simply absurd to find an email system analogous to a telephone, a television set, a bulletin board, or a slip of scrap paper." The dissenters viewed the Board's task in cases involving employee-to employee communication in the workplace "... to balance the employees' Section 7 right to communicate with one another against the employer's right to protect its business interests." Where an employer has given employees access to e-mail in the workplace for their regular and routine use – as the employer has done – a ban on "non-job-related solicitations" should be unlawful absent a showing of special circumstances. The dissent also contended that the "discrimination" analysis applied by the Seventh Circuit and adopted by the majority, which focused on whether the other activities permitted by the employer were "equal" to Section 7 activity, was not appropriate in Section 8(a)(1) cases. The Board also unanimously affirmed the judge's finding that the employer violated Section 8(a)(1) by maintaining an overly broad rule, in the absence of special circumstances, prohibiting employees from wearing or displaying union insignia while working with the public.