



# NLRB Region 6

## *Outreach*

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National Labor Relations Board, Region 6

William S. Moorhead Federal Building, Suite 904

1000 Liberty Ave.

Pittsburgh, PA 15222-4111

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*Sixth Edition*

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### From the Director's Chair

David Bowie's song "Ch Ch Changes" applies aptly to the NLRB these past several months. We have seen a lot of changes at the NLRB since our last publication.



Wilma Liebman



Mark Pearce



Craig Becker



Brian Hayes

From January 2008 to March 2010, the Board operated with three of its five seats vacant. The two remaining members - Chairman Wilma Liebman and Member Peter Schaumber - issued nearly 600 decisions on which they could agree, deferring deadlocked or potentially precedent-setting cases for additional Board members. Dozens of the decisions were appealed to federal courts on the ground that the two-member Board did not have authority to act.

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On June 17, 2010, a divided Supreme Court ruled in *New Process Steel vs. NLRB* that the two-member Board lacked the authority to decide cases. At the time, about 100 of the two-member decisions were pending on appeal before the federal courts. All such cases have been or will be returned to the Board for reconsideration by at least three members. Most of the remaining decided cases have either been closed under the Board's processes or are in some stage of compliance proceedings. For further information and a list of cases that issued between January 1, 2008 and April 5, 2010 while the Board had only two members, go to [www.NLRB.gov](http://www.NLRB.gov). More detail about the NLRB's plan for considering two-member cases in the wake of the Supreme Court ruling is available on the Board's website under "press releases."

In this our 75<sup>th</sup> Anniversary year, our current Board now has a complement of four Board members including newly appointed Mark Pearce, Craig Becker, and Brian Hayes, joining Chairman Wilma Liebman.

**Wilma B. Liebman** was designated Chairman of the National Labor Relations Board (NLRB) by President Obama on January 20, 2009. She has served on the Board since November 14, 1997. Prior to joining the NLRB, Ms. Liebman served as Deputy Director of the Federal Mediation and Conciliation Service (FMCS) and as Special Assistant to the Director of FMCS. At the FMCS Ms. Liebman oversaw arbitration, alternative dispute resolution, international affairs and labor-management cooperation grants programs and advised the FMCS Director on issues involving major labor disputes. Prior to joining FMCS, Ms. Liebman was Labor Counsel for the Bricklayers and Allied Craftsmen from 1990 through 1993, served as Legal Counsel to the International Brotherhood of Teamsters for nine years and as staff attorney with the NLRB from 1974 to 1980. A native of Philadelphia, PA, Ms. Liebman holds a B.A. from Barnard College in New York City and a J.D. from the George Washington University Law Center.

**Mark Gaston Pearce** was sworn in as a Board Member on April 07, 2010, following his recess appointment by President Obama. Mr. Pearce was a founding partner of the Buffalo, New York law firm of Creighton, Pearce, Johnsen & Giroux, where he practiced union side labor and employment law. In 2008, he was appointed to the New York State Industrial Board of Appeals, an independent quasi-judicial agency. Pearce has taught at Cornell University's School of Industrial Labor Relations Extension. In addition, Pearce practiced at Lipsitz, Green, Fahringer, Roll, Salisbury & Cambria LLP and, from 1979 to 1994, he was an attorney and District Trial Specialist for NLRB Region 3. Pearce received his J.D. from State University of New York, and his B.A. from Cornell University.

**Craig Becker** was sworn in as a Board Member on April 05, 2010, following his recess appointment by President Obama. Prior to joining the NLRB, he served as Associate General Counsel to both the Service Employees International Union and the American Federation of Labor & Congress of Industrial Organizations. He graduated summa cum laude from Yale College in 1978 and received his J.D. in 1981 from Yale Law School. After law school he clerked for the Honorable Donald P. Lay, Chief Judge of the United States Court of Appeals for the Eighth Circuit. For 28 years, he practiced and taught labor law at the UCLA School of Law, the University of Chicago Law School and Georgetown Law School. Mr. Becker has argued labor and employment cases in virtually every federal court of appeals and before the United States Supreme Court.

## NLRB Speakers Available

Members of the Region's staff are available to make presentations before any unions, employer organizations, social service organizations, high school or college classes and others interested groups. We are happy to describe the Act's protections, how the Region investigates and decides unfair labor practice cases and processes representation petitions, and other NLRB topics of interest. To arrange for a speaker and to discuss possible topics, telephone ARD Mark Wirick 412 395-6846.

Recently, Region 6's staff spoke to groups of union stewards about the process of filing an unfair labor practice charge and what occurs when a charge is filed. Other presentations have been given on contract violations vis-à-vis unfair labor practice charges, and collective bargaining issues. We have also spoken before college classes providing an outline and history of the National Labor Relations Act and explaining the structure of the National Labor Relations Board. We

**Brian Hayes** was sworn in as a Board Member on June 29, 2010 by Sen. Mike Enzi at his offices in the Russell Building. He had most recently served as Republican Labor Policy Director for the U.S. Senate Committee on Health, Education, Labor and Pensions. Before joining the Senate staff, Mr. Hayes was in private practice for 25 years representing management clients in labor and employment law. He began his legal career as a clerk for the NLRB's Chief Administrative Law Judge, and later served as counsel to the Board Chairman. Mr. Hayes earned his undergraduate degree from Boston College and his law degree from Georgetown University Law Center.



There is also a newly appointed Acting General Counsel, **Lafe Solomon**, who may be new to his current position, but is a career employee who has been with the Agency for many years, most recently in the Office of Representation Appeals. Celeste Mattina, RD in Region 2 Manhattan was recently appointed by Lafe to be the Acting Deputy General Counsel. With these changes in personnel, there are bound to be changes in procedures and priorities. One such change we have already seen came with the issuance of GC 10-07, which issued on September 30, 2010 setting forth the Acting General Counsel's position on "nip-in-the-bud" cases.

## John Higgins Retires after 46 Years

After a distinguished, forty-six year career with the National Labor Relations Board, Deputy General Counsel John Higgins announced his retirement from the Agency. Originally from Melrose, Massachusetts, Higgins received a B.A. from Boston College, and completed his J.D. at Boston University School of Law in 1964. That same year, Higgins began his Board career as a Field Attorney in Memphis, Tennessee. After four years, he became a Supervisory Attorney, and in 1969, Higgins joined the Division of Advice in the agency's Washington, D.C. headquarters. In 1976, he received a promotion to Deputy General Counsel. In 1988, President Reagan nominated Higgins as a Member of the Board. Under recess appointment, Higgins served as a Board Member for more than one year, and later received a second recess appointment as a Member in 1996 under President Clinton. In 2001, President George W. Bush appointed Higgins as Deputy General Counsel. In 2005, he served as Acting General Counsel. Higgins also served as Solicitor of the Board and Inspector General.



Higgins is actively involved in the Labor and Employment Section of the American Bar Association, as well as other legal and scholarly organizations, and is the editor of several volumes on labor law. During the past 30 years, Higgins has taught as an Adjunct Lecturer at Catholic University's Columbus School of Law. During retirement, he plans to increase his course load. The Agency recognizes Higgins' outstanding service, thanks him for his leadership, and wishes him well in retirement.

have even conducted mock representation elections in front of law and graduate students.

## Contact the Region

There is always an information officer available at an NLRB Regional Office to answer general inquiries or to discuss a specific workplace problem or question. The information officer can provide information about the Act and advice as to whether it appears to be appropriate to file an unfair labor practice charge or representation petition. If filing a charge or petition does appear to be appropriate, the information officer can assist in completing the form.

The information officer at Region 6 may be reached by telephone at:

1-866-667-6572  
(Toll free)

Or

412-395-4400

[Se habla español](#)

# www.nlr.gov

## Labor Professionals can find injunction activity and amicus brief invitations on the NLRB website

Sixth in a series of informational articles about the Agency's electronic portal.

As cases are filed, Regional offices identify those which are potentially appropriate for Section 10(j) injunctive relief. The Region identifies these cases and if appropriate makes a recommendation to the General Counsel that injunction is warranted. The GC reviews the case and if the GC agrees with the Region, he recommends to the Board that it authorize the seeking of injunctive relief from federal district court. The current cases in which the Board has authorized seeking an injunction are now listed on [www.nlr.gov](http://www.nlr.gov). To view the list, click on "[→10\(j\) Injunction Activity](#)" under "**I am a Labor Professional.**" The Activity chart shows case names, the authorization date, and the status of the case. To see a list of involved parties, click on the case name. You can also view the 15 categories of labor disputes in which Section 10(j) injunctions may be appropriate by clicking on the link on this page.

The Agency occasionally issues invitations to the public and interested parties to file amicus briefs in cases of significance or high public interest. These invitations are now presented on the Agency's website. To view the current invitations, click on "[→Notice and Invitation to File Briefs](#)" under "**I am a Labor Professional.**" You will see a listing of cases for which a Notice has been issued as well as links to the briefs which have already been submitted in the case pursuant to the Agency's invitation. The page also provides access to an archive of previous invitations and related briefs.

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Friday, November 26, 2010

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What's New

Summary of cases for week of November 15-19, 2010  
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Los Angeles hotel settles NLRB case with \$1.3 million payment  
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## Filing Information

### How to File an Unfair Labor Practice Charge

Anyone may file an unfair labor practice charge with the NLRB. To do so, they must submit a charge form to any Regional Office. The form must be completed to identify the parties to the charge as well as a brief statement of the basis for the charge. The charging party must also sign the charge.

Forms are available for download from the NLRB website. They may also be obtained from an NLRB office. NLRB offices have information officers available to discuss charges in person or by phone, to assist filling out charge forms, and to mail forms.

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. Usually evidence will consist 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.

## New 10(j) Initiative Expedited Investigation and Prosecution of Cases Involving Discharges of Union Organizers During Organizing Campaigns

"Effective Section 10(j) Remedies For Unlawful Discharges In Organizing Campaigns" is the title of recently issued GC Memorandum 10-07 from Acting General Counsel Lafe Solomon, setting up new priorities and timelines for investigating and seeking 10(j) injunctive authorization in these discriminatory discharge cases. Both charging and charged parties, and their legal counsel, should be aware of these new timelines and their potential impact throughout the entire case handling process.

The Acting General Counsel considers discriminatory discharges as among the most serious violations of the Act. An unremedied discharge sends to other employees the message that they too risk retaliation by exercising their Section 7 rights. "[N]o other worker in his right mind would participate in a union campaign in this plant after having observed that other workers who had previously attempted to exercise rights protected by the Act have been discharged and must wait three years to have their rights vindicated," quoting from the court's 10(j) decision in *Silverman v. Whittall & Shon, Inc.*, 1986 WL 15735, 125 LRRM 2152 (S.D.N.Y 1986).

Given that the resumption of union organizing activity is unlikely during the continued absence from the workplace of unlawfully discharged union leaders, their interim reinstatement through 10(j) injunctive relief is critical to prevent an ultimate Board order from being ineffective in protecting rights guaranteed by the Act. Consequently, the goal is to give all unlawful discharges in organizing cases priority action and a speedy remedy.

Board agents are instructed to take the lead affidavit (presumably, the discharged employee(s)) from the charging party within seven (7) calendar days from the filing of the charge in all "nip-in-the-bud" discharge cases. Thereafter, the Region will attempt to obtain all the charging party's evidence in support of the charge within fourteen (14) days of filing. "Just and proper" evidence regarding the appropriateness of injunctive relief will be taken at the same time in the investigative process.

If the charging party's evidence points to a *prima facie* case on the merits and suggests the need for injunctive relief, the Region will notify the charged party in writing within 21 days of filing that the Region is seriously considering the need for Section 10(j) relief and will request that a position statement on that issue be submitted to the Regional Office within seven calendar days after the written notification. This notification will often be combined with the letter putting the charged party on notice of the allegations raised by the charge and soliciting submission of evidence, including affidavits and documents. Again, this should include any evidence the charged party may wish to submit on whether 10(j) relief would be "just and proper."

(continued)

After a full investigation, the Region will determine whether or not the charge has merit.

### After the Region Makes a 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 if it is not withdrawn. 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 Board decision subject to appeal to a federal court.

### Remedies for Violations

When there has been a violation, the Act does not impose fines or other direct penalties. Rather, it requires remedial action to correct the violation and its effects. NLRB Remedies require those who have violated the Act to cease the violation, to inform employees that they will respect their rights, to reinstate employees who have been unlawfully fired, and to pay compensation for lost earnings.

## **REGION 6 TIMELINE FOR CASES INVOLVING A DISCHARGE IN AN ORGANIZING CAMPAIGN** (Measured from date of charge filing)

- **7 days: Lead Affidavit**
- **14 days: All Charging Party Evidence**
- **21 days Notification to Charged Party that Section 10(j) relief is being seriously considered and requiring a position statement on the Section 10(j) question and all evidence on the merits within 7 days**

The Regional Director will normally make a determination on the merits of the case and whether 10(j) relief is warranted within 49 days from the filing of the charge. Regions are instructed to “quickly issue complaints” in these nip-in-the-bud discharge cases once a merit determination is made and to set prompt administrative hearings before an administrative law judge.

If complaint issues in a nip-in-the-bud case, the Region will promptly schedule the trial. The trial will be scheduled for consecutive days, using a liberal estimate as to the length of the trial, so as to avoid any adjournment of the trial before its completion.

The Region will decide at the time of the merit determination whether it will submit a written recommendation immediately (within seven days) to the Injunction Litigation Branch as to the need for 10(j) relief or whether it will wait until after the trial to make a recommendation to seek 10(j) relief (again within seven days of the close of the hearing). Factors that the Region may consider in deciding to wait until after the trial are whether the respondent has raised a significant *Wright Line* or economic defense, or if processing to the administrative hearing would significantly assist in reaching a settlement.

## Electronic ULP Notice Posting

In Picini Flooring, 356 NLRB No. 9 (October 22, 2010), the Board amended its current posting language in remedial notices to encompass and require electronic distribution by email, intranet, internet, or by any other electronic communication if the respondent customarily communicates with its employees or members by any of those means.

This decision does not expand the scope of the standard notice remedy that has been a vital element of the Board’s remedies for unfair labor practices since the earliest cases under the Act. Rather, it improves the administration of the Act to ensure notices are communicated to employees or members in a manner customarily used by the respondent.

As an administrative agency the Board has discretion to establish rules and remedies to protect and advance employee rights within the limitations imposed by the Act. The Board’s standard remedial posting provision requires a respondent to post a notice for 60 days “in conspicuous places including all places where notices to employees [members] are customarily posted.” Id. The

## How to File a Representation Petition

Filing NLRB representation petitions can be simple and convenient. An NLRB Information Officer can assist you in completing a petition form. Our contact information is on page one.

If you complete the petition yourself, keep in mind these helpful tips:

- Know which Regional office will handle your petition. Region 6 covers 41 counties in Pennsylvania and 26 counties in West Virginia.
- You may prepare your petition on our website at: [www.nlr.gov](http://www.nlr.gov) (filing instructions detailed).
- Know the job titles used by the Employer and the employee shift schedules.
- Provide the Region with authorization or membership cards (or other proof of interest) signed and dated by at least 30 percent of the employees in the petitioned-for unit.

modified provision directly follows the standard provision and states in pertinent part, "In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if the Respondent customarily communicates with its employees [members] by such means." Id. The Board amended the standard provision in remedial notices as a result of the increased reliance on electronic communication within the workplace to reflect the contemporary transition of communication technology. This policy applies to all respondents, whether the respondent is an employer or union, and will be applied retroactively in all pending cases in whatever stage, absent any "manifest injustice." Id.

The Board determined that questions as to whether an electronic notice is appropriate or unduly burdensome on the respondent, or any other issues regarding electronic notices, will be resolved in the compliance stage of the proceeding. Furthermore, the burden of establishing whether or not electronic posting should be required is on the respondent because it has knowledge, access and possession of relevant information, and corroborating evidence regarding communication within its business.

## **Board Orders Compound Interest for Back Pay**

In Kentucky River Medical Center, 356 NLRB No. 8 (October 22, 2010), the Board adopted a policy in which interest on back pay awards will be compounded on daily basis, rather than the previous practice of using simple interest. This decision continues the Board's evolutionary approach to remedial issues involving interest on back pay, making determinations via adjudication rather than by rulemaking, that has been uniformly upheld by federal appellate courts.

As an administrative agency the Board has been allowed the discretion to establish the rules which govern its particular field of law within the limitations imposed by the Act. It is anticipated that daily compounding will lead to more fully compensatory interest awards and thus come closest to achieving the make-whole Board remedies ordered to correct violations of the Act. Further, daily compounding conforms to commercial practice and is used under both the Internal Revenue Code and the Back Pay Act. In Kentucky River, the Board stated that the enhanced monetary remedies will be applied retroactively in all pending cases in whatever stage, given the absence of any "manifest injustice" in doing so. Id. slip op. page 4. However, the Board later clarified its policy by stating that daily compounding would not apply to cases that were already in the compliance stage on the date Kentucky River issued (October 22). Rome Electrical Systems, Inc., 356 NLRB No.38, fn.2 (November 24, 2010).

The General Counsel had advocated that interest be compounded by quarterly periods, rather than at a daily rate, for primarily administrative reasons. However, it is the Board's view that any administrative difficulties associated with daily compounding may be relatively minor. The daily compounding of interest on back pay can be accomplished by use of computer software for such financial calculations, and any administrative burden should be outweighed by the benefits of the new policy and will serve to deter the commission of unfair labor practices and encourage compliance with Board Orders and improve the statutory remedies provided by the Act.

- Although over 90% of elections are conducted pursuant to election agreements, 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 10-14 days from date of filing.
- Be prepared for the election to be conducted within 42 days from the date of filing.
- Always call the assigned Board agent with questions or concerns.

## Region Six Hires New Attorney

On October 25, 2010 Region Six welcomed its first newly-hired attorney in 21 years, Emily Sala. Emily is a native of Washington, D.C and recently relocated to Pittsburgh. Emily is a graduate of American University's Washington College of Law and is a member of the Maryland Bar.



## Ginny Scott

### First "Bridge" Celebrates 40 Years

In 1975, the NLRB implemented the Bridge Program, developed to provide carefully selected support staff employees an opportunity to qualify for careers as Field Examiners. Virginia "Ginny" Scott was the first Region 6 employee selected to participate, and successfully completed the rigorous program in 1978.

Ms. Scott began her NLRB career in 1970, as a docket clerk and receptionist. She was soon promoted to the secretarial pool and then to the position of secretary to a group supervisor. Taking control of her professional development, Ms. Scott began night classes at the University of Pittsburgh and, when the Bridge Program was implemented, Ms. Scott eagerly applied. Her strong work ethic, attention to detail and college credits earned her a spot in the program. The three-year program required her to balance secretarial work with that of professional Field Examiner duties and her class work. Her tenacity paid off and in 1978 Ms. Scott was promoted to Field Examiner. Most recently, she has served as the Region's R case specialist.

Ms. Scott celebrated 40 years with Region 6, on September 8, 2010.  
Congratulations Ginny!



Regional Director Bob Chester presents Ginny Scott with 40 year service pin.