



NLRB Region 6

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Outreach



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FROM THE DIRECTOR'S CHAIR

What's this thing I keep hearing about—The Boeing Complaint?

If you've been paying attention to the news, a recent Complaint against the Boeing Corporation out of Region 19 (Seattle) has caused quite a buzz. In response to public inquiries and a letter from Respondent's Counsel, the Acting General Counsel issued the following brief statement on May 9, 2011:

Contrary to certain public statements made in recent weeks, there is nothing remarkable or unprecedented about the complaint issued against the Boeing Company on April 20. The complaint involves matters of fact and law that are not unique to this case, and it was issued only after a thorough investigation in the field, a further careful review by our attorneys in Washington, and an invitation by me to the parties to present their case and discuss the possibility of a settlement. Only then did I authorize the complaint alleging that certain statements and decisions by Boeing officials were discriminatory under our statute.

It is important to note that the issuance of a complaint is just the beginning of a legal process, which now moves to a hearing before an administrative law judge. That hearing, scheduled for June 14 in Seattle, is the appropriate time and place to argue the merits of the complaint. The judge's decision can further be appealed to the Board, and ultimately to the federal courts. At any point in this process, the parties could reach a settlement agreement and we remain willing to participate in any such discussions at the request of either or both parties. We hope all interested parties respect the legal process, rather than trying to litigate this case in the media and public arena.

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Since his appointment as Acting General Counsel in June 2010, Lafe Solomon has enacted a series of initiatives to more quickly and effectively restore the status quo when unfair labor practices have occurred. He has also highlighted areas of interest to be addressed or reconsidered by the Board.

- Effective Remedies in Organizing Campaigns**

[General Counsel \(GC\) Memorandum 10-07](#), issued on September 30, 2010, Acting General Counsel Solomon announced a desire to obtain more remedies in cases when employees are discharged in the midst of a union organizing campaign. The New 10(j) Initiative was described fully in Region Six's last newsletter. In furtherance of that initiative, Acting General Counsel Solomon issued [GC Memorandum 11-01](#) outlining appropriate remedies in these cases, including seeking a federal injunction that would compel an employer to offer reinstatement to the fired workers pending litigation of the underlying unfair labor practice case.

- Default/Performance Language in Settlement Agreements**

In 2002, the Agency identified a best practice of including default or performance language in settlement agreements when there was a substantial likelihood the charged party/respondent would be unwilling or unable to fulfill its settlement requirements. What is default or performance language? It is language that requires the charged party/respondent to honor its commitments in the settlement agreement, a failure of which will result in the General Counsel filing for summary judgment for a Board order with respect to the issues contained in the settlement agreement. The language provides that the only issues which may be litigated are whether the charged party/respondent defaulted on the terms of the settlement agreement. In [GC Memorandum 11-04](#), Acting GC Solomon expanded the use of performance language to *all* informal settlement agreements Agency-wide. Via [GC Memorandum 11-10](#), Acting GC Solomon clarified GC Memorandum 11-04 to require the use of language assuring that service of any enforcement proceedings would be made to charged parties/respondents at their last known address.

- First Contract Bargaining Cases**

Former General Counsel Ronald Meisberg initially established remedial initiatives in first contract bargaining cases, which were highlighted in [GC Memoranda 06-05](#) and [07-08](#). In [GC Memorandum 11-06](#), Acting General Counsel Solomon has expressed interest in determining whether additional appropriate remedies should be included. Regions are now authorized to seek notice readings and extensions of certification years without having to submit cases to the Division of Advice. The length of such extensions will depend on the nature of the violations, the number, extent and dates of collective bargaining sessions, the impact of unfair labor practice sessions on the bargaining process, and the conduct of the union during negotiations. Most often, a year's extension will be sought. However, Regions have the discretion in appropriate circumstances to seek extensions between 6 months and one year. Regions are also authorized to seek bargaining schedules of at least 24 hours per month and at least 6 hours per session without submitting cases to Advice. As appropriate, Regions are also instructed to submit cases to Advice where reimbursement for negotiation expenses may be warranted. Similarly, Regions have been instructed to submit to Advice cases in which reimbursement of litigation

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 have even conducted

expenses for the union or General Counsel may be an appropriate additional remedy in response to the unfair labor practices.

- **Deferral to Arbitral Awards and Grievance Settlements:**

In [GC Memorandum 11-05](#), the Acting General Counsel advised that he would be submitting the issue of the Board's deferral standards in 8(a)(1)&(3) cases for reconsideration by the Board. Specifically, he will urge the Board to hold in such cases that the party urging deferral has the burden of demonstrating that: (1) the contract had the statutory right incorporated in it or the parties presented the statutory issue to the arbitrator; and (2) the arbitrator correctly enunciated the applicable statutory principles and applied them in deciding the issue. If the party urging deferral makes that showing, the Board should defer unless the award is clearly repugnant. The award should be considered clearly repugnant if it reached a result that is "palpably wrong," i.e., the arbitrator's award is not susceptible to an interpretation consistent with the Act. The Board should not defer to a pre-arbitral-award grievance settlement unless the parties themselves intended the settlement to also resolve the ULP issues. Where the evidence demonstrates that the parties intended to settle the unfair labor practice charge, the Board should continue to apply current non-Board settlement practices and procedures, including review under the standards of *Independent Stave*. While this issue is being considered by the Board, Regions are instructed to, at a minimum, obtain a *prima facie* case prior to deferring a case, and that upon issuance of an award or receipt of a grievance settlement, the Region should determine if the party urging deferral has met the burdens set forth above to demonstrate that deferral to the arbitrator's award is appropriate. If it does not, Regions are to complete the investigation of the case and thereafter submit the case to the Division of Advice, along with the Region's recommendation as to whether to defer to the award. **The GC Memos referred to** are available on the Agency website at www.nlrb.gov., Click on [Publications](#) and then on [General Counsel Memos](#).

Acting General Counsel Lafe Solomon will be speaking at the Southwestern PA Chapter of the Labor Employment Relations Association and the Robert Morris University School of Business October 2011 dinner meeting.

Topic: "Social Media- What issues employees and employers face with increasing use of these highly accessible communication techniques."

Date: Wednesday, October 5, 2011

Details: Cash Bar: 6:30 PM

Buffet Dinner: 7:00 PM

Program Begins: 7:30 PM

International Suite, Sewall Center

Robert Morris University

6001 University Blvd.

Moon Twp., PA 16108

The event is open to the public. For more information contact Laura Whitaker at 412-397-6356 (phone) or 412-397-2172 (Fax) by 9/28/11

Regional Director Bob Chester

will speak at the Pennsylvania Bar Institute's Employment Law Institute, a two day seminar on employment law that begins on 11/16/11.

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.nlrb.gov

Board Launches New Website

The screenshot shows the homepage of the NLRB website. At the top, there's a navigation bar with links for Home, Rights We Protect, What We Do, Cases & Decisions, Who We Are, News & Media, and Publications. Below the navigation is a main banner featuring a gavel and a map of the United States, with a link to 'Find Your Regional Office'. The left sidebar contains a 'Latest News' section with links to various news articles from September 14, 2011, through August 27, 2011. The right sidebar lists various resources like 'The NLRB Process', 'MyNLRB', 'Find a Case', etc. At the bottom, there's a footer with links to 'Rights We Protect', 'What We Do', 'Cases & Decisions', 'Who We Are', 'News & Media', 'Publications', and 'Fact Sheets'.

<http://www.nlrb.gov/> [9/15/2011 4:04:30 PM]

On February 10, 2011, the NLRB announced the launch of its new website that is more flexible, easier to navigate, and useful to a variety of audiences. The redesigned site is at www.nlrb.gov. Among the highlights:

- 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. Additional documents from Washington and the Regional offices not previously available will be posted to the site over time.
- The website showcases a new case-management system that has been coming online at the Agency for more than a year, and will be deployed

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

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. Each case is assigned its own page, where information and documents are posted. More information and documents will be added over time as the rollout of the new system is completed.

- For the first time, the Agency's 32 Regional offices are prominently highlighted in the new site. An interactive map shows Regional boundaries and allows visitors to quickly locate their own 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.
- 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.
- Improved navigation will make it easier for visitors to find their way, and new pages explain the NLRB processes and functions. At the same time, all the case handling manuals, memos and forms found on the old website will be available on the new one.

Beyond e-filing: "MY NLRB"

The **NLRB E-Filing** system provides an easy way to electronically file most case documents. Although you may not **E-File** unfair labor practice charges, representation petitions, or petitions for advisory opinions, most other documents filed with the Agency are eligible. In fact, **E-Filing** is strongly encouraged for such documents. **E-Filing** works with our new **NxGen** case management system to enhance efficiency and reduce paper usage, and has the potential for those same benefits for the parties in our cases. www.nlrb.gov contains instructions, FAQs, and even a demonstration video.

However, **E-Filing** is only one aspect of the Agency's move toward the future. **My NLRB** is the latest initiative of the Agency's e-Government program, a multi-year effort to provide greater transparency to the Agency's administrative processes, and to improve the public's ability to transact business online.

Why register for a My NLRB account?

My NLRB is your gateway to case information, documents, and electronic filing services from the Board. In addition, a pilot project named **E-Issuance** is under way. Full functionality of **My NLRB** is available only to registered users. Benefits include the ability to save **Board** case searches and your **E-Filing** preferences, and to register for **E-Service** of final Board and ALJ decisions. Basic registration involves providing your name and email address and choosing a user ID and password.

My NLRB is divided into four functional areas: **Regional Office Cases**, **Board Cases**, **E-Filing**, and **My Profile**.

- **Regional Office Cases** is the area of **My NLRB** where you have access to detailed case status information maintained by the Office of the General Counsel.
- **Board Cases** is the area of **My NLRB** where you can access detailed public information regarding cases pending before the Board, including

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.

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

the case docket and related documents maintained by the Office of the Executive Secretary.

- **E-Filing** is the area of **My NLRB** where you can electronically file case documents with the NLRB Field Offices, the General Counsel's Office of Appeals, the Division of Judges, or the Board.
- **My Profile** is the area where, after you register, you may view and manage your profile information.

E-Issuance is the electronic issuance of final Board and Administrative Law Judge (ALJ) decisions. Under the [pilot project](#), final Board and ALJ decisions will be issued electronically at the close of each business day by being listed on a daily **E-Docket** posted on the NLRB website. You can find out more information on the **E-Issuance FAQ** located under a help tab in the **My Profile** screen.

FTCA SETTLEMENT

Former employees at closed Somerset, PA camper manufacturer receive backpay and medical payments

A settlement between the major investor in a defunct Pennsylvania manufacturer of camper trailers and its former unionized workforce has resulted in the withdrawal of charges that the company's abrupt closure in January 2011 violated federal labor laws.

Located in Somerset, PA, the plant manufactured pop-up camper trailers for the Coleman Company. It originated as a division of Coleman in 1966, was sold to Fleetwood Enterprises in 1989. Private equity firm Blackstreet Capital bought the manufacturing plant in 2008 and renamed it FTCA, Inc.

In February 2011, the United Steelworkers, which represented the FTCA employees, filed a charge with the NLRB Regional office in Pittsburgh alleging that the company illegally closed the plant's doors without bargaining with the Union over the effects of the closure, and failed to furnish the Union with relevant requested information. Under the agreement, FTCA, Inc.'s parent company, FTCA, LLC, and Blackstreet Capital will cover employees' back pay due as a result of the failure to bargain, and medical expenses incurred as a result of losing insurance coverage. The amount recovered remained confidential under terms of the private agreement. The property and holdings of FTCA, Inc. were liquidated at auction.

The settlement, which avoided costly and lengthy litigation, was made possible by the efforts of numerous NLRB employees at headquarters and in the Pittsburgh office, where the team was coordinated by Supervisor Janet Schaefer. The matter was investigated by Attorney Cliff Spungen, Compliance Officer Tara Yoest and Field Examiner Paul Fink, assisted by the full regional team.

FEDERAL JUDGE ORDERS INTERIM RELIEF

Region Six obtained a 10(j) injunction against Grane Healthcare Co. and Ebensburg Care Center, LLC, d/b/a Cambia Care Center

U.S. District Court Judge Kim R. Gibson issued an order requiring the operator of a 376 bed-nursing home in Cambria County, Pennsylvania to recognize and

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.

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:

bargain with Local 1305, Professional and Public Service Employees of Cambria County a/w the Laborers' International Union of North America (the Laborers Local 1305) on an interim basis pending a final decision by the National Labor Relations Board. In issuing the decision, Judge Gibson found that the Agency is likely to succeed on the merits, that Grane and Cambria Care are a single employer, and that the entities are a successor to the former operator of Laurel Crest Nursing and Rehabilitation Center that unlawfully refused to recognize Laborers' Local 1305 as the collective bargaining representative of its nearly 180 nonprofessional employees.

The dispute arose in January 2010, when Grane/Cambria Care took over operations of the nursing home from the county. Although a majority of the employees formerly employed by the county were hired, the Employer refused to recognize Laborers' Local 1305 which had represented these employees for about 40 years. While District Court Judge Gibson did not order the reinstatement of two Local Union leaders, Judge Gibson found that a failure to issue an interim bargaining order requiring the Employer to recognize and bargain with Laborers' Local 1305 would result in irreparable harm. The Judge found that the issuance of such an order weighs in the public interest in order to protect the "strong interest" that employees of an incumbent union have in insuring that their previous representative is protected. Judge Gibson based his decision upon a review of the case before Administrative Law Judge David Goldman supplemented by live testimony from witnesses.

Unwilling to comply with the District Court's Order pending appeal, Grane/Cambria Care also asked Judge Gibson to stay his order. However, on July 1, 2011, Judge Gibson denied that request and in so doing reaffirmed the Court's recognition that the public interest favored issuance of the interim bargaining obligation.

ALJ Goldman issued his decision finding Grane/Cambria Care to be a Burns successor which unlawfully failed and refused to offer employment to five alleged discriminatees. Presently, the underlying unfair labor practice case is pending decision by the Board.



The Region's team in this case included:

Bottom Left to Right: Regional Attorney Kim R. Siegert; Regional Director Robert W. Chester; Summer Law Clerk Ryan Hauck.

Top Left to Right: Trial Attorney Patricia Daum, Administrative Assistant Shirley McIntyre.

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(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.
- 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.

SOCIAL MEDIA ISSUES RISE TO FOREFRONT

Last fall, social media issues in the context of the NLRA gained national attention as the NLRB's Region 34, Hartford, Connecticut Regional office, issued complaint alleging that an employer, American Medical Response of Connecticut, Inc., had unlawfully discharged an employee for engaging in protected concerted activity on Facebook. The employee was a member of a union and was discharged from her employment for criticizing her supervisor on Facebook following a disciplinary incident at the workplace. A number of her co-workers joined her in the discussion online. Several high-profile news outlets, including *The New York Times*, covered the case. Region 34's complaint further alleged that the employer maintained an unlawful overly broad social media policy. In February 2011, the case was settled before proceeding to trial.

Among other notable cases, in early May 2011, the NLRB's Region 3, the Buffalo, New York Regional office, complaint issued against Hispanics United of Buffalo, a nonprofit that fired several employees for engaging in conversation on Facebook that the employer alleged to have constituted harassment towards another employee. The complaint alleged that the employees were engaged in protected concerted activity, as the employees were discussing job performance and staffing levels. The employees are not members of a union. The case proceeded to a hearing at the end of this summer.

Also in May 2011, the NLRB's Chicago regional office issued complaint against Knauz BMW, a car dealership, for terminating an employee for engaging in activity on Facebook, including posting photographs and comments about his workplace. The complaint alleges the employee was engaged in protected concerted activity because his discussion related to terms and conditions of employment. Trial was scheduled for late July 2011.

On August 18, 2011, the Division of Operations-Management of the NLRB Office of the General Counsel released to the public OM 11-74, which details the Agency's treatment of social media issues in 14 cases during the last year. The memo offers guidance to practitioners and human resources professionals concerning the role of the NLRA in the social media debate.