



# NLRB Region 7 Outreach

**Stephen M. Glasser**  
**Regional Director**



**August 2009**  
**No. 6**

**McNamara Federal Building**  
**Room 300, 477 Michigan Ave**  
**Detroit, Michigan 48226 -2569**

**Grand Rapids Resident Office**  
**[See next page for address]**  
**Grand Rapids, Michigan 49503**

## ***In this Issue:***

- **White House Announces Three NLRB Nominations**
- **Agency Encourages e-Filing**
- **NLRB Posts Two Videos on its Website**
- **Electronic Case Files**
- **Outreach Corner**
- **New Video Testimony Program**
- **Laurel Baye and its current impact**

**Contact Us:**  
**(313) 226-3200**

**Agency Website:**  
[www.nlr.gov](http://www.nlr.gov)  
**Toll Free:**  
**(866) 667-6572**  
**Hearing Impaired:**  
**(866) 315-6572**

## **SAVE THE DATE!**

**THURSDAY—**  
**OCTOBER 15, 2009**  
**THE BERNARD GOTTFRIED**  
**MEMORIAL LABOR LAW**  
**SYMPOSIUM**



Wayne State University Law School—Spencer M. Partrich Auditorium  
Detroit Publisher Keith Crain and Detroit Regional Director Stephen Glasser will join practitioners to speak at the annual Bernard Gottfried Memorial Labor Law Symposium.

Topics include:

- \* Board Cases of Recent Vintage- Here Today, Gone Tomorrow?
- \* Panel discussion: Labor law reform—If Not Now—When?
- \* Afternoon presentations on the Duty of Fair Representation
- \* Bringing a Charge/Petition before the NLRB

For more information contact Region 7, Group Supervisor Patrick Labadie at (313) 226-3213, or email at [patrick.labadie@nlrb.gov](mailto:patrick.labadie@nlrb.gov).

---

## **WHITE HOUSE ANNOUNCES THREE NLRB NOMINATIONS**

On July 9, 2009, the White House announced that it had sent to the Senate the nominations of Craig Becker, Mark Gaston Pearce and Brian Hayes to be members of the National Labor Relations Board. If they are confirmed by the Senate, the Board will be at its full complement of five members for the first time since December 2007.

Mr. Hayes currently serves as the Republican Labor Policy Director to the U.S. Senate Committee on Health, Education, Labor and Pensions. Mr. Hayes' term would expire on December 16, 2012.

[Continued on Page 2]

The Region 7 Detroit office is located on the third floor of the Patrick V. McNamara Federal Building located at the corner of Michigan Ave. and Cass Ave. in downtown Detroit.

The Detroit office is open from 8:15 a.m. to 4:45 p.m. Monday through Friday. Telephone (313) 226-3200 Fax (313) 226-2090

The Grand Rapids Resident Office handles cases on the west side of the lower peninsula of Michigan.

It is open from 8:15 a.m. to 4:45 p.m. Monday through Friday.

Telephone (616) 456-2679 Fax (616) 456-2596

The Resident Officer is Chester H. Byerly, Jr..

The Resident Office is located on the third floor of the building located at 82 Ionia, the corner of Ionia St. and Fountain St. in downtown Grand Rapids.

→ On September 11, 2009, the Grand Rapids Resident office will be relocated to:

Gerald R. Ford Fed. Bldg.  
Room 299  
110 Michigan St., N.W.  
Grand Rapids, MI 49503-2363

[The phone and fax numbers will remain the same.]

## THE NLRB ENCOURAGES E-FILING



The NLRB is marching into the 21<sup>st</sup> century with a strong grasp of technology and the impact that it will have on case handling. In February, 2009, the Agency issued a news release encouraging the use of e-filing by the public in its dealings with the Agency. The Agency announced three changes which it believes will encourage the use of its e-filing system:

- ⇒ The Board and the General Counsel will now accept electronic filings up to 11:59 p.m. local time at the receiving office on the due date.
- ⇒ The Board and the General Counsel will now require parties who e-file documents to serve the documents on other parties to the case by e-mail whenever possible.
- ⇒ The Board and the General Counsel will no longer require parties to provide physical copies of long documents that they file electronically.

When e-filing under the new extended deadline, users should be aware that a technical failure by the Board's e-filing system may excuse a late filing, but user end problems will not.

The new e-filing policy can be found at the Board's website. In addition, e-filing "frequently asked questions" can also be found at the website.

**REMEMBER:** unfair labor practice charges and representation petitions are *not* accepted electronically but can be faxed to the Detroit office at (313) 226-2090 or the Grand Rapids Resident Office at (616) 456-2596.



### Board Nominations (Continued)

Mr. Pearce, who was an attorney with the NLRB at its Buffalo regional office from 1979 to 1994, is in private practice with a Buffalo, NY law firm and would have a term ending August 27, 2013.

Mr. Becker, Associate General Counsel of the Service Employees International Union and the AFL-CIO, would have a term ending December 16, 2014.

Chairman Liebman's term expires on August 27, 2011 and Member Schaumber's term ends August 27, 2010. By tradition, three of the five seats on the Board are filled by the same political party as the President in office.

## ELECTRONIC CASE FILES



The NLRB is in the process of converting its case records system from its prior system, Case Automated Tracking System (CATS), to a system where case files are maintained in an electronic format, called the Next Generation system, or NxGen. Currently Regions 9 (Cincinnati) and 10 (Atlanta) are operating as pilot regions in the conversion process. The Agency has advised Regions not involved in the pilot transition program to begin preparing for the transition from CATS to NxGen. This requires the use of standard naming formats for all files. Regions were also instructed to begin creating and maintaining electronic case files in addition to the existing paper files. The Office of Appeals, the Agency office in charge of reviewing cases in which a Regional Director has refused to issue complaint, began processing its appeals with the new system in late 2008.

Creating and maintaining case files electronically can involve substantial time in scanning and converting documents to an electronic format. Therefore, the Agency is encouraging parties to file documents with regions electronically whenever they are able to do so in place of filing paper documents.

NxGen has numerous built-in security measures for materials placed in it. In order to further protect the materials, only certain offices of the Agency are permitted to view the electronic case file depending on what stage it is at within the Agency.

On February 12, 2009, the Agency issued a press release stating that General Counsel Meisburg had made his first decision in a paperless administrative appeals case. The case dealt with an appeal of a Regional Director's determination to accept a settlement agreement where one of the parties contended that the settlement was inadequate. The Office of Appeals presented the case electronically and after careful review the appeal was denied.

For information about which documents can be filed electronically, look under the "e-filing" tab on the NLRB website.

## **PLAY** NLRB RELEASES TWO VIDEOS ON ITS WEBSITE

In another innovation at its award-winning website and to enhance the public's ability to transact business at the website, the Agency now features two new videos on the site ([www.nlrb.gov](http://www.nlrb.gov)): "Introduction to the NLRB Public Website" and "How to Use CiteNet" the Agency's legal research database.

The "Introduction to the NLRB Public Website" video provides viewers with a guided tour of the Agency's website pointing out many of its user-friendly features. The video explains how to navigate the Agency's website while at the same time explaining to viewers how to avail themselves of the Agency's services to enforce rights under the National Labor Relations Act. The video also explains the Agency's outreach and public information programs.

The "How to Use CiteNet" video explains how to use the Agency's electronic legal research database of Board and court decisions dating from 1992. CiteNet is a free public service offered by the Agency to assist labor law professionals and the public with their legal research needs. In many cases, CiteNet will provide a direct link to the decision itself

## **SPEAKERS AVAILABLE**



**Members of the Region's staff are available to make presentations before any employer or union group, classroom group, legal services clinic or service agency, and labor relations association, to describe the Act's protections, how the Region investigates and resolves unfair labor practice charges, processes representation petitions, or any NLRB topic of interest.**

**To arrange for a speaker and to discuss possible topics, please do not hesitate to telephone Regional Outreach Coordinator Patrick Labadie at (313) 226-3213.**



## CIRCUIT COURTS DISAGREE REGARDING AUTHORITY OF THE TWO-MEMBER BOARD

Effective midnight, December 28, 2007, Board Members Wilma Liebman, Peter Schaumber, Peter Kirsanow and Dennis Walsh delegated to Members Liebman, Schaumber and Kirsanow 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.

As a result of this delegation, Chairman Liebman and Member Schaumber have constituted a quorum for purposes of deciding Board cases. That has resulted in the omnipresent footnote 1 seen in Board decisions issued since December 31, 2007, which explains the authority of the two-member Board to issue decisions under Section 3(b) of the National Labor Relations Act.

Certain respondents have raised with the circuit courts, which have the authority to enforce Board decisions, the issue of the authority of the two-member Board to decide cases. Three of the circuits, the First, Second and Seventh Circuits, have held that the two-member Board does have authority under Section 3(b) of the Act to issue decisions and therefore have enforced Board orders issued by the two-member Board. However, on May 1, 2009 the District of Columbia Circuit held in *Laurel Baye Healthcare of Lake Lanier, Inc.*, 546 F. 3d 469 472-76, that the two-member quorum lacked authority to issue decisions. On May 28, 2009, the Board filed a petition with the District of Columbia Circuit for a rehearing of the *Laurel Baye* case, but the petition was denied on July 1, 2009.

On May 18, 2009, Chairman Liebman issued a statement that the Board has an important duty to keep functioning and to avoid an indefinite shutdown in its decision-making. She went on to state that the authority of the two-member panel has been upheld by other circuits and was supported by a legal opinion that the Board earlier had sought from the Department of Justice's Office of Legal Counsel. She stated that the Board would continue to issue decisions based on the authority of the two-member Board.

## NLRB ESTABLISHES VIDEO TESTIMONY PROGRAM



In 2008 the Board authorized the General Counsel to implement a video testimony pilot program to enhance the Agency's ability to process representation cases more efficiently. Since that time, Regions have used video testimony in both pre and post-election hearings to take oral testimony of witnesses not able to appear in person at the proceedings.

There continues to be a strong preference for "live, in-person" witness testimony at all NLRB representation hearings and the presence of all parties, representatives and witnesses in the hearing room. However, where circumstances demonstrate a benefit from the use of videoconferencing equipment, Regional Directors have the authority to require its use during pre and post-election representation hearings.

Parties to representation cases interested in using video testimony in a representation case should contact the Director of the Regional Office where the representation case is pending. In exercising their discretion whether to take video testimony, Regional Directors will consider various factors, including the number, length and types of documents to be introduced through a witness providing testimony via video, the number of witnesses who would testify by video, the expected length of their testimony, the types of issues involved, the potential cost of using video testimony versus travel costs, and the positions of the parties.

## OUTREACH CORNER

This section highlights some of the Outreach activities performed by Region 7 staff over the last several months.

- \* March 3, 2009: Senior Field Examiner **Tom Good** gave a presentation to students at Michigan State University regarding the Agency.
- \* March 18, 2009: Regional Attorney **Dennis Boren** and Group Supervisor **Patrick Labadie** met with students at a “Call to Serve” job fair for public employers at Eastern Michigan University.
- \* March 20, 2009: Senior Field attorney **Joseph Canfield** gave a presentation to about 20 union representatives regarding the Agency and the Act.
- \* April 16 and June 18, 2009: Regional Director **Stephen Glasser** and Senior Field Attorney **Joseph Canfield** met with representatives of the IBEW to provide information about the Agency.
- \* April 22, 2009: Group Supervisor **Patricia Zane** met with union stewards of the National Association of Letter Carriers to explain the Act and provide information about the Agency.
- \* April 23, 2009: Senior examiner **Tom Good** gave a presentation about the Agency to students at a business law class at Michigan State University.
- \* May 1, 2009: Regional Attorney **Dennis Boren** and Supervisory Attorney **Andy MacEachern** represented the Agency at a Law Day event and met with members of the public and distributed information about the Agency.
- \* May 15, 2009: Group Supervisor **Patrick Labadie** met with 15 managers of the Michigan Department of Civil Rights to explain the NLRB representation and unfair labor practice investigation process.
- \* June 9, 2009: Field Examiner **Elizabeth Kerwin** met with union representatives of the Laborers International Union to explain the Agency’s processes for investigation of charges and the Act.
- \* August 5, 2009: Senior Field Examiner **Richard Yorke** gave a presentation to attorneys and health care representatives at the Ann Arbor office of the law firm of Dykema Gosset.

**Our office is ready and willing to appear at your events** to explain what our Agency does under the National Labor Relations Act. If you are interested in having someone from our Region speak to your group, please contact Outreach coordinator Patrick Labadie at 313-226-3213 or by e-mail at [patrick.labadie@nlrb.gov](mailto:patrick.labadie@nlrb.gov).



**National Labor Relations Board  
Region 7  
Room 300 Patrick V. McNamara Federal Building  
477 Michigan Avenue  
Detroit, MI 48226-2569**