



NLRB Region 7

Stephen M. Glasser
Regional Director



www.nlr.gov

Outreach

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No. 1

McNamara Federal Building
Room 300, 477 Michigan Ave
Detroit, Michigan 48226

Grand Rapids Resident Office
82 Ionia Street, Room 330
Grand Rapids, Michigan 49503

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Contact Us:

(313) 226-3200

Agency Website:
www.nlr.gov

Toll Free:
(866) 667-6572

Hearing Impaired:
(866) 315-6572

Greetings

This is the Region's first newsletter which we offer as a way to inform you about the Agency, the Region, and labor-related matters of interest. The Detroit Regional Office (Region 7) is the largest of the Agency's 32 Regional Offices in terms of staff size and case intake. Our geographic jurisdiction is the lower peninsula of Michigan and the upper peninsula counties of Luce, Schoolcraft, Mackinac, and Chippewa. In order to better serve the employees and parties of the western part of the state, we have a resident office in Grand Rapids, which opened in November 1981. In enforcing the National Labor Relations Act, we process petitions seeking secret-ballot elections where employees vote on union representation, and investigate and, where appropriate, prosecute charges against employers and labor organizations alleging commission of unfair labor practices as defined in Section 8(a) and (b), respectively, of the Act. The Detroit office is staffed by 12 managers and supervisors, 36 investigators (21 attorneys and 15 field examiners) and 17 administrative support staff. The Grand Rapids resident office is staffed by two managers, seven investigators (three attorneys and four field examiners) and two administrative support staff. Charges and petitions may be filed by mail, office visit, or fax. At the present time we do not accept electronic filing (e-mail) of such documents.

Region 7, as other Regions, strives to maintain the highest level of quality work, and do so in a timely manner in accordance with Agency time goals. An unresolved labor dispute or question whether a union is the employees' exclusive collective-bargaining representative serves no interest. Indeed, the Act exists for the very purpose of minimizing such issues and giving full effect to the employees' exercise of their statutory rights. The staff of Region 7 is pleased to assist those who seek to access our services and we assure our "customers" of quality and prompt casehandling in a professional and courteous manner.

Stephen M. Glasser
Regional Director

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.

Visitors to the McNamara Building must enter the building from the Michigan Avenue entrance.

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 NLRB cases on the west side of the lower peninsula of Michigan.

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.

It is open from 8:15 a.m. to 4:45 p.m. Monday through Friday.
Telephone (616) 456-2679
Fax (616) 456-2596

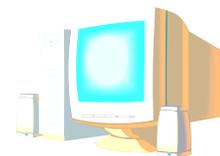
The Resident Officer at the Grand Rapids office is Chet Byerly.



**GENERAL COUNSEL ANNOUNCES
THAT REGIONS
WILL SEEK COMPOUND INTEREST**

On May 2, 2007, General Counsel Ronald Meisburg issued Memo 07-07 stating that Regions in all cases where a monetary award is being sought should seek quarterly compound interest. He stated that all Regions should plead this remedy in their complaints. Previously only simple interest was sought on backpay and other monetary awards. However, in Memo 07-07, the General Counsel stated "I have taken a fresh look at Board remedies and considered whether they remain appropriate in the contemporary workplace." He noted "I have concluded that the Board should also adopt a policy of compounding interest on all monetary awards. Such a policy is necessary to ensure that employees are properly compensated for the lost use of their money; since the common practice in private markets today is to assess compound interest on loaned funds." The final word, of course, will come from the Board.

**BOARD HEARS ORAL
ARGUMENT ON EMPLOYEE
USE OF E-MAIL**



On March 27, 2007, the Board heard oral argument whether an employer can ban the nonbusiness related use of its e-mail system. The case, *The Guard Publishing Company d/b/a the Register Guard*, involved discipline issued to employees using the employer's e-mail system for communication regarding upcoming contract talks and the union's entry in a local parade. The union president received discipline for sending the e-mails on the employer's system. The discipline led to unfair labor practice charges. Administrative Law Judge McCarick found that the employer's policy was facially lawful, but the discipline imposed on the union president was discriminatory because the employer allowed employees to use the e-mail system for nonbusiness related activity. At the oral argument the Union and the Employer made presentations. Also making presentations were the Human Resources Policy Association and the United States Chamber of Commerce, as *amici*.



Section 10(b) of the National Labor Relations Act allows a charging party six months to file a timely charge with the NLRB. If you intend to file a charge with the NLRB, your charge must be filed and served on the charged party within six months of the date of the alleged unfair labor practice.



Region 7 attends Law Day event held at the Federal Courthouse in Detroit

Tuesday, May 1. It was a dark and cloudy day, threatening rain as supervisory attorneys Amy Roemer and Erik Karmol and field attorney Eric Cockrell wended their way to the Theodore Levin United States Courthouse to participate in Law Day, hosted by the United States District Court for the Eastern District of Michigan and the Federal Bar Association. The purpose of Law Day was to provide the downtown and surrounding Detroit communities an opportunity to tour the Federal Courthouse, and meet with attorneys expert in specific areas of law or representatives of various Federal agencies.

The Region 7 representatives arrived at the Courthouse at about 10:30, and displayed effective concerted effort in setting up a display table complete with the NLRB banner draping the front, the Agency seal prominently displayed, and various Agency paraphernalia ranging from sticky note pads, pencils and pens, to copies of the Act and Agency brochures attractively arranged on the table. At 11:00, Erik and Eric left to do Information Officer duty in an adjoining room for the “Ask the Lawyer” component of Law Day. Amy remained stationed at the table to answer inquiries regarding the Agency’s mission. Soon she was joined for the rest of the four hour session by Erik and Eric as a result of a surfeit of lawyers available for “Ask the Lawyer.” Throughout the day, the three engaged colleagues from other agencies and visitors checking out the wares. Bankruptcy Court, U.S. Postal Investigators, and the NLRB were among the agencies present that did not have a direct connection with Homeland Security.

Although, when all was said and done, the turnout was composed primarily of Federal Courthouse denizens, including a couple of the four-legged members of one of the enforcement agency’s canine patrol. The folks who availed themselves of this unique opportunity to meet their government at work left Law Day with smiles on their faces and bags full of goodies.

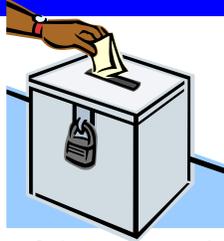
Section 7 of the National Labor Relations Act (NLRA) gives employees the right to:

- Form, join, or assist a union
- Choose representatives to bargain with their employer
- Act together with other employees for their mutual aid and protection
- Choose not to engage in any such activities

Nonunion Protected Concerted Activity

Q: Does the NLRA protect employees' activity for mutual aid or protection, even if the employees do not currently have a union?

A: Yes. For instance, employees not represented by a union who walked off a job to protest working in the winter without a heater were held by the Supreme Court to have engaged in concerted activity that was protected by the NLRA. *NLRB v. Washington Aluminum*, 370 U.S. 9 (1962).



Oakwood Healthcare case is from the Detroit Region

One of the most anticipated Board decisions in recent years, *Oakwood Healthcare, Inc.*, 348 NLRB No. 37 (9/29/06) came out of the Detroit Region. While the case involved the supervisory status of the hospital's charge nurses, the impact of the decision goes to the heart of Section 2(11)'s definition of a supervisor and cuts across all bargaining units of all employers within the Board's jurisdiction. Also issued with *Oakwood* and dealing with the supervisory issues were *Croft Metals, Inc.*, 348 NLRB No. 38 (a nonhealth care employer) and *Golden Crest Healthcare Center*, 348 NLRB No. 39. In *Oakwood*, the Board discussed the definitions of Section 2(11) terms "assign," "responsibly to direct," and "independent judgment." As to the *Oakwood* charge nurses, the Board held that the 12 permanent charge nurses were statutory supervisors, but that the employer did not meet its burden of establishing that its 112 rotating charge nurses were statutory supervisors. The Board then applied its definitions of "assign," "responsibly to direct," and "independent judgment" articulated in *Oakwood* in the *Croft Metals* and *Golden Crest Healthcare Center* decisions.

The ultimate impact of the *Oakwood* decision will be reflected in the cases remanded by the Board to the various Regions for supplemental decisions consistent with *Oakwood*. Stay tuned.

FOUR SOUTHEASTERN MICHIGAN BEER DISTRIBUTORS HAVE PAID AND ONE IS MAKING THE FINAL PAYMENT IN WHAT IS ONE OF THE LARGEST PAYOUTS IN ANY NATIONAL LABOR RELATIONS BOARD CASE

On April 3, 1991, charges alleging bad faith bargaining and unilateral changes were filed by Teamsters Local 1038 against Don Lee Distributors, Inc., Powers Distributing Company, Inc., Eastown Distributors Co., Oak Distributing Co., and Hubert Distributors, Inc. After the issuance of several consolidated complaints, a decision and recommended order was issued on December 1, 1994. Following the filing of exceptions by the employers, the Board issued its Decision and Order on November 8, 1996, adopting the recommended order, with modifications. Therein, the Board ordered that the employers, among other things: (a) rescind the unilateral implementation of reductions in hourly wage rates and holiday and vacation pay and restore all terms and conditions of employment to the status quo prior to the unilateral changes; and (b) make whole all unit

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More questions?



Learn More:

The NLRB website, www.nlr.gov, contains a great deal of information about the provisions of the Act, Board policies and procedures, and how to contact the nearest Regional Office.

Contact the Region:

There is always an information officer available at an NLRB office or by telephone to answer general inquiries or to discuss a specific workplace problem or question. The information officer can provide information about the Act and discuss whether it appears to be appropriate to file an unfair labor practice charge. However, the information officer may not offer legal advice and the decision as to whether to file a charge rests with the individual. If filing a charge does appear to be appropriate, the information officer can assist in completing the charge form.

The information officer at Region 7 may be reached by telephone at:

313.226.3200

employees for the losses of wages and benefits they suffered as a result of the unilateral changes. This led to an appeal to the Court of Appeals for the Sixth Circuit, which, on June 2, 1998, denied the employers' petition for review and granted the Board's petition to enforce its order. After a petition for rehearing was denied on July 10, 1998, the employers filed a petition for a writ of certiorari in the Supreme Court on October 8, 1998. On January 19, 1999, the Supreme Court denied the petition.

Between 2000 and 2003, all of the beer distributors, save one, entered into settlements for 90-95 percent of the amounts that were computed to be owed to the employees and former employees over the backpay period of April 15, 1991, to June 30, 1998. The settlements with four of the employers were approximately \$4,500,000; \$5,908,000; \$8,500,000; and \$11,167,500.

Since one distributor refused to settle, it was necessary to conduct a compliance hearing over six days in June and July 2003. On December 16, 2003, a Supplemental Decision and Order was issued by the Administrative Law Judge sustaining the Region's methodology and computations. After the distributor filed exceptions, the Board issued its Supplemental Decision and Order on March 7, 2005, which adopted the judge's recommended order, with modifications. The subsequent appeal by the distributor was denied by the Sixth Circuit Court of Appeals on August 1, 2006.

The distributor has now issued checks totaling nearly \$10,200,000 in backpay and interest for its employees and former employees. Although most of the checks have been cashed, Region 7 is conducting an extensive search for approximately two dozen former employees who have yet to be found.

Overall, when the final case will be closed in early 2008—17 years after its filing—in excess of \$40,000,000 in backpay and interest will have been paid to approximately 2,000 employees and former employees of the five beer distributors.



What individuals are excluded from the National Labor Relations Act?

The Act states that employees covered by it shall include any employee except for:

- agricultural laborers;
- any individuals employed by his parent or spouse;
- independent contractors;
- supervisors;
- individuals employed by an employer subject to the Railway Labor Act;
- government employees, including those employed by the Federal government, a Government corporation or Federal Reserve Bank, or any state or political subdivision such as a city, town, or school district.

However, pursuant to the Postal Reorganization Act of 1970, the NLRB does have jurisdiction over the U.S. Postal Service and its employees.



Section 10(j) and Special Remedies



Section 10(j) of the Act authorizes the Board to seek injunctive relief in a U.S. District Court in those situations where the normal processes of the Board likely will be inadequate to effectively remedy the alleged violations of the Act. The section was added to the Act in 1947 as part of the Taft-Harley amendments. Congress created Section 10(j) as a means to preserve or restore the lawful status quo ante so that the purposes of the Act are not frustrated.

Injunctive relief may be sought as soon as an unfair labor practice complaint has been issued by the General Counsel and remains in effect until the case is finally disposed of by the Board. It may be requested by the charging party or sought by a Regional Office sua sponte. When a Region concludes that a case is appropriate for injunctive relief, it submits a recommendation to the General Counsel in Washington D.C. If the General Counsel agrees, the case is forwarded to the Board. If the Board authorizes the General Counsel to seek injunctive relief, the Region files a petition in the appropriate U.S. District Court. Approximately 75 to 100 recommendations for injunctive relief are submitted by the Regions to the General Counsel each year. The most common cases where injunctive relief is sought include those involving discharges during union organizing campaigns, tainted withdrawals of recognition from unions, and successor employers' refusals to recognize incumbent unions.

The normal remedies for an unfair labor practice finding include an agreement to cease and desist from the alleged unlawful conduct, affirmative acts to return to the status quo ante, such as reinstatement and backpay, and a 60-day notice posting so that employees will know about their rights and the remedial action being taken. Special remedies may be sought in certain situations at the discretion of the General Counsel. This generally occurs when the alleged violations are numerous and pervasive. Special remedies can include reading of the notices by respondent officials, granting union access to employees during an organizing campaign, and extension of the union's certification year. More recently, in certain cases the General Counsel has sought the e-mailing of remedial notices to employees where respondent normally communicates with its employees by e-mail and/or the alleged violation occurred by e-mail.

• **Can the NLRB help me?**

Section 7 of the National Labor Relations Act extends rights to private sector employees.

• **What rights do employees have?**

The NLRA protects workers who form, join, support or assist labor organizations, and protects groups of workers who engage in protected concerted activities, without the assistance of a labor organization, to modify their wages or working conditions. Employees also have the right to refrain from engaging in such activities.

Practical Trial Postponement Tips

As the Regional Attorney, one of my responsibilities deals with setting a hearing date and location and thereafter assigning an attorney to litigate the case once the complaint issues. Once a complaint issues, it is not uncommon for an attorney or representative to discover that there is a conflict either in his/her schedule or with a potential witness' schedule. Upon learning that a conflict exists, it is critical that the party seeking the postponement file the request in the proper manner.

Section 102.16 of the Board's Rules and Regulations deals with such requests. Specifically, this section provides, in part, that upon proper cause shown by a party, the Regional Director issuing the complaint may extend the date of the hearing or may change the location at which it is to be held, except that the authority to extend the date of the hearing shall be limited to the following circumstances:

- (1) Where all parties agree or no party objects to the extension of the date of hearing;
- (2) Where a new charge or charges have been filed which, if meritorious, might be appropriate for consolidation with a pending complaint;
- (3) Where negotiations which could lead to settlement of all or a portion of the complaint are in progress;
- (4) Where issues related to the complaint are pending before the General Counsel's Division of Advice or Office of Appeals; or
- (5) Where more than 21 days remain before the scheduled date of hearing.

In circumstances other than those set forth above, motions to reschedule the hearing are to be filed with the Division of Judges in accordance with Section 102.24(a) of the Board's Rules and Regulations. When the motion to reschedule has been granted, the Regional Director issuing the complaint retains the authority to order a new date for hearing and the responsibility to make the necessary arrangements for conducting such hearing, including its location.

In summary, once a complaint issues and a party makes a determination that it is going to seek a postponement, it is incumbent on the moving party to demonstrate proper cause, contact the parties to ascertain their position relative to the request, and to file the request in a timely manner. To the extent that no prior postponements have been granted and the moving party complies with these criteria, it is reasonable to assume that the Regional Director would look favorably upon the request.

Dennis Boren
Regional Attorney

Contributors:

Mark Baines
Compliance Officer

Dennis Boren
Regional Attorney

Patrick Labadie
Group Supervisor

Amy Roemer
Group Supervisor

Richard Whiteman
Deputy Regional Attorney

Technical Assistance:

Richard F. Czubaj
Field Attorney



**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.

SAVE THE DATE!!!!
**Gottfried Labor Law
Symposium scheduled**



Region 7 will conduct the 15th annual Bernard Gottfried Memorial Labor Law Symposium on Wednesday, October 24, 2007 at the Wayne State University Law School in Detroit. The event begins at 8:15 a.m. and runs to 4:00 p.m. The Symposium will tackle two major issues in labor law today. The first deals with the consequences of the *Oakwood Healthcare* decision and is titled "Now Who is a Supervisor?" Speakers from the Regional Office and the labor bar will address the issue. A panel discussion will be held on the relevancy of the Board and the Act in the current labor climate and is titled "*The NLRA and the Employee Free Choice Act; What the 21st Century Will Bring.*" After lunch, special guest speaker Barry Kearney, head of the Agency's Division of Advice, will present his views of the current issues before the Board and the General Counsel. Mr. Kearney's speech will be followed by presentations on three subjects: (1) employee use of electronic mail, (2) picketing and secondary pressure by unions and (3) injunctive relief and other special remedies.

The Region will be sending out a pamphlet with registration information to those on its mailing list. Other labor practitioners and members of the public can obtain a registration form from the Regional Office in Detroit by calling Group Supervisor Patrick Labadie at (313) 226-3213.