NATIONAL LABOR RELATIONS BOARD

Region 13 - Chicago **February 2015**

AFFIRMED! 7th Circuit Finds Chicago Bus Company in Contempt of District Court Order – Owes Backpay and Board's Attorney Fees

The National Labor Relations Board obtained another successful ruling against Latino Express Inc., a Chicago-area bus company whose employees voted in early 2011 to be represented by Teamsters Local 777. The initial ULP charges were filed in early 2011 by two fired drivers and Teamsters Local 777 at the NLRB Regional Office in Chicago. The Region investigated the charges and in March 2011 issued a consolidated complaint alleging numerous violations by Latino Express. While that case was pending before the Board, attorneys in the Region won a temporary injunction in federal district court and Latino Express was ordered to, among other things, offer immediate reinstatement to the two fired drivers.

The Company failed to comply with the district court's order and was found in contempt by Judge John F. Grady on July 2, 2012. The district court then issued an order requiring, among other things, new offers of reinstatement to both employees, backpay to the employees, payment to the NLRB for its attorney's fees and costs for investigating and prosecuting the contempt matter, and threatened fines against the company and the owner if the company failed to comply with the contempt order.

Latino Express appealed the contempt finding to the Seventh Circuit and oral arguments were heard by the Court in September 2014. On January 12, 2015, the Seventh Circuit issued its decision completely affirming the contempt findings against Latino Express and its Vice President. Accordingly, the Board is resuming its efforts to obtain back pay for the two employees pursuant to the Judge's contempt finding and update its attorney's fees due.

Karsh Promoted to AGC

Aaron Karsh, former Region 13 Field Attorney, was recently promoted to Assistant General Counsel in the Division of Operations-Management in Washington, D.C. The Region congratulates Aaron and looks forward to continuing to work with him in his new role. Press Release

Speaker Requests

The Region is available to provide speakers for your organization. To inquire about a speaker contact the Region at 312-353-7570 and ask to speak with Elizabeth Galliano or Drew Hampton.

The Chicago Regional Office is located in the historic Rookery

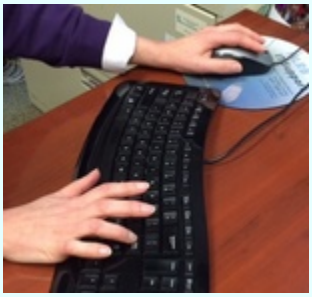
New Representation Case Rules

On December 12, 2014 the NLRB issued a final rule for representation case procedures. A summary of the final rule can be found here on the NLRB website.

Region 13 intends to conduct training sessions on the new representation case procedures pursuant to the final rule. We will announce the dates of these trainings soon and encourage all to attend.

Think Twice Before Failing To Comply With a Subpoena

In *M.D. Miller Trucking & Topsoil, Inc*., 361 NLRB No. 141 (Dec. 16, 2014), the General Counsel sought sanctions against an employer whose attorney refused to fully comply with the General Counsel's and union's subpoenas. As a result, the administrative law judge barred the employer from presenting certain evidence at trial. The Board held this sanction was not an abuse of discretion as the subpoenas sought information relevant to the matters at issue. In the decision, the Board found the employer unlawfully refused to reinstate an employee by not accepting his current valid medical certification, and requiring him to complete multiple medical certifications because of his union activities. The employer engaged in threats of futility regarding the employee's filing of grievances. In affirming the administrative law judge's decision regarding threats of futility, the Board rejected the employer's argument that it was simply expressing its opinion on the merits of a potential grievance in the light of the circumstances surrounding the employer's statements.



Employees' Right to Use Email

In *Purple Communications, Inc*., 361 NLRB No. 43 (Sept. 24, 2014), the Board set aside elections at two locations based on the Employer's objectionable conduct. In that decision, the Board severed and held for further consideration the question of whether the Employer's electronic communications policy was unlawful. The policy prohibited employees from using the Employer's email system. On December 11, 2014 the Board issued its decision on the remaining issue (*Purple Communications, Inc.* 361 NLRB No. 126). Finding that "the use of email as a common form of workplace communication has

Building at the corner of Adams and LaSalle streets in downtown Chicago. It is easily accessible by public transportation.

NLRB Forms

Quick links to NLRB forms.

* Charge against Employer

* Charge against Labor Organization

* Petition for Election

* Notice of Appearance

For other forms click here.

Procedural Questions

If you have procedural questions you would like addressed in upcoming issues of the newsletter, please email those questions to elizabeth.galliano@nlrb.gov or andrew.hampton@nlrb.gov

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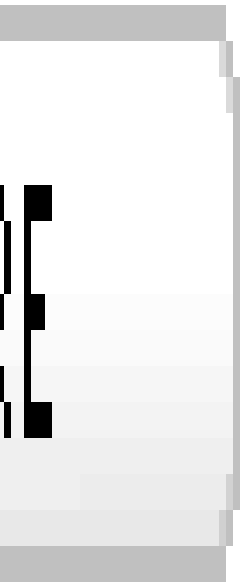
expanded dramatically in recent years", the Board decided that "employee use of email for statutorily protected communications on nonworking time must presumptively be permitted by employers who have chosen to give employees access to their email systems." This decision overrules the Board's divided decision in *Register Guard*, 351 NLRB 1110 (2007) to the extent that it held that employees did not have a statutory right to use their employer's e-mail systems for Section 7 purposes. However, the decision applies only to employees who have already been granted access to an employer's email system and an employer may demonstrate that special circumstances justify a total ban on nonwork use of email. Please read the decision for the full discussion and dissent.

To Defer Or Not To Defer – That Is The Question

The Board adopted a new standard for determining whether to defer to the arbitrator's decision in cases alleging the employer retaliated against employees for exercising their Section 7 rights [8(a)(1) and 8(a)(3) cases]. In modifying its deferral standard in *Babcock & Wilcox Construction Co., Inc*. 361 NLRB No. 132 (2014), the Board changed who carries the burden of proving deferral is appropriate from the party opposing deferral to the party requesting deferral. The party requesting deferral to the arbitrator's decision must show that: 1) the arbitrator was explicitly authorized to decide the unfair labor practice issue; 2) the arbitrator was presented with and considered the statutory issue, or was prevented from doing so by the party opposing deferral; and 3) Board law reasonably supports the arbitrator's award. The new standard also applies to grievance settlements between the parties reached prior to arbitration.

For additional guidance please see Memorandum GC 15-02.

The NLRB is an independent federal agency that protects the rights of most employees to engage in concerted activity, union activity or to refrain from engaging in these activities. Additional information can be found on the Chicago Regional page and on the Chicago Region's Facebook page.



Questions?
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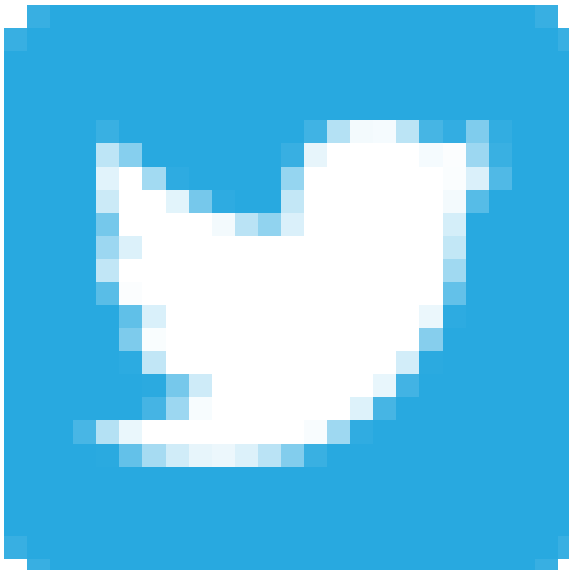


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