NATIONAL LABOR RELATIONS BOARD
REGION 13
CHICAGO
NEWSLETTER

# THE ChiRO UPDATE

SPRING 2012

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**NLRA EMPLOYEE RIGHTS NOTICE POSTING REQUIRED AS OF APRIL 30, 2012.**
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## Introducing Peter Sung Ohr, Region 13's New Regional Director

It is my pleasure to introduce myself to the Chicago community as the NLRB's Chicago Regional Director. Having spent most of my youth in Chicago, this city holds a special place in my heart. I attended Chicago public schools in the Albany Park area for many years and graduated from Notre Dame High School in Niles, Illinois before moving to California to attend University and Law School.

I started my career with the NLRB as an attorney in the Honolulu, Hawaii Subregional Office and then worked as a Deputy Assistant General Counsel for the NLRB's Division of Operations-Management in Washington, D.C. During my tenure in Operations, I had the good fortune of working with the Chicago office. Through that relationship I learned first-hand that Chicago's labor community is alive and well. Chicago's labor environment is thriving and dynamic. Labor organizations and employee advocacy groups demand the best for their clients. The businesses in Chicago continue to be leaders of commerce throughout the nation. The law firms that represent management and labor organizations are of the highest caliber. Moreover, the Chicago NLRB Office has time in and time out risen to meet any and all challenges.

As I begin my tenure, I suspect that there will be some changes in the operations of the office, but one thing that will not change is the quality and professionalism exhibited by the people in the NLRB office. I am very fortunate to be joining an office with so many dedicated public servants. I want to continue my predecessor's outreach efforts. Having a continued dialogue with the community that the Chicago office serves is vital to the effectuation of the NLRA. Further, I will be expanding our outreach efforts to include as many members of the community as possible, even if those sectors of the community are not traditionally part of the established labor community. I seek your assistance in letting others know about the NLRB Chicago Office. The last thing I want to learn is that an individual's Section 7 rights were violated but the time to file a charge has expired, or that an entity violated federal labor laws because of ignorance of the law.

I am excited to be a part of a Region with such rich history and accomplishments. There is no doubt in my mind that the NLRB Chicago Office will continue to be a flagship office of the NLRB. I look forward to developing lasting relationships with as many members of the Chicago community as I can during my long tenure.

As they say in Hawaii, Aloha.

# Region Secures 10(j) Injunction Against A.D. Conner

**By Brigid Garrity, Field Attorney**

Region 13 recently secured injunctive relief against a petroleum products delivery company that shut down its unionized operation and transferred the associated work to its non-union sister company. The injunction required A.D. Conner to, among other things, restore the terms of its applicable collective bargaining agreements to employees who had been moved and to bargain with the employees' unions. The injunction was obtained less than five months after the Region issued its administrative complaint.

The case arose out of charges filed on October 15, 2010, by Locals 142 and 705 of the International Brotherhood of Teamsters. The locals alleged that, in the prior month, A.D. Conner's Owner William J. McEnery and Vice President David Christopher first attempted to coerce employees into dropping their Union representation by threatening the closure of the facility, then specifically asked employees to decertify the Unions and dealt directly with them regarding their wages and benefits. After employees refused to renounce their Unions, the company did, in fact, shut down to avoid its contractual obligations to both Teamsters Local 705 and Local 142. It then transferred some A.D. Conner employees to work at its non-union delivery arm, Heidenreich Trucking. Next, A.D. Conner terminated the remainder of its bargaining unit employees that it had not elected to keep at Heidenreich, and did so in retaliation for these employees' affiliation with the Unions. Following this, Respondent refused to bargain with either Union, repudiated both of its collective bargaining agreements, and failed to respond to a request for information made by Local 705.

After a full investigation of all issues which included the need to issue an investigative subpoena for documents, then-Regional Director Joseph Barker found merit to the Unions' allegations and issued an administrative complaint on February 16, 2011, against A.D. Conner and Heidenreich Trucking as alter egos, as well as against A.D. Conner, Heidenreich Trucking and several other companies owned by the William J. McEnery Trust as a single integrated enterprise. The NLRB hearing on the case was conducted before Administrative Law Judge Paul Buxbaum from March 8-10.

On March 28, the Board authorized the Region to institute Section 10(j) proceedings against A.D. Conner and Heidenreich as alter egos. The Region filed the 10(j) petition in the U.S. District Court on April 4.

On June 24 while the 10(j) petition was pending, the ALJ issued a decision finding that A.D. Conner and Heidenreich were alter egos and a single integrated enterprise which had violated Sections 8(a)(1), (3) and (5) of the Act. Specifically, he found that the companies had 1) threatened bargaining unit employees with closure of operations, 2) solicited employees to decertify, 3) discriminated against bargaining unit employees because of their union affiliations, 4) failed to bargain with Locals 705 and 142, 5) failed to provide information to Local 705, 6) repudiated the collective bargaining agreements with both Locals, and 7) bypassed the Unions by dealing directly with employees. Shortly thereafter, the District Court was advised of the ALJ's decision on the merits of the complaint.

On July 11, U.S. District Court Judge Robert M. Dow, Jr. issued an order granting full 10(j) relief to the Region. *Barker v. A.D. Conner*, --- F.Supp.2d ----, 2011 WL 2683164, N.D. Ill., July 11, 2011 (NO. 11-CV-2255). The injunction decree directed the companies to cease and desist from refusing to recognize the Unions, threatening to close because of employees' membership and activities on behalf of the Unions, shutting down operations without bargaining with Locals 142 and 705 and in retaliation for union activity, and transferring bargaining unit work to a non-union entity in order to avoid contractual obligations. The injunction also directed the companies to affirmatively apply the terms of the expired collective-bargaining agreements to the respective unit employees transferred to Heidenreich, recognize and bargain with both Unions, and provide the information requested.

On August 23, 2011, Respondent filed exceptions to the ALJ Decision with the Board. On December 28, the Board adopted Judge Buxbaum's order in full, thereby terminating the 10(j) injunction.

# Change Is Inevitable, Except From A Vending Machine

(Quote from Robert C. Gallagher)

**By Arly Eggertsen, Regional Attorney**

As surely as the ocean tides roll in and out, Board law has and will change. Recent Board cases have significantly changed prior precedent in both representation law and unfair labor practice law. Some of the most significant changes that you should be aware of are discussed herein.

In *Lamons Gasket Company*, 357 NLRB No. 72 (August 26, 2011), the Board re-established the recognition bar doctrine and overruled *Dana Corp.*, 351NLRB 434 (2007). That doctrine bars, for a period of six months to one year, the processing of a representation petition challenging the voluntary recognition of a labor organization by an employer as the exclusive bargaining representative of its employees. Under *Dana*, employees could challenge a voluntary recognition by filing a decertification petition during a 45-day period following the posting of a notice to employees advising them of that right. In re-establishing the recognition bar, the Board found that a reasonable period to allow the parties to bargain without the interjection of a representation challenge was a period ranging from a minimum of six months to one year. This period dates from the first bargaining session, not the date of the voluntary recognition. The burden of establishing whether the bar period should extend beyond the six-month minimum rests on the party asserting the bar using the "multifactor test of *Lee Lumber*." Slip op. at 10. The multifactor test of *Lee Lumber* considers: (1) whether the parties are bargaining for an initial contract; (2) the complexity of the bargaining issues; (3) the amount of time since bargaining commenced and the number of sessions; (4) the progress made in negotiations; and (5) whether the parties are at an impasse. Issues under the re-established recognition bar can be raised in both representation cases and unfair labor practice cases under Section 8(a)(5) of the Act.

In *UGI-UNICCO Service Company*, 357 NLRB No. 76 (August 26, 2011), the Board restored the successor bar that was discarded in 2002. The successor bar applies in situations where a successor employer recognizes the incumbent union that represented the employees with the predecessor and no other bar to challenging the union's representational status exists. The Board found:

> In such cases, the union is entitled to a reasonable period of bargaining, during which no question concerning representation that challenges its majority status may be raised through a petition for an election filed by employees, by the employer, or by a rival union; nor, during this period, may the employer unilaterally withdraw recognition from the union based on a claimed loss of majority support... Slip op. at 8.

When the successor adopts the existing terms and conditions as the starting point for negotiations, "[t]he reasonable period for bargaining will be 6 months, measured from the date of the first bargaining meeting..." Slip op. at 9.

When the successor employer unilaterally establishes initial terms and conditions of employment,

> [t]he 'reasonable period of bargaining' will be a minimum of 6 months and a maximum of 1 year, measured from the date of the first bargaining meeting between the union and the employer. We will apply the multifactor analysis of *Lee Lumber* to make the ultimate determination of whether the period has elapsed...The burden of proof will be on the party who invokes the 'successor bar' to establish that a reasonable period of bargaining has not elapsed. *Id*.

One other caveat to the operation of the bar exists. If there was no open period during the final year of the predecessor bargaining relationship and a new contract is reached with the successor during the successor bar period, then the contract bar for the new agreement is two years instead of three.

*(See "Recent, Significant Board Decisions," continued on page 4)*

# Recent, Significant Board Decisions (cont.)

In *The Continental Group*, 357 NLRB No. 39 (August 11, 2011), the Board modified the long standing principle that discipline imposed pursuant to an unlawfully overbroad rule is unlawful. The Board found that, where the "conduct for which an employee is disciplined is wholly distinct from activity that falls within the ambit of Section 7…," it is not unlawful for the employer to discipline an employee pursuant to an unlawful, overly broad rule. Slip. op. at 4.

The Board's application of this modified legal principle to the facts in *Continental Group* demonstrates the new limitations. In that case, the employer maintained an overly-broad, no-access rule for off-duty employees. However, employee Gonzales was living in the common area of the condo building where he worked. The Employer discharged Gonzales pursuant to its unlawful, overly-broad rule, and thus the ALJ found that the discharge likewise violated Section 8(a)(1). However, the Board held that Gonzales's conduct was wholly distinct from any conduct protected under Section 7 of the Act. Therefore, his discharge was lawful, even though it was pursuant to an unlawful rule.

To complicate matters, the Board noted there was a middle ground between protected activity and wholly unprotected activity. For example, asking for a pay raise is protected under Section 7 if done with other employees, but not protected if done solely for one's own benefit. In such cases, the Board will apply the general principle that discipline pursuant to an unlawful rule is also unlawful, unless the employer shows that the conduct interfered with the disciplined employee's or other employees' work or interfered with the employer's operations. Slip op. at 4.

In a series of three cases, the Board dealt with the issues of interfacing the prohibitions of Section 8(b)(4)(B) with the protections of the First Amendment. In *Carpenters Local 1506 (Eliason & Knuth)*, 355 NLRB No. 159 (August 27, 2010), the Board held that a stationary banner addressed to consumers of a secondary employer announcing a labor dispute and "shame" on the secondary was not restraint or coercion within the meaning of Section 8(b)(4)(B)(ii). The Board concluded that bannering was not the same as picketing, but was more akin to handbilling and therefore protected free speech. The Board rejected the General Counsel's argument that the bannering constituted "signal picketing," finding that the banner's communication was aimed at the public whereas "signal picketing" is aimed at communications between union represented workers. Slip op. at 9. The Board also rejected the argument that the banner lost the protection of the First Amendment because the message was false; it found the message was not false and that, in any event, a false statement does not lose the protection of the First Amendment. Slip op. at 15.

In *Carpenters Southwest Regional Council Locals 184 & 1498 (New Star)*, 356 NLRB No. 88 (February 3, 2011), the Board found bannering by a union at reserve gates on construction sites did not violate Section 8(b)(4)(B), as the bannering did not constitute picketing necessary to finding a *Moore Dry Dock* violation. The Board found no evidence that the bannering constituted "signal picketing" as there was no work stoppage by any employees, no discussions by union agents about the dispute with any passersby, and handbills accompanying the bannering stated the unions were not urging anyone to refuse to work or deliver goods.

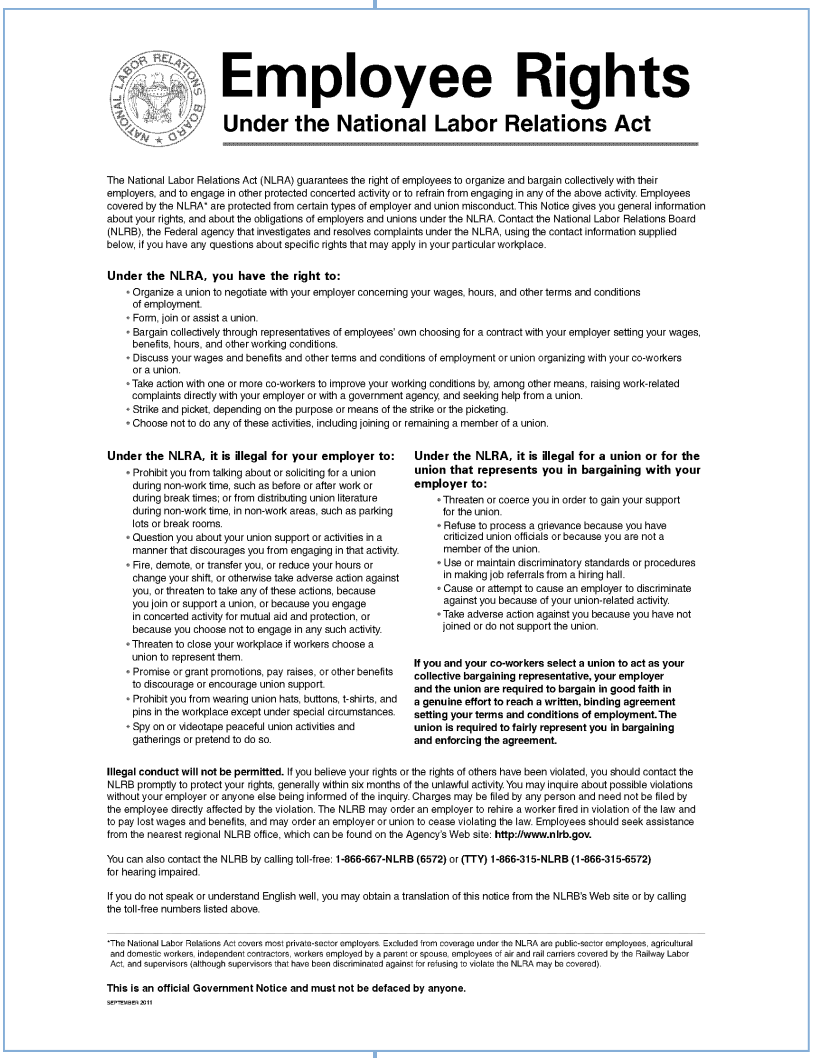
In *Sheet Metal Workers Local 15 (Brandon Medical Center)*, 356 NLRB No. 162 (2011), the Board found that displaying a large rat at a neutral's premises and holding out a leaflet with two arms to customers entering the neutral employer's parking lot was not picketing. The Board stated that, "because we find that the rat display and Holly's leaflet display did not involve any confrontational conduct, we reject the judge's finding that these displays constitute picketing". Slip op. at 3 (emphasis added). In finding there was no confrontational conduct, the Board relied

*(See "Recent, Significant Board Decisions," continued on page 9)*

# Notice of Employee Rights Under the NLRA

**By Charles J. Muhl, Field Attorney**

On April 30, 2012, most private sector employers will be required to post a Notice which advises employees of their rights under the National Labor Relations Act (NLRA) and the conduct of unions and employers which is prohibited by the Act. Among the employee rights described in the notice are the right of employees to discuss their wages and benefits with co-workers or a union; the right to take action with one or more co-workers to improve working conditions; the right to form, join, or assist a union; and the right to bargain collectively through a representative chosen by employees. The Notice also states that employees have the right to chose not to engage in any of these activities. This Notice posting requirement is based upon a rule issued by the National Labor Relations Board (NLRB) on December 22, 2010.



## Employee Rights

### Under the National Labor Relations Act

The National Labor Relations Act (NLRA) guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected concerted activity or to refrain from engaging in any of the above activity. Employees covered by the NLRA* are protected from certain types of employer and union misconduct. This Notice gives you general information about your rights, and about the obligations of employers and unions under the NLRA. Contact the National Labor Relations Board (NLRB), the Federal agency that investigates and resolves complaints under the NLRA, using the contact information supplied below, if you have any questions about specific rights that may apply in your particular workplace.

**Under the NLRA, you have the right to:**

- Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.
- Form, join or assist a union.
- Bargain collectively through representatives of employees' own choosing for a contract with your employer setting your wages, benefits, hours, and other working conditions.
- Discuss your wages and benefits and other terms and conditions of employment or union organizing with your co-workers or a union.
- Take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and seeking help from a union.
- Strike and picket, depending on the purpose or means of the strike or the picketing.
- Choose not to do any of these activities, including joining or remaining a member of a union.

**Under the NLRA, it is illegal for your employer to:**

- Prohibit you from talking about or soliciting for a union during non-work time, such as before or after work or during break times; or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms.
- Question you about your union support or activities in a manner that discourages you from engaging in that activity.
- Fire, demote, or transfer you, or reduce your hours or change your shift, or otherwise take adverse action against you, or threaten to take any of these actions, because you join or support a union, or because you engage in concerted activity for mutual aid and protection, or because you choose not to engage in any such activity.
- Threaten to close your workplace if workers choose a union to represent them.
- Promise or grant promotions, pay raises, or other benefits to discourage or encourage union support.
- Prohibit you from wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances.
- Spy on or videotape peaceful union activities and gatherings or pretend to do so.

**Under the NLRA, it is illegal for a union or for the union that represents you in bargaining with your employer to:**

- Threaten or coerce you in order to gain your support for the union.
- Refuse to process a grievance because you have criticized union officials or because you are not a member of the union.
- Use or maintain discriminatory standards or procedures in making job referrals from a hiring hall.
- Cause or attempt to cause an employer to discriminate against you because of your union-related activity.
- Take adverse action against you because you have not joined or do not support the union.

**If you and your co-workers select a union to act as your collective bargaining representative, your employer and the union are required to bargain in good faith in a genuine effort to reach a written, binding agreement setting your terms and conditions of employment. The union is required to fairly represent you in bargaining and enforcing the agreement.**

**Illegal conduct will not be permitted.** If you believe your rights or the rights of others have been violated, you should contact the NLRB promptly to protect your rights, generally within six months of the unlawful activity. You may inquire about possible violations without your employer or anyone else being informed of the inquiry. Charges may be filed by any person and need not be filed by the employee directly affected by the violation. The NLRB may order an employer to rehire a worker fired in violation of the law and to pay lost wages and benefits, and may order an employer or union to cease violating the law. Employees should seek assistance from the nearest regional NLRB office, which can be found on the Agency's Web site: **http://www.nlrb.gov.**

You can also contact the NLRB by calling toll-free: **1-866-667-NLRB (6572)** or **(TTY) 1-866-315-NLRB (1-866-315-6572)** for hearing impaired.

If you do not speak or understand English well, you may obtain a translation of this notice from the NLRB's Web site or by calling the toll-free numbers listed above.

*The National Labor Relations Act covers most private-sector employers. Excluded from coverage under the NLRA are public-sector employees, agricultural and domestic workers, independent contractors, workers employed by a parent or spouse, employees of air and rail carriers covered by the Railway Labor Act, and supervisors (although supervisors that have been discriminated against for refusing to violate the NLRA may be covered).

**This is an official Government Notice and must not be defaced by anyone.**

SEPTEMBER 2011

On March 2, a U.S. District Court Judge for the District of Columbia held that the Board's issuance of the rule was proper pursuant to the Board's rulemaking authority contained in the NLRA. However, the Judge struck down the portion of the rule which made an employer's failure to post the Notice an automatic unfair labor practice under the Act. The Judge left open the possibility that such failure to post could constitute a ULP depending on the factual circumstances of an individual case, something that could be litigated through the Board's regular administrative procedures. The Judge also rejected the rule's tolling of the 6-month statute of limitations contained in Section 10(b) of the Act when an employer fails to post the Notice, concluding the Board had no authority to alter the statute in that fashion. Multiple parties, including the National Association of Manufacturers and National Right to Work Foundation, had challenged the rule in court, and may appeal the Judge's decision.

With the Board's rule upheld, any employer that falls under the jurisdiction of the Board must post the Notice. The Board's jurisdiction is very broad and covers the great majority of non-government employers with a workplace in the United States, including non-profits, employee-owned businesses, labor organizations, non-union businesses, and businesses in states with "Right to Work" laws.

The Notice must be posted in locations where other workplace notices are usually posted. If an employer typically posts workplace polices or rules on an Internet or Intranet site, the Notice must be posted there. If at least 20 percent of employees only speak a foreign language, the Notice also must be translated and posted into that language.

Copies of the Notice, including many foreign translations, and detailed information on the posting requirement are available from the NLRB website. This includes a page with Frequently Asked Questions on the Notice.

# *NLRB Region 13 Employees Participate in Labor Rights Week*

***By Elizabeth Galliano, Field Examiner***

Labor Rights Week took place the week preceding Labor Day, August 29 to September 2, 2011. This marked the third annual National Labor Rights Week with events in various cities throughout the Untied States. This year, several Central American Embassies signed letters of understanding with the U.S. Department of Labor to work together to educate Latino workers in the United States and prevent workplace abuses. They also joined the Mexican Embassy in promoting Labor Rights Week. Region 13 employees joined workers from other state and federal agencies in the week long events that took place at the Mexican Consulate, Guatemalan Consulate, and El Salvadoran Consulate in Chicago, as well as churches and community centers in the suburbs.

Board agents Ed Castillo, Elizabeth Cortez, Elizabeth Galliano, Helen Gutierrez, and Cristina Ortega gave brief presentations in Spanish about the NLRB and answered workers' questions. More specifically, agents reviewed an arbitration award with a worker who did not understand it and talked with an employee about filing a charge concerning discipline the employee received after speaking to a group of employees about the company's last-minute, mandatory overtime. In addition to speaking with workers, Chicago board agents also shared information about our agency with the employees of other federal and state agencies, law firms, and community groups that work with the Consulates here in Chicago.

Labor Rights Week was a great opportunity to share information about the NLRB with others and to learn more about other state and federal laws



*Field Attorney Elizabeth Cortez and Field Examiner Elizabeth Galliano at the Consulado General de México en Chicago*

## NEED AN NLRB SPEAKER?

**If you are a business, union, law firm, community group, university, high school, or any other organization and are interested in having a presentation regarding any NLRB-related topic, please call either Gail Moran or Charles Muhl at 312-353-7570 and a presentation with Region 13 staff members will be arranged.**

# REGION 13 OUTREACH ACTIVITIES

**By Dan Nelson, Supervisory Field Examiner**

Region 13 employees continue to participate in a variety of outreach activities to advise and educate employees, employers, unions, practitioners, and other individuals about the NLRB and the law we enforce.

Field Attorney Christina Hill was interviewed by MsEsquire TV about the basics of the NLRA. The interview aired on CANTV in the fall of 2011 and currently can be viewed on YouTube on MsEquire's channel.

On September 22nd, 2011, Field Attorney Charles Muhl presented to a group of professionals from the Human Resource Management Association of Chicago where he discussed protected concerted activities and the application of the National Labor Relations Act to handbook policies and social media.

On November 4th, Regional Attorney Arly Eggertsen and Assistant to the Regional Director Gail Moran attended an ABA event where they met with several labor law practitioners and presented on recent developments at the National Labor Relations Board.

On November 4th, Field Attorney Jeanette Schrand presented to a labor law class at Northern Illinois University College of Law where she covered the basics of the National Labor Relations Act and recent developments in labor law.

On December 7th, Field Attorney Charles Muhl was invited to a brown bag lunch at a law firm to meet with several attorneys, where the discussion focused on the application of the National Labor Relations Act to small- and medium-sized, non-union companies.

On December 9th , Field Attorney Christina Hill spoke at a Black Women's Lawyers Association event about career strategies for young attorneys.

On January 25th, 2012, Field Attorney Lisa Friedheim-Weis led an introductory labor law class at the University of Illinois, Chicago Labor Education Program where she covered the basics of the National Labor Relations Act.

On January 28th, Field Attorney Charles Muhl was a panelist at a DuPage County Bar Association event where he shared the latest developments on Board law as it pertains to social media.

On February 16th, Field Attorney Cristina Ortega spoke about the NLRB, NLRA, and employment opportunities in the federal government to individuals attending a career day sponsored by the Chicago Area Law Consortium.

***Have an idea for en event with Region 13 representatives, including presentations directed towards employees who are unaware of their NLRA rights? Please call the Region at (312) 353-7570 and ask to speak to Gail Moran or Charlie Muhl.***

# Region 13 Staffing Update

**By Paul Prokop, Field Examiner**


The Region experienced three recent departures – Supervisory Field Examiner Walter Hoffman, Field Attorney Denise Jackson-Riley, and Field Examiner Cathy Brodsky. Their dedication, hard work and combined 67 years of experience will be sorely missed by the Region.

**Walter Hoffman**, known to most, if not all, simply as "Wally," decided to call it quits after 33 years of dutiful service as a Field Examiner and Supervisor. Wally's office inbox was decorated with a sticker bearing the motto "I'm with the government, I'm here to help you." During his years with Region 13, he helped as many as he could, as often as he could. Wally will be remembered for his keen ability and eagerness to mentor new employees, his easy-going demeanor, his knack for having the perfect on-point case at his fingertips in his legendary filing cabinet and his broad institutional knowledge. His retirement plans include honing his photography skills, traveling to Europe, and mocking those of us who are not retired.

**Denise Jackson-Riley** retired in November 2011. During her 19 years with Region 13, Denise contributed her skills as both an investigator and litigator. The staff of Region 13 will miss her legal acumen and friendly personality. Her retirement plans include spending more time with her daughter Lauren.

**Cathy Brodsky** retired at the end of 2011 after 15 years with Region 13. Cathy's previous government service included stints with the Railroad Retirement Board and FDIC. In reminiscing about her days at Region 13, Cathy noted that her work provided a fascinating insight to the American workplace and its dynamics, and that she has a lot of respect for the Board's thorough processes and for the problem-solving capabilities of practitioners in our field.

# NLRA Violations Can Pop Up Anywhere

**By Liz Galliano, Field Examiner**

A recent EEOC case, *EEOC v. Sterling Jewelers Inc.*, W.D. N.Y., No. 1:11 – mc – 00028, 11/2/11, highlights the fact that workplace conduct may violate more than one federal statute enforced by different federal agencies. This case dealt principally with age and sex discrimination by an employer, Title VII violations under the EEOC's jurisdiction. However, as part of the case, the company gave the female employee a counseling report stating discussions of pay should only be between an employee and his/her manager and inappropriate discussions violate the company's code of conduct. The company's action in that regard clearly supports an NLRB charge alleging that the company's code of conduct contained an unlawful prohibition on protected concerted activity by employees under Section 7 of the Act and that the female employee had been unlawfully disciplined pursuant to that unlawful policy.

The Region would like to remind everyone that, if a situation presents the potential for violations of more than one federal or state law, the affected parties must contact each federal or state agency responsible for enforcing the particular laws at issue. The NLRB cannot initiate an investigation absent a charge being filed. However, once a charge is filed, the NLRB and the Chicago Regional office can and have worked with other federal agencies on cases in order to remedy violations of multiple statutes. This office remains open to doing so in the future should be need arise.

# *Recent, Significant Board Decisions (cont.)*

on the stationary nature of the conduct, the distance of the conduct from building entrances, and the lack of evidence anyone was accosted by the conduct. In dicta, the Board concluded that the conduct at issue was not signal picketing because it was aimed at consumers rather than employees of any secondary employers.

The foregoing three Section 8(b)(4)(B) cases are very fact specific, and they do not preclude finding that bannering accompanied by other conduct in some situations may constitute "signal picketing" or be coercive within the meaning of Section 8(b)(4)(B). See *Warshawsky & Co. v. NLRB*, 182 F.3d 948 (D.C. Cir., 1999). Look for any confrontational factors associated with the bannering, rat displays or other conduct aimed at neutrals to have them cease doing business with the primary and whether that conduct is aimed at the employees of the neutrals or the public.

# *Former Regional Director Kinney Honored*

On December 7, 2011, former Region 13 Regional Director Elizabeth Kinney received the Distinguished Service Award from the Chicago Chapter of the Labor and Employment Relations Association (LERA). LERA was founded in 1947 as a professional organization dedicated to the advancement of labor and employment developments, and counts representatives of labor, management, government, neutrals, and academics among its members. The Distinguished Service Award is presented by the Chicago Chapter biennially to honor outstanding achievement in labor relations by members of the Chicago labor relations community. Also honored with the Distinguished Service Award along with former Regional Director Kinney were Thomas Allison of Allison, Slutsky & Kennedy, James Franczek of Franczek Radelet, and Edward Sadlowski of the USW.

**PROTECTING WORKPLACE DEMOCRACY**

**REGION 13**
**CHICAGO**

209 S. LaSalle Street
Suite 900
Chicago, IL 60604
Phone: 312-353-7570
Fax: 312-886-1341
Web: www.nlrb.gov

*Regional Director:*
Peter Sung Ohr

*Regional Attorney:*
Arly W. Eggertsen

*Assistant to the Regional Director:* Gail R. Moran

*Deputy Regional Attorneys:*
Paul Hitterman,
Richard Kelliher-Paz

*Supervisors:* Jessica Muth, Dan Nelson, Paul Prokop

*Office Manager*: Rosemary Wright

*Assistant Office Manager*:
Catherine Jones

*Newsletter Editor:*
Charles J. Muhl