

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 ON THEIR BEHALF

ACT TOGETHER WITH OTHER EMPLOYEES FOR THEIR BENEFIT AND PROTECTION

CHOOSE NOT TO ENGAGE IN ANY OF THESE PROTECTED ACTIVITIES

NLRB Region 14 St. Louis, MO and Subregion 33 Peoria, IL



St. Louis



Peoria

D.C. Circuit Court Decisions Raise Challenges for the Board

Jurisdiction over Religious Institutions. In *Carroll College, Inc.*, 350 NLRB No. 30 (July 20, 2007), the Respondent tested the certification of the UAW as the representative of its faculty members claiming it was a religious organization exempt from the NLRB's jurisdiction under the Religious Freedom Restoration Act (RFRA). The Board disagreed and concluded the Respondent unlawfully refused to bargain. Even though the Respondent did not raise a jurisdictional issue in the representation case, it sought review of the Board's decision in the D.C. Circuit, which vacated the Board's decision. Applying a less restrictive test for determining whether a church-operated school is beyond the Board's jurisdiction than the Board did, the Court found that the College was a religious institution exempt from the Board's jurisdiction because: (1) its "charter documents make clear that it holds itself out to students, faculty, and the broader community as providing a religious educational environment;" (2) "[t]here is no dispute that Carroll . . . is a nonprofit institution;" and (3) "Carroll is 'affiliated with . . . a recognized religious organization.'" The Board relied on the more restrictive standard in *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979). The challenge: which standard should be applied in the future?

Decisional Authority of the Two-Member Board. For 17 months, the two-member Board has been issuing decisions under the theory that it constitutes a quorum of a three-member Board. The two-member status has been challenged in many of the circuit courts. Three circuit courts have ruled on the issue, the 1st, 7th and the D.C. Circuits. The 1st and 7th have approved the authority of the two-member Board—as a legitimate quorum of a three member group—to issue decisions. The D.C. Circuit Court, however, determined "that the [Two-Member] Board was not properly constituted, and . . . did not have the authority to issue the order before [it]." In response to the D.C. Circuit, the Board has respectfully decided not to adhere to the Court's decision and issued a May 18, 2009 press release stating its intention to continue issuing decisions as a two-member Board as well as petition the D.C. Circuit panel to revisit its ruling. On May 27, 2009, a party to the 7th Circuit case asked the Supreme Court to resolve the split decisions. Click here to see the Daily Labor Report's discussion on this topic.

Inside this issue:

Hot Topics Pending Before the Board	2
Technological Advances	2
Outreach Corner	3
Region 14 Wrap Up	4
How Did it Play in Peoria?	5
The Basics	6

NLRB Simplifies and Encourages E-Filing

"E-gov" is the mandate to federal agencies to establish procedures for Internet-based access to government services. There is a link to e-gov on our website nlrb.gov. From there you can establish your own personal account with us to access Regional and Board case information and submit documents to us electronically, called e-filing. In a press release dated February 19, 2009, the Board announced three changes to its e-

filing program designed to simplify and encourage electronic filings:

1. 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.
2. 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.

3. The Board and the General Counsel will no longer require parties to provide physical copies of long documents that they file electronically.

We encourage all parties to submit acceptable documents electronically. Click here to see which documents you can submit electronically.



What are the Hottest Topics at the Board You Ask? Bannering, Access, and Pre-Recognition Negotiation

Bannering: Several cases are pending before the Board over “bannering”. Bannering is a practice in which large banners or inflatable rats (or other animals/characters) are displayed in front of an employer’s facility or job site criticizing their employment practices without creating a physical barrier to the location. The question is whether this conduct can constitute unlawful secondary boycotting in violation of Section 8(b)(4) of the Act.

Access: In [New York New York I](#), 334 NLRB 762 (2001) and [New York New York II](#), 334 NLRB 772 (2001) the Board found the Respondent violated Section 8(a)(1) of the Act by preventing off-duty employees of a restaurant located inside the casino from engaging in hand-billing on the Respondent’s premises. The Board concluded that employees who took part in the area standards handbilling, both inside and outside the casino, were engaged in protected activity, were not trespassing when they did so, and were lawfully on the Respondent’s premises pursuant to their employment relationship with the restaurant. In 2002, the D.C. Circuit Court of Appeals denied enforcement of the Board’s orders and remanded the cases to the Board for further inquiry concerning whether the term “employee” extends to the relationship between an employer and employees of a contractor working on its property. These cases are currently pending before the Board. Click [here](#) to read the Court’s decision.

Pre-Recognition Negotiation: In [Dana Corporation 2005 WL 857114](#), an Administrative Law Judge (ALJ) ruled that both the Employer and the UAW (who have a long-standing bargaining relationship) violated the Act by unlawfully entering into a letter of agreement that set forth terms and conditions of employment to be negotiated in a contract should the UAW obtain majority status at another Employer facility in the future. The question is whether the Board will agree with the ALJ that the parties’ conduct was unlawful.

On March 10, 2009, H.R. 1409 and S. 560, the Employee Free Choice Act of 2009 (EFCA), was introduced in Congress. EFCA would be the first amendment to the National Labor Relations Act in over 30 years. The two bills, which are identical in their text, have three main provisions: 1) a new form of labor organization certification based on signed authorizations of a majority of bargaining unit employees, 2) first contract mediation and arbitration, and 3) stronger penalties for violations of the Act while employees are attempting to organize or obtain a first contract. Click [here](#) to read the text of H.R. 1409. As of the date our Spring 2009 Newsletter issues, the bills have been referred to Committees. For an impartial pro/con debate of EFCA, you can read the March 2009 issue of the Congressional Digest. A fee will be required if you do not already subscribe to the Digest. Click [here](#) to visit the Congressional Digest Corporation website.



WE WANT TO HEAR FROM YOU!

We would like to know if this Newsletter is helpful and informative. We would also like to know if there are certain topics, issues, Board decisions, or Regional practices that you would like to see discussed in future editions. If so, please contact Region 14 Outreach Coordinators [Lynette Zuch](#) or [Cindy Flynn](#) at (314) 539-7770 or Subregion 33 Outreach Coordinator [Melissa Olivero](#) at (309) 671-7080. Your feedback will be greatly appreciated and carefully considered. You may also contact the Outreach Coordinators if you would like to be added or deleted from our mailing list.

21st Century Technology for a 21st Century Society



In 2008, the Board authorized the General Counsel to implement a video testimony pilot program aimed at enhancing the Agency’s ability to process representation cases more efficiently. Since then, Regions have used video conference equipment in pre and post- election hearings to take oral

testimony of witnesses not able to appear in person at a hearing. Recently, NLRB Operations issued a [memo](#) highlighting this practice for representation cases and suggested its use in unfair labor practice investigations to secure evidence where a face to face affidavit is not required. A survey of Regions utilizing this equipment noted that many of the stakeholders, the public we serve, were not aware of the availability of video conference equipment. We are taking this opportunity to notify you of our video testimony program. We encourage our stakeholders to suggest the use of this technology in appropriate representation and unfair labor practice case proceedings.

Outreach Corner

This section will highlight Outreach events Region 14 and Subregion 33 Staff participated in during the last quarter

- **February 24, 2009** Field Staff attended a Labor and Employment Relations Association (LERA) program on Economic Shockwaves: Impact on Employers and Unions
- **February 26, 2009** Supervisory Staff spoke to approximately 30 students at a job fair at Washington University School of Law
- **March 19, 2009 and March 24, 2009** Managerial and Supervisory Staff spoke to CORO Leadership Center participants concerning an overview of the NLRA
- **April 2, 2009** Supervisory, Field and Support Staff attended a LERA and St. Louis University School of Law program on Competition in the Global Workplace
- **April 8, 2009** Supervisory and Field Staff spoke to approximately 25 attendees at the University of Missouri Extension Labor Law Breakfast Series about unfair labor practice proceedings and hot topics
- **April 22, 2009** Field Staff spoke to approximately 20 students at Lindenwood University's labor and employment class on collective bargaining
- **April 23, 2009** Field Staff spoke to approximately 100 students at the University of Illinois Law School about careers at the NLRB
- **May 20, 2009** Supervisory and Field Staff attended a LERA program on Stress in the Workplace

Our Staff is ready and willing to appear at your events! If you are interested in having someone from Region 14 or Subregion 33 speak to your group, please contact Region 14 Outreach Coordinators [Lynette Zuch](#) or [Cindy Flynn](#) at (314) 539-7770 or Subregion 33 Outreach Coordinator [Melissa Olivero](#) at (309) 671-7080.



Representation Petition Dismissed in Lindenwood University



The decision in *Carroll College* (discussed on the cover page) was raised in a Region 14 representation case, Lindenwood University, [Case 14-RC-12752](#). Local 2-197, American Federation of Musicians, petitioned to represent a unit of all musicians at Lindenwood’s Scheidegger Center for the Arts, which presents traveling

shows and celebrity performers. While the parties stipulated that Lindenwood is an employer engaged in commerce, the Employer argued that it was a religious institution exempt from the Board’s jurisdiction because it holds itself out as providing a religious educational environment, is organized as a nonprofit, and is affiliated

with the Presbyterian Church. The Regional Director ultimately dismissed the petition, but not on jurisdictional grounds. Rather, the record established that Lindenwood did not directly employ the musicians. Lindenwood contracts with production companies who hire all of their actors, stage hands, technicians, and musicians. On the single occasion when Lindenwood paid musicians, a contractor chosen by the performers arranged for the hiring of the musicians to perform with the show. Therefore, there was no evidence that an employer-employee relationship existed between Lindenwood and the petitioned-for employees.

Air Traffic Controllers at a Single Facility are an Appropriate Unit



employed at the East Alton, Illinois facility was an appropriate unit in which to conduct the union security deauthorization (UD) election. The East Alton facility was one of approximately 14 airport facilities located across several states. Some of those facilities’ employees were represented by a union and some were not. The represented facilities were separately certified. While the Union argued that the parties effectively merged all units into one based on factors such as a single collective bargaining agreement

In *Midwest Air Traffic Control Service, Inc.*, [Case 14-UD-296](#), the Regional Director concluded that the petitioned-for single-facility unit of air traffic control specialists (controllers) em-

ployed at all facilities, common terms and conditions of employment, pooled ratification votes, lack of local agreements, and administration of the contract at the Union’s “national” level, the evidence fell short of the unmistakable evidence needed that the parties, through contractual language, bargaining history, and course of conduct, mutually agreed to extinguish the separateness of the previously certified units.

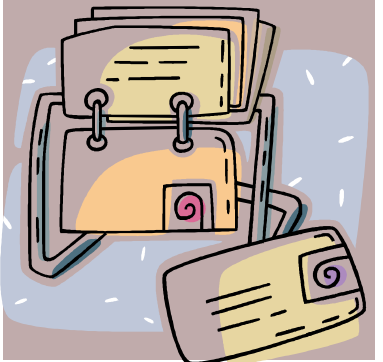
Region 14 Wrap-up

This section will highlight topics related to Region 14.



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 Monday through Friday
 8:00 a.m. to
 4:30 p.m.



Board Rejects Employer's Test of Certification

In *Rochelle Waste Disposal*, 354 NLRB No. 18 (April 30, 2009), a case that followed the Board's decision in the *Rochelle Waste Disposal*, 353 NLRB No. 38 (October 20, 2008), the International Union of Operating Engineers Local 150, AFL-CIO, alleged that the Respondent refused to bargain with it after it was certified as the exclusive bargaining representative of heavy equipment operators on November 6, 2008. The Respondent admitted that it refused to bargain, sought to test that certification, and requested the complaint be dismissed. The



Counsel for General Counsel filed a motion for summary judgment. The Board granted the motion for summary judgment and directed the Respondent to bargain upon request. The Board rejected the Respondent's position for three reasons: 1) all representation case issues were or could have

been litigated in the prior representation case; 2) the Respondent did not offer to adduce newly discovered and previously unavailable evidence; and 3) the Respondent did not allege any special circumstances that would require the Board to reexamine its decision in the representation case.

How did it Play in Peoria?

In a "play" on words of the city's motto dating back to Vaudevillian days, this section will highlight topics related to Subregion 33.



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Hours:

Monday through Friday

8:30 a.m. to 5:00 p.m.

Are you ready for the Digital TV Transition?

Several federal agencies, including the NLRB, have partnered with the Federal Communications Commission (FCC) to get the word out about the upcoming transition from analog to digital television broadcasts. If you are one of the many who still use "rabbit ears" to get your television signal, you will be left in the dark if you do not take action to convert to a digital TV format by the new deadline of June 12, 2009. Please go to the FCC's website, www.dtv.gov to learn how you can be ready for the DTV transition.



National Labor Relations Board

Region 14 St. Louis, MO

and

Subregion 33 Peoria, IL

Quarterly Outreach Newsletter

“The purpose of the [National Labor Relations Act] is to define an environment within which labor and management can resolve their differences.”

Former NLRB Chairman

Robert J. Battista

May 20, 2005

The **National Labor Relations Board** is an independent federal agency created by Congress in 1935 to administer the [National Labor Relations Act](#), the primary law governing relations between unions and employers in the private sector. The statute guarantees the right of employees to organize and to bargain collectively with their employers, and to engage in other protected concerted activity with or without a union, or to refrain from all such activity.

www.NLRB.gov

The Basics

The National Labor Relations Board (NLRB), charged with enforcing the NLRA, has two principal functions: 1) to determine through secret ballot elections whether employees wish to be represented by a union in dealing with their employers, called representation cases, and 2) to prevent and remedy unlawful acts by either employers or unions, called unfair labor practice cases. The Agency does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections that are filed with the NLRB in one of its 51 Regional, Subregional, or Resident Offices. Region 14 covers the geographical area of Eastern Missouri and Southern Illinois. Subregion 33 covers the Northern Half of Illinois (except for the Chicago area) and some of Iowa. If you have questions about a workplace problem, please call an NLRB Information Officer in the Office that covers the area where your employer is located. Information Officers are available by phone or by walking into Regional Offices during business hours. Our [website](#) is extensive and user-friendly, and it can give you additional information about filing charges and petitions with the NLRB and other workplace questions.

