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## Relco Locomotives, Inc. — A Repeat Offender in Iowa

by Nichole L. Burgess-Peel, Supervisory Attorney

One of the most significant litigation cases for the Region in the past few years involves a locomotive manufacturer in Albia, Iowa, called Relco Locomotives, Inc. Over the last three years, employees of Relco have repeatedly tried to exercise the rights guaranteed them under Section 7 of the National Labor Relations Act. In response, Relco has launched a vigorous campaign to prevent employees from exercising these rights - terminating ten employees and engaging in numerous other unfair labor practices. What follows is a brief overview of Relco's operation, a recitation of the facts of each case and the Board decisions, and a summary of where the case stands today.

### The Story Begins: The Case Before the Board

The small town of Albia, Iowa is home to Relco Locomotives, a company that specializes in the rebuild, repair and manufacture of locomotives and

railcars. The family-owned company employs about 100 production employees and 25 managerial and support staff. Its Chief Operating Officer is Mark Bachman who runs the day-to-day operations of the facility. Bachman and supervisor Cliff Benboe are the primary actors in three unfair labor practices cases that the Region has investigated, litigated and won since 2009.

### Relco I – Organizing Efforts in 2009

In about March 2009, the employees of Relco began efforts to obtain Union representation with the Brotherhood of Railway Signalmen. In response, and as found by Administrative Law Judge William L. Schmidt, Relco terminated the two lead Union supporters, Jeffrey Smith and Ron Dixon, in retaliation for their Union activities. During the same time period, employees also engaged in protected concerted activity when they determined that Relco was charging employees

more to launder their uniforms than Relco was being charged by the vendor. Two employees, Dane See and Timothy Kraber, made inquiries of the vendor and confronted Relco on behalf of employees. Relco fired them for their trouble. During this time, Relco also maintained and required employees to sign an unlawful non-disclosure agreement in violation of Section 8(a)(1). All of Judge Schmidt's findings were affirmed by the Board at Relco Locomotives, Inc. (Relco I), 358 NLRB No. 32, (April 12, 2012).

### Relco II – Organizing Efforts in 2010

Despite Relco's unlawful conduct, employees continued to organize. The Brotherhood of Railroad Signalmen filed a petition and the Board held an election on October 20, 2010. The Union lost, but did not file objections. Shortly thereafter, Relco

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## Paper Free at the NLRB; the Agency Gets Tech Savvy

by Marlin O. Osthus, Regional Director

The Office of the General Counsel of the National Labor Relations Board continues to move forward with initiatives to utilize technology to improve efficiency and transparency. In this issue of the Region's newsletter I highlight two of those initiatives. One will be in place by the time you read this, and the other is in the planning stage.

Effective October 1, 2012, Regional Offices no longer maintain paper files. Rather, the official Agency file is electronic, and kept in the Agency's software program called NxGen. With this change, the Agency intends to be more proactive to ensure that NLRB official files are properly maintained and

contain only appropriate documents, with removal of unnecessary documentation and duplicate documentation, while still following case file retention requirements maintained by the Agency. In addition, NxGen continues to maintain the necessary separation between the General Counsel's office and the Board-side. Thus, as was the case prior to October 1, Board personnel will not have access to electronic case files maintained by Regional Offices. You

can obtain many more details about the transition to electronic case files by reading Memorandum OM 12-80 from Associate General Counsel Anne Purcell, which is dated September 7, 2012. The

memorandum is available on the Agency's website.

What does the NLRB's conversion to electronic case

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## Two New Members of the Administrative Law Judge Corps

Two new ALJs, Christine Dibble and Kenneth Chu, joined the Agency last month, bringing the number of NLRB judges to 37 nationwide. Judge Dibble served as a Social Security judge since April 2008. Before her appointment to that position, she served as an administrative judge with the Equal Employment Opportunity Commission (EEOC) for 15 years. She also worked as an attorney with the Service Employees International Union and as an equal employment opportunity specialist with the Department of Housing and Urban Development. Judge Dibble received her B.A. degree from Colgate University and her J.D. degree from the University of Michigan Law School. She will take her assignments from the Washington, D.C. office of the Division of Judges.

**Judge Dibble Says:** I started my legal career as a criminal defense attorney with legal aid in New York state. After several shorter stints in legal areas involving housing discrimination and labor, I landed as an Administrative Judge with EEOC. I am from St. Louis and Kansas City, Missouri but have lived in various parts of the country since graduating from Colgate University. I am ecstatic to be returning to Kansas City with family and friends. In addition to resuming my passion for working with Big Brothers/Big Sisters organization, I plan to begin theological studies this winter. Working for the NLRB is a dream come true. However, if I were not working with the

agency, my dream job would be to have Samantha Brown's job on the Travel Channel because I love to travel. This position gives me the best of both worlds, work I love and travel.

Judge Chu becomes the first Asian-American judge in the Board's history. Before he was appointed a Social Security judge in June 2009, Judge Chu served as an administrative judge with the EEOC, including a stint as district chief judge; he also served as deputy director of an EEOC district. He is a graduate of the City College of New York and received his JD degree from Brooklyn Law School. Judge Chu will be stationed in the New York office of the Judges Division.

“My mother was a garment worker and an ILGWU member and my father eventually opened a small Chinese restaurant.... I was instilled with the diverse points of management and labor relationship.”

**Judge Chu Says:** I was born in Hong Kong and came to this country when I was five years old. My parents and my four siblings lived in a two room tenement in the Lower East Side of New York. My mother was a garment worker and an ILGWU member and my father eventually opened a small Chinese restaurant. At the very beginning,

I was instilled with the diverse points of management and labor relationship through my parents! I practiced immigration, labor, employment discrimination and housing law while working with the Asian American Legal Defense & Education Fund before my career with the federal government.

*Article originally published in September 2012 issue of All Aboard.*

## Paper Free at the NLRB

*(Continued from page 1)*

files mean for those of you who practice before the Board? Most importantly it means that you can save yourself and the Region a great deal of time and resources by e-filing your documents. Keep in mind that e-filing is not the same as emailing documents to the Region or to the Board agent assigned your case. When you e-file a document, it goes directly to the case file, and the Board agent receives notification that a document has been e-filed to the case file. If you have never e-filed documents with the Agency, you can learn how to do so by going to the Board's website ([www.nlrb.gov](http://www.nlrb.gov)), and clicking on "Cases and Decisions," and then "File Case Documents." While I strongly encourage you to take advantage of e-filing, if you choose not to e-file then I urge you to email materials directly to the Board agent assigned to the case you are involved in. By emailing documents you save Board agents the task of scanning materials mailed to the Region in order to upload them into the case

files. You also save yourself time and resources by not preparing and mailing written materials.

Finally, for those of you who continue to send materials to the Region by fax or mail, it is not necessary to send multiple copies of the same documents by both facsimile and by mail, or to send the same documents to more than one person in the Region. Once documents are uploaded into the electronic file, regions are to destroy hard copies (with certain exceptions as described in OM 12-80). Thus, for example, when you send a position statement by facsimile, and then send the original, and courtesy copy me or another person in the office, you have created three hard copies – all of which will be destroyed in accordance with the instructions in the OM Memorandum. Instead, send the Board agent one copy; the Board agent will scan and upload the copy into the electronic file; and everyone in the office will then have access to your material. However, keep in mind that you can save both your own staff and this office a great deal of work by simply e-filing.

The second initiative currently in the plan-

ning stage is to expand the documents you can access on the Agency's website. Currently available on the Agency's website are published and unpublished decisions by the Board, decisions by Administrative Law Judges, Regional Election Decisions, some Advice Memoranda, and dismissal letters issued by regions. A recent updating of regional office websites has resulted in you being able to access Board and Administrative Law Judges' decisions related to each region. Additional documents under consideration for posting on the Agency's website are charges, petitions and complaints, as well as other documents that are public under the Freedom of Information Act. Before posting these documents, the Agency must give careful consideration to the privacy interests of individuals who are often identified by name in the documents, along with information on the individuals' addresses and/or telephone numbers. Expect more information on this second initiative in 2013.

Finally, keep in mind that for now, you may not e-file charges or petitions. If you want to file a charge or petition, you can file them by facsimile, or by mailing them to the regional office.

## VISIT US ON THE WEB

### NLRB AGENCY WEBSITE

**WWW.NLRB.GOV**

### REGION 18 WEBSITE

<http://www.nlr.gov/category/regions/region-18>

### DID YOU KNOW?

Every day there is someone here to answer your questions.

The **information officer** is responsible for incoming phone calls and visitors. We rotate the responsibility daily, and make an effort to answer all inquiries before the close of business.

The **information officer** cannot offer legal advice, but can provide information about NLRB procedures and the NLRA, refer inquisitor to other agencies, and log questions for future reference.

Each day, an agent is responsible for serving as the Region's Information Officer (I.O.). In this series, we share particularly interesting and informative I.O. questions and answers.

## Dear Abby...

*I am a union rep and there is going to be a certification election soon for a group of employees I have been organizing. I know that there are rules limiting the Employer's freedom to campaign during the 24 hours immediately preceding the election. Do those rules apply to the Union?*

The limitation you refer to is called the *Peerless Plywood* rule and it applies to both employers and unions. The rule forbids election speeches, whether coercive or not, within 24 hours of the scheduled election time. The rule does not prohibit employers or unions from making campaign speeches on or off company premises during the 24-hour period if attendance is voluntary and on the employees' own time. It is worth noting the application of the *Peerless Plywood* rule in mail ballot elections; there, the rule begins 24 hours before the scheduled time for the mailing out of the ballots and continues to run until the set time for return.

For more information on election speeches, you can go to the NLRB's *Outline of Law and Procedure in Representation Cases*, Chapter 24, Section 325 located on our website: [www.nlr.gov](http://www.nlr.gov).

## RELCO: I Through III

(Continued from page 1)

resumed its unlawful conduct. Relco II, decided by ALJ Geoffrey Carter and affirmed by the Board at Relco Locomotives, Inc. (Relco II), 358 NLRB No. 37 (April 30, 2012), held that Relco threatened, disciplined and terminated employees Charlie Newton and Mark Baugher on March 11, 2011, in retaliation for their support for the Union, as well as in violation of Section 8(a)(4) of the Act because the judge also found that Relco retaliated against both for testifying in the hearing in the case before Judge Schmidt. ALJ Carter concluded that Relco discharged two additional employees: Richard Pace and Nicholas Renfrew, on December 23, 2010, in retaliation for their protected concerted activity—specifically, for discussing a coworker who they thought had been fired. Relco I and II were litigated by attorneys David Biggar (recently retired) and Cathy Homolka. Both cases are currently pending on motions for

enforcement in the 8<sup>th</sup> Circuit.

### Relco III – Organizing efforts in 2011

Showing remarkable resiliency in the face of hallmark, “nip-in-the-bud” violations, employees took up the organizing gauntlet again in early 2011, this time contacting the International Brotherhood of Electrical Workers. Organizing began in the spring of 2011 and gathered momentum in the late fall. Respondent took a slightly different approach this time, first soliciting employee grievances, but then ultimately terminating the two lead supporters, Mark Douglas and Jerry Sindt, on January 2, 2012. The Region tried the case, this time with Attorney Cathy Homolka leading the litigation, assisted by Nichole Burgess-Peel. Again, the Region was successful and Judge Fine sustained every allegation in the complaint, Relco Locomotives, Inc., (Relco III), JD-51-12 (Sept. 25, 2012). The Region anticipates that Relco will file exceptions to Judge Fine's decision.

### The Petition for Injunctive Relief – The Case before the District Court

Prior to the administrative hearing in Relco III, the Region recommended to the Acting General Counsel that injunctive relief be sought requiring, among other things, that Relco immediately reinstate Douglas and Sindt. The Acting General Counsel and the Board authorized the Region to seek injunctive relief. The case was argued in late July, 2012. Despite the issuance of Judge Fine's decision affirming each complaint allegation, in an Order dated October 4, 2012, Chief Judge James Gritzner in the Southern District of Iowa denied the Region's petition. Osthus v. Relco Locomotives, Inc., 4:12-cv-00205-jeg-cfb. The Region is recommending that Judge Gritzner's decision be appealed to the 8<sup>th</sup> Circuit.

Stay tuned. . .

# Inside the Professional Exchange Program

by Charles A. Chermak, Field Examiner

We were able to attend a Q & A session with a delegation of trade union officials from China's Henan Province.

Ever wonder how appeals get processed? Or how the NLRB website gets updated? How about where travel policy comes from? Last spring, I had the opportunity to find out.

From mid-May to mid-June, I participated in the NLRB Headquarters' Professional Exchange Program. The Exchange Program occurs – budget permitting – during the spring and summer months, and allows professionals from field offices to meet and work with employees at our Washington, D.C. Headquarters. This year, 22 professionals from 19 different Field Offices took advantage of the opportunity over four different sessions. Participants chose from a number of different Headquarter offices to work in, including among others, Regional Advice, Public Affairs, and Representation Appeals. Along with the work for the offices they choose, participants also meet, tour, and learn about almost every Headquarters office, such as the Solicitor's office and the Executive Secretary's office. Through this experience, field employees get a chance to be 'behind the curtain' and learn that Headquarters is not the mysterious place they might believe it to be.

For four weeks, I worked away from the Des Moines Resident Office. My chosen destination: the Office of Appeals. Immediately I recognized several names I had heard for years, including Yvonne Dixon, Director of the Office of Appeals. Finally, I had faces to put with names.

My time in the Appeals Office was limited, though, as all Exchange Program participants attended numerous Departmental briefings. It was through these briefings that we were really able to meet and understand the functions of each Headquarter office. We were able to meet and discuss issues with Acting General Counsel Lafe Solomon, Inspector General David Berry, Board Chairman Mark Gaston Pearce, and many others. The Chairman was even kind enough to give us a tour of his office, which was decorated with his own very colorful paintings depicting family members, jazz musicians, and, of course, labor scenes. Who knew he was such an accomplished artist!?

Our Exchange session also included informational briefings with an international emphasis. The first of these two briefings involved attending a NLRB reception for Kayo Rokumoto, First Secretary for Labor and Employment from the Japanese Embassy. Kayo had many questions about the NLRB process, and we had just as many about Japan's labor system. At the second international briefing, we were able to attend a Q & A session with a delegation of trade union officials from China's Henan Province. This delegation was on a tour of employment related agencies in the D.C. area in an effort to learn about American employment law.

When I completed the Exchange, I was glad to get back to the field and work with the public again, as Headquarters' work does not put you in contact with 'real' people like field work does. However, the mysteriousness of Headquarters is now gone, and I have a great appreciation for the people there and their commitment to the Act.

## Outreach: Need A Speaker For Your Organization?

The NLRB is continuing its efforts to reach community groups with information about the Agency. Regional staff members are available to speak to organizations, large and small, at your request. We regularly provide speakers to make presentations to colleges, high schools, technical schools, labor unions, employer associations, staff of legal services or other civil rights agencies, or any other groups with a particular interest in the nation's labor laws.

The Region has given presentations on introductory and general information such as the history of the agency and the National Labor Relations Act, how to file charges and petitions with the agency, and how the agency investigates cases. The Region has also given more in-depth presentations on specific issues such as successorship, the duty of fair representation, Beck Rights, Protected Concerted Activity in a non-union workplace, etc.

Please contact the Region's Outreach Coordinator, Chinyere Ohaeri at 612-348-1766 or via email at [Chinyere.Ohaeri@nlrb.gov](mailto:Chinyere.Ohaeri@nlrb.gov) to make arrangements for a speaker. Last year we addressed several groups throughout the region and this year we plan to address many more.





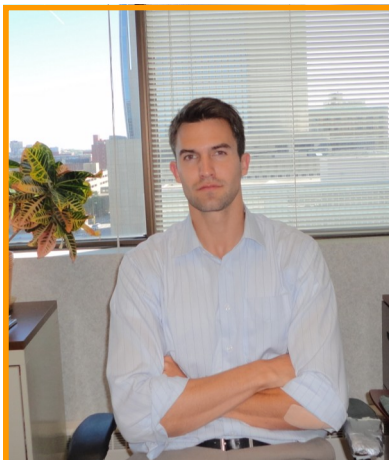
# Staff Spotlight

## We welcome Nicholas Heisick and Rachael Simon-Miller

**Nicholas S. Heisick** says his mission as a Field Examiner is to protect the rights of workers to unionize, or not to unionize, to mutually aid each other, or to refrain from providing such aid. A Minneapolis native (Brooklyn Park, to be specific), he attended Augsburg College, where he studied English and Economics and played small forward on the basketball team. It was while he was attending graduate school at the University of Minnesota's Center for Human Resources and Labor Studies that he realized he might find a career involving law, particularly labor law, very rewarding.

While completing his Master's degree, Nick interned at the NLRB's Miami Resident Office as a Field Examiner Co-Op for six months, worked at PepsiCo for a summer, and studied abroad in Shanghai for a month working on a project to improve Dairy Queen's sales in China. Upon graduation, Nick accepted a position with PepsiCo but was eliminated in the wake of the financial crisis in the fall of 2008. In 2010, he accepted a Field Examiner position with NLRB Region 29 in Brooklyn, NY, and in June 2012 transferred to Minneapolis to be closer to family, as he and his wife are expecting the arrival of their first child.

Now that he is back in Minnesota, Nick hopes to get back to leveraging his unusual height on the basketball court, enter "crop art" at the MN State Fair, and canoe in the BWCA, but is fairly certain he will not have much time in the near future while he is busy perfecting his feeding, burping, and diapering skills.



**Rachael Simon-Miller** joined Region 18 in August 2012 after two years at the NLRB Headquarters in Washington, D.C., and two years at Regional Office 5 in Baltimore, MD.

Rachael earned her undergraduate degree at St. Olaf College, majoring in Sociology and Anthropology. After a few post-college years in Minneapolis, Rachael and her husband moved to Washington, D.C., where Rachael attended law school at Catholic University. There, she soon became interested in labor and employment law, which led her to internships at the Service Employees International Union, the International Brotherhood of Teamsters, and at the NLRB. She served as an editor on the Catholic University Law Review, for which she wrote an article examining whether employee participation in immigration protests may be protected concerted activity under the Act.

After seven years in D.C., Rachael and Zach were up for something new and jumped at the chance to move back to the Twin Cities to be closer to family and friends. Although the impending Minnesota winter is scary, Rachael hopes that the hardiness she

learned as a child in Wisconsin will overcome the aversion to cold she developed in the balmy Mid-Atlantic. In her free time, Rachael loves running, going for walks, movies, restaurants, reading, camping, and travel of all kinds—be it a simple weekend day trip or a weeks-long journey to China.



## We congratulate Nichole Burgess-Peel, Supervisory Attorney

In June 2012, Region 18 selected Nichole Burgess-Peel as a new supervisory attorney. A graduate of the University of Wisconsin-Madison, Nichole earned her undergraduate degree in political science and a certificate in criminal justice. After graduating, she stayed in Madison and worked for a state senator from Milwaukee for about 2 1/2 years. She then returned to Minnesota where she received her J.D. from the University of Minnesota Law School in 1999.

Nichole began working as a Field Attorney in the Regional Office shortly after graduation. During her time at the Board, she has litigated numerous unfair labor practices cases and has also argued several injunction cases in federal district court. Nichole's self-professed claim to fame is that she has never lost a case she litigated before an ALJ. Looks like that record will remain untarnished. . .

Nichole is married to Paul Peel and they have two children: Myles and Lucy.



## And We Bid Adieu to Newly-Retired Sue Shaughnessy

**Sue Shaughnessy's first day with the NLRB was August 2, 1976, during Gerald Ford's term in the White House. After 36 years, Sue retired in September 2012.**

**Q: What most excited you about your new job?**

**A:** I was working for the government and would have a steady job! Even when the budget of the NLRB became politicized and there was talk of reductions in force, it never occurred.

**Q: Do you remember the first election you ran?**

**A:** I don't remember the first one I ran by myself, but I remember one with colleague Mike Hansell at Tonka Toys. As Mike was counting the ballots, he would say "yes" and give the number of "yes" votes at that time and the same for the "no" votes. For example, he called "53 yes" and "47 no," and then "54 yes" and "48 no." I remember thinking to myself, "oh no, I'll never be able to do that...." But, other colleagues didn't count that way, so I was greatly relieved.

**Q: Where is the "best" place you traveled within the Region?**

**A:** Over the years, I grew to like places where "normal sized airplanes" flew. ("Normal" meaning with a flight attendant and bathroom.) Places like Sioux Falls, Rapid City, Fargo and Bismarck. As time went on, airlines dropped service to some of the smaller towns that smaller planes served. I traveled on several airlines that are no longer in business: Ozark, Western, Braniff, North Central, Republic and Northwest.

**Q: Tell us about the most interesting hearing you've seen:**

**A:** Now-deceased Teamster Rep John Robertus was against an attorney whose boss he despised, and he told him so during a break. This was in the Grand Rapids County Courthouse and a deputy sheriff came up to me and asked, "Ma'am, do you need any help?" I said no and quickly went into the restroom to get away from them. During the hearing John was also reading into the record "Organizing and the Law" and I repeatedly told him to stop doing that. He was a character.

**Q: How many different offices did you have?**

**A:** I had two in the current building, and three in the building next door. Of those three, two were on the third floor (one was windowless and one had a window). When we first moved in, I had an office on the second floor for a while because our office suite had flooded.

**Q: What would you say to someone starting at the NLRB tomorrow?**

**A:** Enjoy the ride.

**Q: What will you miss most?**

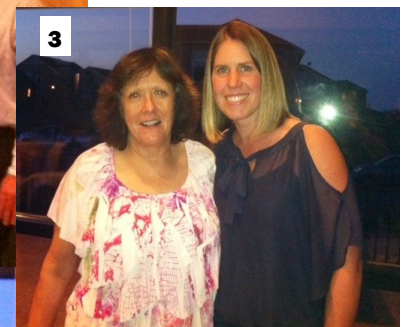
**A:** Seeing my co-workers five days a week

**Q: What have you enjoyed most about retirement so far?**

**A:** Having time to do what I want when I want, or not do anything at all!

**Picture 1:** Sue Shaughnessy and Nichole Burgess-Peel.

**Picture 2:** Top Row, Left to Right: Carol Collins, Joe Bornong, Paulette Jamison, Deb Rogers, Marlin Osthus, Mike Shaughnessy, Roger Czaia, and Jim Fox. Bottom Row, Left to Right: Marie Simpson, Bernie Grenzer, Sue Shaughnessy, Frank Kapsch, and Dave Biggar.



**Picture 3:** Sue Shaughnessy and Jennifer Hadsall

**Picture 4:** Left to Right: Nicholas Heisick, Sue Shaughnessy, Lucy Peel, Charles Chermak, Martha Armstrong, and Linda McIlhon.