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ATTORNEY**

# Region 18 HOT DISH

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## From the Director's Chair

On September 15, I was installed as Regional Director for Region 18. Because I have worked in Region 18 for over 30 years, most of you know me and my views on the National Labor Relations Act. As I said at my installation, the success of the Region is determined not by whether we or the Act are criticized or praised; rather the Region's success is determined by whether we are doing the right thing in each individual case and whether we are processing cases in a timely fashion. Thus, I want to share with you some of the recent successes of the Region.

**First**, the Region's 10(j) program is active and successful. Field Attorney Nichole Burgess-Peel obtained an injunction against Whitesell Corporation in the Federal District Court for the Southern District of Iowa on September 11, 2009. This is the second injunction against Whitesell in three years. In the most recent case, Judge Charles Wolle ordered Whitesell to cease engaging in bad faith bargaining and to rescind its imposition of a final offer.

In another case, Attorney Sandra Francis represented the Region in the Federal District Court for the State of Minnesota. Judge David Doty issued an injunction



**Regional Director  
Marlin Osthus**

against Vincent/Metro Trucking LLC, requiring it to recognize and bargain in good faith with UFCW 789, to provide the Union with information, and to cease dealing directly with employees and bypassing the Union. In addition, Judge Doty granted the Region's request that Vincent be required to read the Court's Order aloud to its employees, in both Spanish and Mandarin Chinese.

In a third case, the Region has recently requested authorization from the General Counsel to seek an injunction against an employer in the State of Iowa related to the employer's unlawful withdrawal of recognition, unlawful refusal to bargain, and unlawful unilateral changes to employees' terms and conditions of employment. We are awaiting the General Counsel's response to the recommendation.

**Second**, the Region continues to utilize investigative subpoenas to obtain information in order to decide the merits of charges. Since I assumed the role of Acting Regional Director in late May, the Region has issued investigative subpoenas in 17 cases involving ten employers. In most of these cases, the Region issued two or more investigative subpoenas in order to compel testimony or the production of documents. While a few of the subpoenas were directed to employees who would allegedly corroborate evidence already presented, most have been issued to employers charged with violating the Act. In those situations involving the ten employers, merit was found to charges against five of the employers; no merit was found to charges against three of them; and two of the employers remain under investigation.

**Finally**, the Region continues to successfully litigate unfair labor practice cases before administrative law judges. Two of the most recent litigation successes are interesting because they involve unique facts and allegations. See the Article on page 3 for a discussion of these cases, successfully litigated by attorneys Sandra Francis and David Biggar.

## Video Testimony Pilot Program

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 obtain 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 you to suggest the use of this technology in appropriate representation and unfair labor practice case proceedings.

### WE WANT TO HEAR FROM YOU!

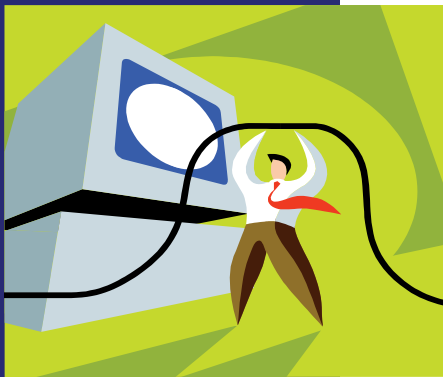
We would like to know if this newsletter is helpful and informative, and if there are any topics you would like to see discussed in future issues. If so, please contact Outreach Coordinator Pamela Scott at (612) 348-1788. Your feedback will be greatly appreciated and carefully considered. You may also contact the Outreach Coordinator if you would like to be added to or deleted from our mailing list.



Video testimony pilot program

*"...the CiteNet research tool is now available and can be particularly handy."*

Article by  
Sandie Francis



## HAVE YOU CHECKED OUT [WWW.NLRB.GOV](http://WWW.NLRB.GOV) LATELY?

The Board's website continues to improve as a useful tool both for people interested in learning the basics of who we are and what we do, and for the labor professional needing to stay current on the latest developments or do some pertinent research. A couple of points of interest for labor professionals:

All Board, ALJ, and Regional Director decisions are online and available almost immediately upon issuance. You can also find the publicly-released Memos issued by the General Counsel, Operations-Management, and the Division of Advice. And, you can access the Board's Appellate Court Branch Briefs

and Memoranda. Links to these documents are right on the homepage under the heading "I am a labor professional" as well as under the "Research" tab.

In addition, under the "Publications" tab you can find all of the manuals that we use regularly for unfair labor practice investigations, election issues, and compliance cases.

For researching, the CiteNet research tool is now available and can be particularly handy. CiteNet has replaced the old blue classified index books as a source of collecting cases by relevant topics. It seems a bit tricky at first, but is actually extremely useful for finding all the cases related to one area organized by sub-topic (and it's FREE!). A nice feature recently added is the ability to link directly to the case from the results list so you can read/print the case in full. There is a "Using CiteNet" video available on the webpage.

There is also an online form you can fill out under the "Speakers" tab at the very top of the website, if you would like to be contacted about having someone from the NLRB come out to address your group.

Finally, under the "E-Gov" tab, you can e-file documents with the Region or Board (under the E-Filing link), fill out charge or petition forms online (under Online Forms). These can be printed and either mailed or faxed in (charges and petitions are not yet accepted through e-filing). More recently, the Electronic Case Information System option has been added which allows you to search for petitions or charges filed with any Region.

As always, if you would like assistance with filling out a petition or charge, you can contact the Information Officer for Region 18 at (612) 348-1757, on duty weekdays 8:00- 4:30.

# NEW! Representation Case Video



To support the Agency's current efforts to increase the public's awareness of the National Labor

**Get your copy of the NEW R-case video!**

Relations Act and to enhance the "Speaker's Bureau" program on the Agency's website ([www.nlrb.gov](http://www.nlrb.gov)), a digital video presentation has been produced for public distribution that dramatically portrays representation case processing. The video is available in both English and Spanish.

The video is designed to inform the public, including potential vot-

ers, employers and unions, about the role of the Agency. Employing narrators and actors in vignettes, the video chronologically depicts an organizing campaign, the filing of a petition, and an election. The video is available for distribution to interested individuals and groups, and will also be posted as a streaming video on the Agency's internet website.

To obtain a copy, please contact Region 18 Outreach Coordinator Pamela Scott, at (612) 348-1788.



## Region 18 Litigation Successes

In *Bernard Dalsin Manufacturing Co.*, 18-CA-18797, ALJ Eric Fine sustained complaint allegations that the company illegally hired permanent replacements for striking employees. What is unique about this case is that under the Act, employers are normally permitted to hire permanent replacements for striking employees. However, employers do not have the right to do so if they have an independent unlawful purpose for hiring permanent replacements. In *Bernard Dalsin*, Attorney Sandra Francis (on behalf of the General Counsel) proved that the company had no intention to hire permanent replacements and instead intended to rely on temporary replacements, until the company learned that striking employees had scheduled a re-vote on the company's final offer. When the company learned that striking employees might offer to return to work (if they voted to accept the final offer), it hastily converted its temporary replacements to permanent status in order to avoid the obligation to return striking employees and in retaliation for the employees' exercise of

the right to strike. No exceptions were filed to Judge Fine's decision, and the case is currently in compliance.

In a second case, Counsel for the General Counsel David Biggar successfully argued that Auto Glass Repair and Windshield Replacement Service, Inc. (WRS) should be responsible for remedying unfair labor practices committed by Leiferman Enterprises d/b/a Harmon Auto Glass (Leiferman). In a prior litigated case, the Board concluded that Leiferman unlawfully ceased contributions to employees' 401(k) plans and unlawfully failed to pay increases in employees' health insurance premiums. This decision is reported at 352 NLRB No. 24.

After the Board issued this decision, Compliance Officer Roger Czaia determined that the amount owed employees for these unlawful acts is \$54,518.25, plus interest, and the Region issued a backpay specification. However, Leiferman was no longer in business and had been forced into receivership by its principal secured creditor. The receiver in turn sold Leiferman's assets to WRS. In order-

ing the sale of the assets to WRS, the District Court for the State of Minnesota, County of Hennepin, stated that the purchase was "free and clear of any liens and encumbrances." Thus, WRS contended it was not liable to pay for Leiferman's unfair labor practices. ALJ Robert Giannasi agreed with the Region that WRS is liable. First, he found that WRS continued in the same business as Leiferman and had notice of the unfair labor practices prior to its purchase of the assets, making WRS a successor within the meaning of *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973). Second, Judge Giannasi concluded that the fact the purchase agreement included a clause indemnifying WRS from any claim by the NLRB specifically protected the Board's interest in recovering the monies owed in this case. Moreover, the judge concluded that a state court order cannot override the requirements of federal law. This case is currently awaiting decision by the Board as the company filed exceptions.





Region 18 staff attending the swearing-in ceremony for newly-installed Regional Director Marlin Osthus: (L-R front row) Joe Bornong, Sandie Francis, Florence Brammer, Nichole Burgess-Peel, Marie Simpson, Deb Rogers, Bernadette Grenzer, Paulette Jamison, Sue Shaughnessy, Deann Helget. (Back row) Jim Fox, David Biggar (partially hidden), Chip Chermak, Jenny Hadsall, Melissa Bentivolio, Linda McIlhon, Roger Czaia, and Marlin Osthus.

## New NLRB Office of Public Affairs created

The National Labor Relations Board has created a new Office of Public Affairs in Washington, to replace the former Division of Information. It will be developing a modern outreach and education strategy aligned with the contemporary workplace and workforce, and with new technologies. It will take a more active role in educating the general public and other interested parties — including public officials, journalists, academics and attorneys — in what the Board does and what rights it protects.

**We're on the Web!**  
[www.nlr.gov](http://www.nlr.gov)

It will also strive to reach new audiences, especially among workers and employers who may not realize that the Act applies to their workplaces, and to deliver news in a more timely and focused way.

The Office of Public Affairs will be directed by Nancy Cleeland, who covered major labor disputes and chronicled the underground economy at the Los Angeles Times for a decade, and who shared a Pulitzer Prize for a series of stories that explored the labor and outsourcing policies of Wal-Mart. More recently, Ms. Cleeland led communications efforts at the Economic Policy Institute.

Anthony Wagner joins the Office as

the Agency's first New Media Specialist. He was previously the Director of Online and Web Communications at the National Association of Independent Colleges and Universities, where he created new channels of communication to expand the reach of association activities.



**Wishing you all the warmth  
of the holiday season!**