

National Labor Relations Board Region 28

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We're on the Web!

<http://www.nlrb.gov/>

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Message from the Regional Director



Welcome to the inaugural issue of Region 28's newsletter. Our newsletter is to provide you with news and information about the Region and the National Labor Relations Board and to help you become better acquainted with us.

I would like to start by extending my sincere thanks for the professionalism and cooperation that you, your clients, and your members, show in your dealings with the Region.

The work of the Region's dedicated and talented staff depends on the professionalism and courtesy of all parties. We have had the honor of working with many of you in connection with cases throughout Arizona, New Mexico, Southern Nevada, and West Texas. The excellence and dedication of the labor-management community within Region 28 is evident and appreciated. The year ahead looks to be interesting one. Until relatively recently, the Board was functioning with only two members, which prevented it from addressing several, significant issues. We anticipate that the Board, now that it is able to function fully as a result of recent appointments, will address many of these pending issues in the coming year. In addition, our Acting General Counsel, Lafe Solomon, was recently nominated by President Obama to serve a full term as General Counsel. The Region is in the process of implementing initiatives, which build on the prior General Counsel's programs, including "Effective Remedies in Organizing Campaigns" and "Effective Section 10(j) Remedies for Unlawful Discharges in Organizing Campaigns."

Again, thank you for your continuing interest and participation in the work of the Region. We stand ready and look forward to working with you in the year ahead.

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 addressed or discussed in future editions. If so, please contact us at 602.640.2146. and let us know. Your feedback will be greatly appreciated and carefully considered.

You may also contact us at the same number mentioned above if you would like to be added or deleted from our mailing list or if you would like to have a speaker address your group.

NLRB: What We Are All About

The National Labor Relations Board (NLRB) is charged with enforcing the National Labor Relations Act. The NLRB 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 28 covers the geographical area of Arizona, Nevada, New Mexico, and Texas (El Paso County). 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.

E-Filing with the NLRB

The Agency's website (www.nlr.gov) has been recognized as one of the best in the Federal Government. The site allows users to transact business online with the Agency. On the website, you will find:

- (1) "My NLRB," a feature, using portal technology, that allows users who E-file documents to establish their own accounts in order for the system to automatically fill in data fields on E-filing forms; and
- (2) an expanded E-filing program for filing documents electronically with the General Counsel's Office of Appeals, Regional, Subregional, and Resident Offices, and the Division of Judges. Most documents to be filed in a Regional Office can be filed at this site.

DOCUMENTS THAT MAY BE FILED WITH THE REGIONAL OFFICE ELECTRONICALLY THROUGH THE AGENCY'S WEBSITE:

- ❖ Position Statements
- ❖ Notices of Appearance
- ❖ Requests for an Extension of Time for Filing of Documents Due to be Filed With a Regional Director or Hearing Officer
- ❖ Requests for Postponement of a Hearing Due to be Filed With a Regional Director or Hearing Officer
- ❖ Excelsior Lists
- ❖ Observer Designations
- ❖ Requests To Proceed
- ❖ Withdrawal Requests
- ❖ Disclaimers of Interest

Did you know...?

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



- ❖ Election Objections and Evidence in Support
- ❖ Representation Case Briefs to the Regional Director/Hearing Officer
- ❖ Documents Addressed to Administrative Law Judges and to be served on Counsel for the General Counsel
- ❖ Unfair Labor Practice Exceptions and Briefs to the Board to be served on Counsel for the General Counsel
- ❖ Answers to Complaints or Compliance Specifications
- ❖ Motions for Summary Judgment and responses to such motions to be filed with the Regional Director or Counsel for the General Counsel
- ❖ Petitions to Revoke Subpoenas and responses to such petitions to be filed with the Regional Director or Counsel for the General Counsel

ELECTRONIC FILINGS MUST BE TIMELY

Please note that date-sensitive electronic filings must be submitted so that transmission through the Agency's website is accomplished by the time of close of business in the receiving office. A failure to timely file or serve a document will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason.

DOCUMENTS WHICH ARE NOT ACCEPTED ELECTRONICALLY (BUT MAY BE FAXED TO 602-640-2178):

- ❖ Charges
- ❖ Petitions
- ❖ Voluntary-Recognition Notifications

More information is available at www.nlr.gov or from our Information Officers:

Phoenix Regional Office: 602-640-2160

Las Vegas Resident Office: 702-388-6416

Albuquerque Resident Office: 505-248-5125

Compliance 101



Formal compliance cases involve ensuring a respondent's compliance with the requirements of a Board order or a court judgment that enforces a Board order. Compliance-related issues also arise in connection with informal settlement agreements. Informal settlement agreements are usually negotiated by the

Board agent who investigated the original charge or by the trial attorney assigned to litigate the case. However, the responsibility of ensuring that compliance of settlement agreements is reached lies with the compliance team.

With that in mind, it's important to note some of the significant Compliance cases Region 28 has had in the last couple of years. For

NLRB Speakers Are Available for Your Group!

Interested in having a representative of Region 28 address your group?

Representatives from Region 28 are available to make presentations to various groups, including

- ✓ classroom groups,
- ✓ employer associations,
- ✓ labor organization associations,
- ✓ and other groups comprised of members of the public.



Management of Arizona, Inc., d/b/a Waste Management of Tucson, Cases 28-CA-21988, et al. where respondent reinstated two discriminatees, paid \$90,000 in backpay, and removed unlawful discharge references from its records. Other significant compliance cases include that of Fluor Daniel, Inc., Cases 28-CA-12750, et al. where the Region distributed \$12,000,000 to over 100 discriminatees and in Valley Health System, LLC d/b/a Desert Springs Hospital Medical Center, 352 NLRB No. 16 where respondent paid over \$225,000 in backpay to two discriminatees, rescinded their unlawful warnings and discharges, and expunged such references from their personnel files.

For nearly 50 years, the Board has ordered simple interest to be computed on a quarterly basis on backpay owed. However, on October 22, 2010, the Board issued a decision in Jackson Hospital Corporation d/b/a Kentucky River Medical Center, 356 NLRB No. 8, where it found that interest shall be computed on a daily compounded basis "in al pending cases in whatever stage, given the absence of any 'manifest injustice' in doing so." Also, on the same date, the Board issued its decision in J & R Flooring, Inc., d/b/a J. Picini Flooring, 356 NLRB No. 9, where it found that respondents that are found to have violated the Act should be required to distribute remedial notices electronically, such as by email, or posting on an intranet or internet site, in addition to physical posting of paper notices on a bulletin board, when that is their customary means of communicating with employees or members.



Be sure to look for additional compliance developments in our upcoming newsletters!

NxGen



Arriving soon and in your area, NxGen! Who's that? No, it's not a younger group of workers coming to take over for us older folks. NxGen is the new case tracking system arriving early in the New Year, here in Region 28, which is just around the corner. NxGen is the new electronic case handling system that will be utilized Agency-wide in 2011. The new case handling system is currently being tested in two Regions and has been introduced to all other Regions, in phases. The Agency, as well as Region 28, is embracing new technology, e-filing, bar coding and an electronic case handling system. To participate you only need a few things: a computer, web access and the desire to save trees! That's all part of e-gov, e-filing, and electronic filing. Naming conventions, scanning, bar codes, and uploading files are fairly new to Region 28 and are all an important part of NxGen. Everyone is participating: administrative staff, Field Examiners, Field Attorneys, supervisors and managers. Documents are now being filed via the internet. Documents received by mail are being scanned, named and saved in a common area while waiting migration to NxGen, where all case information will be integrated into the new system. Not only are we e-filing, uploading, scanning and saving, but we will have correspondence templates that will be centrally updated and used by all offices, rather than each office having to update its documents when we have changes to the Rules and Regulations, manuals or the law. Check us

Outreach

Speakers can be made available to address a variety of topics, including

- a summary of Section 7 rights,
- protected concerted activity,
- other aspects and coverage of the Act,
- unfair labor practice and representation case proceedings and procedures,
- and other topics of interest.

out on the NLRB website, www.nlr.gov.

Western States Labor and Employment Law Conference



Region 28 co-sponsored one of the premier labor and employment events this winter in the Western States Labor and Employment Law Conference on December 2, 2010 in Las Vegas, Nevada. Conference programs included *NLRB Regional Best Practices* where five Regional Directors discussed best practices in their offices for both ULP cases and representation elections; *Free Speech vs. Private Property* where a distinguished panel discussed the current state of the law; and *Social Media and the 21st Century Workplace* where discussion regarding the use and misuses of social media in the workplace was very lively. Plenary speakers included the

Chairman of the NLRB, Wilma B. Liebman and the Director of the Federal Mediation and Conciliatory Service (FMCS), George H. Cohen. For more information on upcoming events contact Miguel Rodriguez at (602) 640-2146.

News from Las Vegas Resident Office

It has been a busy past six months for the Las Vegas Resident Office with much of the work centering on charges filed as a result of an organizing effort by Culinary Workers Union Local 226 and Bartenders Union Local 165 among employees at 10 off-strip casinos owned and operated by Stations Casinos, Inc, the third-largest employer in Nevada. Field Examiner Cheryl L.



Leavengood organized and coordinated the investigation of over 10 charges filed by the Union. Many of the witnesses were Spanish speakers, requiring our two bi-lingual Board agents, Field Examiner Michael J. Johnson and Field Attorney Pablo A. Godoy, to obtain the Spanish-language affidavits and provide translations of the same.

The Region authorized a consolidated complaint over numerous alleged Section 8(a)(1) allegations and several alleged Section 8(a)(3) allegations including job assignments and discipline. The Union has described the consolidated complaint as the largest ever issued against a Nevada casino. When we were unable to obtain a settlement of the case, Pablo took the lead in the litigation of the complaint, assisted by Field Attorney Erica Berencsi from the Fort Worth Regional Office. Language Clerk Olga Austin and Law Clerk Sophia Alonso participated in trial preparation of the Spanish-speaking witnesses. The hearing opened on October 25 and continued for a total of 16 days through January 13 before Administrative Law Judge Geoffrey Carter from the Washington, D.C. Division of Judges' office. The hearing resumed on January 31 with three additional weeks of hearing scheduled thereafter.

To arrange for a speaker and to discuss possible topics, please contact the Region's Outreach Coordinator, Deputy Regional Attorney, Paul Irving at 602.640.2088.



Lowdown from the High Desert

A lot of changes have hit Region 28's office in the high desert this past summer. First off, the Albuquerque Resident Office doubled in staff size. For the past three years, Office Automation Assistant Stephanie Blackburn and Field Attorney Liza Walker-McBride have been the only two employees manning the Albuquerque outpost for cases arising out of New Mexico and El Paso, Texas.



On July 7, 2010, this all changed when David Garza joined them and the Region 28 family after he was appointed Resident Officer for the Albuquerque Resident Office. Prior to his appointment, David served as Resident Officer for the Des Moines Resident Office in Des Moines, Iowa for Region 18 (Minneapolis) for nine years. Originally from Texas, David started his Agency career working as a Field Attorney in Region 16 (Fort Worth) after

receiving his law degree from the University of Texas in Austin, Texas and is a devout Longhorn sports enthusiast. With the move, David brings his wife, Angela, and their two children, Winona (2) and Stephen (6 months). David is accustomed to chilly weather from living in Iowa but must now get acquainted with a whole different kind of chili (red and green) in his new Albuquerque home.

On August 16, 2010, Law Clerk Sophia Alonso arrived to join the Albuquerque Resident Office staff. Sophia joined Region 28 after graduating and receiving her law degree from Rutgers University School of Law. Since her arrival in Albuquerque, Sophia has hit the ground running. She has quickly taken on casework and has recently helped our office in Las Vegas with its expansive trial in Stations Casino. A native of El Paso, Texas, Sophia is also now closer to home in her new position.

The Albuquerque Resident Office has been quite busy these past few months. The office has had a notable uptick of representation petitions and unfair labor practice cases, particularly from cases filed in and around El Paso, Texas. In early November 2010, Liza finished up her eight day trial in Public Service of New Mexico. A number of other Resident Office trial cases have settled. (Sodexo, Smith's Food and Drug Centers, and Mora San-Miguel Electric Cooperative).

With all of the changes taking place in the Albuquerque Resident Office, Region 28 is planning an open house in early January 2011 to invite labor practitioners to meet the staff and to visit and find out more about the office.