

NLRB Connections

NATIONAL LABOR RELATIONS BOARD

AGENCY APPOINTS JAMES G. PAULSEN AS REGION 29'S NEW REGIONAL DIRECTOR

FUTURE NEWS- LETTERS:

- If you wish future newsletters to address an issue not discussed here, you may bring it to the attention of Peter Margolies (peter.margolies@nlrb.gov, Telephone No. (718) 330-7721).

On December 30, 2011, Alvin Blyer, the Region's much beloved Regional Director who had dutifully and ably led the Region for over 26 years, retired. The agency has appointed James G. Paulsen as his successor.

Like his predecessor, Mr. Paulsen has enjoyed a long and distinguished career at the agency. Prior to his appointment as Director, he served as an Assistant General Counsel in the Division of Operations-Management with oversight over eight Regional Offices. He has been a member of the Senior Executive Service since 1999. In Operations, he helped to coordinate General Counsel policy on the utilization of Section 10(j) injunctive relief,

chaired the Field Quality Committee and was a lead on the development of NxGen, the NLRB's case management system. In 2003,



Present Day NLRB insignia.

Mr. Paulsen received a Presidential Rank Award for distinguished service as a Senior Executive. For six months in 2002, Mr. Paulsen served as the Acting Regional Director of the New Orleans Regional Office (Region 15).

Mr. Paulsen began his career with the

NLRB as an attorney in the Division of Advice in 1978, worked in the Manhattan (Region 2) and Brooklyn (Region 29) Regional Offices as a Field Attorney, was promoted in 1989 to a Supervisory Attorney in Region 2 and in 1996 to Deputy Assistant General Counsel in Operations-Management. Mr. Paulsen received his B.A. degree from Davidson College, Davidson, North Carolina in 1974, graduating cum laude, and his J.D. degree, with high honors, from the University of Florida Law School in Gainesville, Florida in 1976. During law school, he also served as the Editor-in-Chief of the University of Florida Law Review.

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REGION'S OUTREACH PROGRAM

The Region's outreach program is designed to educate the general public about the Act. In connection with this program, the Region has sent speakers to employer conferences, worker advocacy groups and other organizations to inform them about their rights and obligations under the Act. Over the last two years, the Region has placed particular emphasis upon educating young people about the agency and its mission. To accomplish this, it has sent speakers to several high schools and colleges to teach students about Act, its history, and its relevance to the day to day situations students may encounter as they enter the work world. To bring these situations to life, the Region has sometimes sent teams of agents to enact skits, some of them featuring the students as actors, involving union and concerted activity. The Region intends to continue working with high schools and colleges during the coming months.

If your organization is interested in an outreach presentation, you should contact the Region's outreach directors, Peter Margolies (peter.margolies@nlrb.gov, Telephone No. (718) 330-7721) and Aggie Kapelman (aggie.kapelman@nlrb.gov, Tel No. (718) 330-7723).

If you wish future newsletters to address an issue not discussed here, you may bring it to their attention.

NOTICE POSTING RULE EFFECTIVE ON APRIL 30, 2012

On April 30, 2012 a new rule will go into effect requiring most private sector employers to post a notice describing employees' rights under Section 7 of the National Labor Relations Act. Employers will also be required to provide a link to the notice from their internal or external website if they routinely use their website to inform employees of personnel rules or policies.

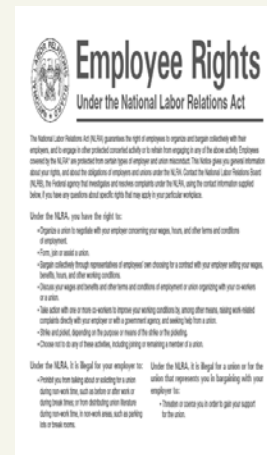
The 11-by-17-inch NLRB notice is free and can be downloaded and printed in multiple languages from our website at www.nlrb.gov/poster, or ordered by mail by filling out a form at the web address or by calling 202-273-0064. In addition, the requirement may be satisfied by purchasing an all-in-one poster from a commercial vendor.

The Agency believes that the notice will help employees and employers better understand the law and avoid misunderstandings. It is similar to other workplace postings that describe workers' rights to a minimum wage, to a safe workplace, and to freedom from certain types of discrimination. Federal contractors are already required to post a notice of NLRA rights, and that posting will also satisfy this requirement.

The Region has begun an outreach program to familiarize employers with this rule. We have begun contacting local chambers of commerce, agencies that enforce other workplace laws, and various regional journals and publications to notify them of the rule and request that they consider informing their members, users or readers of this new requirement.

For further details about the

posting and the NLRB's jurisdiction, please see our question-and-answer section here: <http://www.nlrb.gov/faq/poster>. Questions can be directed to us at poster@nlrb.gov. Representatives are also available to present information and answer questions in person through this link: www.nlrb.gov/who-we-are/requestspeaker.



For a full view of the NLRB Notice turn to page 6

UNFAIR LABOR PRACTICE LITIGATION

REGION SUCCESSFULLY LITIGATES SEVERAL ULP CASES INVOLVING MANY EMPLOYEES



Bread and Roses strike in Lawrence, MA., that started on January 12, 1912. The shutdown of mills in Lawrence forced a national debate about factory conditions, child labor, and the exploitation of immigrants and the free exercise of First Amendment rights during labor disputes.

The Region has prevailed before the Board on several important unfair labor practice cases. In **Special Touch Home Care Services** (357 NLRB No. 2), the Board majority, on remand from the Second Circuit, found that the employer violated Section 8(a)(3) by failing to immediately reinstate 48 home health care aides who had engaged in a strike. Section 8(g) of the Act requires that unions must provide healthcare institutions with

10 days notice of their intent to strike or picket so that the institution can make adequate arrangements to care for patients when their employees are on strike. In this case, a union provided the employer with the required notice. However, the Employer non-coercively polled its employees as to whether they intended to work on the day of the strike. Later, 48 employees engaged in the strike without having told the Employer that

they would not report to work. When the union, on their behalf, unconditionally offered to return to work, the Employer delayed their reinstatement and did not return some of them to their former positions. In finding a violation, the Board noted that while Section 8(g) requires the union to provide ad-

vance notice of a strike when striking a healthcare institution, it imposes no such requirement upon employees. It ordered that the 48 employees be made whole for any losses they suffered as a result of the Employer's actions. Member Hayes dissented from the decision.

In **LaGuardia Associates** (357 NLRB No. 95), the Board partially overturned an Administrative Law Judge and found that the employer violated Section 8(a)(1) by disciplining 10 employees. A group of 13 to 15 employees had concertedly approached the employer's chief operating officer (C.O.O.) and

presented him with a petition demanding that any pending layoffs proceed according to seniority. The C.O.O. read the petition, said he would meet with one employee, and repeatedly told the remaining employees to return to work. During the ensuing incident, which lasted less than a minute,

three employees either grabbed or deliberately blocked the C.O.O., and one employee briefly touched his arm, possibly by accident. The Board upheld the discharge of the three employees who had deliberately made physical contact with the C.O.O., but found that the discipline of the remaining

10 employees was unlawful. It noted that the 10 employees were engaged in concerted activity, and that their conduct was not sufficiently egregious to forfeit the Act's protection. Member Hayes dissented.



"48 employees to be made whole for any losses they suffered as a result of the Employer's actions."



REGION PREVAILS IN CASE INVOLVING ORGANIZATIONAL HANDBILLING

In **Simon DeBartolo Group** (357 NLRB No. 157), a Board majority found that the employer, a shopping mall operator, violated Section 8(a)(1) of the Act by prohibiting off duty employees of a contractor that works at its Roosevelt Field and Smithaven malls from engaging in organizational leafleting in non-work areas of the malls that are open to the pub-

lic. In finding a violation, the majority applied its decision in **New York New York Hotel & Casino** (356 NLRB No. 119), which held that a property owner may “exclude such employees only where the owner is able to demonstrate that their activity significantly interferes with his use of the property or where exclusion is justified by another legitimate business

reason....” The employer in this matter was unable to demonstrate this, and the majority found its surveillance of employees while they were handbilling, its exclusion of them from its property, and its threat to arrest them, violated Section 8(a)(1). Member Hayes dissented from this decision.



A Handbill announcing the formation of the Irish Volunteers at the Rotunda on 25th November, 1913.

REPRESENTATION ROUNDUP

The past year was a very busy one for Region 29 in the representation casehandling arena. It conducted roughly 100 elections involving thousands of employees. Some of them, such as the election at Target Corporation’s Valley Stream store, were widely reported in the press. Although the vast majority of the elections resulted from Stipulated Election Agreements, there were a few cases in which it became necessary to conduct a hearing to resolve pre-election

issues. The Region also conducted some post election hearings.

Of all the above cases, only one pre-election case resulted in a published Board decision. In **Ace Car and Limousine Services** (357 NLRB No. 43), a Board majority upheld the Regional Director’s finding that a contract did not bar an election because it contained a union security clause that was unlawful on its face. In non-right to work states, it is not unlawful for a union secu-

arity clause to require that employees pay union dues as a condition of employment.

However, such a clause may not lawfully require the payment of additional “assessments”. Since the provision in the above case required that employees pay assessments in addition to dues, the majority found that the contract containing the provision did not bar an election. Member Becker dissented from the decision.

AGENCY COMPLETES IMPLEMENTATION OF ELECTRONIC CASE MANAGEMENT SYSTEM

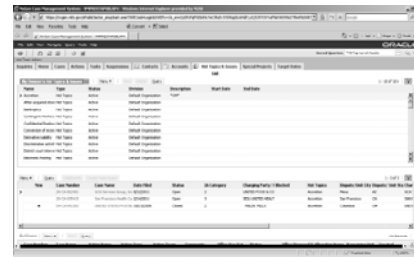
*“All Regions
are now using
NxGen”*

With much effort, the agency has completed its implementation of an electronic case management system called “NxGen.” While the agency is continuing to maintain paper files, virtually all case records are also being maintained in electronic format. In conjunction with NxGen, the agency has implemented an “E-filing” system that enables parties to file documents electronically through the agency’s website. The E-filing system has been integrated into NxGen, and is resulting in greater transparency by making more non-sensitive casehandling information accessible to the general public. In addi-

tion to increasing the transparency of the agency’s operations, NxGen is providing immediate electronic access to documents filed with the Agency. This electronic access is also enabling the Region to collaborate with other Regions and the Headquarters Offices of the General Counsel.

The NxGen case management system is also improving the quality of its casehandling by providing for greater standardization of some casehandling processes and improv-

ing our research capabilities. All Regions throughout the country are now using the same high quality NxGen generated templates to produce the various documents, such as election agreements, complaints and dismissal letters that the agency issues in the course of its operations.



NxGen Case Management System: “Hot Topics” Tab

COMPLIANCE CORNER

REGION PREVAILS IN HIGH PROFILE COMPLIANCE CASE

In **Domsey Trading Corp.** (357 NLRB No. 180 (2011)), the Board moved a step closer to ensuring that when its judgment against Domsey Trading is fully liquidated, the Board will be able to successfully satisfy the backpay claims of 181 unfair labor practice strikers who received delayed reinstatement after they made unconditional offers to return to work. The final liability is

expected to exceed \$2 million. During the backpay litigation, the Employer sold its building, and received over \$9 million in sales proceeds, substantially all of which was distributed to its shareholding principals, and closed. After the sales proceeds were transferred, Domsey Trading no longer had sufficient assets to satisfy the Board backpay claim. Sales pro-

ceeds were traced and in a parallel Pre-Judgment Federal Debt Collection action, a protective restraining order was obtained against the shareholders. All but one shareholder, Arthur Salm entered into settlement agreements. Applying the **White Oak Coal Co.**, 318 NLRB 732 (1995), test



to the facts growing out of this single transaction, the Board found the corporate veil should be pierced to find Salm personally liable to satisfy Domsey’s backpay obligation. Specifically, the Board found that the first prong of the **White Oak Coal** test was met by Salm’s co-mingling of diverted corporate funds which showed a lack of

“adherence to normal legal formalities or arm’s length dealings” and rendered the corporation undercapitalized relative to its obligations. The second prong of the test was satisfied because “adherence to the corporate form here would promote injustice and sanction the employer’s evasion of legal obligations,” that is sanc-

tion the enrichment of insiders at the expense of its make whole obligation to its 181 employees. Member Hayes dissented from the decision.



Region 29 Compliance Supervisor Elias Feuer and Region 29 Attorney Aggie Kapelman



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.nlr.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.