



# NLRB REGION 7 OUTREACH



STEPHEN M. GLASSER, REGIONAL DIRECTOR

March 2011  
No. 10

MCNAMARA FEDERAL BUILDING  
477 MICHIGAN AVE—ROOM 300  
DETROIT, MICHIGAN 48226 - 2569

GRAND RAPIDS RESIDENT OFFICE  
110 MICHIGAN ST., NW—ROOM 299  
GRAND RAPIDS, MICHIGAN 49503-2363

## *In this Issue:*

- \* Federal Court issues writ of body attachment when party refused to comply with subpoena
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## DETROIT REGION CONDUCTS BERNARD GOTTFRIED LABOR LAW SYMPOSIUM AND NLRB 75<sup>TH</sup> ANNIVERSARY RECEPTION

Detroit Regional Director **Stephen Glasser** and Board Member **Craig Becker** joined academics and practitioners who spoke at the 18<sup>th</sup> annual Bernard Gottfried Memorial Labor Law Symposium held at Wayne State University Law School in Detroit on October 14, 2010. The Symposium, conducted by the Detroit Region and Wayne State Law School in sponsorship with the State Bar of Michigan Labor and Employment Section, is held each year in memory of **Bernard Gottfried**, who served as Regional Director of the Detroit Region from 1973 until his passing in 1992. Director Gottfried also taught labor law at Wayne State University Law School as an adjunct professor.

Regional Director Glasser and Law School Dean **Robert Ackerman** each made opening remarks to welcome an audience that included attorney practitioners from management and labor, academics, Regional personnel and students. The first topic for discussion was "Privacy in the Workplace: Section 7 vs. Employer Rights." Resident Officer **Tom Good** provided an overview of Board law dealing with the issue. A practitioner from the labor and management side each provided views on Board decisions and spoke of issues that may arise with technology and employee privacy.

Field Attorney **Joseph Canfield**, who is also an adjunct professor at Wayne State University Law School, then moderated a spirited discussion between panels of labor and management practitioners and academics titled "Improving the NLRB by Administrative Change." Board Member Becker, in a luncheon address, discussed his experience as a Member of the Board, recent Board decisions, and issues that the Board may deal with in the future.

*(Continued on page 4)*

# REGION 7 OFFICES

The Region 7 Detroit office is located on the third floor of the Patrick V. McNamara Federal Building located at the corner of Michigan Ave. and Cass Ave. in downtown Detroit.

The Detroit office is open from 8:15 a.m. to 4:45 p.m. Monday through Friday. Telephone (313) 226-3200 Fax (313) 226-2090

The Grand Rapids Resident Office handles cases on the west side of the lower peninsula of Michigan.

It is open from 8:15 a.m. to 4:45 p.m. Monday through Friday. Telephone (616) 456-2679 Fax (616) 456-2596

The Resident Officer is Thomas M. Good

The Resident Office is located at:

Gerald R. Ford Fed. Bldg. Room 299 110 Michigan St., N.W. Grand Rapids, MI 49503-2363

## FEDERAL COURT ORDERS NONCOMPLIANCE FINES AND ISSUES WRIT OF BODY ATTACHMENT DUE TO COMPANY'S REFUSAL TO COMPLY WITH REGION 7 SUBPOENAS AND THE COURT'S ORDERS

On January 6, 2011, the United States District Court for the Western District of Michigan issued an Order Assessing Non-Compliance Fines against Random Acquisitions, LLC, a property management company. The Court also issued a Writ of Body Attachment (arrest) against the managing shareholder of the company.

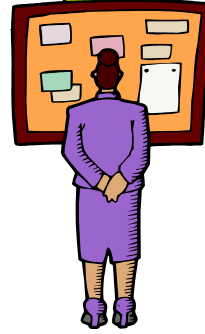
In October 2009, an employee filed an unfair labor practice charge with Region 7 alleging that the company terminated her and four others because they collectively demanded their paychecks. During the investigation of the charge, the Region issued subpoenas to the company, requiring it to provide certain documents and present a witness for affidavit testimony. The Region sought enforcement of the subpoenas in Federal District Court due to the company's refusal to comply with the subpoenas. In February 2010, the Court ordered the company to comply with the subpoenas; however, the company failed to comply.

In May 2010, the Court issued a contempt order requiring, among other things, that the NLRB be reimbursed for its attorney fees in prosecuting the contempt action. It further ordered prospective noncompliance fines for every breach of the May 2010 contempt order. Moreover, the Court reserved its right to issue a writ of body attachment against the managing shareholder for non-compliance. In October 2010, the Court issued another order liquidating the amount of attorney fees owed to the NLRB, and requiring payment to the NLRB. The company failed to comply with the May and October 2010 Court orders with respect to payment of attorney fees.

As a result of the company's and its managing shareholder's noncompliance with the Court's orders, the NLRB petitioned the court, in December 2010, to order a noncompliance fine in the amount of \$1,000 for failure to pay attorney fees, demand payment of \$3,264.00 for attorney fees, and issue a writ of body attachment against the managing shareholder. The Court granted the NLRB's petition on January 6, 2011, specifically directing the United States Marshal to arrest the managing shareholder, and incarcerate him until he and/or his company sufficiently complied with payment of the attorney fees and noncompliance fine.



## BOARD PROPOSES RULE TO REQUIRE POSTING OF NLRA RIGHTS



On December 22, 2010, the *Federal Register* published the Board's Notice of Proposed Rulemaking, which provided a 60-day comment period that ended on February 22, 2011. The proposed rule would require employers to notify employees of their rights under the National Labor Relations Act by posting a notice. The Board stated that it believes that many employees are unaware of their rights under the National Labor Relations Act and it intends to increase awareness among employees of their rights and to promote statutory compliance by employers and unions.

Private sector employers (including labor organizations) whose workplaces fall under the NLRA would be required to post the employee rights notice where other workplace notices are typically posted. Should the employer communicate with employees primarily by email or other electronic means, the notice would be posted electronically as well. The notice would be available from the Agency's Regional offices and could also be downloaded from the NLRB website.

The proposed notice states that employees have the right to act together to improve wages and working conditions, to form, join and assist a union, to bargain collectively with their employer, and to choose not to do any of these activities. It provides examples of unlawful employer and union conduct and instructs employees how to contact the NLRB with questions or complaints.

Charles Morris, Professor Emeritus of Law, Southern Methodist University, originally proposed the notice posting rule in 1993. Similar postings are already required under the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Occupational Safety and Health Act, the Americans with Disabilities Act, and the Family and Medical Leave Act, among other workplace laws.

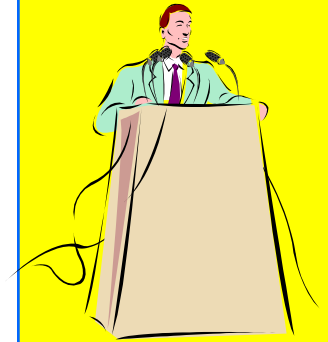
Board Member Brian Hayes dissented from the issuance of the proposed rulemaking, stating his belief that "the Board lacks the statutory authority to promulgate or enforce the type of rule which the petitions contemplated and which the proposed rule makes explicit."

## BOARD ORDERS COMPOUND INTEREST, ELECTRONIC NOTICE POSTING

In a pair of decisions issued on October 22, 2010, the Board adopted two new remedial policies: adding daily compound interest to backpay and other monetary awards, and requiring many employers and unions to notify workers electronically of NLRB orders in unfair labor practice cases. The Board's stated goal was making Board remedies more effective and in line with current legal and workplace practices. Going forward, interest on backpay and all other monetary awards will be compounded daily. The decision in *Kentucky River Medical Center*, 356 NLRB No. 8, was unanimous.

Also, employers that customarily communicate with their employees electronically, either through e-mail or an Internet or Intranet site, will be required to post remedial notices the same way, in addition to posting a paper copy of the notice. The same will hold true for union respondents that customarily communicate with their members electronically. The decision in *J. Picini Flooring*, 356 NLRB No. 9, was 3-to-1, with Chairman Wilma Liebman and Members Craig Becker and Mark Pearce in favor and Member Brian Hayes dissenting.

## SPEAKERS AVAILABLE



**Members of the Region's staff are available to make presentations before any employer or union group, classroom group, legal services clinic or service agency, and labor relations association, to describe the Act's protections, how the Region investigates and resolves unfair labor practice charges, processes representation petitions, or any NLRB topic of interest.**

**To arrange for a speaker and to discuss possible topics, please do not hesitate to telephone Regional Outreach Coordinator Patrick Labadie at (313) 226-3213.**

## → ACTING GENERAL COUNSEL ON DEFERRAL PRACTICES ←

On January 20, 2011, Acting General Counsel Lafe Solomon issued *GC Memo 11-05* which deals with deferral to arbitral awards and grievance settlements in Section 8(a)(1) and (3) cases. In the memo, the Acting General Counsel states that the Office of the General Counsel will urge the Board to change the burden of proof for deferral to grievance awards. The Acting General Counsel contends that the party urging deferral should have the burden of showing that the deferral standards set forth in *Olin Corp.*, 268 NLRB 573, (1984) have been met.

Also, it is the Acting General Counsel's position that the Board should modify its approach in Section 8(a)(1) and (3) cases and should not defer to an award unless the party urging deferral demonstrates that: (1) the contract had the statutory right incorporated in it or the parties presented the statutory issue to the arbitrator; and (2) the arbitrator correctly enunciated the applicable statutory principles, and applied them in deciding the issue. The Acting General Counsel is also taking the position that the Board should not defer to a pre-arbitral grievance settlement in Section 8(a)(1) and (3) cases unless the parties intended the settlement to also resolve unfair labor practice issues. *GC Memo 11-05* is available on the Agency website at [www.nlr.gov](http://www.nlr.gov), click on "Publications" and then on "General Counsel Memos."



### LABOR LAW SYMPOSIUM *(Continued from page 1)*

Following the address by Board Member Becker, the Region held an NLRB 75<sup>th</sup> anniversary reception. Former Board Chairman **Robert Battista**, former Board Member **Dennis Devaney** and former General Counsel **Leonard Page** were the featured speakers. They each discussed their experiences working for the Agency and their thoughts on the Agency's 75<sup>th</sup> anniversary. The Region also showed a video of former Deputy General Counsel John Higgins' speech given at an Agency conference in August 2009 where he discussed the impending 75<sup>th</sup> anniversary of the Act and selected ten memorable individuals in the history of the Agency. The Region also displayed newspapers from the 1930s and 1940s which recounted much of the history of Region 7 during those tumultuous times in the Agency's early years.



**Board Member Craig Becker**



Participants in the Gottfried Seminar from left to right: Professor William Mateikis, Linda Burwell (management attorney), Region 7 Resident Officer Thomas Good, Regional Director Stephen Glasser, David Radtke (union attorney) Professor Marick Masters, Bruce Miller (union attorney), J. Douglas Korney (union attorney), former Chairman Robert Battista, Robert Sikkel (management attorney), Richard Seryak (management attorney), and Region 7 Field Attorney Joseph Canfield.

## **BOARD ANNOUNCES LAUNCH OF NEW WEBSITE**

On February 10, 2011, the NLRB announced the launch of a new Agency website that is more flexible, easier to navigate, and useful to a variety of audiences. The redesigned site is at [www.nlr.gov](http://www.nlr.gov).

Among highlights of the new site:

- More case information is available more quickly than ever before. All Board decisions are now posted to the site at the time they are issued, rather than after a one-day holding period. The Board is also for the first time posting unpublished decisions, which do not appear in the official bound volumes of Board decisions. Additional documents from Washington and the Regional offices not previously available will be posted to the site over time.
- The website showcases a new case-management system that has been coming online at the Agency for more than a year, and will be deployed to all Regional offices by the end of this fiscal year. The new single system replaces 13 separate case tracking systems, and will allow for seamless searches that cover the entire life of a case at the Agency. Each case is assigned its own page, where information and documents are posted. More information and documents will be added over time as the rollout of the new system is completed.
- For the first time, the Agency's 32 Regional offices are prominently highlighted in the new site. An interactive map shows Regional boundaries and allows visitors to quickly locate their own Regional office. One click away is a page for each Region that lists top officials and features newsletters, news releases and local cases and decisions.
- A data section tracks NLRB activities over the years by the numbers. The section launches with eight charts and tables covering a variety of indicators, from charges filed to back pay collected. More charts and tables, with greater interactivity, will be added through the year.
- Improved navigation will make it easier for visitors to find their way, and new pages explain the NLRB processes and functions. At the same time, all the casehandling manuals, memos and forms found on the old website will be available on the new one.

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## **NLRB ADVISES STATES THAT SECRET BALLOT MEASURES ARE PREEMPTED BY FEDERAL LAW**

On January 23, 2011, the National Labor Relations Board, through the Acting General Counsel, advised the Attorneys General of Arizona, South Carolina, South Dakota, and Utah that recently-approved state constitutional amendments governing the method by which employees choose union representation conflict with federal labor law and therefore were preempted by the Supremacy Clause of the U.S. Constitution. The states were also advised that the Board has authorized the Acting General Counsel to file lawsuits in federal court, if necessary, to enjoin them from enforcing the amendments.

Under the 1935 National Labor Relations Act, private-sector employees have two ways to choose a union: they may vote in a secret-ballot election conducted by the NLRB, or they may persuade an employer to voluntarily recognize a union after showing majority support by signed authorization cards or other means.

The state amendments prohibit the second method and therefore interfere with the exercise of a well-established federally-protected right. For that reason, they are preempted by the Supremacy Clause of the U.S. Constitution. The amendments have already taken effect in South Dakota and Utah, and are expected to become effective soon in Arizona and South Carolina.

On January 27, the Attorneys General for the four states sent a letter to the Acting General Counsel promising to defend the amendments to their state constitutions. In that letter they stated "You premise your proposed lawsuit on the erroneous conclusion that our constitutional provisions require elections when federal law does not. We do not believe that is true. Our amendments support the current federal law that guarantees an election with secret ballots if the voluntary recognition option is not chosen." On February 2, Acting General Counsel Solomon responded to that letter stating that their January 27 letter "may provide a basis upon which the matter can be resolved without the necessity of costly litigation." The Acting General Counsel has directed his staff to explore the issue further with the states.

## PRESIDENT OBAMA SUBMITS NOMINATIONS TO THE SENATE TO FILL NLRB VACANCIES

On January 5, 2011, the White House announced that the President intends to nominate Lafe E. Solomon to be General Counsel of the NLRB and Terance F. Flynn to be a Board member.

Lafe Solomon, a career attorney at the Board, was named Acting General Counsel by President Obama on June 21, 2010. Mr. Solomon began his career with the Agency as a field examiner in the Seattle region in 1972. He then obtained his law degree and has served in the Office of Appeals, the Appellate Court Branch and has worked on the staff of 10 Board members.

Terence Flynn is currently detailed to serve as Chief Counsel to Board Member Brian Hayes. Mr. Flynn was formerly Chief Counsel to Board Member Peter Schaumber. From 1996 to 2003, Mr. Flynn was Counsel in the Labor and Employment Group of Crowell & Moring, LLP.

On January 26, 2011, President Obama nominated Craig Becker to fill the remainder of a five-year term as a Board Member ending December 16, 2014. The President originally stated his intention to nominate him to the Board in April 2009, but the appointment stalled in the Senate and on March 27, 2010, the President gave Member Becker a recess appointment that allows him to serve until the end of the Senate's 2011 session. Member Becker was sworn in on April 5, 2010.

The Board currently consists of Chairman Wilma Liebman, and Members Mark Gaston Pearce, Brian Hayes and Craig Becker. Chairman Liebman's term expires on August 27, 2011.



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## NLRB INVITES BRIEFS REGARDING APPROPRIATE BARGAINING UNITS IN LONG-TERM CARE FACILITIES

On December 22, 2010, the Board invited parties to file briefs on the issue of the appropriate composition of bargaining units in long-term care facilities. In the case under review, the United Steelworkers, District 9, petitioned for an election to represent certified nursing assistants at a nursing home in Mobile, Alabama. The employer, *Specialty Healthcare and Rehabilitation Center of Mobile*, contends that, under Board law, the unit must include all nonprofessional service and maintenance employees, such as dietary aides, cooks, and clerks. The Regional Director found the petitioned-for unit was appropriate, and that decision was appealed to the Board.

In 1991, the Board decided *Park Manor Care Center*, 305 NLRB 872, indicating that in non-acute healthcare facilities, such as nursing homes, it would "take a broader approach utilizing not only 'community of interests' factors but also background information gathered during rulemaking and prior precedent." The question of appropriate unit composition that is presented in the *Specialty Healthcare* case revisits that *Park Manor* decision. In seeking briefs, the Board majority observed that the long-term healthcare industry has changed dramatically since *Park Manor* was decided. Employment growth in the sector has been strong and, during the last decade, nearly 3,000 petitions for representation elections have been filed involving that industry.

The invitation to file briefs specifically asks eight questions, including what the interested parties' experience has been under the *Park Manor* decision and whether its application has hindered or encouraged employee choice and collective bargaining. The period for filing briefs expired on February 22, 2011.

Chairman Liebman and Members Becker and Pearce were in the majority. In dissent, Member Hayes wrote that there is little evidence that current policies are problematic, and that changing them could lead to a proliferation of units in the healthcare industry. The *Specialty Healthcare* case can be found at 356 NLRB No. 56.

## GRAND RAPIDS RESIDENT OFFICER CHET BYERLY RETIRES

Colleagues and friends of Resident Officer **Chet Byerly** gathered in Grand Rapids on December 9 to help celebrate his 38 years with the Agency and his transition to retirement. The festivities were organized by the Resident Office staff, and originally were planned for Region 7 personnel only. But due to requests and inquiries from outside, the event had to be expanded to accommodate a large turnout of practitioners and labor bar members from western Michigan, the territorial jurisdiction of the Grand Rapids Resident Office.

Regional Director **Stephen Glasser** delivered the opening remarks. Adding to accolades for Chet's competence as a manager, Steve recalled Chet's role in helping to open the Grand Rapids Resident office in 1981, and in establishing and maintaining its reputation for timely and quality case processing. Steve read a congratulatory letter from Associate General Counsel **Rick Siegel**.

Following comments by Tom Good and Brad Howell, field examiner and fellow founding staff member of the Resident Office **Craig Sizer** added his tributes and, in time for Chet and Joan Byerly's approaching initiation to grandparenthood, presented Chet with a gift from the Regional staff, an HD video camera. Chet's expressed gratitude to the colleagues and parties he worked with during his 38-year career. After the cake was cut and served, Chet, Regional office staff and alumni traded war stories late into the afternoon.

Chet began his career at the NLRB as a field examiner in the Detroit Regional Office in 1973. He helped to open the Grand Rapids Resident Office in 1981, and succeeded the late **Dave Basso** as Resident Officer in 1999.



Colleagues from the Grand Rapids RO surround RO Chet Byerly (center) at his retirement celebration, Wishing him well are [left to right] FX Ethan Ray, current Resident Officer Thomas Good, LSA Ann O'Neal-Jones, LRA Barb Kubik, FA Brad Howell, FX Craig Sizer, FA Colleen Carol, OM Rochelle Anderson, FX Alex Kassel, and FA Steve Carlson.

## HAPPY RETIREMENT TO CHET AND LINDA



## REGION 7 BIDS FOND FAREWELL TO LINDA BAHASH

On January 27, 2011, the Region 7 staff held a luncheon to celebrate the retirement of Linda Bahash, Region 7 docket clerk. Also present for the luncheon were Linda's son Christopher and his wife. Linda started with the Agency in October, 1985 and from her first day with the Agency has been the docket clerk at Region 7. In her position, she docketed charges and petitions and prepared the appropriate cover letters for service of the documents on the parties.

Linda has three children, Christopher, Don and Lisa. She said that she will spend the first two weeks of her retirement in Florida with her son. She also plans to visit her brother in California. We wish you well Linda !!!

## TOM GOOD NAMED RESIDENT OFFICER IN GRAND RAPIDS



On January 18, 2011, Acting General Counsel Lafe Solomon announced the appointment of Thomas M. Good as NLRB Resident Officer in Grand Rapids, Michigan. Tom is a career Agency employee with 32 years of service as a field examiner, and in his new position will assist Regional Director Stephen M. Glasser in the processing of representation and unfair labor practice cases filed in the western half of the Lower Peninsula of Michigan.

Acting General Counsel Solomon said Tom is ideally suited for the job, given his ability to skillfully handle the most complex and challenging assignments. "He is a dedicated and well respected employee with considerable initiative who has demonstrated strong leadership and problem solving skills. I am confident he will serve the Agency well as the head of the Grand Rapids office."

Tom received both a B.S. degree and a Master's degree in Labor and Industrial Relations from Michigan State University. He began working for the Agency during his graduate studies in 1979 as a co-op student in the Detroit Regional office. In 1980 he joined the Hartford, Connecticut office as a field examiner, and transferred to the Grand Rapids office in 1982.



## REGION 7 EMPLOYEE PROFILE: KATHLEEN DRUMMOND, LITIGATION SUPPORT STAFF AASSISTANT

Kathleen (Kathy) Drummond is the Litigation Support Staff Assistant in Region 7. In her position she performs support staff work for the office but also assists Region 7 trial attorneys with support staff work when they are handling major cases. Kathy started work for the federal government at the Selective Service System in October 1967, but transferred to the NLRB in April 1968 when her friend, Linda Bottomly, also started with the Agency at Region 7. Kathy worked full-time until November 1977 when she went on maternity leave. She returned in January, 1979 and has since worked part-time.

Kathy and her husband Tom have one daughter, Tara.

