



# NLRB REGION 7 OUTREACH



STEPHEN M. GLASSER, REGIONAL DIRECTOR

October 2011  
No. 11

MCNAMARA FEDERAL BUILDING  
477 MICHIGAN AVE—ROOM 300  
DETROIT, MICHIGAN 48226 -2543

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

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## SAVE THE DATE !

THURSDAY, OCTOBER 13, 2011

### THE BERNARD GOTTFRIED MEMORIAL LABOR LAW SYMPOSIUM

WAYNE STATE UNIVERSITY LAW SCHOOL

*Morning Topics: A Swinging Pendulum or Course Correction?-- Board Cases of Recent Vintage, and Is Collective Bargaining at the Crossroads?*

*Afternoon presentations: A Union's Duty to Provide Information and Bringing an Unfair Labor Practice Charge before Region 7*



**Luncheon Speaker:** Lafe E. Solomon,  
NLRB Acting General Counsel

**Contact Us:**  
(313) 226-3200

Agency Website:  
[www.nlr.gov](http://www.nlr.gov)

Toll Free:  
(866) 667-6572

Hearing Impaired:  
(866) 315-6572

Registration forms have been mailed, but for more information contact Region 7, Group Supervisor Patrick Labadie at (313) 226-3213, or email, [patrick.labadie@nlrb.gov](mailto:patrick.labadie@nlrb.gov).

## WE NEED YOUR EMAIL ADDRESS!!

To reduce costs, future issues of the Region's Outreach newsletter will be sent by email only. If you want to continue receiving the newsletter, please send your email address to:

[carol.koper@nlrb.gov](mailto:carol.koper@nlrb.gov).

## 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 Good

The Resident Office is located at:

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

## BOARD ISSUES DECISION ON APPROPRIATE UNITS IN NON-ACUTE HEALTH CARE FACILITIES



On August 26, 2011, the Board issued a decision that set forth a new approach for determining what constitutes an appropriate bargaining unit in non-acute health care facilities. In *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, the Board found that certified nursing assistants at a nursing home constituted a separate bargaining unit without including all other non-professional employees. With the decision, the Board overruled its 1991 decision in *Park Manor Care Center*, 305 NLRB 872 (1991) which set forth a special test for determining the appropriateness of bargaining units in nursing homes, rehabilitation centers and other non-acute health care facilities (unit determinations in acute care hospitals are covered by the Board's Health Care Rule).

In *Specialty Healthcare*, the Board held that employees at nursing homes, rehabilitation centers and other non-acute health care facilities will be subject to the same "community of interest" standards that the Board has applied to other workplaces. The Board stated "We have concluded that the *Park Manor* approach to determining if a proposed bargaining unit in a nursing home is an appropriate unit has become obsolete, is not consistent with our statutory charge, and has not provided clear guidance to interested parties or the Board." The Board further stated that where a non-acute health care facility employer contends that a proposed unit inappropriately excludes certain employees, the employer will be required to prove that the excluded employees share "an overwhelming community of interest" with the employees in the proposed unit.

Former Chairman Wilma Liebman, Member (now Chairman) Mark Gaston Pearce and Member Craig Becker were in the majority, with Member Brian Hayes in the dissent.

The above mentioned cases can be accessed at the Board's website, [www.nlr.gov](http://www.nlr.gov) under "Cases & Decisions."



## BOARD DECIDES SIGNIFICANT CASES DEALING WITH NEW COLLECTIVE BARGAINING RELATIONSHIPS

On August 30, 2011, the Board issued two decisions that overruled decisions from 2007 and 2002 which dealt with the protections provided by federal law for new collective bargaining relationships.

In *Lamons Gasket Co.*, 357 NLRB No. 72, the Board considered a new bargaining relationship created by an employer's voluntary recognition based on a showing of support by a majority of employees. For over 40 years, Board law had prohibited challenges to the union's representative status for a "reasonable period of time" following voluntary recognition. In its 2007 decision, *Dana Corp.*, 351 NLRB 434 (2007) the Board allowed for an immediate challenge to a voluntary recognition by an employee filing a decertification petition or by a rival union. In *Lamons Gasket*, the Board overturned *Dana* and returned to the principle that prohibits challenges to a union's status as collective bargaining representative after voluntary recognition for a "reasonable period of time."

In the other case, *UGL-UNICCO Service Company*, 357 NLRB No. 76, the Board considered the period following a change in ownership of a company with a unionized workforce. In *UGL-UNICCO* it overruled *MV Transportation*, 337 NLRB 770 (2002) which created an immediate window after the sale or merger for a union's status to be challenged by 30% of the employees. In *UGL*, the Board returned to its prior standard articulated in *St Elizabeth Manor*, 329 NLRB 341 (1999) in which a new bargaining relationship between the incumbent union and the new employer was held to be protected for a reasonable period of time without a challenge to the union's representative status.

All of the above mentioned cases can be accessed at the Board's website, [www.nlrb.gov](http://www.nlrb.gov) under "Cases & Decisions."

## 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.

### VIEW THE REGION 7 WEBPAGE!

Go to [www.nlrb.gov](http://www.nlrb.gov), click on "Who We Are" and then "Regional Offices." At the dropdown menu, select "Detroit, MI Region 7" and you will find our webpage. At the webpage you can find all of the Region's past newsletters, Regional office news and a listing of past and upcoming Regional events involving Region 7 personnel.

**CHAIRMAN LIEBMAN LEAVES NLRB;  
MEMBER PEARCE DESIGNATED THE  
NEW CHAIRMAN**

NLRB Chairman Wilma Liebman left the Agency at the completion of her third term on August 27, 2011. She had served on the Board for nearly 14 years. Chairman Liebman was first appointed to the Board by President Bill Clinton. She was reappointed twice by President George W. Bush and was designated Chairman by President Barack Obama on January 21, 2009. She is the third longest serving member in the Board's 76-year history. Before coming to the NLRB, Ms. Liebman had served as Deputy Director of the Federal Mediation and Conciliation Service and as counsel to two labor organizations.

The White House has designated Board Member Mark Gaston Pearce to be Board Chairman. Member Pearce was sworn in as a Board member on April 7, 2010, following his recess appointment, and was confirmed by the Senate on June 27, 2010 for a term that ends on August 27, 2013. Previously, he served as a member of the New York State Industrial Board of Appeals and was a founding partner of the Buffalo NY law firm of Creighton, Pearce, Johnsen and Giroux. He worked as an attorney for the NLRB from 1979 to 1994.

At present on the Board are Chairman Pearce, Member Brian Hayes, whose term expires on December 16, 2012 and Member Craig Becker, a recess appointment, whose term expires on December 31, 2011.



**Wilma Liebman**



**Craig Becker**



**Brian Hayes**



**Mark Gaston Pearce  
Chairman**

## **BOARD ISSUES FINAL RULE ON POSTING OF NLRA RIGHTS**

The Board has issued a Final Rule requiring employers to post a notice which informs employees of their rights under the National Labor Relations Act. The rule is to go into effect on November 14, 2011. Private sector employers (including labor organizations) whose workplaces fall under the Board's jurisdiction will be required to post the employee rights notice where other workplace notices are typically posted. Copies of the notice will be available from the Agency's regional offices. A copy is now available to download from the Agency's website ([www.nlr.gov](http://www.nlr.gov)).

The notice, which is similar to one required by the Department of Labor for federal contractors to post, states that employees have the right to act together to improve wages, hours and other working conditions, to form, join and assist a union, to bargain collectively with their employer, and to refrain from doing any of those activities. It provides examples of unlawful employer and union conduct and instructs employees how to contact the Agency's regional offices.

The Board received approximately 6,500 comments during the 60-day comment period following the publication of the proposed rule in the Federal Register. In response to the comments the Board modified parts of the rule, for example, employers will not be required to distribute the notice by email to their employees and employers may post the notice in black and white as well as in color. The final rule also clarifies requirements for posting in foreign languages.

Former Board Chairman Wilma Liebman, Member (now Chairman) Mark Gaston Pearce and Member Craig Becker approved the final rule with Member Brian Hayes in dissent.

*(See pages six and seven for a reproduction of the Employee Rights notice.)*

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### **REGION 7 EMPLOYEE PROFILE:**

## **CRAIG SIZER**

Craig Sizer is a senior field examiner in the Region's Grand Rapids resident office. Craig graduated Magna Cum Laude from Western Michigan University in 1974. For two years he taught individuals seeking their G.E.D. in Benton Harbor, Michigan. He started with the Agency as a field examiner in the Detroit office in 1977. He transferred to the Grand Rapids resident office when it opened in 1981. He has spoken at four Bernard Gottfried Memorial Labor Law Symposiums. Craig plans to retire from the Agency in December 2011.

In his retirement, Craig plans to do some traveling and perhaps teaching or writing. Craig's hobbies include gardening, reading, music, cross-country skiing, and spending time with his family. Craig and his wife Janice have been married for 38 years. They have three children and two granddaughters.





# 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.

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\*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.**

September 2011



## ACTING GENERAL COUNSEL RELEASES REPORT ON SOCIAL MEDIA CASES



On August 18, 2011, the Acting General Counsel released a report detailing the outcome of the investigation of 14 cases investigated by the Agency involving the use of social media and employers' social and general media policies. Each case was submitted by Regional offices to the Division of Advice. In four of the cases that involved employee use of Facebook, Advice found that the employees were engaged in protected concerted activity because they were discussing terms and conditions of employment with fellow employees. Advice found that in four other cases employee use of Facebook and Twitter posts was not concerted and in one case that it was not protected.

In another case, Advice found that a union engaged in unlawful conduct when it videotaped interviews with employees at a nonunion jobsite and posted those interviews on YouTube and the local union's Facebook page.

In three cases, Advice found that employer social media policies were unlawfully overly broad. Another case involved an employer's policy that restricted employee contact with the media. The complete report by the Acting General Counsel can be accessed at the Board's website, [www.nlr.gov](http://www.nlr.gov) under "News and Media."

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Detroit, MI 48226-2569

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