

Circle City - River City News

NATIONAL LABOR RELATIONS BOARD

Region 25 Office
575 N. Pennsylvania St.
Room 238
Indianapolis, IN 46204
Phone: (317)226-7381

Subregion 33 Office
300 Hamilton Blvd.
Suite 200
Peoria, IL 61602
Phone: (309)671-7080

SUMMER 2013 ISSUE

A newsletter to
inform the public
about workplace
rights & issues

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INFORMATION,
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*Hablamos
Español*

Regional Office Restructuring

The National Labor Relations Board approved the formal restructuring of several regional offices.

The restructuring was published in the Federal Register on December 6, 2012, and took effect on December 10, 2012. It changed the status of four Regional Offices to subregional offices and re-assigned some subregional and resident offices to new Regional Offices. The number of NLRB Regional Offices was reduced from 32 to 28, while the total number of field offices remained unchanged at 51.

Subregion 33 (Peoria, IL) now reports to the Indianapolis, IN Regional Office (Region 25). The Regional Director in

Indianapolis overseeing both offices is Rik Lineback.

This restructuring adjusts the Agency's presence to case filing developments that have occurred over the years by more evenly distributing case intake among Regions. The development of the Agency's electronic case management system (NxGen) facilitates the Agency's ability to proceed with these restructuring plans. All of the resulting Regions will be of a size and internal management structure that will optimize efficiency and economy, while preserving high quality investigations and litigation and resulting in an Agency that is *(continued on pg. 7)*

Paper Free at the NLRB

The offices of the NLRB have made the switch to electronic case files. At this point, the Agency no longer maintains official paper case files. Parties with the technological capabilities should e-file their documents with the appropriate Agency office through the www.nlr.gov website. Although e-

mail is a great way to communicate with Board Agents about scheduling and other issues, e-mail should not be used as a way to file documents with the Agency. If you have the capabilities to scan and e-mail a document, you have the capabilities to e-file it. The following *(continued on pg. 7)*

Say Hello, Wave Goodbye

Say hello: Meet Rik Lineback, Regional Director for Region 25.



How long have you worked for the NLRB?

I've been with the NLRB since 1974, so 38 years.

Which region did you begin working for?

I started with the Indianapolis office and have just never left!

How did you get started with the NLRB?

I started working with the NLRB right out of law school. I was hired as a law clerk and awaited my bar results to become a field attorney. I had worked in a few factories as summer jobs during college and this increased my respect for the working man. In law school, I took a labor law class and found it very interesting. I wanted to try and help the little guy so I knew the NLRB would be a good fit.

When not hard at work, what do you like to do in your spare time?

I really enjoy watching movies, especially classic movies in black and white. [Editor's note, the following answer came after much cajoling as Mr. Lineback has many favorite movies] My top five favorite movies at the moment would be *Spartacus*; *The Awful Truth* (great movie with Irene Dunne and Cary Grant); *The Fall* (a more recent flick about a 1920s injured stuntman); *L.A. Confidential*, and I'm almost embarrassed to say this last one, but *Field of Dreams*.

What are some restaurants in Indianapolis that you enjoy?

My favorite place to go to in Indianapolis is the Elbow Room. It's not too fancy or anything; it's close, has good folks, and everybody knows my name.

Say hello: Deb Stefanik was recently appointed Officer-in-Charge of Subregion 33 by the Board. She will surely continue her record of excellent public service in her new role. Look for a column about Deb in a future edition of this newsletter!

Wave goodbye: Former Officer-in-Charge of Peoria, Pete Perez, has returned "home" to the St. Louis office as its Assistant Regional Director. We will miss him in the office but wish him the best on his new endeavor.

How long have you worked for the NLRB?

I have worked for the agency for 34 years. I've been in the Peoria office since 2003 and have been the Officer-in-Charge for about 2 years.

Which region did you begin working for?

I started at the agency as a field examiner in the St. Louis office – Region 14, and investigated for 25 years before moving to Peoria.

How did you get started with the NLRB?

I was "lucky" enough to graduate from college in a recession with a very (un)useful degree in Political Science, so I took the PACE test. At that time, the PACE test was the federal government's main tool for recruitment. I was working as a carpenter in the construction industry when I received a call from the NLRB based on my PACE score. I interviewed in the St. Louis office and the rest is history.

When not hard at work, what do you like to do in your spare time?

I enjoy cooking, good wine, listening to music and traveling. I do not really have any favorite recipes, as I try to cook something new each time. I used to enjoy watching the Food Network, but miss the cooking shows like Emeril Lagasse's and Mario Batali's where it was less of a reality show and more instructional. When it comes to music, I do not go to as many shows as I used to, but I most recently went to New York to see Van Morrison. If Eric Clapton ever did another Crossroads Guitar Festival in Chicago, I would probably try to attend.

What are some restaurants in Peoria that you enjoy?

One of the best restaurants I've been to in Peoria is *June* located in Peoria Heights. Other than that, my foodie heart belongs to St. Louis with its amazing Italian restaurants on "The Hill."

NLRB Speakers are Available

Interested in having a representative of the NLRB address your group?

Members of the Regional and Subregional offices are available to make presentations before any group, including classroom groups, legal services clinics or service agency staffs, as well as those members of the public that they serve. Speakers are available to cover a variety of topics, including presentations describing what the Act's protections cover, how the Region investigates unfair labor practice charges, the NLRB's representation case procedures, or any other NLRB topic of interest.

To arrange for a speaker and to discuss possible topics, please contact Field Attorney Rebekah

Ramirez at (317)226-5618 or Assistant to the Regional Director Patricia Nachand at (317)226-7404 for speakers from the Indianapolis office or Officer-in-Charge Deb Stefanik at (309)671-7080 for speakers from the Peoria office.

You may also request a speaker through a link on the NLRB's Web site:

<http://www.nlr.gov/news-outreach/request-speaker>



NLRB Speakers are Available for Your Group

NLRB Appoints Melissa Olivero as ALJ

The National Labor Relations Board has appointed Melissa Olivero as an administrative law judge in its Division of Judges. She will be transferring to the Board from a similar position with the Social Security Administration.

Judge Olivero served as a judge with the Social Security Administration for 2 years. Before joining Social Security, she spent 6 years as a trial attorney with the Peoria office of the National Labor Relations Board. She also spent several years in private practice and as a criminal prosecutor. In addition, she spent 4 years in the United States Army and 4 years in the Army Reserves as a platoon leader and company commander, attaining the rank of captain before her honorable discharge. Judge Olivero graduated from the

University of Michigan and received her law degree from the Northern Illinois University College of Law. She will take her assignments from the Washington, D.C. office of the Division of Judges.

With offices in Washington, D.C., New York City, San Francisco and Atlanta, the Division of Judges is responsible for docketing unfair labor practice cases brought by the Board's General Counsel on charges filed by unions, employers and individual employees. The Division disposes of those cases by settlement or by conducting trials and issuing initial decisions, which may then be appealed to the five-member Board and thereafter to an appropriate United States Court of Appeals.



Staff Spotlight: NLRB Walk for Fitness

On April 9, 2013, members of the Indianapolis Regional Office participated in the NLRB's Second Annual Walk for Fitness. At 1:00pm, over 200 NLRB staff members from headquarters and many regional offices stepped out into the fresh spring air for some collective exercise. Participants had a pleasant time enjoying each other's company and look forward to next year's event.



Recent Region 25 & Subregion 33 Trial Success

- On May 16, 2013, the Board adopted ALJ Carissimi's findings that Indiana Fire Sprinkler & Backflow, Inc. unlawfully refused to consider a union supporter for hire and unlawfully interrogated employees about their union membership, sympathies, and activities.
 - In his May 3, 2013 decision, ALJ Wedekind found that New NGC, Inc. d/b/a National Gypsum Company unlawfully unilaterally refused to pay any portion of the increase in the health insurance premiums announced and implemented by the bargaining unit's health plan and unilaterally changed its "lockout/tagout" safety procedures to require covered unit employees to carry at least two locks on their person at all times.
 - On April 30, 2013, ALJ Rosenstein issued his decision finding that Oak Terrace Healthcare unlawfully maintained a rule instructing its employees not to discuss their wages and unlawfully dis-
- charged an employee for violating the rule prohibiting employees from talking about their wages.
 - ALJ Dibble issued her decision on April 24, 2013, finding that NACCO Material Handling Group, Inc. unlawfully refused to provide information to the Independent Lift Truck Builders Union and unilaterally abandoned its established past practice of allowing the Union Vice-President to use the company paid time allotted to the chief steward when substituting for the chief steward.
 - On November 8, 2012, the Board affirmed ALJ Sandron's Supplemental Decision and Order that E.L.C. Electric Inc.; its alter ego and successor Midwest Electric & Retail Contractors, Inc., d/b/a MERC, Inc.; its alter ego, Asset Management Partners, Inc.; and Edward L. Calvert, an individual, pay in excess of \$437,000 in order to remedy a number of violations of Section 8(a)(1) and (3) and make whole 16 individuals harmed by those violations.



NLRB Website Describes PCA Rights

The National Labor Relations Board has made public a webpage that describes the rights of employees to act together for their mutual aid and protection, even if they are not in a union.

The page, at www.nlr.gov/concerted-activity, tells the stories of more than a dozen recent cases involving protected concerted activity, which can be viewed by clicking points on a map. Among the cases: A construction crew fired after refusing to work in the rain near exposed electrical wires; a customer service representative who lost her job after discussing her wages with a coworker; an engineer at a vegetable packing plant fired after reporting safety concerns affecting other employees; a paramedic fired after posting work-related grievances on Facebook; and poultry workers fired after discussing their grievances with a newspaper reporter.

Some cases were quickly settled after charges were filed, while others progressed to a Board decision or to federal appellate courts. They were selected to show a variety of situations, but they have in common a finding at some point in

the NLRB process that the activity that the employees undertook was protected under federal labor law.

The right to engage in certain types of concerted activity was written into the original 1935 National Labor Relations Act's Section 7, which states that: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities."

"A right only has value when people know it exists," said NLRB Chairman Mark Gaston Pearce. "We think the right to engage in protected concerted activity is one of the best kept secrets of the National Labor Relations Act, and more important than ever in these difficult economic times. Our hope is that other workers will see themselves in the cases we've selected and understand that they do have strength in numbers."

Dear NLRB...

I am a union rep and there is going to be a certification election soon for a group of employees I have been organizing. I know that there are rules limiting the Employer's freedom to campaign during the 24 hours immediately preceding the election. Do those rules apply to the Union?

The limitation you refer to is called the *Peerless Plywood* rule and it applies to both employers and unions. The rule forbids election speeches, whether coercive or not, within 24 hours of the scheduled election time. The rule does not prohibit employers or unions from making campaign speeches on or off company premises dur-

ing the 24-hour period if attendance is voluntary and on the employees' own time. It is worth noting the application of the *Peerless Plywood* rule in mail ballot elections; there, the rule begins 24 hours before the scheduled time for the mailing out of the ballots and continues to run until the set time for return.

For more information on election speeches, you can go to the NLRB's Outline of Law and Procedure in Representation Cases, Chapter 24, Section 325, located on our website: www.nlr.gov.

Are Witness Statements Confidential?

The NLRB has ruled that, in considering whether an employer is obligated to provide witness statements to a union representing an employee concerning discipline, the Board must balance the confidentiality interests of the employer against the union's need for the information. The decision in *American Baptist Homes of the West d/b/a Piedmont Gardens*, 359 NLRB No. 46 (Dec. 15, 2012), overrules a 1978 Board decision, *Anheuser-Busch, Inc.*, 237 NLRB 982, which established a categorical exemption for witness statements in such cases. In *Piedmont*, the Acting General Counsel and the charging party argued that the bright-line rule established in 1978 was "inappropriate",

and the Board agreed, finding it should instead apply a balancing test articulated by the Supreme Court in 1979, in *Detroit Edison Co. v NLRB*, 440 U.S. 301. In its decision, the Board noted that the Act imposes on an employer a "general obligation" to furnish a union with relevant information necessary to perform its duties. However, under *Detroit Edison*, the Board must balance that need against "any legitimate and substantial confidentiality interests established by the employer." The Board discussed that balance in the decision. Also, it decided not to apply the rule retroactively; therefore, *Piedmont* and other pending cases are being decided under *Anheuser-Busch*.

Acting GC Considers At-Will Clauses

NLRB Acting General Counsel Lafe Solomon has released an analysis of at-will employment clauses in two employee handbooks, finding that both are lawful under the NLRA. Charges filed with the NLRB alleged that the handbooks defined at-will employment so broadly that employees would reasonably think they could not engage in activity protected by the NLRA. However, the two memos prepared by the NLRB's Division of Advice in Washington DC found that they were not overly broad. As both memos explain, an employer violates the Act by maintaining work rules or policies that explicitly prohibit NLRA-protected union or concerted activity, such as joining a union or discussing terms and conditions of employment with coworkers. Even if not explicit, a rule can be unlawful if employees would reasonably construe the language to prohibit such activity.

The handbook maintained by *Rocha Transportation* (Advice Memo dated October 31, 2012) advised drivers that their employment is at-will and may be terminated at any time. "No manager, supervisor, or employee of Rocha Transportation has any authority to enter into an agreement for employment for any specified period of time or to make an agreement for employment other than at-will," it continued. "Only the president of the Company has the authority to make any such

agreement and then only in writing." The Advice Memo notes that this clause explicitly states that the relationship can be changed, and so employees would not reasonably assume that their NLRA rights are prohibited.

At *SWH Corporation d/b/a Mimi's Cafe* (Advice Memo dated October 31, 2012), the handbook description of at-will employment advises: "No representative of the Company has authority to enter into any agreement contrary to the foregoing "employment at will" relationship." The Acting GC found this was not unlawfully broad because the clause does not require employees to agree that the employment relationship cannot be changed in any way, but merely highlights that the employer's representatives are not authorized to change it.

The Advice Memos are provided as guidance for employers and human resource professionals in a developing area that has drawn considerable attention recently. They distinguish the language in the two handbooks from another at-will clause that was recently found by an NLRB Administrative Law Judge to be unlawfully broad in *American Red Cross Arizona*, JD(SF)-04-12. That case was settled before Board review. Because Board law in this area remains unsettled, the Acting GC is asking all Regional Offices to submit cases involving employer handbook at-will provisions to the Division of Advice for further analysis & coordination.

NATIONAL LABOR RELATIONS BOARD



The National Labor Relations Board is an independent federal agency created by Congress in 1935 to administer the National Labor Relations Act, the primary law governing relations between unions and employers in the private sector. The statute guarantees the right of employees to organize and to bargain collectively with their employers, and to engage in other protected concerted activity with or without a union, or to refrain from all such activity. The NLRA extends rights to most private sector employees, to their employers, and to unions/labor organizations. The NLRA protects workers who form, join, support or assist unions, also known as labor organizations, and protects groups of workers (two or more employees) who engage in protected concerted activities without a union concerning their wages or working conditions. The Act protects non-union and union employees against employer and union discrimination based on union-related activities or other protected concerted activities.

Employees who wish to pursue workplace organization issues or allegations of unfair labor practices may seek assistance from the nearest regional NLRB office. Employers and Unions who wish to pursue allegations of unfair labor practices may do the same. The Agency has 51 regional, sub-regional, or resident offices to serve the public. For more information about your local NLRB office, please visit www.nlr.gov/who-we-are/regional-offices.

Regional Office Restructuring

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best able to fulfill its mission in the future.

Additional office restructuring included:

The Winston-Salem, NC office (Region 11) became a subregion of the Atlanta Regional Office (Region 10). The Nashville, TN resident office, now also reports to Atlanta. The Memphis, TN

office (formerly Region 26) became a subregion of the New Orleans Regional Office (Region 15). The Little Rock, AR resident office reports to New Orleans. The Overland Park, KS office (Region 17) became a subregion of the St. Louis Regional Office (Region 14). The Hartford, CT office (Region 34) became a subregion of the Boston, MA Regional Office (Region 1).

Electronic Case Files

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short process is all you need to know in order to e-file:

1. Go to the Agency's website at www.nlr.gov
2. Click on the "E-File Documents" tab in the middle of screen
3. Enter the case number
4. Follow the step-by-step instructions on how to:

- a. Enter your data and upload your documents
- b. Review and confirm your submission
- c. Receive your receipt with confirmation number.

Parties should e-file all documents with the Agency, except for unfair labor practice charges, representation petitions, and requests for advisory opinions, which should be faxed, mailed, or delivered to the Agency.