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# NLRB Region 3

## Outreach



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### Regional Director's Corner

Since April of last year, I have been extremely busy as the Regional Director of Region 3, Buffalo and the Acting Regional Director of Region 6, Pittsburgh. Much of my time during these last 10 months has been spent traveling between the two Regions and trying to provide the best customer service

possible in both jurisdictions. I have been greatly aided in this effort by the hardworking and dedicated staffs of both offices who rose to the occasion and filled in wherever and whenever necessary. For their efforts I am truly grateful. I am also grateful to the members of the labor bar in both Regions, as well as the unions and employers who voiced their support for each Regional Office. I am happy to say that the Agency has recently selected Nancy Wilson as the new Regional Director in Region 6, having decided that consolidation was not the best course of action. Both Regions have had their geographical jurisdictions extended, with Region 3 assuming responsibility for several counties in Vermont which will be serviced by our Resident Office in Albany, where Barney Horowitz is the Resident Officer.

The Board has been busy issuing decisions that will impact our customers and we have outlined some of the more important cases in this newsletter. On May 8, 2015, we will be co-sponsoring with Cornell University's ILR School and The New York State Bar Association a conference at SUNY Buffalo's Center for Tomorrow. The Chairman of the Board, the General Counsel, Ethics Counsel and additional Board members are going to be speaking about recent developments and we expect to have a very enlightening agenda so please save the date! We will have a Practices



• **How to File a Charge:**

Anyone may file an unfair labor practice charge with the NLRB. To do so, they must submit a charge form to any Regional Office or, they may file electronically through the Board's website at [nlrb.gov](http://nlrb.gov). The form must be completed to identify the parties to the charge as well as a brief statement of the basis for the charge. The charging party must also sign the charge.

• Forms are available for download from the NLRB website. They may also be obtained from an NLRB office. NLRB offices have information officers available to discuss charges in person or by phone, to assist filling out charge forms, and to mail forms.

• You must file the charge and serve it on the charged party within 6 months of the unfair labor practice.

• **When a Charge is Filed:** The NLRB Regional Office will investigate. The charging party is responsible for promptly presenting evidence in support of the charge. Usually evidence will consist of a sworn statement and documentation of key events.

• Please submit documents to us electronically at [nlrb.gov](http://nlrb.gov)

• Please promptly present your evidence in support of any charge you file.

• The Region will ask the charged party to present a response to the charge, and will further investigate the charge to establish all facts.

• After a full investigation, the Region will determine whether or not the charge has merit.

**(Regional Director's Corner Continued)**

and Procedures meeting after the conference. CLE credits will be available for attendees and I look forward to seeing you there!

Rhonda P. Ley,  
Regional Director, Region 3

**Save the Date!**

**May 8, 2015, Cornell/NYSBA Labor Law Conference**

Claire T. Sellers is currently planning future outreach events with community leaders and welcomes the opportunity to work with you to plan an event. Feel free to contact Claire at 716-551-4967 or at [claire.sellers@nlrb.gov](mailto:claire.sellers@nlrb.gov) for a speaker or if you have any outreach ideas or requests.

Also, be sure to save the date for our upcoming CLE conference with the NYSBA and Cornell University scheduled for **May 8, 2015**.

**Expanding Our Outreach!**

Region 3 is working hard to expand its outreach. In September, **Field Attorney Claire T. Sellers** organized an event for government agencies and legal service agencies to learn about each other's functions and services, and how to coordinate more effective referrals. The agencies that attended include OSHA, Legal Services for the Elderly, Legal Aid and the NY State Department of Labor. We created an information packet explaining services offered by different agencies, which was attached to the electronically distributed newsletter or can be requested from Claire at 716-551-4967 or at [claire.sellers@nlrb.gov](mailto:claire.sellers@nlrb.gov).



In November, the Region kicked off the month with its annual "Coffee with the Chairman." **Chairman Mark Pearce** packed the house speaking on recent Board decisions about social media in *Triple Play*, 361 NLRB No. 31 (2014), and scope of bargaining unit issues in *Macy's*, 369 NLRB No. 4 (2014), and *Neiman Marcus*, 361 NLRB No. 11 (2014), as well as the Supreme Court's recent decision and the impact of *Noel Canning*, 1345 S. Ct. 2550 (2014).

### After the Region Makes a Determination

If the Region determines that a charge has no merit—that the charged party has not violated the Act—it will dismiss the charge unless the charging party withdraws the charge. The charging party has the right to appeal a dismissal.

If the Region determines that a charge has merit—that the charged party has violated the Act—it will attempt to settle the case. Unless there is a settlement, the Region will proceed to trial before an administrative law judge to obtain a finding of a violation and an order directing the charged party to undertake remedial actions. The charged party has appeal rights, with a final decision subject to appeal to a federal court.

### Remedies for Violations

When there has been a violation, the Act does not impose fines or other direct penalties. Rather, it requires a make whole remedy to correct the violation and its effects.

**NLRB** remedies require those who have violated the Act to cease the violation, to inform employees that they will respect their rights, to reinstate employees who have been unlawfully fired, and to pay compensation for lost earnings.



### Spotlight on Albany!

Since our last newsletter, **Barney Horowitz**, the Albany Resident Officer, has conducted numerous outreach events throughout the state. Capitalizing on the interest generated by the Chicago Regional Director's decision in *Northwestern University* (Case 13-RC-121359), Barney developed a presentation entitled "The NLRA – on the Football Field, on the Campus and in the Classroom." He gave his presentation at events in the Albany and Buffalo offices and presented a version focused only on the *Northwestern* case at New York Law School and as part of a panel for the Federal Court Bar Association in Hamilton, New York. Over one hundred twenty-five people attended the four presentations.



Although the dispute in *Northwestern* over whether Division 1 scholarship football athletes are employees within the meaning of the Act has grabbed the most attention, there are a number of issues arising from ongoing organizing efforts in education and Barney's presentation attempted to address them all. A summary of the major issues in the academic area and the current status of these issues is set forth below:

The College Athlete: The Board invited briefs in *Northwestern* on May 12, 2014 asking the public to address what test should be applied to determine whether the scholarship football players are employees under the statute. The case is open.

The Graduate Student: In *Northwestern*, the Board also invited parties to address whether the standard used by the Board in *Brown University*, 342 NLRB 483 (2004), to find that graduate students who serve as research or teaching assistants are not statutory employees should be used, and if that standard should be adhered to, modified or overruled. As noted above, the case is still open, but a union has filed petitions in another Region seeking elections for graduate assistants. Therefore, even if the Board does not address the question in *Northwestern*, it may have to face it in another case in the near future.

The Faculty Member at Religiously Affiliated Colleges: On February 10, 2014, the Board invited briefs in *Pacific Lutheran* 361 NLRB No. 157 (December 16, 2014), requesting guidance as to the test to be applied under *Catholic Bishop*, 440 U.S. 490 (1979), to determine whether self-identified religiously affiliated educational institutions should be exempt from the Act. The Board recently issued its decision. In *Pacific Lutheran University*, the Board ruled 3-2 that it will assert jurisdiction and resolve disputes involving the faculty at religiously affiliated colleges unless the college first demonstrates that it: a) holds itself out as a religious educational environment and b) holds the faculty out as performing a special role in creating or maintaining this environment.

## How to File a Representation Petition

Filing NLRB representation petitions can be simple and convenient. An NLRB Information Officer can assist you in completing a petition form. Our contact information is on page one of this newsletter. If you complete the petition yourself, keep in mind these helpful tips:

- Know which Regional office will handle your petition. Region 3 covers all of New York except New York City, Long Island, Orange, Putnam, Rockland and Westchester Counties. Persons may also obtain service at Region 3's Resident Office located in Albany, New York.
- Prepare your petition on our website at: [www.nlr.gov](http://www.nlr.gov) (filing instructions detailed).
- Know the job titles used by the Employer and the employee shift schedules.
- Provide the Region with authorization/membership cards (or other proof of interest) signed and dated by at least 30 percent of the employees in the petitioned-for unit.
- Although 91% of elections are conducted pursuant to election agreements, be prepared for a hearing by knowing: (1) the employer's operations; (2) the community of interests of various employee job categories; and (3) who the "supervisors" are. Hearings are typically held 10-14 days from date the petition was filed.
- Be prepared for the election to be conducted within 42 days from the date the petition was filed.
- Always call the assigned Board agent with questions or concerns.

## (Spotlight Continued)

The Faculty Member as Managerial Employee: In *Pacific Lutheran*, the Board announced that it would also revisit the Supreme Court's decision in *Yeshiva University*, 444 U.S. 672 (1980), addressing the managerial employee status of full-time faculty, and invited parties to file briefs addressing this question. In the December 16th decision, the Board also addressed *Yeshiva* and essentially re-ordered the examination of critical factors. The Board majority ruled that in evaluating the managerial status of faculty members, it would first examine the faculty decision making in the primary areas of academic programs, enrollment management and finances, and then the secondary areas of academic and personnel policy and decisions. The Board indicated that faculty members would only be found to be managerial employees if the evidence supported a finding that the control exercised by faculty was, at a minimum, at the level of "effective recommendation." Interestingly, *Pacific Lutheran* was an adjunct organizing case and all five Board members agreed that the record was insufficient to show that the adjunct faculty members were managerial employees. Future cases involving tenure-track faculty may be tougher to resolve.

Charter Schools: The question of whether private, not-for-profit corporations operating charter schools are subject to NLRA jurisdiction or were exempt entities as political subdivisions was seemingly answered by the Board in *Chicago Mathematics and Science Academy*, 359 NLRB No. 41 (2012), where the Board asserted jurisdiction. As a result of the Supreme Court's *Noel Canning* decision, that case no longer has precedential value. The Board, however, presently has another case arising within New York state which will require it to re-address the question of whether a charter school qualifies for the political subdivision exemption from the NLRA's coverage. See *Hyde Leadership Charter School Brooklyn*, 29-RM-126444 (Regional Director's Decision dated May 28, 2014 finding jurisdiction under the Act).

## Section 10 (j) and 10(l) Injunction Litigation News

Region 3 has been actively engaged in seeking injunctive relief in a number of cases this year, including two *Gissel* bargaining order cases. A short summary follows.

### Gissel bargaining order cases:

#### Novelis Corporation

The Region achieved a partial 10(j) injunction in this case which arises out of an initial organizing drive by the United Steel, Paper and Forestry Rubber Manufacturing, Energy, Allied Industrial and Service Workers at Novelis Corporation. In December 2013, the employees sought union representation at the Oswego, New York facility where the company manufactures rolled aluminum products for the can and automotive

**Section 7 of the National Labor Relations Act (NLRA) gives employees the rights to:**

- Form, join, or assist a union
- Choose representatives to bargain with your employer on your behalf
- Act together with other employees for their benefit and protection
- Choose not to engage in any protected activities

**Non-Union Protected Concerted Activity**

**Q:** Does the NLRA protect activity with other employees for mutual aid or protection, even if you don't currently have a union?

**A:** Yes. For instance, employees not represented by a union, who walked off a job to protest working in the winter without a heater were held by the Supreme Court to have engaged in concerted activity that was protected by the NLRA and that they could not be lawfully discharged for such action.

**(Injunction Litigation News Continued)**

industries. Novelis then began an anti-union campaign, which resulted in the union filing numerous unfair labor practice charges with Region 3. The Region filed a petition for injunctive relief in federal district court (NDNY) seeking a *Gissel* bargaining order and an order that Novelis cease and desist from conduct alleged as 8(a)(1) violations (including threats of plant closure, threats of more onerous working conditions, restoration of a benefit, interrogations, removal of union literature) and that it restore an employee to his previous position following an alleged unlawful demotion. On September 4, 2014, District Court Judge Gary L. Sharpe issued an order granting the injunction in part and ordering Novelis to restore the employee to his prior position, cease and desist from its conduct enumerated as Section 8(a)(1) violations and post and read the notice to employees. (5:14-CV-775). **Lil Richter** handled the 10(j) arguments.

In the underlying administrative case, in a decision issued on January 30, 2015, ALJ Michael A. Rosas found that a bargaining order was appropriate to remedy unfair labor practices that Novelis committed in response to the organizing campaign. (2015 WL 400625) After a 17 day hearing held from July through October 2014, Judge Rosas issued a decision finding that the union had established a majority of support through signed authorization cards, and that Novelis had violated the Act. Judge Rosas determined that a bargaining order was the appropriate remedy because the "Company's commission of several hallmark violations along with numerous other violations, many of which directly affected the entire bargaining unit, and many of which directly involved upper-level management, strongly suggests that the lingering effect of these violations is unlikely to be eradicated by traditional remedies." Judge Rosas ordered that the election be set aside and that Novelis bargain with the union as the exclusive collective bargaining representative of employees. The administrative case was tried by **Linda Leslie** and **Nicole Roberts** from the Buffalo office. This case was investigated by **Patricia Petock**.

**Hogan Transports, Inc.**

The case arose out of the union's initial organizing drive at a trucking company. The Region filed a petition seeking 10(j) injunctive relief and a bargaining order in the NDNY on October 25, 2013. (1:13-MC-64). On November 22, 2013, the district court's chief judge (Gary L. Sharpe) granted a partial 10(j) injunction ordering that Hogan cease and desist from the 8(a)(1) behavior, and that it rescind the unilateral change, and reinstate the discharged employee. The 10(j) relief included a posting and reading of the district court's order. The Region appealed the ruling of the district court denying the *Gissel* bargaining order to the Second Circuit which vacated the district court's decision in part and remanded the case to the district court for further consideration. On January 20, 2015, the district court granted the interim *Gissel* bargaining order and the additional injunctive relief as previously ordered.

## Don't Tell Me I Can't Talk About My Wages!

The National Labor Relations Act (NLRA) protects the rights of both unionized and non-unionized employees. The NLRA protects employee rights to join and support unions where they work, to participate in protected concerted activities with other employees, and to refrain from participating in such activities. Under the NLRA, two or more employees have the right to act together to raise workplace issues with their employer or to press for changes in wages or other working conditions. Such employee's actions are known as protected concerted activities.

Employer rules which have a tendency to chill employees in the exercise of these rights violate the NLRA. In this regard, the Board has held, among other things, that employers may not prohibit employees from discussing their own wages or attempting to determine what other employees are paid. The mere maintenance and announcing of these rules is a violation, even if these rules are not enforced. Juniper Medical Center Pavilion, 346 NLRB 650 (2006).

## (Injunction Litigation News Continued)

The administrative consolidated complaint (03-CA-107189 and 03-CA-108968) alleges that Hogan violated Section 8(a)(1) of the Act by moving employees' work location, threatening employees with job loss, interrogating employees, promising employees a wage increase and increasing employees' wages. The complaint alleges that Hogan violated Section 8(a)(3) by discharging its employee for union activities. The complaint also sought a *Gissel* bargaining order. On February 26, 2014, the ALJ found in favor of the General Counsel on most of the allegations including the *Gissel* bargaining order. The administrative case is pending before the Board on exceptions. This case was investigated by **Dave Turner** and litigated by **Gregory Lehmann**.

### First contract bargaining 10(j) case:

#### S.W. Pitts

In May 2014, the Region filed a petition for injunctive relief under Section 10(j) of the Act in federal district court (NDNY), in *S.W. Pitts Hose Company of Latham, N.Y., Inc.* (1:14-MC-23). The petition was based on conduct alleged as unlawful in the context of a newly-certified union attempting to bargain a first contract. An administrative complaint in Cases 03-CA-119561 and 120331 also issued alleging that S.W.Pitts committed unfair labor practices in violation of Section 8(a)(1), (3) and (5) of the Act by engaging in surface bargaining, refusing to bargain in good faith, unilaterally changing terms and conditions of employment without first bargaining to a good-faith impasse, and temporarily suspending certain employees for engaging in protected concerted and/or union activities. District Court Judge David N. Hurd granted the petition for injunction in full and ordered S.W. Pitts to meet and bargain with the union in good faith, rescind the unilateral changes (including contract proposals) and read the district court's order and notice to employees. The administrative case settled shortly thereafter and full compliance has been achieved. The 10(j) was handled by **Greg Lehmann** and **John Grunert** from the Albany Resident Office and was investigated by **Barney Horowitz**.

### Rochester Regional Joint Board (Xerox Corporation)-10(l) case

The Region filed a petition for injunctive relief under Section 10(l) of the Act in federal district court (WDNY), in *Rochester Regional Joint Board*, (14-CV-6605). District Court Judge Elizabeth Wolford, granted in full the relief sought in the Board's petition. The dispute arose when RRJB filed a grievance seeking to enjoin Xerox from subcontracting certain maintenance work. The Judge found that the language relied upon by RRJB to pursue its grievance was not for lawful work preservation but rather had the secondary effect of requiring a non-contracting party to sign a written commitment to assume all of the company's obligations under the collective-bargaining agreement. RRJB also filed a motion in district court seeking a preliminary injunction (14-CV-6607) to maintain the status quo and prevent Xerox from subcontracting until the grievance could be arbitrated. The Judge denied

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# Outreach

## REGION 3 STAFF

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### Albany Resident Office

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Kelly Moore, Field Examiner

David Turner, Field Examiner

## (Injunction Litigation News Continued)

RRJB's motion. The underlying administrative complaint (03-CC-137244 and 03-CE-137252) alleges that RRJB violated Section 8(e) and 8(b)(4)(ii)(A) and (B) by, entering into an agreement by which Xerox agrees to cease doing business with another person, seeking to enforce an agreement that would force or require Xerox to enter into an agreement prohibited by Section 8(e), and threatening, coercing, and restraining Xerox where an object is to force Xerox to cease doing business with another person. The injunction case was argued by **Jesse Feuerstein** and the administrative case was tried by **Alicia Pender**, both from the Buffalo office. The case was investigated by **Dave Turner**. The administrative case is pending before the ALJ.

## Administrative Case Litigation News

The Region achieved a full win in *Canton-Potsdam Hospital*, 03-CA-114181, where the General Counsel alleged that the Hospital violated Section 8(a)(1) of the Act by maintaining a rule preventing employees from wearing certain union insignia. ALJ Steven Davis found that it was unlawful for the Hospital to ban the two stickers at issue, "Hands Off Our Health Insurance" and "I Support EJ Noble Workers," in both patient care and non-patient care areas. The case arose in the context of a publicity campaign by the union during successor contract bargaining. The ALJ's order was adopted by the Board in the absence of exceptions. The case was litigated by attorneys **Gregory Lehmann** and **John Grunert** from the Albany Resident Office. **Dave Turner** investigated the case.

In *New York State United Teachers*, 03-CA-116945, the Region also received a complete win on the merits. The General Counsel alleged that NYSUT violated Section 8(a)(1) of the Act by telling an employee via e-mail that his protected activities were incompatible with his employment. ALJ Michael Rosas found the e-mail communication to be unlawful and the ALJ's order was adopted by the Board in the absence of exceptions. The case was investigated and litigated by attorney **John Grunert** from the Albany Resident Office.

The Region won a difficult case, *Newark Electric Corp.*, 03-CA-088127, et al., before the ALJ. The General Counsel alleged that Newark Electric and its single employer and/or alter ego violated Section 8(a)(5) of the Act by withdrawing recognition from the union and repudiating the collective-bargaining agreement and failing to apply the terms of the contract. The complaint also alleged the unlawful discharge of an employee because of his union activity. The case involves interesting issues concerning whether the Respondents were bound by a letter of assent. The ALJ found that the entities alleged were alter egos and single employers.

## Learn More: Visit Us Online!

The NLRB website, [www.nlr.gov](http://www.nlr.gov), contains a great deal of additional information about the protections of the Act, Board policies and procedures, and how to contact the nearest Regional Office.

## Region 3 Has its Own Web Page

You can now access link the [Region 03 Web Page](#) through the NLRB website, [www.nlr.gov](http://www.nlr.gov) using the find your Regional Office link. Or use the link provided in this article.

On the [Region 03 Web Page](#) you can find upcoming events that are planned in Region 3 as well as recent outreach activities and Regional Office news.

## (Administrative Litigation News Continued)

The case, which is pending before the Board on exceptions, was tried by Region 3 Buffalo attorney **Claire T. Sellers** and investigated by field examiner **Renee Hutt**.

In *Columbia Memorial Hospital*, 03-CA-120636, the General Counsel alleged that the Hospital violated Section 8(a)(1), (3), and (5) of the Act by disciplining an employee for granting a union representative access to the facility, maintaining an overbroad handbook rule, revising its facility access policy without bargaining with the union and in response to union activity, refusing to honor an employee's *Weingarten* request, and refusing to furnish the union with relevant information. The General Counsel won the majority of the allegations in a decision by ALJ Kenneth Chu. The case was litigated by attorney **John Grunert** from the Albany Resident Office with the assistance of **Amy Cocuzza**. This case was investigated by **Dave Turner**. In another *Columbia Memorial Hospital* case (03-CA-132367), the ALJ found that the Hospital violated Section 8(a)(5) of the Act by failing to provide information to the Union.

The Region received a favorable ALJD on November 21, 2014 in *Selux Corporation*, 03-CA-123429. The General Counsel alleged that Selux violated Section 8(a)(1) and (5) of the Act by laying off an employee without bargaining with the union and by engaging in direct dealing with the employee. In finding a violation, the ALJ found that Selux failed to give clear notice to the union of its decision to lay off a unit employee and, that while the parties had conversations about the layoff, they did not engage in actual bargaining. The case was investigated and litigated by attorney **John Grunert** from the Albany Resident Office.

In *Jamestown Fabricated Steel & Supply*, 03-CA-119345, the Region received a full win in a decision by ALJ Mark Carissimi. The General Counsel alleged Jamestown violated Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with the union. The ALJ determined that Jamestown was a successor employer, and therefore, it inherited the bargaining obligation of the predecessor. Jamestown's bargaining obligation matured upon the union's valid oral demand for recognition because, at that time, it employed a representative complement of employees. The ALJ further determined that once Jamestown's bargaining obligation matured, the successor bar doctrine, as reestablished in *UGL-UNNICO Service Co.*, 357 NLRB No. 76 (2011), entitled the union to a reasonable period of bargaining without challenge to its majority status. As such, expressions of disaffection from unit employees to Jamestown made shortly after the union's request for recognition could not serve as a basis for its refusal to recognize the union. The case is pending before the Board on exceptions. The case was tried by **Jesse Feuerstein** and investigated by **Tom Miller** from the Buffalo office.

The Region also received a full win before the ALJ in a novel case, *TLC Health Network*, 03-CA-113937. The General Counsel alleged that



**(Admin Case Litigation News Continued)**

TLC violated Section 8(a)(1) and (4) of the Act by discharging a supervisor because she voted in a Board-supervised election in which her supervisory status was at issue. The supervisor, who was uncertain of her supervisory status, had voted in the election to determine whether she was, in fact, eligible to vote. The ALJ agreed with the GC that Section 8(a)(4) protected her from discharge because she invoked the Board’s processes for that purpose. The case was tried by **Alicia Pender** and investigated by **Tom Miller** from the Buffalo office.

In *Ace Masonry, Inc., et al* (03-CA-073540, et al.), the Region achieved a win before the ALJ in a compliance case (arising out of a backpay specification) where the Region sought to hold certain individuals connected with Ace Masonry and its alter ego Bella Masonry derivatively and personally liable for the amounts due to benefit funds. The ALJ found that all but one of the individuals alleged were personally liable for the debt under the Board’s standards set forth in *White Oak Coal*, 318 NLRB 732 (1995). In finding personal liability, the ALJ discussed the commingling of funds between the corporate entities and individuals. The case was litigated by **Greg Lehmann** from the Albany office, who was assisted by Region 3’s Compliance Officer **Sandra Larkin**. The case is pending before the Board on exceptions. **Barney Horowitz** and **Kelly Moore** investigated the cases.

In *NexStar Broadcasting Group, Inc. d/b/a WETM-TV*, 03-CA-125618, the General Counsel alleged that the Employer, a television station in Elmira, violated Section 8(a)(1) and (5) of the Act by unilaterally removing two employees and their work from the bargaining unit. NexStar argued that the union agreed to remove the employees and their work from the bargaining unit because their positions were supervisory. The ALJ rejected this argument and agreed with the General Counsel that the employees were not supervisors. The ALJ held that NexStar violated the Act by removing the employees and their work from the bargaining unit. Field Attorney **Claire T. Sellers** tried the case and was assisted in preparation for trial by then Law Clerk Trainee, now Field Attorney **Jessica Noto**. The case was investigated by Field Examiner **Tom Miller**.

**Noteworthy Settlements**

*Orchard Manor*, Case 03-CA-112835: this first contract bargaining case involved the alleged unlawful suspension and discharges of employees. In the settlement, employees received backpay and reinstatement offers. The employer denies violating the Act.

*Elmer Davis*, Case 03-CA-116608: the union alleged that the employer violated Section 8(a)(5) of the Act by unilaterally implementing a drug and alcohol testing policy. The case settled with the employer offering reinstatement and backpay to approximately 20 employees. The employer also agreed to revise its drug and alcohol testing policy. The employer denies violating the Act.

## NLRB Releases Videos on Website

In its continuing effort to enhance the public's ability to transact business with the Agency, the NLRB now features the following videos on our site at [www.nlr.gov](http://www.nlr.gov):

“Introduction to the NLRB Public Website, which provides viewers with a guided tour of the Agency’s website; How to use CiteNet, which explains how to use the Agency’s electronic legal research database of Board and court decisions dating from 1002; and the “Representation Case” video, which is designed to inform the public about the role of the Agency in conducting elections.

## (Noteworthy Settlements Continued)

*Battistoni Italian Specialty Meats, LLC*, Case 03-CA-131246: the charge alleged that the employer, alleged as a successor to Providential Foods Corporation, refused to recognize and bargain with the union and refused to provide requested information. The Region issued a consolidated complaint on August 25, 2014. The Region also sought authorization from the General Counsel to seek Section 10(j) relief and the Board authorized it in early September 2014. The case then settled when the employer agreed to recognize and bargain with the union and provide the union with requested information. The employer denies violating the Act.

## The National Labor Relations Board Issues its Final Rule to Modernize Representation-Case Procedures

The NLRB adopted a final rule amending its representation case proceedings to modernize and streamline representation disputes. The Rule was published in the Federal Register on December 15, 2014, and will take effect on April 15, 2015.

Read the full press release [here](#).

Training on the new Rule is available in Buffalo on April 1 and in Albany on April 2. Contact Claire at 716-551-4967 or at [claire.sellers@nlrb.gov](mailto:claire.sellers@nlrb.gov) for more information.

## New Board Law on Employee Use of Email

*Purple Communications, Inc.* (21-CA-095151 and 21-RC-091531 and 21-RC-091584; 361 NLRB No. 126)

The full Board reviewed the ALJ's finding that the Respondent's electronic communications policy, which prohibits employees' non-business use of its email network, was lawful under *Register Guard*, 351 NLRB 1110 (2007), enfd. in relevant part and remanded sub nom. *Guard Publishing v. NLRB*, 571 F.3d 53 (D.C. Cir. 2009). The Board overruled *Register Guard*'s holding that employees have no statutory right to use their employer's email system for Section 7 purposes and found that employee use of email for statutorily-protected communications on nonworking time must presumptively be permitted by employers who have chosen to give employees access to their email systems. The Board also held that an employer can justify a total ban on nonwork use of email, by showing that special circumstances make any ban necessary to maintain production or discipline. The Board noted that *Register Guard* focused too much on employers' property rights and too little on the importance of email as a means of workplace communication. The Board noted that it sought to accommodate employees' Section 7 rights to communicate and the legitimate interests of employers.

### Our Service Standards

- We will attempt to answer your questions about the case, consistent with the confidentiality rights of the other persons and the Privacy Act.
- If necessary we will provide bilingual services if we are given sufficient notice of that need.
- We will provide the same treatment to all persons regardless of race, sex, religion, national origin, age, political affiliation, sexual orientation or disability.
- Our facilities are accessible to persons with disabilities. Please let us know if you will need an accommodation.

If you wish, you may be represented by an attorney or other representative of your choice.

### Congratulations!

**Sandra Larkin** was recently promoted to Supervisory Field Examiner responsible for overseeing the investigation of unfair labor practice charges and processing of representation petitions. Sandy brings over 30 years of experience in Region 3 to her new position. She started her career as the receptionist and held several support staff positions before successfully completing the Agency's upward mobility program. Sandy spent the next 15 years as a Field Examiner investigating unfair labor practices and conducting representation hearings and elections. Most recently, Sandy was the Region's compliance officer, responsible for securing compliance with Board decision and orders and settlement agreements and protecting the Agency's compliance interests through ancillary proceedings against uncooperative respondents, such as Federal Debt Collection Act actions in U.S. District Court, claims in U.S. Bankruptcy Court, and mediations with the U.S. Circuit Courts.

Sandy also served as the Region's FOIA officer and participated on committees that revised the Agency's Compliance Casehandling and Support Staff manuals.

**Greg Lehmann** has been employed by the NLRB since 2000, starting in the Buffalo Regional Office and transferring to the Albany Resident Office in 2006. Greg received his B.A. degree from the University of Nevada, Reno and his J.D. degree from Albany Law School.



**Mary Elizabeth Mattimore** joined Region 3 as a field attorney in 1995. In 2007, Beth was promoted to supervisor and shortly thereafter to Deputy Regional Attorney. In Spring 2014, with the retirement of Mike Israel, Beth became Acting Regional Attorney and in January 2015, Beth was appointed Regional Attorney.

### Welcome Aboard!

#### Region 3 Extends a Warm Welcome to the Following New Staff Members

Region 3 is delighted to welcome our new field attorney **Jessica Noto**. Jessica graduated *magna cum laude* in May 2014 from the University at Buffalo Law School with concentrations in Civil Litigation and Criminal Law. There she was a published member of the *Buffalo Law Review*, the

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# NLRB Region 3 Outreach

## Contact the Region:

There is always an information officer available at an NLRB Regional Office to answer general inquiries or to discuss a specific workplace problem or question. The information officer can offer information about the Act and advice as to whether it appears to be appropriate to file an unfair labor practice charge. If filing a charge does appear to be appropriate, the information officer can assist in completing the charge form.

The information officer at Region 3 may be reached by telephone at:

1-866-667-6572  
(Toll free)

or

716-551-4931 (Buffalo)  
518-431-4155 (Albany)

## Para información en Español llame al:

1-866-667-6572  
(Toll free)

## TOLL FREE NUMBER:

The Agency also has a toll free telephone number that offers a general description of the Agency's mission, referrals to other related agencies and access to an Information Officer based upon the caller's telephone number. A Spanish language option is also available. Toll free access is available by dialing:

(TTY) 1-866-315-NLRB (1-866-315-6572) for hearing impaired.

## (Welcome! Continued)

2013-14 Desmond Moot Court champion, and a two-time competitor for UB's internationally ranked Jessup International Moot Court team, an organization for which she also served as Executive Director. Prior to attending law school, Jessica attended Seton Hall University, graduating *magna cum laude* from the University Honor's Program with majors in English Literature, Social and Behavioral Sciences, and Creative Writing. She also minored in Criminal Justice and Psychology. She was the captain and president of Seton Hall's mock trial program, which advanced to the national tournament under her direction. She currently volunteers her time at Buffalo State College where she acts as head coach of their mock trial program. Jessica is thrilled to begin work with the Board!



## Charles ("Chuck") Guzak is the newest member of Region 3, at the



Resident Office in Albany. He obtained his J.D. from Cornell Law School, where he was a teaching assistant for two courses at the Cornell School of Industrial & Labor Relations, President of the National Lawyers Guild, Executive Vice Chancellor of the Moot Court Board, a participant in the Labor Law Clinic, and the recipient of the Hayman Labor Law Scholarship. He completed externships at Tompkins-Tioga Neighborhood Legal Services and the Cornell Office of University Counsel during law school. Prior to attending law school, Chuck obtained an M.A. in Near Eastern Languages in Cultures from UCLA, and he obtained his B.A. in Arabic/Islamic Studies & Philosophy from the University of Michigan. Between his undergraduate and graduate studies, Chuck completed a Fulbright research fellowship in Damascus, Syria. Immediately before joining the NLRB, Chuck was an associate in the Litigation Department of Bond Schoeneck & King in Syracuse, New York.

## Farewell

Region Three is losing one of our finest employees, **Lillian Richter**, who is leaving the great white north for the more temperate climate of Winston-Salem, North Carolina Region 10. Lil is one of the longest tenured employees at Region Three. She served for many years as a field attorney, and for the last five and a half years as a supervisor. While an attorney, Lil investigated and litigated some of the Region's most complex cases, and was always willing to provide guidance and assistance to new hires. While serving as a supervisor, Lil provided excellent leadership



**(Farewell Continued)**

and support to her team members. No matter how busy Lil was, she always had time to answer questions or serve as a sounding board for one of her team members. Lil's great sense of humor and smiling face will be sorely missed in the hallways of Region Three, and we all wish her luck tending to her horses and enforcing the Act in Winston-Salem!

**Rhonda P. Ley, Regional Director**  
National Labor Relations Board, Region 3

To receive this newsletter electronically send an email to:  
[Katy.Domagala@nlrb.gov](mailto:Katy.Domagala@nlrb.gov)

# **I N T A K E & R E F E R R A L S**

- ▶ Empire Justice Center
- ▶ Equal Employment Opportunity Commission
- ▶ The Legal Aid Bureau of Buffalo, Inc.
- ▶ Legal Services for the Elderly Disabled & Disadvantaged of W.N.Y.
- ▶ National Labor Relations Board
- ▶ Neighborhood Legal Services, Inc.
- ▶ NYS Department of Labor
- ▶ NYS Division of Human Rights
- ▶ U.S. Department of Labor Occupational Safety and Health Administration
- ▶ U.S. Department of Labor Wage and Hour Division
- ▶ Erie County Bar Association Volunteer Lawyers Project, Inc.
- ▶ Western New York Law Center

# **EMPIRE JUSTICE CENTER**

**One West Main Street, 2nd Floor - Rochester, NY 14614 - (585) 454-4060 - Fax (585) 454-4019**

## **1. WHO WE ARE**

Empire Justice is a statewide, multi-issue, multi-strategy public interest law firm focused on changing the “systems” within which poor and low-income families live. We have offices in Rochester, Albany, Yonkers, and Central Islip, New York. With a focus on poverty law, Empire Justice brings important litigation on behalf of individuals and groups and provides assistance to local legal services programs and community based organizations. As an advocacy organization, we undertake research, provide training, and engage in legislative and administrative advocacy on behalf of those harmed by poverty and discrimination. As a non-profit law firm, we provide legal assistance to those in need and undertake impact litigation in order to protect and defend the rights of disenfranchised New Yorkers.

## **2. WHAT WE DO**

We represent individuals and groups who suffer from employment discrimination and seek to enforce their rights under the ADA, Title VII, the New York State Human Rights Law, and federal civil rights laws. We assist in non-litigation advocacy and negotiation, direct legal representation (administrative complaints, state and federal litigation), technical assistance and public policy support (to promote and advance bills such as increasing the minimum wage rate and improving civil legal protections against LGBT discrimination).

## **3. PRIORITY ISSUES / CASES**

We represent persons who are victims of disability, race, and gender discrimination, and we have a project focused on wage theft and enforcing workers’ rights under state and federal employment statutes. These attorneys represent individuals and groups of low-wage and immigrant workers in the Genesee Valley and Westchester County in wage theft and related claims. We work with community organizations and workers’ centers to develop effective strategies to address wage theft and other forms of workplace exploitation. We also represent low-income LGBT people in cases where they were discriminated against because of their sexual orientation, gender identity, and/or gender expression.

## **4. INTAKE PROCESS**

Call (585) 454-4060.

## **5. CONTACT INFORMATION**

- a. Clients seeking information and assistance: (585) 454-4060
- b. Website: [www.empirejustice.org](http://www.empirejustice.org)

# EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

6 Fountain Plaza, Suite 350 - Buffalo New York, 14202 - (716) 551-4442 - Fax (716) 551-4387

## 1. WHO WE ARE

The EEOC is a federal law enforcement agency that investigates or looks into claims that employers, employment agencies or labor organizations discriminated against employees or applicants because of their race, color, religion, sex, pregnancy, national origin, age (40 or older), disability, or genetic information. The EEOC often tries to settle these claims with the help of a mediator. Sometimes, the EEOC takes cases to court. The EEOC does not charge a fee to investigate, mediate or litigate charges. The EEOC also educates employers, employees and the public about job discrimination.

## 2. WHAT WE DO

We enforce five laws prohibiting discrimination in employment: Title VII of the Civil Rights Act, Age Discrimination in Employment Act, Americans with Disabilities Act (ADA), Equal Pay Act, and Genetic Information Non-Discrimination Act (GINA).

## 3. PRIORITY ISSUES / CASES

- **Title VII** of the Civil Rights Act prohibits discrimination on the bases of race, color, sex (including Pregnancy Discrimination Act), national origin, religion, and retaliation.
- The **Age Discrimination in Employment Act** prohibits discrimination on the basis of age and retaliation.
- The **ADA** prohibits discrimination against qualified individuals with disabilities, persons regarded as disabled, and persons with a record of a disability.
- The **Equal Pay Act** prohibits sex discrimination in payment of wages (including fringe benefits such as vacation/holiday pay, severance pay) to men and women performing substantially equal work under similar working conditions in the same establishment. **Bottom Line: Equal Pay for Men and Women.**
- **GINA** restricts the acquisition of genetic information by employers and covered entities; prohibits the use of genetic information to discriminate in employment; and requires covered entities to keep genetic information confidential, with limited exceptions. **ADA** prohibits discrimination based on manifested conditions that meet the definition of disability. **GINA** prohibits discrimination based on genetic information and not based on a manifested condition.

Discrimination under Title VII, ADEA and ADA is prohibited in all aspects of employment including, for example: application process, hiring, compensation, harassment, terms, conditions, privileges, promotion, advancement, training, and fringe benefits. Under Title VII and the ADA, employers, employment agencies, unions, employer-union apprenticeship programs, and local, state and federal agencies, with 15 or more employees, are subject to these laws. Under ADEA, employers with 20 or more employees are subject to ADEA. Under EPA, employers covered by minimum wage law are subject to EPA.



#### **4. INTAKE PROCESS**

Under Title VII, ADEA and ADA, charges must generally be filed within 300 days. Charges against employers NOT subject to a state or local law must be filed within 180 days. There is no requirement that an EPA charge be filed with EEOC before one files in court. Jury trials are available and suits must be brought within 2 years, 3 years if a willful violation.

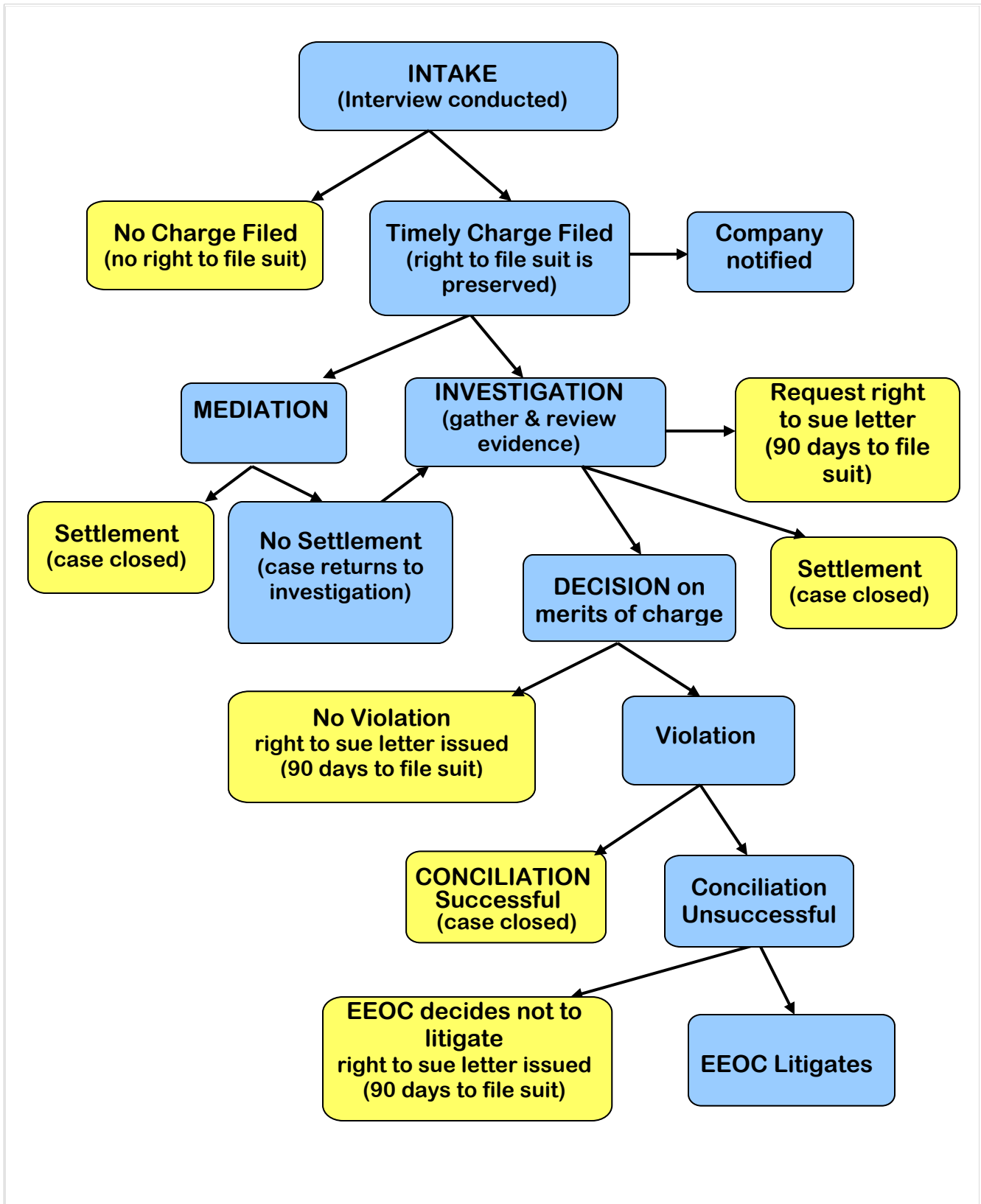
If an individual believes he/she has experienced job discrimination, he/she should contact us at (716) 551-4442. We will ask why he/she believes the employer discriminated against him/her. We may ask him/her to fill out a questionnaire. He/she should be sure to give us any evidence he/she has to show that discrimination occurred. Based on the individual's answers and the information given to us, we will tell the individual if he/she has a claim that fits within the laws we enforce. In any case, he/she has the right to file a charge of job discrimination to keep his/her right to file in federal court.

When an individual files a charge, the EEOC must give the employer accused of discrimination a copy of the charge, which includes the individual's name. If an individual contacts the EEOC but decide not to file a charge, we will not tell the employer that the individual contacted us. If the individual does not file a charge, the individual will not be able to file suit in federal court based on the laws we enforce. If the EEOC does not have jurisdiction, or if the charge is untimely, we will close the charge quickly. We may also close a charge quickly if we decide that we probably will not be able to find discrimination. Then, we will give the individual a letter or notice of his/her right to file suit in federal court within 90 days. If we do not close the charge quickly, we may send it to mediation or to investigation.

#### **5. CONTACT INFORMATION**

- a. Individuals seeking information and assistance: (716) 551-4442
- b. Website: [www.eeoc.gov](http://www.eeoc.gov)

# EEOC CHARGE PROCESSING



**Yellow = Charge process ends**

**Blue = Charge process continues**

# THE LEGAL AID BUREAU OF BUFFALO, INC.

237 Main Street, Suite 1602 - Buffalo, NY 14203 - (716) 853-9555 – Fax (716) 853-3219

## 1. WHO WE ARE

It is the mission of the Legal Aid Bureau to provide quality legal representation and advice to persons in need residing in Erie County, New York. The Bureau's Civil Legal Services Unit represents low-income individuals in a variety of civil matters that have a direct impact on their quality of life.

## 2. WHAT WE DO

The Legal Aid Bureau of Buffalo, Inc. is a charitable, not-for-profit corporation that provides legal representation, assistance and advice to individuals who are unable to pay for the services of a lawyer. The Civil Unit at Legal Aid also provides direct services to qualifying individuals throughout Western New York along with community partners in the Foreclosure Prevention Project of Western New York, The Coordinated Refugee/Asylee Legal Services Project, and the Erie County Restorative Justice Coalition.

## 3. PRIORITY ISSUES / CASES

**The Civil Unit assists in the following matters:**

**Housing:**

Mortgage and Buffalo City tax foreclosures, Housing code violations, Landlord and tenant disputes.

**Family Matters:**

Divorce, Child custody, Child support and visitation, Domestic violence.

**Labor & Employment:**

Unemployment insurance benefits, employment discrimination, wage theft and unpaid wages, Certificates of relief and good conduct, Clearance for background checks.

**Re-entry:**

General civil legal services for formerly incarcerated individuals.

**The Civil Unit is able to provide the following services on a limited basis:**

**Consumer Problems:**

Bankruptcy, SSD/SSI, Unfair consumer practices, estates.

**Family/Education:**

School suspension and expulsion hearings, Child protective services issues.

## 4. INTAKE PROCESS

Clients generally contact Legal Aid at (716) 853-9555 and are directed to the appropriate intake paralegal.

## 5. CONTACT INFORMATION

Individuals seeking information and assistance: (716) 853-9555, [info@legallaidbuffalo.org](mailto:info@legallaidbuffalo.org)

# LEGAL SERVICES FOR THE ELDERLY, DISABLED & DISADVANTAGED OF W.N.Y.

237 Main Street, Suite 1015 - Buffalo, New York 14203 – (716) 853-3087 - Fax (716) 856-5317

## 1. WHO WE ARE

It is the mission of Legal Services for the Elderly, Disabled or Disadvantaged of Western New York to improve the quality of life for elderly, disabled and low-income persons in Western New York. We do so through the provision of free civil legal services, primarily to individuals age sixty and over as defined by the federal Older Americans Act, but also to younger disabled and low-income individuals, as funding permits. Our primary goal is to use the legal system to assure that our clients may live independently and with dignity.

## 2. WHAT WE DO

Areas of representation may differ by county and are usually developed in collaboration with each county Office for the Aging. Some project areas are determined by grant guidelines and program capacity. Since the majority of our funding is derived from the Federal Older Americans Act, services are limited to those age sixty and over (as required by the Act), unless otherwise noted.

## 3. PRIORITY ISSUES / CASES

- a. Social Security / Railroad Retirement (Erie Co.) - Denials / Discontinuances; Overpayments; SSI (non-disability only, disability issues referred to NLS)
- b. Medicare (Erie Co.) - Denials / Discontinuances; Part B Charges/Premiums; Illegal Charges by Providers; Prescription Drug Appeals (no age limit, all New York Counties)
- c. Medicaid (Erie Co.) - Eligibility Denials / Discontinuances; Coverage Denials / Discontinuances Spousal issues (Support); Preplanning Advice (General advice to prevent future Medicaid denials. (LSED does not do tax or estate planning.); Home Health Care, increases, denials and discontinuances; Transportation to Medical appointments; Medicaid Long Term Home Health Care; Medicare Savings Program
- d. Private Health Insurance (Erie Co.) - Denials / Discontinuances and charges; Policy Advice; Spousal (Spousal rights to medical insurance); COBRA Rights; Long-term Care insurance denials of coverage
- e. Institutionalization (Nursing Home, Adult Home, Assisted Living) (Erie Co.) – Evictions; Admissions; Civil Rights
- f. Miscellaneous Health-related Issues (Erie Co.) - Veterans Medical and Improved Pension/Aid and Attendance Benefits
- g. Housing
  - Tenant Representation – City of Buffalo; 55 years of age and older; Income at or below 200% of the Federal Poverty Level

- Tenant Representation - Erie County; 55 years of age and older; Senior or Disabled Subsidized project Housing only; Income at or below 200% of the Federal Poverty Level
- Water Shut-Offs - City of Buffalo
- Tax Foreclosures – City of Buffalo & Erie County; Owner-occupied homes; Any age; Income at or below 200% of the Federal Poverty Level
- Housing and Health Code Violations – City of Buffalo; Owner occupied homes; Income at or below 200% of the Federal Poverty Level
- Mortgage Foreclosure Prevention and Predatory Lending; (Erie, Niagara, Orleans, Wyoming, & Genesee Counties); The Foreclosure Prevention Project of Buffalo and W.N.Y.; (855-969-3775); Must be owner occupied and want to maintain ownership
- Bankruptcy- when necessary to prevent homelessness

h. Consumer (Erie, Niagara, Cattaraugus & Chautauqua Counties)

- Liens on exempt Social Security Bank Accounts
- Harassment by Creditors/Debt Collectors - Income at or below 200% of the Federal Poverty Level
- Executions on Social Security Checks
- Identity Theft - Financial & Medical - Income at or below 200% of the Federal Poverty Level
- Financial Abuse by Family, Friends, Neighbors
- Summons & Complaint by Creditor
- Income at or below 200% of the Federal Poverty Level
- Summons & Complain by Medical Provider
- Client is owed a Debt - Shoddy work, failure of contractor to do work, unsatisfactory goods/services, loan not paid back, or client has been defrauded in any way, e.g. scams and slamming with phone companies.
- Lien Issues
  - Mortgage related: The Foreclosure Prevention Project of Buffalo and W.N.Y. (855-969-3775)
  - Non-Mortgage related: Income at or below 200% of the Federal Poverty Level
- Reverse Mortgage
- Rent to Own - Income at or below 200% of the Federal Poverty Level
- Student Loan Collection - Income at or below 200% of the Federal Poverty Level
- Misc. consumer issues as resources permit - Income at or below 200% of the Federal Poverty Level

i. Seneca Nation of Indians - referrals through the Area Office for the Aging (Irving & Salamanca); Will/Estates/Probate Advice; Consumer; Power of Attorney; Health Care Proxy/Living Will; Social Security Issues; Housing and Landlord/Tenant issues; Guardianship advice

j. Substituted Decision Making (Erie Co.)

- Power of Attorney and Revocations - Income at or below 200% of the Federal Poverty Level
- Health Care Proxy/Living Will - Income at or below 200% of the Federal Poverty Level
- Medical Orders for Life-Sustaining Treatment (MOLST) - Income at or below 200% of the Federal Poverty Level
- Objection to Social Security Representative Payee Appointment
- Defense of Guardianship Appointment (individual opposes appointment)
- Court Appointed Court Evaluator & Guardianships (Erie County only) - By order of court only

- k. Family Law (Erie Co) - 55 years of age and older; Parties must be relatives-grandparents, great-grandparents, aunts, uncles, great-aunts or great-uncles; Parties must meet with attorney/paralegal to review specifics of case before we accept representation; representation is generally limited to custody matters.
  - Adoption – grandparents seeking private placement or agency adoption
- l. Family Offense/Elder Abuse (Erie, Niagara, Wyoming, Livingston & Ontario (Counties) - Family Offense Proceedings in Family Court; Financial Abuse of Power of Attorney requiring Revocation Rep Payee Misuse of Social Security funds; Misuse of property or abuse of control over person by Article 81 Guardian; Financial abuse by family members, friends, neighbors; Third Parties Reporting Physical, Emotional or Financial Abuse-it must first be determined that we have a client to represent.
- m. Genesee County Office for the Aging - We accept referrals from this agency to assist individuals in this county with areas of law that we represent.
- n. Wyoming County Office for the Aging - We accept referrals from this agency to assist individuals in this county with areas of law that we represent.
- o. Niagara County Office for the Aging - We accept referrals from this agency to assist individuals in this county with areas of law that we represent.
- p. Cattaraugus County Office for the Aging - We accept referrals from this agency to assist individuals in this county with areas of law that we represent.
- q. Western New York Coalition Pooled Trust - Please call our social worker, Kathy Kanaley at 716-853-3087 (Ext # 219) or Rachel Schepart at 716-853-3087 (Ext. #227) for more information.

#### **4. INTAKE PROCESS**

Due to funding limitations, services are provided on first come, first served basis. Please call (716) 853-3087. Our receptionist will take all necessary information and have our intake paralegal return your call.

#### **5. CONTACT INFORMATION**

- a. Individuals seeking information and assistance: (716) 853-3087
- b. Website: [www.lsed.org](http://www.lsed.org)

# NATIONAL LABOR RELATIONS BOARD

130 S. Elmwood Ave. Suite 630 – Buffalo, NY 14202 – (716) 551-4931 – Fax (716) 551-4972

## 1. WHO WE ARE

The National Labor Relations Board (NLRB) is an independent federal agency that protects the rights of private sector employees to join together, with or without a union, to improve their wages and working conditions.

## 2. WHAT WE DO

Board agents investigate and remedy unfair labor practices by unions and employers. An unfair labor practice is interference or discrimination by an employer or union against workers due to group activities to improve working conditions, wages and benefits or due to union activities or due to a refusal to engage in those activities. Board Agents also conduct elections to determine whether employees wish to be represented by a union, and if so, which union.

## 3. PRIORITY ISSUES / CASES

**Charges against an Employer:** for threatening, disciplining, or firing employees involved in protected concerted activities or in union activities.

**\*\*\* The employee does not have to be affiliated with a union to seek our protection. \*\*\***

**Charges against a Union:** for threatening or refusing to process a grievance or to refer a worker to a job because employees do not support the union.

**Petitions for Elections:** employees who wish to be collectively represented may file a petition for an election. If there is a showing that at least 30% of an appropriate unit of employee at the workplace wish to be represented collectively by a union or by another group, a Board agent will hold a secret ballot election. If a majority of the employees choose to be represented, the NLRB may certify that representative to bargain collectively with the employer on behalf of the employees in the unit. If employees are dissatisfied with their current representative, a timely filed petition may be filed and an election will be held pursuant to the same procedures described above.

## 4. INTAKE PROCESS

### **Unfair Labor Practices:**

An employee can contact his/her NLRB field office and file an unfair labor practice charge with the NLRB. A Board agent can help an employee with filing a charge. There is no filing fee.

Once a charge is filed, it is assigned to a Board agent for investigation. The Board agent will contact the charging party and arrange to take a statement from the charging party. The Board agent will then take statements from any witnesses. The employer or union is asked to provide its defense. A decision is then made to dismiss or issue complaint. Efforts are made to settle the case before deciding to issue complaint and going to trial. If a trial is necessary, the case is assigned to a field attorney who will present the case to an administrative law judge.

**Petitions:**

A union representative or employee may bring a petition and recognition cards signed by at least 30% of employees in the proposed unit to a field office. Once a petition is filed, it is assigned to a Board agent for review and scheduling of a secret ballot election.

Charges and petitions are available on our website.

**5. CONTACT INFORMATION**

- a. Individuals seeking information and assistance: (716) 551-4931
- b. Website: [www.nlr.gov](http://www.nlr.gov)



# NEIGHBORHOOD LEGAL SERVICES, INC.

237 Main Street, 4th floor - Buffalo, New York 14203 - (716) 847-0650 - Fax (716) 847-0227

## 1. WHO WE ARE

Neighborhood Legal Services, Inc. (NLS) is a not-for-profit agency with three offices throughout Western New York in Buffalo, Niagara Falls and Batavia.

## 2. WHAT WE DO

NLS provides free legal services to persons with low-income and persons with disabilities. It also provides a wide range of technical assistance and support services. While the majority of its services are provided within the New York counties of Erie, Genesee, Niagara, Orleans and Wyoming, NLS also provides disability-related services for all of Western New York and operates both a Statewide and National Assistive Technology Advocacy Project to assist persons with disabilities and the advocates and agencies that serve them..

## 3. PRIORITY ISSUES / CASES

The **Family Unit** handles divorces and other family issues for victims of domestic violence, and grandparent or other kinship custody cases when appropriate. The attorneys in the unit also handle divorces where there are no unresolved issues and the divorce is likely to go through by default.

The **Housing Law Unit** represents clients facing housing crises. Usually, this means representing clients facing eviction. Sometimes our clients have already been locked out of their homes. By making sure that landlords maintain apartments that are safe and habitable, the Housing Unit helps preserve and improve the housing stock. The Housing Unit also represents tenants in both public and subsidized housing and helps clients obtain or retain housing subsidies. The City of Buffalo funds the Housing Unit to provide legal assistance and advocacy to victims of housing discrimination regardless of income. Through this funding the Housing Unit assists families and individuals who have been denied the housing of their choice, or who have been discriminated in the terms or conditions of their tenancy in violation of Federal, State or local law.

The **Public Benefits Unit** helps individuals with problems accessing public assistance, food stamps, Medicaid, emergency assistance, and homeless benefits.

The **Disability Unit** assists individuals with SSI denials, SSI work incentives, benefits counseling, student loans, etc.

## 4. INTAKE PROCESS

Individuals call in directly at 9:00 a.m. on specified mornings. (We take a limited number of calls per day.) If intake is down for any reason, the individual is advised as to when intake will next reopen. We also take referrals from the Family Justice Center. We may also take referrals from other agencies or entities on a case-by-case basis.

## **5. CONTACT INFORMATION**

- a. Individuals seeking information and assistance: (716) 847-0650
- b. Website: [www.nls.org](http://www.nls.org)

# NYS DEPARTMENT OF LABOR

Walter J. Mahoney State Office - 65 Court Street - Buffalo, NY 14202

## 1. WHO WE ARE

The mission of the New York State Department of Labor is to protect workers, assist the unemployed, and connect job seekers to jobs. We vigorously enforce state Labor Laws to give businesses that obey the law an even break. We work aggressively to ensure a fair wage for all workers. We protect the safety and health of workers and the public. We help the unemployed via temporary payments (unemployment insurance). We link job seekers with employers. We guide workers to training that will keep New York strong in the world economy.

## 2. WHAT WE DO

Our agency enforces the State Labor Law for minimum wage, hours of work, child labor, payment of wages and wage supplements, migrant farm labor, and conditions in the garment industry. We educate immigrant workers about their rights under the law and links them to groups that help them overcome employment barriers. We administer and enforce the prevailing wage law that applies to public construction projects and service jobs in public buildings. We protect employers, workers and the public from dangers at work and other health hazards. We administer the Unemployment Insurance program that gives weekly benefits to workers who are out of work through no fault of their own. We offers free services through our network of New York State Career Centers, including: resume help, career guidance, job placement, apprenticeships, and referrals to training.

## 3. PRIORITY ISSUES / CASES

### The Division of Immigrant Policies and Affairs

The Division helps workers from other countries use the many programs and services we offer. The staff can help you:

- Receive the wages you are owed
- Find a job or
- Get job-training aid

We also assist migrant and seasonal farm workers. For help call 212-775-3665 or 518-457-6162.

### Wage Protection

The Division of Labor Standards protects all workers, even if they are paid off the books or are not documented. We enforce the State Labor Law for:

- Minimum wage
- Hours of work
- Child labor
- Payment of wages and wage supplements
- Migrant farm labor and
- Conditions in the garment industry

The New York State minimum wage is \$8.00 per hour. For food service workers, the wage rate is \$5.00 per hour. For other service workers who receive tips, the rate is \$5.65 per hour.

In all cases, pay for time worked (hourly wage plus tips) must equal at least the minimum wage of \$8.00 per hour. Overtime pay is set at 1 1/2 times the regular rate of pay, over 40 hours per week. If your pay

is less than \$8.00 per hour, contact the Labor Department for help. Call 1-888-4-NYSDOL, from 8 a.m. to 5 p.m.

### **Public Work**

The Bureau of Public Work administers the prevailing wage law. We set the rates each year and enforce the law.

This law says workers must earn the prevailing wage rate if they are employed on public construction projects or at service jobs in public buildings.

### **Safety and Health**

The Department of Labor protects employers, workers and the public from dangers at work and other health hazards. These include asbestos control, occupational safety and health problems in the workplace, boiler safety, licenses for crane operators, blasters, asbestos workers and inspection of ski areas, amusement rides and places of public assembly.

### **Farm Workers**

New York State has programs to protect migrant farm workers. Labor Standards Investigators check the conditions of migrant farm workers and report problems to the proper agency.

### **Child Labor**

New York State strictly enforces child labor laws. The law applies to all workers under age 18. It limits the hours youth may work during the school year. It also says they cannot operate unsafe machinery or work in dangerous jobs.

### **Unemployment Insurance**

If you are unemployed through no fault of your own, you may qualify for weekly benefit payments while you look for work. You can apply for unemployment benefits online or by calling 1-888-209-8124.

### **Job Help**

The Department of Labor has information and free services for job seekers and workers. We offer: resume help, career guidance, job placement and referrals. At New York State Career Centers, there are Resource Rooms where you can use computers and faxes to job hunt, explore training, take aptitude tests and link to partner agencies and services.

## **4. INTAKE PROCESS**

Call 1-888-4-NYSDOL, from 8 a.m. to 5 p.m.

## **5. CONTACT INFORMATION**

- a. Individuals seeking information and assistance: 1-888-4-NYSDOL
- b. Website: [www.labor.ny.gov](http://www.labor.ny.gov)

# NYS DIVISION OF HUMAN RIGHTS

Walter J. Mahoney State Office - 65 Court Street, Room 506 - Buffalo, NY 14202  
(716) 847-7632 – Fax (716) 847-7625

## 1. WHO WE ARE

The Buffalo Office serves the residents of Erie County, Niagara County, Cattaraugus County, and Chautauqua County. The primary responsibility of the Division's regional offices is to process and investigate incoming complaints of discrimination.

## 2. WHAT WE DO

New York has the proud distinction of being the first state in the nation to enact a Human Rights Law, which affords every citizen "an equal opportunity to enjoy a full and productive life." This law prohibits discrimination in employment, housing, credit, places of public accommodations, and non-sectarian educational institutions, based on age, race, national origin, sex, sexual orientation, marital status, disability, military status, and other specified classes.

The New York State Division of Human Rights was created to enforce this important law. The mission of the agency is to ensure that "every individual . . . has an equal opportunity to participate fully in the economic, cultural and intellectual life of the State." It does so in many ways, including the following:

- Through the vigorous prosecution of unlawful discriminatory practices;
- Through the receipt, investigation, and resolution of complaints of discrimination;
- Through the creation of studies, programs, and campaigns designed to, among other things, inform and educate the public on the effects of discrimination and the rights and obligations under the law; and
- Through the development of human rights policies and proposed legislation for the State.

## 3. PRIORITY ISSUES / CASES

Every case filed with the Division is a priority case. Cases are processed at the regional level within six months of filing.

## 4. INTAKE PROCESS

People seeking to file a complaint can do so in person, phone or use our internet complaint form.

**In person:** By appointment only. Walk-ins will be scheduled for appointment.

**Phone appointments:** Reserved for the disabled or individuals who are unable to come into the office and lack access to the internet complaint.

### **Internet:**

Fill in complaint form: <http://www.dhr.ny.gov/sites/default/files/pdf/complaint-form-fill-in.pdf>

Form for Download: <http://www.dhr.ny.gov/sites/default/files/pdf/complaint-form.pdf>

## **5. CONTACT INFORMATION**

- a. Individuals seeking information and assistance: (716) 847-7632 or [InfoBuffalo@dhr.ny.gov](mailto:InfoBuffalo@dhr.ny.gov)
- b. Website: [www.dhr.ny.gov](http://www.dhr.ny.gov)

U.S. Department of Labor  
**OCCUPATIONAL SAFETY AND  
HEALTH ADMINISTRATION**

130 S. Elmwood Ave. Suite 500 – Buffalo, NY 14202 – (716) 551-3053 – Fax (716) 551-3126

## 1. WHO WE ARE

Congress created the Occupational Safety and Health Administration (OSHA) to assure safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education and assistance. OSHA is part of the United States Department of Labor. The administrator for OSHA is the Assistant Secretary of Labor for Occupational Safety and Health. OSHA's administrator answers to the Secretary of Labor, who is a member of the cabinet of the President of the United States.

## 2. WHAT WE DO

OSHA promulgates safety and health standards, conducts enforcement inspections, provides compliance assistance, and protects employees from discrimination for exercising their safety and health rights. In NYS, OSHA covers most private sector employers and their workers and federal employers and employees. Public employers and employees are covered by the NYS Department of Labor Public Employee Safety and Health (PESH) division (Buffalo: 716-847-7166; Rochester: 585-258-4570). The Buffalo Area Office covers the ten WNY counties (Alleghany, Cattaraugus, Chautauqua, Erie, Genesee, Livingston, Monroe, Niagara, Orleans and Wyoming).

## 3. PRIORITY ISSUES / CASES

OSHA's inspection priorities are as follows:

- a. Imminent danger situations
- b. Fatalities/catastrophes
- c. Complaints and referrals
- d. Programmed inspections

Our priorities are ongoing hazards that violate an OSHA standard and employees are exposed to the hazard(s).

## 4. INTAKE PROCESS

OSHA conducts both programmed (scheduled) and unprogrammed (unscheduled) inspections. Programmed inspections are typically in high hazard industries, are random in nature, and sites are selected using neutral selection criteria. **Programmed inspections** include national emphasis programs, regional emphasis programs, and local emphasis programs. Approximately 60% of the inspections conducted are in the construction industry (hazards such as falls, caught-in, struck-by and electrical) and the remainder of the inspections are in General Industry which includes manufacturing, healthcare and other service-related industries (hazards such as amputations, electrical, falls, fires and/or explosions from releases of highly hazardous chemicals, unexpected energization of energy sources, confined spaces, health hazards, etc.). **Unprogrammed inspections** include accidents, complaints, or referrals

from other agencies or the media. There are two types of complaints that can be filed with OSHA...formal complaints and “phone and fax” complaints.

**Formal complaints** typically lead to inspections whereas “phone and fax” complaints usually lead to investigations. A formal complaint is a signed complaint filed by either a current employee, family member of a current employee or bona fide representative of a current employee alleging a serious hazard, the hazard is ongoing, violates an OSHA standard, and employees are exposed to the hazardous condition. A **“phone and fax” complaint** can be anonymous or filed by any source. For “phone and fax” complaints, OSHA would contact the employer by phone, discuss the alleged hazards, allow the employer 5 business days to conduct an internal investigation to ascertain if the hazards exist or not and what was done to correct the hazards. OSHA would then fax a follow-up letter to the employer outlining the hazards, their timeframe to respond, provide compliance assistance resources to assist the employer, and explain the discrimination protections under the OSH Act. OSHA never reveals to the employer the identity of the complainant.

Complaints can be filed by contacting the local area office by phone, by letter or may be filed electronically on OSHA’s website ([www.osha.gov](http://www.osha.gov)). The OSH Act prohibits any person from discharging or in any manner retaliating or discriminating against any worker for exercising their safety and health rights (raising safety and health concerns with an employer, reporting a work-related injury or illness, filing a complaint with OSHA, seeking an OSHA inspection, participating in an OSHA inspection and participating or testifying in any proceeding related to an OSHA inspection). Additionally, Congress has expanded OSHA’s whistleblower protections to protect workers from discrimination under a total of 22 federal laws.

The type of information that is most helpful in processing a valid complaint or referral includes: location of hazard (street address, department, location within the establishment), name of the employer(s) having employees exposed to the hazard, number of employees exposed, type of operation and equipment used, frequency and duration of employee exposure, whether the employer was made aware of the hazard, and any controls utilized by the employer to eliminate or reduce the hazard. Controls include personal protective equipment worn by employees, engineering controls used such as ventilation, machine guarding or physical barriers to prevent or reduce exposure to the hazard, or administrative controls utilized such as work practices implemented to reduce employee exposure (employee rotation or using wet methods to control airborne hazards).

## **5. CONTACT INFORMATION**

- a. Individuals seeking information and assistance: (716) 551-3053 or 1-800-321-6742
- b. Website: [www.osha.gov](http://www.osha.gov)



**U.S. DEPARTMENT OF LABOR**  
**WAGE AND HOUR DIVISION**

130 S. Elmwood Ave., Suite 534 - Buffalo, NY 14202 - (716) 842-3240 - Fax (716) 842-3241

**1. WHO WE ARE**

The Wage and Hour Division (WHD) is comprised of a nationwide staff of investigators, supervisors, analysts, technicians, and administrative employees who share responsibilities for enforcing the minimum wage, overtime, and child labor provisions of the Fair Labor Standards Act (FLSA); the prevailing wage requirements and wage determination provisions of the Davis-Bacon and Related Acts (DBRA) and the McNamara-O'Hara Service Contract Act (SCA); the wages and working conditions under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA); the job protections of the Family and Medical Leave Act (FMLA); and the Employee Polygraph Protection Act (EPPA). WHD is also responsible for the enforcement of field sanitation and temporary labor camp standards in agriculture and certain employment standards and worker protections of the Immigration and Nationality Act (INA). The organization is comprised of regional, district, area, and field offices.

**2. WHAT WE DO**

WHO Mission Statement: The mission of WHD is to promote and achieve compliance with labor standards to protect and enhance the welfare of the Nation's workforce.

**3. PRIORITY ISSUES / CASES**

WHO has aligned its work processes into the following key performance goals:

- Ensure that the most vulnerable workers are employed in compliance with wage and hour laws by increasing compliance in high-risk fissured industries, industries with subcontracting, franchising, temporary employment, independent contracting, and other contingent workforce characteristics. Firms providing janitorial and landscaping services.
- Increasing the number of workers employed in compliance in statutory programs (e.g., Service Contract Act and Davis-Bacon and Related Acts) for which there is no private right of action.
- Increasing the percentage of workers with disabilities who are employed in compliance with the provisions of Section 14(c).
- Increasing the percentage of agricultural workers employed and paid in compliance with the provisions of all applicable statutes providing protections for such workers, with a focus on labor intensive agriculture.
- Increasing the percentage of young workers employed in compliance with current regulations.

#### **4. INTAKE PROCESS**

Call 1-866-487-9243 or visit [www.dol.gov/whd](http://www.dol.gov/whd). You will be directed to the nearest WHD office for assistance. There are over 200 WHD offices throughout the country with trained professionals to help you.

The information below is useful to file a complaint with WHD:

- Your name
- Your address and phone number (how you can be contacted)
- The name of the company where you work(ed)
- Location of the company (this may be different from where you worked)
- Phone number of the company, manager or owners name (who should we ask to speak to?)
- Type of work you did
- How and when you were paid (i.e. cash or check, every Friday)

Any additional information that you can provide such as copies of pay stubs, personal records of hours worked, or other information on your employers pay practices are helpful.

Monday-Friday, 8 a.m. to 8 p.m. Eastern Time (leave voice mail after hours)

#### **5. CONTACT INFORMATION**

- a. Individuals seeking information and assistance locally: (716) 842-3240
- b. Website: [www.dol.gov/whd/](http://www.dol.gov/whd/)

**ERIE COUNTY BAR ASSOCIATION**  
**VOLUNTEER LAWYERS PROJECT, INC.**  
237 Main St., Suite 1000 - Buffalo, NY 14203 - (716) 847-0662 - Fax (716) 847-0307

**1. WHO WE ARE**

- a. ECBA VOLUNTEER LAWYERS PROJECT, INC., 237 Main St., Suite 1000, Buffalo, NY 14203, (716) 847-0662
- b. VLP was created in 1983 as a joint project of the Bar Association of Erie County and Neighborhood Legal Services. In 1988 VLP was incorporated as a separate not-for-profit.

**2. WHAT WE DO**

VLP's mission is two-fold. First, VLP coordinates FREE civil legal services for Western New York's low-income residents, assisting thousands of low income residents with significant legal problems every year. We also represent small not-for-profit organizations serving the poor, disabled and elderly. We provide these free civil legal services by utilizing in-house and volunteer attorneys to represent clients. Second, VLP involves volunteer attorneys by recruiting, training, coordinating and assisting attorneys who represent VLP's clients on a pro bono basis.

**3. PRIORITY ISSUES / CASES**

- a. Free legal assistance can have profound impact on the lives of our low-income clients facing the loss of basic life essentials. The types of civil legal cases VLP handles include:

- |                                   |                        |
|-----------------------------------|------------------------|
| • Unemployment                    | • Special education    |
| • Non-parent custody              | • Child support        |
| • Grandparent Visitation          | • Adoption             |
| • Article 81 and 17A guardianship | • Eviction defense     |
| • Divorce                         | • Torts (defense only) |
| • Income tax                      | • Power of attorney    |
| • Wills                           | • Collection defense   |
| • Bankruptcy                      | • Name change          |
| • Small estates                   | • Immigration          |

- b. VLP provides limited scope legal advice and assistance at the following programs:
  - i. Attorney of the Morning program at Buffalo City Court on Monday, Wednesday and Friday mornings. Volunteer attorneys represent clients who are defendants in eviction proceedings.
  - ii. Family Court Help Desk in Erie County Family Court on Monday, Tuesday, Thursday and Fridays from 11:30 am – 2:00 pm. Volunteer attorneys meet with eligible walk-in clients to assist with questions about their Family Court cases including custody, visitation, child support, paternity.
  - iii. Pro Se Assistance Program at WDNY Federal Court on Wednesday and Friday afternoons. Volunteer attorneys assist walk-in clients with their non-criminal federal court matters.

- iv. Say Yes to Education Legal Clinics in the Buffalo Public Schools will start in the 2014 -2015 school year. Walk-in legal clinics will be housed in four Buffalo Public Schools, staffed by VLP coordinator and volunteer attorneys, and will serve families with children in the Buffalo Public and Charter Schools for non-criminal legal matters.
- c. VLP provides free legal services to individuals and families living with HIV/AIDS in 8 WNY counties in the areas of health care, family law, discrimination & confidentiality, financial problems, housing problems, public benefits, end of life planning, and care and custody planning.
- d. We assist eligible non-profit organizations with incorporation, tax exempt status, drafting corporate documents, navigating governmental issues, and general business and corporate advice.

#### **4. INTAKE PROCESS**

- a. Clients call VLP's office, 716-847-0662. They are directed to leave a message and will receive a return call from a VLP staff member or volunteer generally within 1-2 business days (although the message tells them that it could take up to one week to receive a return call).
- b. Initial screening for the legal issue and financial eligibility is done over the phone. People who do not qualify for VLP's services (either VLP does not handle that legal issue or the person does not meet the financial eligibility criteria) are referred to the appropriate agency or BAEC Lawyer Referral Service.
- c. If the person qualifies for VLP's services, an orientation appointment is made. Usually, the appointment is held within a couple of weeks. At this time, there is a 3 month waiting list for divorce clients; however divorce defendants take priority and will be seen sooner.
- d. At orientation, the person is required to provide proof of income and assets. They are interviewed by a volunteer or staff member and meet individually with an attorney. Following this meeting, the attorney determines whether the case will be accepted, and if accepted whether the case will be handled in-house by a VLP staff attorney or referred to a pro bono attorney.
- e. For not-for-profit organizations seeking free legal assistance, they are asked to complete an application form, which is reviewed by the Managing Attorney. If the not-for-profit is eligible for free legal services, a file is opened and referral is made to a pro bono attorney.

#### **5. CONTACT INFORMATION**

- a. Clients seeking information and assistance: (716) 847-0662
- b. Website: [www.ecbavlp.com](http://www.ecbavlp.com)

# **WESTERN NEW YORK LAW CENTER**

**237 Main St., Suite 1130 - Buffalo, NY 14203 – (716) 855-0203 - Fax: (716) 270-4005**

## **1. WHO WE ARE**

The Western New York Law Center, Inc. is a not-for-profit corporation formed in 1996 after Congress restricted the types of cases that Legal Services Corporation (LSC) grantees could handle. The Center represents low-income Western New Yorkers in civil matters, emphasizing those areas restricted by LSC. Our vision and mission with respect to our legal work is to assure that low-income people receive the full range of civil legal services including “non-traditional” legal assistance like policy advocacy and legal education. The Center also serves as a statewide technology support center for legal services programs. Our vision and mission with respect to our technology work is to help legal services offices statewide use technology in a cost effective manner to better serve their clients in this time of diminishing resources. Our target populations are legal services managers, attorneys, paralegals, clients and support staff.

## **2. WHAT WE DO**

As part of our legal work, WNYLC engages in direct representation of homeowners facing foreclosure as well as in fair lending advocacy and education and outreach to community residents and real estate professionals. We also file class action litigation on behalf of our clients.

As part of our legal work, we supervise a consumer walk-in clinic in the community, where consumers can come in and receive legal advice and often drafted papers which they can file in court. In connection with this clinic, we appear twice weekly in Buffalo City Court to represent any consumer who needs our assistance. More information can be found on one of our websites, <http://clarobuffalo.org/>.

## **3. PRIORITY ISSUES / CASES**

Our priority cases are foreclosure prevention, consumer debt defense and bankruptcy.

## **4. INTAKE PROCESS**

We have a hotline, walk in clinics, and make court appearances.

## **5. CONTACT INFORMATION**

- a. Individuals seeking information and assistance: (716) 855-0203
- b. Website: <http://wnylc.com/>