



Between the Regions

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Contact us:

Region 21

888 South Figueroa Street, 9th Floor
Los Angeles, CA 90017-5449
Phone: (213) 894-5200
Fax: (213) 894-2778

Region 31

11500 West Olympic Blvd., Suite 600
Los Angeles, CA 90064-1753
Phone: (310) 235-7352
Fax: (310) 235-7420

San Diego Resident Office

555 West Beech Street, Suite 418
San Diego, CA 92101-2939
Phone: (619) 557-6184
Fax: (619) 557-6358

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Message from Regional Directors Mori Rubin and Olivia Garcia

It was just about two and a half years ago that both of us began our tenures as Regional Directors. We each have over 30 years of experience working for the NLRB, and have a firm commitment to the work and mission of our Agency. We were excited about the prospect of shaping the direction of our Regions. Moreover, we are committed to providing Southern California's labor community with the effective and ethical public service it deserves.

Many positive developments have occurred over the past two years to help us achieve that goal. We have a full Board for the first time in many years. Under the leadership of Chairman Mark Pearce, the Board is ready to tackle the many significant issues pending before it. The San Francisco Division of Judges has hired several new Administrative Law Judges who have brought a new energy and new perspectives to the Agency. Both Regions have successfully litigated several important decisions before the new Board and this new class of ALJs. Details on each Region's recent litigation victories can be found on pages 3 and 4 below.

We have welcomed many new faces as well. Over the past year, Regions 31 and 21 have hired a bevy of new administrative

professionals, field examiners, and field attorneys. Photos of the new staff members, as well as a few biographical facts, can be found on page 7 and 8. Angelica Blanco's first-person account of her transition from Administrative Professional to Field Examiner through the Agency's Bridge Program can be found on page 6.

Both of us enjoy opportunities to engage in outreach to Southern California's many diverse communities. We are especially interested in promoting awareness of rights provided to employees under the NLRA and in helping all sides understand our area of law. We have given presentations

to management groups, high school students, worker advocates, and labor organizations. Pursuant to the Agency's initiative with the Mexican Consulate, we have distributed literature and spoken to visitors at the Mexican Consulates located in Los Angeles and San Diego.

Over two years through this journey, we are proud to look back to see how far we have traveled and what a solid foundation we have built in both of our Regions. We hope to build upon this foundation in our continued goal to provide the best public service possible.



Regional Directors Olivia Garcia and Mori Rubin

NLRB Launches Mobile App

The NLRB's new mobile app, for iPhone and Android users, provides employees, employers and unions with information regarding their rights and obligations under the Act. Download it today from the Apple iTunes store or Google Play store by clicking here: <http://www.nlr.gov/apps>. For more information visit: <http://www.nlr.gov/news-outreach/news-story/national-labor-relations-board-launches-mobile-app>.

Update on Developments in NLRB Law

By Olivia Garcia, Regional Director, Region 21

In this column, I will review Agency Developments and highlight some of the significant new cases and issues around the country.

Presidential Recess Appointments

On June 26, 2014, the U.S. Supreme Court issued its long-awaited decision in *NLRB v. Noel Canning*, No. 12-1281, 2014 WL2882090. The Court found President Obama's January 4, 2012 NLRB recess appointments of Sharon Block, Richard Griffin and Terence Flynn to be unconstitutional because they did not meet the requirements of the Recess Appointments Clause. The Court noted that the President could make recess appointments during both intersession and intra-session recesses by Congress. Similarly, the President could make recess appointments with respect to vacancies that came open before or during a recess. However, it concluded that the appointments were ultimately invalid because the Senate was not in recess and the pro-forma sessions at issue were legitimate. As a result, possibly as many as 700 reported and unreported decisions issued by the quorum-less NLRB from January 2012 until August 2013 may be invalid under the Court's decision. This includes a significant number of decisions that either modified or overruled past Board precedent. The impact of the decision will certainly be an area for discussion in the coming months.

Unionizing Collegiate Football

In what could be a landmark case, the Board in *Northwestern University*, Case No. 13-RC-121359, is currently considering whether scholarship football players at this private university are employees under the NLRA and entitled to unionize. The case stems from a Regional Director's

Decision and Direction of Election finding that scholarship players were neither primarily students nor temporary employees but rather employees under the Act. Northwestern subsequently filed a request for review with NLRB and the request was granted. The Region nonetheless conducted an election on April 25, 2014 and impounded the ballots pending the Board's final decision. Ultimately, the ruling could have major implications for private college athletes, as teams from other schools and sports could choose to follow the same path if the Board upholds the Regional Director's Decision.

The "Micro-Unit" Controversy

In July, the Board ruled on two highly anticipated cases involving its ruling in *Specialty Healthcare*, 357 NLRB No. 83 (2011).

On July 22, in *Macy's, Inc.*, 361 NLRB No. 4 (2014), the Board found appropriate a bargaining unit consisting only of cosmetics and fragrance employees. This represented a significant break from the Board's long-standing practice of upholding only store-wide units in the retail industry. Notably, Member Miscimarra dissented by asserting that not only is the petitioned-for unit inappropriate, but the Board should set aside its *Specialty Healthcare* ruling.

The Board followed up on July 28 with its decision in *Bergdorf Goodman*, 361 NLRB No. 11 (2014). In that case, the Board unanimously found *inappropriate* the petitioned-for unit of "all women's shoe sales associates" at the employer's retail store on Fifth Avenue. In *Bergdorf*, the union sought a bargaining unit comprised only of the women's shoe sales associates in the "Salon shoes" department on the

Continued on page 3.

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Employee Agreements, Default judgments, and Protected Emails

By Brian D. Gee, Regional Attorney, Region 31



In Fiscal Year 2013, and continuing through the present, Region 31 has experienced a material uptick in the number of complaints issued and cases litigated. For example, in FY 2013, the Region issued 45 unfair labor practice complaints, compared to 16 complaints in FY 2007.

This resulted in the busiest trial docket in recent history. Our efforts resulted in multiple important Board decisions and Administrative Law Judge Decisions. A sampling of the most impactful decisions from the past year includes the following.

In *California Institute of*

Technology d/b/a Jet Propulsion Laboratory, 360 NLRB No. 63 (2014), we litigated a high-profile and hard-fought case against JPL, one of the nation's premier facilities for space and scientific research. This case included the allegations that JPL unlawfully issued disciplinary notices to five JPL scientists and engineers for engaging in protected concerted activities which included sending mass emails on the JPL email system to inform co-workers and individuals outside of JPL about the implications of an important U.S. Supreme Court decision affecting their terms and

scientists engaged in protected Section 7 activity when sending those emails, and that JPL violated Section 8(a)(1) by disciplining them.

One of the fastest-expanding industries for union organizing in Southern California is the car wash industry. In *KB In & Out d/b/a Century Car Wash*, the Region alleged that the respondent employer sought to hinder the employees' group wage claim before the Department of Labor by requiring employees to sign "agreements" waiving their right to participate in the DOL case and by discharging the two employees who spoke out most vociferously against the agreements. The ALJ found, and the Board promptly agreed, that the respondent employer violated Section 8(a)(1) and (3) in this case.

Rock Solid Creations Landscape & Masonry and Kevin Frankhauser, 359 NLRB No. 160 (2013), arose in the context of the former Acting General Counsel's initiative announced in GC Memo 11-04 to routinely include

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Employee Agreements continued



conditions of employment. The ALJ found, and the Board agreed, that the

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second floor, and in "Contemporary shoes" group in the larger "Contemporary Sportswear" department. The Board, however, concluded that the two shoe sales associate groups did not share a community-of-interest under *Specialty Healthcare*. In disagreeing with the Regional Director's Decision and Direction of Election, the Board noted that while the petitioned-for employees were identifiable as a group by virtue of their function, the "boundaries of the petitioned-for unit do not resemble any administrative or operational lines drawn by the Employer."

Testing Register Guard

The issue of employee access to employer communication systems continues to be a hot-topic. Current Board law, as set forth in *Register Guard*, 357 NLRB No. 27, holds that employers can enforce a ban on non-work related use of its email system so long as the ban is non-discriminatory and consistently applied. The Board will consider this issue in *Purple Communications*, JD-75-13 (2013), a case arising out of Region 21. In that case, the General Counsel argued that employees should "have a statutory right to use [the employer's email] systems for Section 7 purposes during non-work time, absent a showing of special circumstances relating to the employer's need to maintain production and discipline." A final decision on this issue should be forthcoming.

Weingarten Rights Alive and Well

In another Region 21 case, the Board in *Ralph's Grocery*, 361 NLRB No. 9 (2014), ruled that the Employer violated Section 8 (a) (1) and (3) of the Act by firing an employee who refused to take a drug test without consulting a union representative first. The Board held that the refusal was intertwined with the worker's assertion of his Weingarten rights.



“...[unlawful] bargaining tactics ... included delays, false statements, and refusals to furnish relevant information...”

Arbitration Agreements and Bad-Faith Bargaining

By *Stephanie Cahn, Supervisory Attorney, Region 21*



In the past several months, numerous decisions have been issued by the Board and ALJs on cases litigated by Region 21 attorneys.

We have seen an increase in cases involving arbitration policies under *D.R. Horton, Inc.*, 357 NLRB No. 184 (2012). On February 18, 2014, ALJ Ira Sandron issued his decision in *SF Markets, LLC d/b/a Sprouts Farmers Market*, which consisted of a consolidation of two cases involving issues under *D.R. Horton*. The ALJ found that Sprouts had violated Section 8(a)(1) of the Act by maintaining as a condition of employment and continued employment, mandatory arbitration agreements prohibiting employees from pursuing collective or class lawsuits and arbitrations. In addition, the ALJ found unlawful the filing of a petition to compel arbitration in two separate State courts in order to enforce the mandatory arbitration agreement. Further, the ALJ found that the Respondent had unlawfully threatened an employee with termination and ultimately discharged the employee based solely on her refusal to sign a mandatory arbitration agreement.

On March 5, 2014, ALJ William Cates issued his decision in *Network Capital Funding Corporation*, Case 21-CA-107219. The ALJ found that Network Capital Funding Corporation violated Section 8(a)(1) of the Act by maintaining a mandatory arbitration agreement that waives the right of its

employees to maintain class of collective actions in all forums, judicial or arbitral. In both of these cases involving *D.R. Horton*, the employers have filed exceptions and the cases are currently pending before the Board.

In a Region 21 case reviewed by the Board, *Fallbrook Hospital Corporation*, 360 NLRB No. 73 (2014), the Board agreed with an ALJ that Fallbrook Hospital repeatedly failed to bargain in good faith with a union representing its registered nurses, but the board split 2-1 in ordering Fallbrook to reimburse the union for expenses it incurred during six months of unproductive negotiations.

NLRB Chairman Mark Gaston Pearce and Member Kent Y. Hirozawa joined with Member Harry I. Johnson in finding that Fallbrook violated Section 8(a)(5) of the Act with bargaining tactics that included delays, false statements, and refusals to furnish relevant information to California Nurses Association/National Nurses Organizing Committee (CNA/NNOC). All three members agreed the hospital's bad-faith bargaining warranted an extension of the union's certification as the nurses' bargaining agent.

Pearce and Hirozawa found Fallbrook deliberately blocked progress during the protracted negotiations and they agreed with CNA/NNOC that a monetary award was necessary to remedy the employer's unfair labor practices. Johnson dissented, backing the ALJ's finding that the hospital's illegal conduct did not warrant the extraordinary measure of ordering it to pay the union's bargaining expenses.

Region 31 Representation Cases Update

By Tom Chang, Assistant to the Regional Director, Region 31



From October 1, 2013 to May 31, 2014, a total of 50 Representation cases were filed in Region 31. That is an increase of approximately 14% from Representation cases filed in Region 31 during the same period the previous year. Approximately 96% of the elections that were conducted under the supervision of the Regional Director of Region 31 were held pursuant to a Consent Election Agreement or a Stipulated Election Agreement (excluding all blocking cases). The median number of days elapsing between the dates the petitions were filed to the election dates was 36 days. All of the

elections were conducted within 42 days. Region 31 conducted 23 elections involving approximately 1,798 employees, of which 86% of the elections were won by the Union, 1,032 employees voted for unionization, and 500 employees voted against unionization.

During the same period, Region 31 issued five pre-election Decisions: *San Manuel Indian Bingo & Casino*, 31-RC-114638; *Loyola Marymount University*, 31-RC-118850; *Twentieth Century Fox Film Corporation*, 31-RC-121774; *PCL Industrial Services, Inc.*, 31-RC-118984; and *Paragon Systems, Inc.*, 31-RC-126224. The median number of days elapsing between the dates the petitions were filed to the dates that the Region issued a Decision and Direction of Election or a Decision and Order was 27 days (excluding all blocking cases).

During the same period, Region 31 also issued three (3) post-election

hearings on objections and/or challenges: *Bowers Companies Inc., d/b/a Bowers Ambulance*, 31-RC-205895; *Providence Health system Southern California d/b/a Providence Little Company of Mary Medical Center*, 31-RC-110228; and *S.E. Clemons Inc.*, 31-RC-108048. The Decision and Direction of Election, Decision and Order, Hearing Officer's Report and Recommendations in the above-mentioned cases can be found on the Agency's website at www.nlr.gov.



Region 21 Representation Cases Update

By Tirza P. Castellanos, Supervisory Field Examiner, Region 21



With a filing of 13 petitions, and 15 elections conducted in June and July 2014, this summer has been a very busy and successful one for the Representation Desk at Region 21.

On June 28 and July 1, 2014, Region 21 conducted its largest election in more than 25 years. A unit of almost 5,900 food and beverage employees employed at Disneyland and at Disney California Adventure, Case 21-RC-112556, voted on whether they wished to be represented for the purposes of collective-bargaining by their current union, Workers United, Local 50, Anaheim, California, affiliated with the Workers United Union, Service Employees International Union, or

the petitioning union, Foods Union, or neither union. In a count conducted at the Regional office on July 2, 2014, employees selected their incumbent Union. No objections were filed. All in all, the smooth processing of this election was the result of a collaborative team effort involving more than 17 Board agents from Regions 21 and 31.

Three weeks later, on July 23 and 24, 2014, the Region once again set out to conduct a large scale election. This time, in Robertson's Ready Mix Ltd., Case 21-RC-130952, the Region conducted an election involving approximately 1,500 employees in 10 different job classifications at seven facilities in Southern California. On July 25, 2014, a count was conducted in Region 21. Petitioner-filed objections are currently under investigation. The effort involved eight Board Agents from Regions 21 and 31.

This summer has proven that representation elections are in full-swing at Region 21 and with a little help from our sister Region, we have been ready for the challenge.



“The Bridge Program ... has been a wonderful and exciting experience that has allowed me to witness firsthand why the Agency’s work is important.”

Crossing the Bridge

By Angelica Blanco, Support Staffer, Region 31

In December 2013, Angelica Blanco began the Bridge Program, the NLRB’s program that provides Support Staffers the academic and on-the-job training required to become field examiners. This is her story.

Since beginning the Bridge Program, I have gradually made the transition from the role of Support Staff to engaging in Professional functions such as investigating charges, processing petitions, and conducting elections. While Support Staff undoubtedly play an essential role in the operations of our Agency, the lack of interaction with the public made it at times easy to forget how my work affected the public that we serve. This lack of contact with the public, coupled with a busy workload, left very little room to contemplate how my work was effectuating the Agency’s purpose. Although my bilingual skills provided many opportunities to assist with taking affidavits and conduct elections, these were merely scattered reminders of the fact that people are actually affected by the work we do.

The Bridge Program, on the other hand, has been a wonderful and exciting experience that has allowed me to witness firsthand why the Agency’s work is important. Suddenly

the parties on a charge or petition are no longer just names on a piece of paper, but they are the individuals from whom I need to take evidence, or parties who I need to assist with reaching a stipulated election agreement. In the few elections that I have conducted, I have witnessed employees exercise their right to vote – some with much enthusiasm for the Union and others with marked disdain – and it is evident that they all value the election as a platform to voice their opinion.

I am fortunate to be undertaking this journey in an office that is as supportive and encouraging as Region 31. I have gained a breadth of knowledge from colleagues and supervisors who on countless occasions have taken time from their busy day to provide guidance and constructive criticism. I know that I still have a long road ahead of me but am thrilled about the new challenge that the Bridge Program represents. Perhaps I may never grow used to being unable to sleep the night before an election for fear of oversleeping – or what a now-retired Field Examiner once referred to as “Field Examiner PTSD” – but I have grown more confident with every election and look forward to continue to work directly with the public.

from page 3.

default language in informal settlement agreements. After the respondent employer signed the settlement agreement, it failed to carry out any of its obligations under the agreement, and refused all contact with the Region, we filed a motion for default judgment. In our motion, we alleged that the respondent employer breached the settlement agreement and should therefore be found to have committed all of the alleged unfair labor practices. The Board ultimately found that the employer unilaterally and discriminatorily laid-off and refused to pay employees, impliedly threatened employees, and impliedly promised employees benefits if they reject the union.

Over the past year and a half, the Region has litigated several cases against employers that maintained mandatory arbitration agreements, which are unlawful under *D.R. Horton*, supra. We have won several ALJDs, in full or in part, against various companies, including *Neiman Marcus*, *Pep Boys*, and *Securitas Security Services*.

New Recruits Keep Regions Strong

By John J. Hatem, Senior Field Examiner, Region 21



Recent **Region 21** Additions, L-R: Francisca Benjamin, Thomas Rimbach, Sanam Yasseri, Mathew Sollett, Sunghi Lucia Shin, and Chris Morse.

Francisca Benjamin, Office Automation Asst. – Francisca was born and raised on the Caribbean island of Dominica. She has a BS in Business administration, a certificate in Government contracting, and a black belt in Tang Soo Do (Korean karate). Francisca served 21 years in the U.S. Air Force. Co-workers describe Francisca as “driven.”

Thomas Rimbach, Field Attorney – Thomas graduated from UCLA School of Law and the University of North Carolina, Chapel Hill. Thomas has a background in public service and employment litigation. Thomas is open-minded and creative.

Sanam Yasseri, Field Attorney – Sanam graduated from USC and Southwestern Law School. She is a former NLRB extern, and has returned to the Board after several years in private practice. Sanam has always had a passion for labor and employment law and believes that no aspect of our daily lives plays a more central role than the workplace and the jobs that we hold.

Mathew Sollett, Field Attorney – Matt grew up in New York City and earned his JD from Loyola Law School, Los Angeles. Colleagues admire Matt’s sharp mind, and that he shops for music on vinyl.

Lucia Shin, Language Specialist – Lucia grew up in South America, and went to college while serving in the U.S. Air Force. Colleagues appreciate her positive outlook on life.

Chris Morse, Student Extern – Chris earned his undergraduate degree from Cornell University’s School of Industrial and Labor Relations, and is currently attending University of San Diego School of Law. He hopes to work for the Board after law school. Chris has been a friendly and hardworking team member at Region 21.

Wendy Maldonado, our newest Office Automation Asst., will be featured in our next edition of Between the Regions.



New **Region 31** Team Members, back row L to R: Domingo Becerra, Sarah Ingebritsen, Marissa Dagdagan, and Yeerik Moy. Front L to R: Oscar Gonzalez and Jorge Romero.

Domingo Becerra, Co-Op – Domingo is a Region 31 student co-op, while pursuing a master’s degree at University of Laverne, where he also earned his bachelor’s degree. Domingo uses his abilities to help make a difference in people’s lives. Domingo is a military veteran who lives by the mantra “One Team, One Fight.”

Sarah Ingebritsen, Summer Intern – Sarah is serving as a legal intern while she completes her JD at the UCLA School of Law. Sarah grew up in Spokane, Washington, and has past experience working on immigrant and worker’s rights matters.

Marissa Dagdagan, Field Attorney – Marissa grew up in Chicago before moving to SoCal. She earned her B.A. from UC Berkeley in International Development and her J.D. from the UCLA School of Law with a certificate from UCLA’s David J. Epstein Program in Public Interest Law & Policy. Marissa was inspired to work on labor issues by her grandparents who migrated from the Philippines to work the fields of Santa Maria and the canneries of Alaska.

Yeerik Moy, Field Attorney – Yeerik also grew up in Chicago and started with R-31 after working as a management consultant with Arthur Andersen and as an in-house labor attorney. Yeerik is passionate about making a positive difference in people’s working lives and his Chicago sports teams.

Jorge Romero, Language Assistant – Jorge was born and raised in the Cypress Park neighborhood of Los Angeles. He is an Army veteran, and has earned a B.A. from California University at Dominguez Hills in Digital Media Arts-Music Technology. Jorge is fluent in Spanish. Jorge loves exploring LA’s cultural attractions and music venues with family and friends.

Continued on page 8.



NATIONAL LABOR RELATIONS BOARD

Did
you
know
this?

NLRB Quick Facts—Fiscal Year 2013

Election Petitions

Petitions Filed: 2,507
 Elections Held: 1,545
 Elections Won by Union: 936
 Elections Lost by Union: 609
 Petitions Dismissed: 79
 Petitions Withdrawn: 815
 Median Days from filing of Petition to Election: 38
 Median Unit Size in Elections: 24
 Elections Conducted Pursuant to Election Agreements: 91.1%

ULP Charges

ULP Charges Filed: 21,394
 Settlements: 6,573
 Complaints Issued: 1,272
 Withdrawal: 7,450
 Settlements and Adjustments: 7,193
 Dismissals: 5,844
 Board Orders: 522

Source: <http://www.nlr.gov/news-outreach/graphs-data>

NLRB Guest Speakers

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

To arrange for a speaker and to discuss possible topics, please contact Region 21 Supervisory Examiner Tirza Castellanos at (213) 894-5411 or Region 31 Supervisory Field Attorney Joanna Silverman at (310) 235-7459. You may also request a speaker on the NLRB's website at <http://www.nlr.gov/news-outreach/request-speaker>.

Region 21 and 31 professionals are available to make presentation before any type of group. Speakers can cover a variety of topics, including general presentation on the mission of the Agency and protections afforded by the Act, Regional procedures for the investigation of unfair labor practices and representation petitions, or any other NLRB topic of interest.

New Recruits at Region 31 continued from page 7.

Oscar Gonzalez, Office Automation Assistant – Oscar grew up in Beaverton, Oregon and served in the U.S. Marine Corps. He has earned a B.S. degree in Environmental and Occupational Health. Colleagues know him to be honest and courageous.

Amanda Dixon, Field Attorney – Amanda graduated from the UC Berkeley School of Law and Northwestern University. She grew up in Norman, Oklahoma and has lived in Chicago and Lima, Peru. Amanda credits her grandmother's rodeo championships for her "never a dull moment" lifestyle.

Contributors

Regional Director Olivia Garcia, Region 21
 Regional Director Mori Rubin, Region 31
 Supervisory Field Attorney Stephanie Cahn, Region 21
 Assistant Regional Director Tom Chang, Region 31
 Support Staffer Angelica Blanco, Region 31

Editors

Supervisory Field Examiner Tirza Castellanos, Region 21
 Regional Attorney Brian Gee, Region 31
 Senior Field Examiner John J. Hatem, Region 21