

# Region 18 Hot Dish

MARCH 2018

## The Latest at the Labor Board

By Jennifer Hadsall, Regional Director

The NLRB is still making headlines with change and everyone is abuzz about what is going on. Given our continued popularity, I'm sure you've heard everything I will share in this article, but just to ensure our constituents stay informed, please enjoy the following highlights regarding what the NLRB has been up to.

First, let's address what is going on in the Board side of the Agency. The makeup of the Board has changed a few times since our last newsletter. Currently the Board is comprised of Chairman Marvin E. Kaplan, Mark Gaston Pearce, Lauren McFerran, and William J. Emanuel. As of the writing of this article, John Ring is awaiting confirmation to serve as the fifth Board member.

The Board has issued several decisions addressing areas of law we anticipated they would. The following are some of the most interesting and worth knowing about (If you receive this electronically, the cases are linked for your reading enjoyment):

*The Boeing Company*, 365 NLRB No. 154 (2017) – Overturning *Lutheran Heritage*, 343 NLRB 646 (2004) and adopting a new standard for analyzing work rules.

*PCC Structurals, Inc.*, 365 NLRB No. 160 (2017) – Overturning *Specialty Healthcare*, 357 NLRB 934 (2011), such that the test for appropriate unit need not establish an “overwhelming community of interest,” instead returning to a straight community of interest analysis.

*Raytheon Company*, 365 NLRB No. 161 (2017) – Overturning *E.I. du Pont De Nemours*, 364 NLRB No. 113 (2016), and holding that an employer may rely on past practice when acting after contract expiration, regardless of whether the past practice was a product of a contractual management rights clause that is no longer in effect.

Of relevance to all constituents, the Board has solicited information from the public regarding representation election rules. If you would like to provide a position on how the rules are working, you can go to this hyperlink ([click here](#)), which will explain how to file your position. Positions on this are due by **Monday, March 19, 2018**. The Board, per its request, is particularly

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### COFFEE WITH THE DIRECTOR AND OIC!

**When?** March 21, 2018 at 9:30 a.m.

**Where?** At the Minneapolis and  
Milwaukee Regional Offices

**RSVP required by March 19, 2018**

To RSVP: Send an email  
[Jennifer.Hadsall@nlrb.gov](mailto:Jennifer.Hadsall@nlrb.gov)



# The Latest at the Labor Board

(Continued from page 1)

interested in hearing about the following:

- Should the 2014 Election Rule be retained without change?
- Should the 2014 Election Rule be retained with modifications? If so, what should be modified?
- Should the 2014 Election Rule be rescinded? If so, should the Board revert to the Representation Election Regulations that were in effect prior to the 2014 Election Rule's adoption, or should the Board make changes to the prior Representation Election Regulations? If the Board should make changes to the prior Representation Election Regulations, what should be changed?

Other actions of the Board of interest is the Board's issuance of several unpublished responses to petitions to revoke investigative subpoenas, including some for Region 18. Based on those responses, it appears the Region is appropriately using its investigative subpoena power, as the Board has denied the requests to revoke.

Second, let's see what news is coming from the General Counsel side of the Agency. We have a new General Counsel, Peter Robb. General Counsel Robb has issued a public memo, [GC 18-02](#), which expresses interests that he is focusing on. The memo directs regions to continue to apply extant law in determining the merit of a case, seeking resolutions, and litigation, but requires, for certain areas of identified interest, that the issue be sent to the General Counsel's Division of Advice before any briefing to the Board. The memo also cautions that identification of interest in a particular issue is not indicative of what position the General Counsel will ultimately take on that issue. A few of the identified interests contained in the memo are:

- Concerted activity for mutual aid and protection, including cases which involve obscene, vulgar, or other highly inappropriate conduct, or in which only one employee had an immediate stake in the outcome
- Handbook rules involving disrespectful conduct, use

of employer trademarks and logos, camera/recording device usage, and confidentiality of workplace investigations

- The right to use an employer's email system under *Purple Communications*
- *Weingarten* rights, including its application to drug testing and the expansion of permissible conduct by union representatives during investigatory interviews
- Disparate treatment of represented employees during contract negotiations
- Successorship, including appropriate conduct giving rise to a "perfectly clear" finding
- An employer's duty to bargain before imposing discretionary discipline prior to the execution of an initial collective-bargaining agreement
- Work stoppages protected under the *Quietflex* standard
- The duty to provide witness statements to a union
- Survival of the dues checkoff obligation post expiration of a collective-bargaining agreement

Finally, there have been two very brief government shutdowns. We hope that our communication with you regarding our shutdowns was useful, however, if based on your experience with our communication, we could improve the process please let us know.

Positions from the public regarding representation election rules are due by **March 19, 2018**. You can provide your position on the rules here:

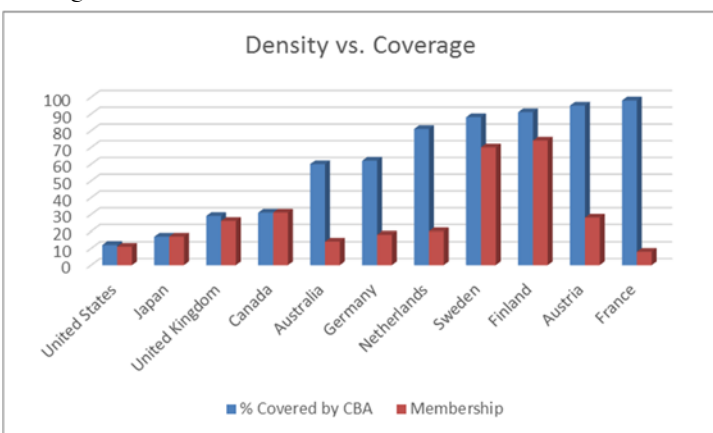
[www.nlr.gov/reports-guidance/public-notices/request-information](http://www.nlr.gov/reports-guidance/public-notices/request-information)

# Labor Relations Around the Globe *By Nick Heisick, Field Examiner*

Milwaukee based Field Examiner Jessica Gibson teaches as an adjunct professor at the University of Wisconsin-Milwaukee, and adapted material from her graduate course on Industrial and Labor Relations to school Region 18 on comparative labor relations. How collective bargaining works and is viewed in the US is unique, perhaps exceptional, to other economically advanced countries.

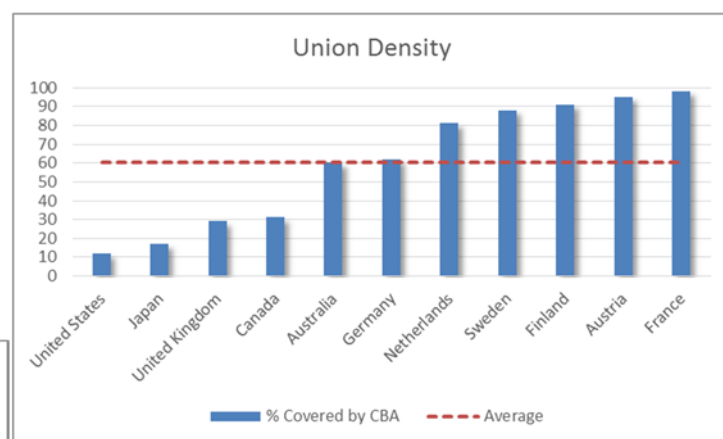
**Union Coverage** – The US has an extremely small portion of working people represented by unions.

**Cooperation** – In many nations, unions and employers enjoy a much less adversarial relationship. In Germany and Japan unions are viewed as partners in the success of the business. In Germany, employee representatives are often members of the board of directors overseeing the running of the company at the highest level. In Japan, unions are organized at the plant level, versus an industry-wide union representing employees of multiple employers. As a result, unions are very much aligned with and work together with management to ensure the success of the business.



**Open Shops** – In many European countries the actual union membership rate is far lower than the percentage of workers covered by a union contract. In France only 8% of the workforce is actually a member of a union, but 98% of the workers are covered by a union. This is because registering as a member of the union is nothing more than a political statement. Members and non-members are subject to the same terms and receive the same benefits regardless of their status. High levels of union coverage are usually a result of industry-wide collective bargaining agreements which cover all employers and employees in that industry.

**The Brits** – Until 1999 workers in the United Kingdom had no legal right to form unions or enter into collective bargaining agreements. This did not stop workers from engaging in collective action or unions from negotiating contracts, but the relationship was based on the idea of “volunteerism” and recognition of the other’s bargaining strength. Like the US, employers and unions in the UK have an adversarial relationship. Since the 1980s a number of laws have weakened unions, including the 2016 New Trade Union Act, which limited the ability of employees to strike and made the dues check-off process difficult for unions.



**Why is the US Different?** -- Look at Canada, eh? Our neighbors to the North are the most similar to us socially and economically, and until about 1970, our union rates were almost identical. After that, Canada remained around the 30% membership level, whereas we dropped to almost 10%. It has been theorized that the divergence is because of four major factors in Canada: 1) many unions are certified through card check instead of elections; 2) parties must go to arbitration if they have not reached a first contract within a limited period of time; 3) most provinces prohibit permanent replacement workers; and 4) a less adversarial attitude by employers towards unions.

**Did you know?** Most countries have laws against unjust discharges unlike the US’s at-will employment. These countries often have employment courts where employees can enforce their rights. Notwithstanding these protections guaranteed by law, union coverage rates are still much higher than the US.

# Staff Spotlight



## Welcome David Stolzberg!

Field Attorney David Stolzberg and his family (Anne, two boys, and a puppy) joined the Minneapolis office and the Region 18 family this past summer. David came to Minneapolis after living and working in Brooklyn (Region 29) since 2006. Beginning with the Agency as a co-op during 2003 in Boston (Region 1), he was hired as a Field Examiner and earned his JD in 2011 from Brooklyn Law School. David and his family love it here and are happy to begin this next chapter in the Twin Cities.

## Nichole Burgess Promoted to Regional Attorney

This past October, Nichole Burgess was promoted to Regional Attorney for Region 18. As Regional Attorney, Nichole is involved in helping decide both litigation and settlement strategy for the Region. She has worked in the Minneapolis Regional Office for over 18 years, previously serving as a Supervisory Attorney for five and half years.

Nichole brings her passion for enforcing the Act, her legal savvy and her years of litigation experience to the role of Regional Attorney. She is excited to play a larger role in developing the Region's legal strategy, where she will be able to apply her years of experience. Nichole enjoys working with parties to resolve their disputes even in difficult cases, which is a skill she will be using more frequently in her role as Regional Attorney. She looks forward to training newer attorneys and field examiners and guiding them through their professional development.



Nichole with her two children, Myles and Lucy.

We know Nichole's enthusiasm and commitment to the Act will bring her (and all of us in Region 18) great success in the future! Congratulations Nichole!

VISIT OUR REGIONAL WEBSITE: [HTTP://WWW.NLRB.GOV/CATEGORY/REGIONS/REGION-18](http://www.nlr.gov/category/regions/region-18)

## Outreach: Want A Speaker For Your Organization?

The NLRB is continuing its efforts to reach community groups with information about the Agency. We are available to speak to organizations, large and small, at your request. We regularly provide speakers to make presentations to schools, labor unions, employer associations, staff of legal services or other civil rights agencies, or any group with a particular interest in the nation’s labor laws.

We have given presentations on introductory and general information such as the history of the Agen-



cy and the National Labor Relations Act, how to file charges and petitions with the Agency, and how the Agency investigates cases. The Region has also given more in-depth presentations on specific issues such as successorship, the duty of fair representation, *Beck* Rights, protected concerted activity in a non-union workplace, etc.

For Minneapolis inquiries, please contact Outreach Coordinator Chinyere Ohaeri at 612-348-1766 or via email at [Chinyere.Ohaeri@nlrb.gov](mailto:Chinyere.Ohaeri@nlrb.gov). For Milwaukee inquiries, please contact Outreach Coordinator, Percy Courseault at 414-297-3877 or via email at [Percy.Courseault@nlrb.gov](mailto:Percy.Courseault@nlrb.gov).

*Each day, an agent is responsible for serving as the Region’s Information Officer (I.O.). In this series, we share interesting and informative I.O. questions and answers.*

### Dear Abby...

*I am interested in learning more about the National Labor Relations Act. Aside from calling the Information Officer or researching Board cases, are there any other resources available to me to learn about some of the ins and outs of the law?*

Yes. The NLRB’s public website and app is an excellent resource for those that are looking for some quick guidance. If you do not have the app, go to [nlrb.gov](http://nlrb.gov) on your web browser. Simply click on “Rights We Protect” and [“What’s the Law?”](#) This menu will take you to various sub-categories for different areas covered by the Act—everything from “Hot Cargo” agreements under Section 8(e) to secondary boycotts. It is a great way to get some information on various issues quickly and concisely.



## REGION 18 PET CORNER

**Back by Popular Demand!**

This is Hershel, who lives with Field Attorney Florence Brammer. Hershel, 13, is a mini long-haired doxie whom Florence adopted in 2006 after he had been dumped in the woods of Becker, MN during a domestic dispute. It took a rescue agency four months to catch him – he may be tiny, but he’s fast! Despite being treated so cruelly by humans at a young age, Hershel never holds a grudge and loves every person he

meets. He is a favorite among the residents of his apartment building, more of whom seem to know his name than Florence’s. Hershel was adopted on the first day of Hanukkah, so his human sisters named him after the protagonist in their favorite Hanukkah book, *Hershel and the Hanukkah Goblins*. Hershel adores car rides and napping in the sun. He abhors vacuums and personal grooming of any kind.



Meet Hagrid. He lives with Field Examiner Margaret Wadzinske and her family, including Hagrid’s adopted shelter dog sibling. Hagrid is a dwarf lion head rabbit, who was named after the burly beloved giant character from Harry Potter. Margaret’s daughter met and fell in love with baby Hagrid during the 2011 Door County Dairy Farm Breakfast. As luck would have it, the bunnies were “Free to a good home”! Hagrid left 4-H farm life and moved south to suburban Milwaukee. He prefers raw foods, but, if he had to pick a “Hot Dish”, it would contain carrots, apples, and sticks. He is curious, loves to chew and stays in a rabbit hutch. His favorite activity is hopping back and forth on his clothesline leash during fair weather or freely in the fenced garden in the off season. Hagrid had a frightening but uneventful wildlife encounter this past fall when he came face to face with a groundhog. He is ready for spring!

