



# NLRB Region 32 Newsletter

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NLRB staff are available to speak to service and advocacy organizations.

Region 32 holds periodic workshops on protected rights and NLRB procedures.

## Did you Know?

### Rights under the National Labor Relations Act

Many people know that the National Labor Relations Board protects employee rights to join and support unions where they work.

**However, the NLRB protects other employee rights as well.** For example, employees have the right to act together to raise workplace issues with their employer or to press for changes in wages or conditions. Such employee actions are known as protected concerted activities.

Unlawful employer actions that are prohibited by the Act include:

- Threatening, disciplining, terminating, or otherwise retaliating against an employee for having engaged in protected concerted activities.
- Prohibiting employees from discussing or sharing information about their wages or working conditions.
- Prohibiting employees from talking about workplace issues on their own time.

Employers who violate the Act generally must cease their unlawful actions, assure employees of their rights, and pay backpay to make employees whole for losses suffered as a result of unlawful actions.

The National Labor Relations Act also protects an employees' right to not participate in unions or in other actions with employees. The Act does not require an Employer to grant any specific employee or union demand.

## What does the NLRB do?



**The law protects employees even if they are not part of a union.** For example, suppose two factory employees, Jose and Richard, are taking their scheduled break, and they are not represented by a labor union. While on break, Jose says to Richard, "Man, it is hot in here today. I can't work much longer in this heat!" Richard nods his head in agreement. Just then, a supervisor walks by and says, "Hey, if I catch you whining about the temperature again, you're fired!"

These two employees are protected under the Act because Jose's comments were 1) said to another employee and 2) the comments were about the conditions of the workplace being too hot to work. When the supervisor said, "Hey, if I catch you whining about the temperature again, you're fired!" he violated the Act by making a threatening and coercive statement to the employees in response to their *protected concerted activity*. By filing a complaint with the NLRB, after an investigation, the NLRB will be able to hold the employer accountable for such statements.

**The law protects employees who want to learn more about forming a union.**

For instance, an employee who works in a clothing store is given a flyer by another employee in the employee break room that advertises an employee meeting at a co-worker's house after work. The flyer states that the purpose of the meeting is for employees to discuss whether they want to be represented by a labor union. The employee wants to go, but she is nervous because she does not want to be seen by a supervisor at the meeting.

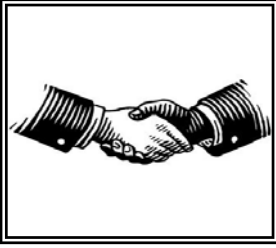


The law protects employees who *distribute* union literature, such as flyers, pamphlets, and even videos about unionizing, so long as they do that in *non-work areas* such as the employee break room or employee parking lot, and on *non-work time* such as during break and lunch, or before and after work. Some employers have a "no solicitation/distribution" rule that prevents employees from sharing any kind of literature, but such a rule cannot be overbroad or enforced only against some but not all employees, or otherwise discriminatorily enforced. For example, such a rule cannot prevent an employee from obtaining union information on *non-work time* and in *non-work areas*. In the scenario above, the employee should feel safe attending the union meeting because she is learning about the union on her own time and away from the employer's property, and so she is fully protected by the law. If the employer fires her or retaliates against her for attending the meeting, the employee can come to the NLRB for help. By filing a charge, the NLRB will begin an investigation into the employer's reasons for taking disciplinary action against the employee, which may include determining if the employer's "no solicitation/no distribution" rule is lawful.



**An employer cannot deny an employee a promotion just because of her union support.** Maria and Luis work in a factory and both recently applied for a foreman position. Maria is a shop steward with the union and Luis is a union member, but not actively involved with the union. Their supervisor Sonia brings them into her office and tells them, "I made my decision... I'm going to hire Luis instead of Maria because Maria is a shop steward and I'm sick of dealing with the union."

Maria may wish to file a charge with NLRB against her employer because the Act makes it unlawful for an employer to deny an employee a promotion because of her union activity. In this case, Luis was selected for the foreman position over Maria because "Maria is a shop steward" and the supervisor did not want to "deal with the union." Although the supervisor may have had any number of lawful reasons to choose Luis over Maria, the supervisor made it clear that she was not choosing Maria "because Maria is a shop steward" and she's "sick of dealing with the union."



**When employees are represented by a union, their employer must follow the law by negotiating with the union about changes in the workplace, and not by dealing directly with employees.**

For example, imagine a group of employees are working next to each other at a hospital when they are approached by their supervisor. The supervisor explains that the hospital has been hurt by the recession and that if they all want to keep their jobs, they will have to take a 25% pay cut, and if they had any questions about the pay cut they could talk to him about it. The employees are represented by a union.

Once employees are represented by a union, the employer has an obligation to deal directly with the union about changes to the terms and conditions of the workplace, such as wages, that will affect employees. The union has the right to be the sole bargainer with the employer. The employer violated the Act by *dealing directly* with the employees about the pay cut instead of going to the union representatives first and bargaining about the pay cut.

**The law provides protection for two or more employees that come together in mutual aid and/or protection about the terms and conditions of their workplace.**

A group of employees working at a sporting goods store approaches their manager and they say that they have been working for two years without a raise and would like a dollar more per hour. The manager replies that if they want more money then they can go work some place else. The manager then fires the group of employees. The employees are not represented by a union.



It does not matter that the employees are not represented by a union, the very fact that the employees came together in a group and told their employer that they wanted a dollar an hour raise is the type of activity that the law protects. This activity is called protected concerted activity. When the manager fired the group of employees, the manager was in violation of the law. By filing a charge against their employer with the local NLRB office, the employees may be able to get their jobs back and recover lost wages.

#### **How do You File a Charge with the NLRB?**

Anyone may file an unfair labor practice charge with the NLRB by submitting a charge form to any Regional Office. 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.

#### **What Happens When You File a Charge with the NLRB?**

The NLRB Regional Office will investigate by interviewing witnesses and collecting documents and other evidence. The charging party is responsible for promptly presenting evidence in support of the charge. 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 had merit. If the Region determines that a charge has no merit—that the charged party has not violated the Act—it will dismiss the charge. The charging party has the right to appeal a dismissal.

#### **What Happens if There Has Been a Violation of the Law?**

When there has been a violation, the Act does not impose fines or other direct penalties. Rather, it requires remedial action to correct the violation and its effects. NLRB remedies require those who have violated the Act to immediately stop 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.



## What does the Act Protect?

- ✓ Protects an employee's right to choose to join or support a Union.
- ✓ Protects the right to vote in a secret-ballot election to determine if a majority of employees in a workplace want a particular union to represent them in dealing with their employer over wages, hours, and working conditions.
- ✓ Requires an employer to recognize and bargain with the union where a majority of employees show that they want union representation.
- ✓ Requires both unions and employers to bargain in good faith.
- ✓ Requires unions to represent their members fairly.

## Careful – the Act's protections are limited!

- ✗ The Act protects employees in acting together to raise workplace issues. Employees are **not** protected by the Act when they make complaints or demands for themselves alone.
- ✗ The Act does **not** protect employees who engage in misconduct, even when the misconduct is intended to support concerted employee action. Threats, violence, or occupation of the employer's premises are among actions generally considered to be misconduct warranting discipline.
- ✗ The Act provides for backpay resulting from unlawful conduct, but the Act does **not** provide for fines, punitive damages, or losses not directly resulting from lost employment.
- ✗ The Act does **not** require an employer to grant employee demands.

## Speakers Available

Members of the Region's staff are available to make presentations before any group, such as high school, college and university students, labor organizations, employer associations, the staff of a legal services clinics or service agencies, as well as those members of the public that they serve, to describe what the Act's protections cover, how the Region investigates and resolves unfair labor practice charges, or any NLRB topic of interest. To arrange for a speaker and to discuss possible topics, please call Outreach Coordinator Shelley Coppock at (510)-637-3257 or Assistant Regional Director Michael Leong at (510)-637-3264.

## Regional Workshops

Region 32 hosts a series of workshops at the Ronald V. Dellums Oakland Federal Building. Workshops cover NLRB-related topics in which all members of the public are invited to attend. The Region will conduct issue-specific workshops for your organization or firm upon request.

## From Region 32's Director

*"The rights protected by the National Labor Relations Act are available to all. Along with the Region's staff, I am committed to improving public awareness of the Act and of the recourse available through the Regional Office to those who have suffered any violation of it."*

**Alan B. Reichard, Regional Director, National Labor Relations Board, Region 32**



*"Democracy cannot work unless it is honored in the factory as well as the polling booth; men [and women] cannot be truly free in body and in spirit unless their freedom extends into the places where they earn their daily bread."*

**Senator Robert F. Wagner in 1935**



## We Welcome You

Contact our information officer at 1-866-667-6572 (Toll free) or 510-637-3300 ***Se Habla Español***