



NATIONAL LABOR RELATIONS BOARD

Region 13 - Chicago

October 2014

A Few Noteworthy Board Decisions

In [Triple Play Sports Bar & Grill](#), 361 NLRB No. 31 (Aug. 22, 2014), the Board found the employer unlawfully terminated two employees for protected concerted activity. Of particular note was the Board's holding that an employee's "Liking" of another employee's work-related Facebook post constituted protected activity. The Board also found the analytic framework of *Atlantic Steel* "not well suited to address ... employees' off-duty, offsite use of social media to communicate with other employees and third parties." Instead, applying the rationale of *Jefferson Standard* and *Linn*, the Board held that the employees' posts and "Likes" on Facebook were protected.

[Pressroom Cleaners](#), 361 NLRB No. 57 (Sept. 30, 2014) This case discusses a statutory successor that unlawfully refused to hire the predecessor's employees. The Board, in a 3-2 decision, returned to the practice outlined in *State Distributing* and held that when a successor employer violates Section 8(a)(5) and (1) by unilaterally changing the predecessor's terms and conditions of employment, the make-whole remedy will include restoration of the predecessor's terms and conditions, including wage rates, until the parties bargain in good faith to agreement or impasse. An employer may no longer attempt to prove in the compliance proceeding what the terms and conditions might have been if it had complied with its obligation to bargain.

[Purple Communications, Inc.](#), 361 NLRB No. 43, (Sept. 24, 2014) is noteworthy for what is not included in the decision. Earlier this year the Board requested briefs on the issue of whether the electronic communications policy was unlawful. The ALJ had found the policy lawful based on *Register Guard*, 351 NLRB 1110 (2007). The General Counsel has argued that *Register Guard* should be overruled. The Board wrote, "we sever and hold for further consideration the question whether Purple's electronic communication policy was unlawful." To Be Continued.

Calendar of Events

November 6, 2014 - Veterans Resource Center, 2925 W. 25th Ave., Gary, IN

The NLRB will present a basic overview of the Act and employee rights. OSHA will present on safety in the workplace. The event is open to veterans, national guard members and their families.

November 15, 2014 - Casa Ecuatoriana, 3300 W. Lawrence Ave., Chicago, IL

The outreach event, commemorating the massacre of workers in Guayaquil, Ecuador in 1922 following a general strike, will feature representatives from the NLRB, OSHA, US DOL and others to answer questions and provide information to the public.

Speaker Requests

The Region is available to provide speakers for your



MOU with Ecuadorian Consulate

On September 22, 2014 Regional Director of the Chicago Regional Office, Peter Sung Ohr, and Office in Charge of the Consular Affairs at the Ecuadorian Consulate in Chicago, Luis Alberto Revelo, signed a Memorandum of Understanding. This Memorandum, based upon the national agreement between the Ecuadorian Embassy and National Labor Relations Board in Washington D.C., aims to strengthen collaborative efforts to promote broader awareness and provide education to Ecuadorian workers and business owners in the United States regarding their rights and responsibilities under the NLRA. [Read national press release.](#)

Recent Board Decisions on Chicago Cases

[Linda Construction, Inc.](#), 361 NLRB No. 56 (2014). On September 30, 2014 the Board issued a decision in *Linda Construction, Inc.*, following a motion for default judgment. The truck drivers at Linda Construction, Inc. are represented by Teamsters Local 731.

Complaint issued alleging that the employer unilaterally ceased making contributions to the union's health and welfare fund and pension fund. In an unusual turn of events, counsel for the employer filed an answer to the complaint and then withdrew the answer. The withdrawal of an answer has the same effect as a failure to file an answer, the allegations in the complaint are considered true. The employer was ordered to make all contributions to the funds and to reimburse unit employees for any additional expenditures resulting from its failure to make such required contributions.

[Labriola Baking Company](#), 361 NLRB No. 41 (2014). On September 8, 2014 the Board issued a decision directing a second election at Labriola Baking Company. The union, Teamsters Local 734, was certified as the union representing the sales drivers in 2011. One year later the parties had not reached a contract and an employee filed a decertification petition. An election was held, the results were close, and the union filed objections. The objections discussed at length by the Board, both in its decision and in the dissent, concern the use of terminology related to immigration status by the employer in meetings with non-English speaking employees prior to an election.

organization. To inquire about a speaker contact the Region at 312-353-7570 and ask to speak with Elizabeth Galliano or Drew Hampton.



The Chicago Regional Office is located in the historic Rookery Building at the corner of Adams and LaSalle streets in downtown Chicago. It is easily accessible by public transportation.

Practical Tips

We would like to repeat that having witnesses appear for affidavits with relevant documents is extremely helpful and time saving for both the investigating agent and the witness.

Procedural Questions

If you have procedural questions you would like addressed in upcoming issues of the newsletter, please email those questions to

Full Board Visits Chicago Regional Office

Seated in the front row, from the right, are Member Miscimarra, Member Johnson, Chairman Pearce, Member Schiffer, and Member Hirozawa.



Recent Settlements in the Region

Lydia Healthcare 13-CA-127835, case settled with Employer agreeing to make whole employee pension contributions and read the notice.

Sheraton Suites, 13-CA-133906, case settled with Employer agreeing to bargain in good faith with the union. The Employer denies violating the Act.

Direct Sat, 13-CA-124291, case settled with the employer agreeing to pay backpay to 48 employees. The Employer denies violating the Act.

Charles Muhl Named ALJ

Charles Muhl, former Field Attorney who worked in the Chicago Regional Office, was recently appointed an Administrative Law Judge with the National Labor Relations Board assigned to the Washington office. Muhl left the Regional Office to work as an Administrative Law Judge for the Social Security Administration prior to being appointed an administrative law judge for the NLRB. Everyone in the Region wishes him success in his new role. [Read the full press release.](#)

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The [NLRB](#) is an independent federal agency that protects the rights of most employees to engage in concerted activity, union activity or to refrain from engaging in these activities. Additional information can be found on the [Chicago Regional page](#) and on the [Chicago Region's Facebook page](#).