NATIONAL LABOR RELATIONS BOARD
REGION 13
CHICAGO
NEWSLETTER

THE ChiRO UPDATE

SUMMER 2013

INSIDE THIS ISSUE

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Workplace Rights Article Omits NLRA Discussion

By Peter Sung Ohr, Regional Director

A recent article entitled "What You Don't Know About Workplace Rules Could Cost You Your Job" appeared in the Chicago Tribune, following its original publication in the Miami Herald. After reading the article, I submitted the following editorial response to the Tribune:

The Tribune's January 21, 2012 article, "What you don't know about workplace rules could cost you your job," failed to mention that, since 1935, the National Labor Relations Act has protected workers in the United States against many of the unlawful acts described by Ms. Goodman. Simply, the NLRA protects workers' fundamental right of association at the workplace. One of the cornerstones of the NLRA is protecting workers' attempts to better their working conditions by prohibiting employers from retaliating against workers for exercising this fundamental right. The law has been misunderstood by many to protect employees in only unionized workplaces. The fact is the NLRA protects workers' attempts to improve their working conditions regardless of whether the workplace is unionized.

(See "Editorial Response on Workplace Rights," continued on page 9)

Impact of the Board's *Specialty Healthcare* Decision

By Arly W. Eggertsen, Regional Attorney

Hit by an acorn, Chicken Little ran around warning everyone that "the sky is falling, the sky is falling." Hit by the Board's decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, (Aug. 26, 2011), some practitioners had the same reaction as Chicken Little, "the sky is falling, the sky is falling". However, the sky is still there and there is little reason to anticipate that it will fall.

The Board's decision is *Specialty Healthcare* did two things. First, it returned to the traditional community-of-interest test in unit determinations for non-acute health care facilities, overruling *Park Manor Care Center*, 305 NLRB 872 (1991) and its focus on using the acute health care rule in making unit determinations in non-acute situations. Second, the Board clarified the semantics and burden of proof used in applying the

(See "Impact of Specialty Healthcare," continued on page 8)

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LONG ROAD CONTINUES IN *FEDERAL SECURITY*

By Richard Kelliher-Paz, Deputy Regional Attorney

A chance encounter in May, 1999 between James Skrzypek, the owner of Federal Security, and Michael Davenport, a former employee, led Skrzypek to file a lawsuit in the Circuit Court of Cook County on June 2, 2000, against 17 former employees. The lawsuit alleged that the employees falsified their affidavits and their testimony in a NLRB proceeding against the company. Skrzypek contended that, during their encounter, Davenport confessed that all of the employees who participated in the NLRB trial lied about the reason that they staged a walkout in 1994 in order to get their jobs back. Skrzypek filed the lawsuit in order to recover over $140,000 in legal expenses that his company incurred defending itself from the NLRB complaint and to obtain unspecified amounts in punitive damages.

Joseph Palm, who was the Charging Party in the 1994 NLRB proceeding, notified Region 13 that Skrzypek had filed a lawsuit against the employees who testified in the trial. Palm filed a charge alleging that Skryzpek's lawsuit violated the Act. On January, 29, 2001, Region 13 issued a Complaint alleging that Skrzypek's filing and pursuit of a lawsuit against his former employees because they had participated in NLRB proceedings against his company violated Section 8(a)(1) of the Act. A hearing on the allegations raised in the complaint was held before Chief NLRB Administrative Law Judge Robert Giannasi. At the hearing, Skrzypek testified that if Davenport never told him that the employees had lied, he would not have filed the State Court lawsuit. However, Skrzypek was unable to produce any other witnesses to substantiate that employees had falsified their testimony at the earlier proceeding. Moreover, Davenport denied telling Skrzypek that he or any other employees falsified their affidavits or testimony at the original proceeding. Davenport testified that Skrzypek bore strong animosity towards Palm. Charles Robinson, another former employee that testified, also denied that the employees had falsified their testimony.

On May 1, 2001, Judge Giannasi, relying on *Bill Johnson's Restaurants, Inc*., 461 U.S. 731 (1983), issued his decision finding that Skryzpek's filing and maintenance of a State Court lawsuit violated Section 8(a)(1) of the Act. Under

Bill Johnson's, a lawsuit can be enjoined if it lacks a reasonable basis and was filed for a retaliatory motive. Judge Giannasi found that Skrzypek's lawsuit was baseless and retaliatory. The judge relied on *LP Enterprises*, 314 NLRB 580 (1994), where the Board found that the filing of a charge is protected under the Act unless it is filed in bad faith, to support his finding that the lawsuit was baseless or lacked a reasonable basis. Skrzypek's lawsuit was baseless because the charge allegations and supporting affidavits in the initial proceeding could not be deemed malicious, i.e. the evidence failed to show that they were filed with reckless disregard of the truth. Judge Giannasi noted that, in the initial proceeding, the testimony of the employees concerning the reasons for the walkout was fully credited by an administrative law judge after a full trial in which their testimony was tested by cross-examination and an opportunity was provided to submit counter evidence. The judge concluded that the charge, supporting affidavits, and testimony could not be deemed malicious or submitted in bad faith.

Judge Giannasi also found that the lawsuit was preempted. The Judge relied on *Manno Electric, Inc.*, 321 NLRB 278 (1996), which also involved allegations of false testimony by employees. In *Manno Electric*, the Board affirmed, without comment, an administrative law judge's analysis stating that the first consideration in finding a

(See "Federal Security," continued on page 3)

Federal Security (cont.)

violation is whether the lawsuit is a suit claimed to be beyond the jurisdiction of the state court because of federal law preemption or whether it is a suit that has an objective which is illegal under the federal law. The Board stated that, if the obvious effect of such state court lawsuit was to frighten employees from appealing to the Board, the lawsuit was a prohibited act as it was aimed at discouraging employees from engaging in protected activity or interfered with employee access to Board processes.

Thereafter, the Board adopted Judge Giannasi's Decision and Recommended Order. While the Order was pending before the United States Court of Appeals for the DC Circuit, the Supreme Court issued its decision in *BE & K,* 536 U.S. 516 (2002). In *BE & K,* the Court held that the Board could not impose liability on an employer for filing a reasonably based but unsuccessful lawsuit filed with a retaliatory purpose. As a result, the Board reconsidered Judge Giannasi's decision under the *BE & K* standard. In an earlier decided case, *J.A. Croson Co.*, 359 NLRB No. 2 (2012), the Board found that *BE & K* did not invalidate the Board's standard for imposing liability on pre-empted lawsuits. The Board then considered and found that Skrzypek's suit was preempted from the date it was filed under the Supremacy Clause. In making this finding the Board stated that Congress in unmistakable terms recognized that an employee's ability to file a charge or provide information to the Board without fear of coercion is crucial to the functioning of the Act as a whole. Sections 8(a)(1) and (4) of Act serve to protect employees who file charges and give testimony to the Board from discharge or other discriminatory conduct. The Board concluded that allowing States to exercise jurisdiction over disputes, including for filing allegedly fraudulent unfair labor practice charges against an employer, would thwart the congressional objective of ensuring that all persons with information about unfair labor practices be free from coercion against reporting them to the Board. The Board also stated that, absent preemption of state court lawsuits, employees may be forced to bear the cost of defending themselves as well as the cost of a mistaken adverse opinion.

With regard to Skrzypek's contention that the employees provided false affidavits and testimony to the Board, the Board found it had already held that the charge allegations and supporting evidence were truthful and that the walkout was related to work conditions. Accordingly, the Skrzypek's lawsuit sought to regulate activity that may fairly be assumed to be protected by Section 7 of the Act. Allowing the State to impose sanctions on employees who exercise their right to file charges and submit evidence under that Act even where the Federal Agency in charge of administering the Act has decided that the charges and evidence was truthful would be fundamentally inconsistent with the comprehensive Federal regulatory scheme.

The Board rejected an argument that the lawsuit was not preempted because the employees' conduct was only "arguably" protected. The Board noted, in particular, that the conduct raised in the lawsuit occurred entirely within the context of a Board proceeding, including the administrative investigation of a charge and unfair labor practice hearing. The State Court would be called upon to determine the credibility of the charge allegations and the testimony in the Board proceeding. The State Court would also be charged with determining the reasons for the walkout. But all of these issues were already decided in the Board proceeding. The Board reasoned that an employer is not without recourse if it later discovers that a charging party has submitted false evidence. If such claims are found credible, the Board can withhold reinstatement and back pay. The Board can even reopen cases to consider the new evidence that has come to light. Finally, if warranted, the Board can refer the matter to the Department of Justice for criminal investigation.

THE NLRB'S ELECTRONIC CASE FILE

By Maria G. Guerrero, Field Examiner

The Region's days of having to carry around voluminous paper files and making numerous copies of the same document for distribution are rapidly receding into ancient history. Now, instead of *flipping* through pages and pages of documents, we will be *clicking* our way through them. As many of you are aware, in 2011 the Agency began the process of converting its records and case management system to an electronic format. The Agency dubbed its new case management system "NxGen." As of October 1, 2012, the Agency's official file became the NxGen electronic file, not the paper case file. This new single system replaces 13 separate case tracking systems, and will allow for seamless searches that cover the entire life of a case at the NLRB.

Alas, the days when parties had to dash to the post office or send their courier service to the Regional Office to timely file documents are also becoming a distant memory. As part of the transition to the NxGen case management system, the Board and its Regional Offices are encouraging the filing of most documents through the Agency's web site. Documents can easily be E-filed by going to www.nlrb.gov and clicking the E-Filing Documents tab in the Resources section of the homepage. It will come as a relief to some that documents that are filed electronically will be due at 11:59 p.m. local time at the receiving office, rather than by the close of business at the receiving office.

Information concerning what documents may be electronically filed, and instructions for filing documents through the Internet can also be found on the Agency's website by clicking the E-Filing Documents tab. It is important to note that charges, petitions, and petitions for advisory opinions must still be filed the old fashioned way, on paper. It is also important to note that parties that file documents electronically will be required to serve these documents by email upon the other parties, when possible.

Besides fewer paper cuts, one of the many benefits of having everything at the click of a button is the ease in which the Agency is able to share information with you, the general public. Ultimately, making more information accessible to the general public in less time will result in greater transparency. In fact, our Regional website has been updated, resulting in more case information being available more quickly than ever before. All Board decisions and ALJ decisions are now posted to the site at the time they are issued. For the first time, the Board also is posting unpublished decisions, which do not appear in the official bound volumes of Board decisions on the Agency website. These new initiatives are a reflection of a more open and engaged Agency. As always, we look forward to better serving you.

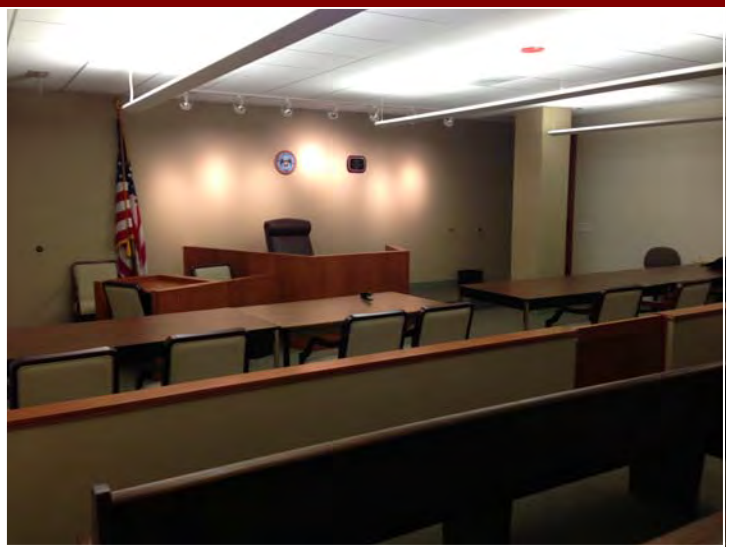
CBS's *THE GOOD WIFE* DEPICTS FICTIONAL HEARING AT NLRB REGION 13

By Charles Muhl, Field Attorney

CBS's *The Good Wife* follows the legal career of Alicia Florek, played by actor Julianna Margulies. The original premise of the show was that Alicia's husband, the State's Attorney for Cook County, Illinois, was jailed following a public corruption scandal, forcing Alicia to return to work after a 13-year absence. Alicia then was hired as an associate at the fictional law firm of Lockhart Gardner in Chicago.

The show's April 21 episode depicted a combined unfair labor practice and representation case hearing before an NLRB administrative law judge at a replica (with windows added) of the NLRB Chicago Regional Office hearing room. The plotlines for the episode would serve as an excellent fact pattern for a law school exam, given the number of legal issues raised. They included what constitutes protected, concerted activity; the lawfulness of multiple employee discharges; the law firm's response to its support staff's organizing campaign; the eligibility of employees to vote in a union election; and the propriety of an employer monitoring employees' online activity when it is conducted using company equipment.

The storyline began with an employee of "Blowtorch" approaching Alicia and asking her to assist in employment contract negotiations for the company's computer coders. To prepare for the negotiations, Alicia and her colleague, Cary Argos, review comparable contracts, including existing collective bargaining agreements. Based upon the review, the attorneys decide to ask for improvements in maternity leave, overtime pay, performance-based bonuses, and just cause termination. Certain of the firms assistants hear the two as they outline the working condition improvements they believe the coders should receive. At the first meeting with Blowtorch's attorney to negotiate the employment contracts, the employer responds to the coders' demands by immediately discharging all of them. In turn, Alicia and Cary advise the terminated employees to file a charge with the NLRB and allege that they were let go due to their protected, concerted activity.



At the NLRB hearing, a discharged employee testifies that multiple employees contacted Alicia to discuss contract issues and unionizing, to support the contention that they engaged in protected, concerted activity. The ALJ ultimately finds that the coders were unlawfully terminated and orders them to be reinstated immediately to their jobs. The Judge also orders that an election take place within 24 hours to determine if the employees wanted to be represented by a union.

From discussions with the coders, Alicia is able to determine that there are 29 votes in favor of unionization, 29 votes against unionization, and two swing voters. Before the election could take place, the company terminates the two swing voters, sending the parties immediately back before the ALJ. Blowtorch's attorney contends that the employees were terminated for cause, relying upon a chat the employees participated in which demonstrated they had called in sick when they were not. This also raised the legal issue before the ALJ of whether the company's monitoring of the employees constituted unlawful surveillance. The employer relied upon a provision in its Employee Handbook granting it permission to monitor employees who used company equipment, as well as the fact that the involved employees were chatting using company computers. The ALJ immediately rules that the discharges were lawful and the employees cannot vote in the election.

("The Good Wife," continued on page 11)

The Great Failed Pullman Experiment

By Gail Moran, Former Assistant to the Regional Director, Retired

George Pullman was born of modest means in Brockton, NY in 1831. After a stint at cabinetmaking with his brother, he moved to the Chicago area to move structures (buildings) ahead of the World's Fair. This proved a very lucrative endeavor for him. He developed ties to the rail sleeping car business, and became a partner in the Woodruff Sleeping Car Company. Not too long thereafter, he bought out his partner and started the Pullman Place Car Company in around 1858. He took a short junket to Colorado as a gold prospector, but returned to Chicago in 1864 and built his first two Pullman sleepers. Rail sleeping cars were widely unpopular at the time because of their narrow berth with a pullout bed, and the inability to stand at full height. Pullman had a better idea.

Pullman strikers confronting the National Guard outside the gates of the Pullman factory

He procured two ordinary rail coach cars and transformed them into sleeping cars. The cars themselves were wider and higher than their predecessors, and were outfitted with luxurious accommodations. As compared to the typical $5,000 investment for rail sleeping cars at the time, Pullman sunk $20,000 into these prototypes. The first use of one of these cars was to transport the body of Abraham Lincoln from Chicago to Springfield for his burial. The Chicago & Alton railroad had to make adjustments in its bridged and other station obstructions in order to accommodate the reconfigured car. The Michigan and Central Railroad made similar adjustments so that General Grant could enjoy a trip between Detroit and Galena, IL. By 1867, Pullman had built 48 luxury sleepers and began acquiring other sleeping car operations, with rights to a total of 15,000 miles of railroads.

In 1880, Pullman bought 4,000 acres of land south of Chicago for his new plant. He also built a self-contained company town on the acreage, believing that keeping his workforce and their families occupied and happy in the evenings would avoid labor unrest and engender loyalty to the company and to him. The town had housing for hourly and management staff, shopping areas, churches, theaters, parks, a hotel, a library, an administration building, and a school. It even had its own newspaper, the Pullman Journal, espousing the political and social views of Mr. Pullman. The town and its buildings were strictly controlled by Pullman and his Town Manager, with the exception of the school board which was elected. Brothels and saloons were prohibited, and anyone deemed a labor agitator was not permitted to rent the public halls for meetings.

The workers' housing consisted of 10 large brick buildings with slate roofs containing 1800 brick tenements. The buildings were three stories tall and contained flats of 2-4 rooms, providing for 12 – 42 families per building. Five families shared one water faucet and two families shared toilet facilities. Importantly, home ownership was not permitted and the rental rates were 20-25 percent higher than in Chicago. In addition, the rent was deducted automatically from workers' paychecks and transferred to the Pullman bank. In contrast to the tenements, the managers' accommodations were plush with steam heat, fireplaces, a bathroom per dwelling, numerous closets, bay windows, and artistic décor.

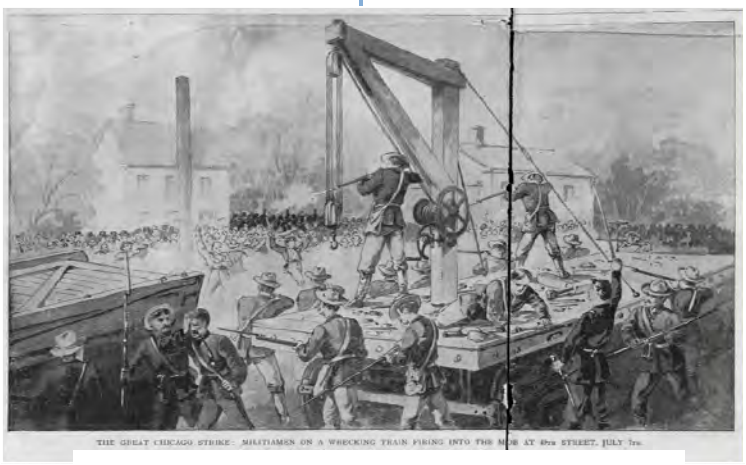
The town became a huge attraction with many visitors during the 1893 World's Fair. But all was not bliss at the town. Circuit Court Judge John Gibbons remarked about the town, "The laborers in Pullman believe that 'spotters' – paid eavesdroppers of the company – mingle with them to catch and report…any sign or word expressive of disapproval or criticism or the authorities." Said the New York Sun: "The people of Pullman are unhappy and

(See "Pullman Experiment," continued on page 7)

The Great Failed Pullman Experiment

grumble at their situation. They want to run the municipal government themselves, according to the ordinary American fashion. They secretly rebel because the Pullman Company continues its watch and authority over them after working hours."

Then came the great recession of 1893. (Ironically, the wealthy railroad companies had engaged in huge expansions and borrowed liberally from the banks so when demand fell, the bankers called in what were sometimes shady loans.) At Pullman, the hourly workforce was slashed by 50 percent and hours were cut, while the Operating Division was solvent throughout and no salaried personnel received wage cuts. With rental rates so high and coming off the top of paychecks, there were huge delinquencies in rent. The workers were also upset with blacklisting of supporters of labor, nepotism, favoritism, and what they viewed as tyranny by foremen. They sought out the young American Railway Union (ARU) headed by idealist Eugene V. Debs. Knowing that replacements were plenty, Debs, a realist, sought to remedy the workers grievances by meeting with the company representatives. Pullman was immoveable and the workers ultimately struck the Pullman company in huge numbers.



A rendition from 49th Street in Chicago

The railroad companies banded together to support Pullman through the General Managers Association, and masterfully concocted a plan to make the dispute appear as if it was between the workers and the government, not Pullman, and to turn the public against the strike. This proved an easy task when the newly appointed U.S. Attorney General was a fan of the rail companies and had served on numerous Board of Directors of their organizations. The Managers Association also undertook to link the sleeper cars directly to the railcars that carried the mail, thus interfering with the delivery of mail. They determined that they would accept no freight, in order to exacerbate the impact of the strike and make the public angry at the strikers. As the strike spread across the Midwest involving some 35,000 workers in nineteen different states, the U.S. Attorney General, with the blessing of President Grover Cleveland, issued a blanket injunction against the strike deeming that the strikers were deliberately interfering with and obstructing delivery of the U.S. mail. Federal marshals were called out, as well as the military, and ordinary citizens were deputized to suppress the strike.

Although the strike had been mostly peaceful to this point, the militia's arrival set off strike sympathizers. Rioting and property destruction broke out at the Blue Island lines, at 49th and Loomis, and at the Panhandle Yards in South Chicago where 700 railcars were set afire. The militia fired wantonly into the crowds to try to control the violence. Ultimately, 12 people were killed and 57 wounded.

Against the wishes of the Governor of Illinois and Mayor of the City of Chicago, who many times tried to mediate the strike, 2,000 Federal troops were dispatched to the area, and Debs and other labor leaders were arrested and jailed for failing to abide by the injunction. An investigation by the U.S. Strike Commission, commissioned by Congress, concluded that the railroads lost at least $4,672,916; Pullman workers lost at least $350,000 in wages; 100,000 employees of 24 railroad companies centered in Chicago lost wages of at least $1,389,143; and that Pullman's intransigence in failing to agree to arbitrate the dispute and employing the "un-American" methods it did at the model town lead to the dispute.

On June 28, 1894, after the strike ended and in an appeasement to labor, President Grover Cleveland signed a Proclamation designating Labor Day a holiday.
(Source: Lindsey, Almont: "The Pullman Strike: The Story of a Unique Experiment and of a Great Labor Upheaval")

Impact of *Specialty Healthcare (cont.)*

community-of-interest test when a party contends that other employees should be included in a "unit of employees who are readily identifiable as a group... [and] who share a community of interests." *Specialty Healthcare,* slip op. at p. 12. Any controversy arising from the Board's overruling *Park Manor* was quickly subsumed by the overreaction to the Board's clarification of the burden of proof and the language used to apply the traditional community-of-interest factors in making appropriate unit determinations.

The Board's clarified application of the community-of-interest standard in *Specialty Healthcare* is set forth below and applies to **all cases** not govern by the Board's Health Care Rule:

> [I]n cases in which a party contends that a petitioned-for unit containing employees readily identifiable as a group who share a community of interests is nevertheless inappropriate because it does not contain additional employees, the burden is on the party so contending to demonstrate the excluded employees share an ***overwhelming community of interest*** with the included employees. [Id., slip op. at 1, emphasis added].

Contrary to the dissenting opinion in *Specialty Healthcare* and the reaction of some practitioners, the Board's reformulating of the language used in applying the community-of-interests standard did not fundamentally change its application. What the Board did was to put into sharp focus appropriate unit principles that have long been hallmarks for making unit determinations, but which were subject to variances in semantics or were less clearly delineated. The requirement of an "***overwhelming community of interest***" to demonstrate that an otherwise appropriate unit is inappropriate without the addition of other employees is merely a clarification of the following unit determination principles familiar to anyone practicing representation law before the Board:

> [T]here is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act requires only that the unit be "appropriate," that is, appropriate to insure to employees in each case "the fullest freedom in exercising the rights guaranteed by this Act." *[citations omitted*] A union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested unit does not exist." *[citations omitted]* Indeed, "the Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employees." *[citation omitted}*

National Labor Relations Board, An Outline of Law and Procedure in Representation Cases, Chapter 12, p.133 (August 2012).

Under the foregoing, long-existing principles, it is clear that a bargaining unit can be appropriate without the inclusion of everyone that has some community of interest with the employees in the unit. Hence, a smaller unit may be appropriate even though a larger unit with additional employees also is. Thus, it follows that merely showing other employees share some community of interest factors with the smaller unit does not render the smaller unit inappropriate. Something more has always been required. The something more that must be shown to require the inclusion of additional employees in an otherwise appropriate unit has been described as having a "close" or "substantial" community of interest with the smaller unit or, conversely, that the

(See "Impact of Specialty Healthcare," continued on page 9)

Editorial Response on Workplace Rights

The law protects a worker who acts together with at least one or more co-worker or on behalf of at least one other co-worker regarding terms and condition of work. The working condition can be anything that affects the workplace—wages, health insurance, retirement benefits, vacation and sick leave, even seeking to curb the actions of the boss who is a jerk, as was the example used in the article. Unlike other anti-discrimination laws, the worker does not have to establish that he or she was retaliated against because of his or her race, gender, or ethnicity. All that the worker has to establish is that he or she acted jointly with or on behalf of at least one other co-worker on an issue regarding working conditions, and the employer cannot retaliate against the worker for that act. This is commonly referred to in labor law as protected-concerted activity.

This fundamental right of association at the workplace also protects workers' communications with one another regarding working conditions. The article warned workers not to post any work-related comments on social media. However, federal labor law prohibits employers from retaliating against workers for posting on social media sites comments regarding working conditions that are joined in by at least one other co-worker. A common misunderstanding by many workers and employers is that workers can be prohibited from talking to one another about their wages. If such an exchange by the workers is conducted around the water cooler, the law is well settled that any acts of retaliation by the employer would be a violation of the NLRA. The same holds true if that exchange took place online through a social media site.

While I don't disagree with the overall theme of the article that workers need to be wary, and while there are no shortages of critics of the NLRA, I am disappointed that the article failed to inform the public of workers' fundamental right of association that the National Labor Relations Act has been protecting for nearly 78 years.

Impact of *Specialty Healthcare (cont.)*

smaller unit has a "distinct" community of interest from other employees. *Specialty Healthcare,* slip op. at p. 12. In short, even before *Specialty Healthcare*, the Board always required more than merely showing some shared community of interest factors to find an otherwise appropriate unit to be inappropriate without the inclusion of additional employees, even if it has not been consistent in the language used to describe the degree of the required community of interest factors. In *Specialty Healthcare,* Board clarified the language used to describe this higher degree of the community of interest to be an "overwhelming" community of interest and placed the burden on the party seeking to add the additional employees.

It is important to remember that the "overwhelming" community of interest test does not come into play without the prerequisite of the proposed unit consisting of an "identifiable" group of employees who share a community of interest being established. It is only when it is established that the proposed unit has the earmarks of being an appropriate standalone unit that the "overwhelming" community of interests test comes into play to determine if the apparently appropriate unit requires additional employees to be appropriate.

In my view, the proper application of the *Specialty Healthcare* test will yield the same unit determinations that would have been yielded before the *Specialty Healthcare* decision. The only difference will be that the rationale in making unit decisions post *Specialty Healthcare* be more clearly delineated and the language will be consistent.

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The Good Wife (cont.)

Alicia's next maneuver before the Judge was to challenge the voting eligibility of the coder who initially brought the case to her. Investigators at Alicia's firm discovered that the employee withdrew a safety complaint she made at the U.S. Department of Labor in exchange for $4 million in company equity, the day after the NLRB charge was filed. However, the significant ownership interest in the company conveyed to the employee resulted in her becoming a Board of Director with a voting seat. The ALJ then deemed her a supervisor ineligible to vote in the election. The Judge then counts the ballots and the unidentified union wins the election 29 to 28.

Not to be outdone, Blowtorch's attorney then announces that, despite the election results, coders will not be represented by a union as the company was sold to its competitor, "Chumhum." Having reached the end of the hour, no issues involving successorship were addressed to the ALJ.

Meantime, a secondary storyline followed the interest of Lockhart Gardner's support staff employees in becoming unionized, after learning about the workplace demands that Alicia and Cary were making on behalf of the computer coders and the protection afforded employees who are organizing. Once the firms' partners get wind of the organizing, they hold a meeting, at which outspoken partner David Lee describes the assistants as being engaged in an "insurrection" and that they needed to be fired. In the end, the partners decide to hear out the assistants' demands. At a subsequent meeting, the support staffers ask Alicia and Lee for earlier retirement vesting, work schedule flexibility, and pay raises. Lee responds by threatening to terminate his own secretary. Then at a subsequent partners' meeting, Lee suggests that the firm fire the ringleaders. Alicia notes that this course of action could lead to years of litigation, to which Lee responds to the recently promoted partner "You're management now." In the end, the firm promotes the two leaders of the assistants' organizing campaign to Staff Coordinators and permits them to telecommute. The action ends the employees' unionization efforts.

How did the fictionalized account of the NLRB hold up to reality? The episode certainly was an entertaining hour of television, but did not let facts get in the way of a good story. Labor law practitioners could note a number of inaccuracies in the depiction of the Agency's proceedings. Among them was the elimination of NLRB charge and petition filing, as well as its investigatory process. In addition, the hearing before the Judge obviously moved at a pace far faster than the norm, and apparently removed any appeal right the parties had to the Board itself. The ALJ also was vested with Section 10(j) authority that belongs to U.S. District Courts, given his immediate reinstatement of the unlawfully terminated employees. Moreover, ALJs who hear representation cases and direct elections typically would leave the details of the election to the discretion of the Regional Director, and it is highly unlikely that any election could be set up in 24 hours. (The ALJ also permits the parties to call him by his first name and states on the record that he will "split the baby" at one point, conduct this author never has observed in an NLRB hearing.) Finally, the position of field attorney appeared to have been eliminated from the NLRB, since no Counsel for the General Counsel was ever present or heard from in the hearing room with Alicia.

Region 13 Staff Update

Regional management has undergone a number of recent changes. **Kate Gianopulos** has been promoted to Supervisory Field Examiner, following **Dan Nelson's** promotion to Assistant to the Regional Director. **Catherine Jones** has been promoted to Office Manager, and **Sara McGill** has been promoted to Assistant Office Manager. In addition, Field Attorney **Catherine Homolka** also transferred to Chicago from the Minneapolis Regional Office. Interns **Chris Eby** and **Kurt Wakefield** have joined the office for the summer.

Board Agents Go Back to School

By Jason Patterson, Field Attorney

On January 31, 2013, Field Examiners Jay Greenhill and Catherine Schlabowske and Field Attorney Jason Patterson spoke on behalf of the Region to a group of 20 students at the University of Illinois School of Labor and Employment Relations in Champaign, Illinois. The students are completing a three semester program geared towards preparing students for careers in human resources and industrial relations. The Board Agents covered a variety of topics including the history and mission of the NLRA and NLRB; an overview of several sections of the Act; investigative and representational case processing; the litigation process; the impact of social media in labor relations; and life as a professional in a federal agency.

As alumni of the University of Illinois, the Board Agents also had an opportunity to speak with professors and administrators in an effort to maintain a strong relationship with the institution. The event was sponsored by the University of Illinois Student Chapter of SHRM.

PROTECTING WORKPLACE DEMOCRACY

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