



NLRB Region 6

Outreach

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Acting Regional Director's Corner

Happy New Year! Since April of last year, I have been extremely busy as the Regional Director of Region 3, Buffalo and the Acting Regional Director of Region 6, Pittsburgh. Much of my time during these last 8 months has been spent traveling between the two Regions and trying to provide the best customer service possible in both jurisdictions. I have been greatly aided in this effort by the hardworking and dedicated staffs of both offices who rose to the occasion and filled in wherever and whenever necessary. For their efforts I am truly grateful. I am also grateful to the members of the labor bar in both Regions, as well as the unions and employers who voiced their support for each Regional Office. I am happy to say that the Agency has posted and will soon fill the position of Regional Director in Region 6, having decided that consolidation was not the best course of action. I will remain as Acting Regional Director for Region 6 until a new Regional Director is selected. Both Regions have had their geographical jurisdictions extended, with Region 6 assuming responsibility for Allegany and Garrett Counties in Maryland, Highland County in Virginia and the additional counties of Clay, Fayette, Grant, Hardy, Mineral, Nicholas, Pendleton, Raleigh, Wyoming in West Virginia.

The Board has been busy issuing decisions that will impact our customers and we have outlined some of the more important cases in this newsletter. On May 8, 2015, Region 3 will be co-sponsoring with Cornell University's ILR School and The New York State Bar Association, a conference at SUNY Buffalo's Center for

- **Make Sure to Use the NLRB E-Filing System**
- **Two Recent Board Decisions**

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File Charges And Petitions Using Fillable Forms From The NLRB Website

- **Filing Information**
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NLRB staff are available to speak to service, education and advocacy organizations

Filing Information

How to file an unfair labor practice charge and representation petition with the NLRB

[How to File an Unfair Labor Practice Charge](#)

Anyone may file an unfair labor practice charge with the NLRB. To do so, they must

Tomorrow. The Chairman of the Board, the General Counsel, Ethics Counsel and additional Board members are going to be speaking about recent developments and we expect to have a very enlightening agenda so please save the date. We will have a Practices and Procedures meeting after the conference. CLE credits will be available for attendees. All are welcome and I look forward to seeing you there.

Rhonda P. Ley, Acting Regional Director

Region Six Has Two New Field Examiners

Dee Moeller began her employment with Region Six as a group secretary, and was happy to put her secretarial and administrative skills to use. Through the years, she learned the processes of the Board and became confident in her ability to assist the professional staff. Dee enjoyed her duties and provided the same meticulousness in mailing out a charge as she did in preparing a brief and exceptions to the Board.

After some personal searching and with the support of her family and supervisors, Dee applied for the Bridge Program. From the outset of the Program, Dee understood that she had much to learn about the professional aspects of processing petitions and investigating cases. Dee didn't realize how it would feel to be back at square one and to re-enter the academic world. It never entered her mind that her children would be encouraging her the same way she had encouraged them during their college years. But Dee unexpectedly found this portion of the Program refreshing and stimulating. Eventually, Dee began to embrace the intellectual challenges presented by her professors. Today, she appreciates the course work portion of the Program and finds herself applying this new knowledge in processing cases.

Dee was assigned mentors and supervisors who almost immediately exposed her to the professional aspects of casehandling. She can vividly recall the thrill and the rush of securing that first election agreement and the time that she articulated her goal of taking the *perfect* affidavit. There have also been times when Dee has wondered what she got herself into. While never thinking of quitting the Program, she had to recall the thoughts surrounding her original soul search and decide to be resolute in confronting the challenges. The duties of a Field Examiner are not easy, but Dee deems this to be the most invigorating time of her NLRB career. Dee has realized that it is interesting to meet and assist individuals from all walks of life and that legal research is actually satisfying. It may sound clichéd, but Dee wants to be a good reflection of a public servant to everyone she meets—from IO duties to election agent to investigator on unfair labor practice charges. Dee completed the Bridge Program in August 2014 and is happy that she persevered. There are often times when Dee feels as though she must pinch herself and remember that this was all not a dream. Dee says, "I did it; I am a Field Examiner!"

Stephanie Smith transferred to Region Six in July 2014 after working in Region 7, Detroit. Stephanie received an undergraduate degree in Human Resource Management from Robert Morris University and a Master's degree in Industrial and Labor Relations from Indiana University of Pennsylvania. In 2004, Stephanie began her employment with the NLRB as a co-op in Region 3, Buffalo. After her co-op, she was hired as a Field Examiner in Region 7, Detroit where she worked for 9 years. Stephanie describes the labor relations

submit 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.

You must file the charge within 6 months of the unfair labor practice.

When a Charge is Filed

The NLRB Regional Office will investigate. The charging party is responsible for promptly presenting evidence in support of the charge. Usually evidence will consist of a sworn statement and documentation of key events.

The Region will ask the charged party to present a response to the charge, and will further investigate the charge to establish all facts.

For the best service and to conserve government resources

atmosphere in Detroit as contentious, noting that many of her cases there involved protests, strikes and picketing. While Stephanie finds the atmosphere in Pittsburgh to be less confrontational, the work is just as meaningful.

Stephanie and her husband, Reggie, are both from suburbs of Pittsburgh and desired to move back to the area. Stephanie loves to travel and is an avid runner. As a result of her husband's work as a NCAA referee, she is also a sports fan!

Litigation News

ALJ Decisions

In a 120-page Decision, JD-62-14, issued on November 14, 2014, Administrative Law Judge Mark Carissimi found that **UPMC Presbyterian Shadyside Hospital** violated the Act by threatening and coercing employees in the exercise of their Section 7 rights, discriminating against employees because they engaged in lawful union activities and retaliating against employees because they participated in previous NLRB cases. ALJ Carissimi's Decision, which encompasses 22 separate charges that SEIU Healthcare Pennsylvania filed against UPMC and its Subsidiary, UPMC Presbyterian Shadyside Hospital, Single Employer, d/b/a UPMC Presbyterian Hospital and d/b/a UPMC Shadyside Hospital, was based evidence taken during 19 days of hearing.

The ALJ's Decision is limited to the merits of the case, as ALJ Carissimi previously issued an Order bifurcating the matter into two phases, one involving the issue of UPMC's status as a Single Employer with UPMC Presbyterian Shadyside Hospital, and the other involving the allegedly unlawful conduct. No date has been scheduled yet for the single employer phase, as a subpoena enforcement action is currently pending in the Third Circuit Court of Appeals.

The alleged unfair labor practices arose in the context of the Union's ongoing organizing campaign among the Employer's non-clinical support employees. Judge Carissimi noted in his Decision that the Employer has openly declared its opposition to the employees' organizational efforts since at least the spring of 2012. He additionally observed that this case, commonly referred to as "UPMC II," is not the first Board litigation based on the Employer's response to the Union's organizing drive. The matter commonly referred to as "UPMC I" (Case 6-CA-081896), was settled in February 2013 by a non-Board agreement and an informal Board Settlement Agreement that provided for the reinstatement of two employees, rescission of various policies, and the posting of an appropriate Notice to Employees. The remainder of the UPMC I allegations, involving other system-wide policies, were litigated before ALJ David I. Goldman. Judge Goldman issued a decision that was favorable to the Region.

ALJ Carissimi found that the Employer's unfair labor practices in UPMC II occurred across departmental lines at both Presbyterian and Shadyside Hospitals. Individual instances of Section 8(a)(1) violations included the following conduct: coercively interrogating employees about their union activities; threatening to discipline employees for refusing to participate in unlawful interrogation; impliedly threatening an employee with a poor evaluation because of her union activities; instructing employees that they were not allowed to post any union materials on bulletin boards; coercively requiring employees to write statements concerning their union activities; demanding employees' consent to be photographed and photographing employees engaged in union activities; discriminatorily prohibiting employees from wearing union

please submit your evidence by electronically filing all documents on the NLRB E-filing system.

After a full investigation, the Region will determine whether or not the charge has merit.

After the Region Makes a Determination

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.

If the Region determines that a charge has merit—that the charged party has violated the Act—it will attempt to settle the case. Unless there is a settlement, the Region will proceed to trial to obtain a finding of a violation and an order directing the charged party to undertake remedial actions. The charged party has appeal rights, including a right to a hearing, with a final decision subject to appeal to a federal court.

Remedies for Violations

When there has been a violation, the Act does not impose fines or other direct penalties. Rather, it requires remedial action to

insignia in patient care areas while permitting employees to wear insignia regarding other entities not related to the hospital in patient care areas; and prohibiting employees from wearing union insignia in non-patient care areas.

Additional Section 8(a)(1) violations arose from a single incident at the Presbyterian Hospital cafeteria on February 21, 2013, when union organizers were meeting with employees to discuss the terms of the settlement agreement in UPMC I. ALJ Carissimi concluded that the Employer violated Section 8(a)(1) of the Act by denying nonemployee organizers access to its cafeteria by causing the police to remove them while permitting other visitors and guests to use the cafeteria; engaging in surveillance of conversations and meetings between employees and union organizers; and engaging in surveillance of employees meeting with union organizers by requiring employees to produce identification. In addition to finding multiple Section 8(a)(1) violations, the ALJ also concluded that the Employer violated Section 8(a)(2) of the Act by forming, assisting and dealing with an unlawful employee participation committee, called the “ESS Employee Council.” Relying on *Electromation, Inc.*, 309 NLRB 990 (1992), enf. 35 F.2d 1148 (7th Cir. 1994), and its progeny, ALJ Carissimi found that the ESS Employee Council was a labor organization under Section 2(5) of the Act which existed, at least in part, for the purpose of dealing with the Employer concerning the terms and conditions of the employees’ employment and that the Employer dominated the committee. To remedy this violation, the judge ordered the Employer to withdraw recognition from, and completely disestablish, the ESS Employee Council.

Turning to the Employer’s alleged discriminatory conduct, ALJ Carissimi concluded that the Employer violated Section 8(a)(1) and (3) of the Act when it issued disciplinary warnings to employees Felicia Penn, Albert Turner, Leslie Poston, Chaney Lewis and Jim Staus; suspended Poston; and placed Staus on a Performance Improvement Plan, all in retaliation for their union activities. The ALJ did not find that the Employer acted unlawfully by issuing a disciplinary warning to another employee. The judge ordered the Employer to rescind all of the discriminatorily issued disciplinary warnings, and to expunge from its records all references to the unlawful warnings.

Most notably, ALJ Carissimi found that all four of the discharges alleged in the Complaint were unlawful. Specifically, the judge determined that the Employer terminated the employment of Finley Littlejohn, Ronald Oakes, Jim Staus and Albert Turner because they engaged in lawful union activities. As to each of these employees, ALJ Carissimi reasoned that the named employee engaged in protected concerted activities, the Employer knew of the employee’s support for the Union, and the Employer bore animus toward the employee’s union sympathies and activities. Applying the Board’s well-established framework for analyzing discriminatory conduct, as set forth in *Wright Line*, 251 NLRB 1083 (1980), the judge concluded that the Employer would not have discharged the named employees in the absence of protected conduct.

Finally, with respect to discriminatees Lewis and Oakes, the ALJ concluded that the Employer violated Section 8(a)(1) and (4) of the Act when it issued a final written warning to Lewis and discharged Oakes. Both of these employees were alleged discriminatees in the UPMC I and both had actively participated in the Board’s processes during that case. In finding the Section 8(a)(4) violations, ALJ Carissimi noted, as mentioned above, that the Settlement Agreement in UPMC I required the Employer to reinstate Oakes after his first discharge.

correct the violation and its effects.

NLRB Remedies require those who have violated the Act to cease 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.

How to File a Representation Petition

Filing NLRB representation petitions can be simple and convenient. An NLRB Information Officer can assist you in completing a petition form. Our contact information is on page seven.

If you complete the petition yourself, keep in mind these helpful tips:

- Know which Regional office will handle your petition. Region 6 covers 41 counties in Pennsylvania, 35 counties in West Virginia, 2 counties in Maryland and 1 county in Virginia.
- You may prepare your

To remedy for these unfair labor practices, the ALJ ordered the Employer to offer reinstatement to all four of the discharged employees. Additionally, the Employer was directed to make whole discriminatees Oakes, Turner, Littlejohn, Staus and Poston for any loss of earnings and benefits that they suffered as a result of the Employer's unfair labor practices. Consistent with the Board's recent decision in *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014), the judge ordered the Employer to compensate the discriminatees for the adverse tax consequences, if any, of receiving lump sum backpay awards.

Beyond these traditional remedies for unfair labor practices, the judge ordered a noteworthy extraordinary remedy: a public reading of the Notice to Employees. The ALJ reasoned that the special remedy is warranted because the Employer "has responded to the Union's organizing campaign with extensive and serious unfair labor practices," including numerous violations of Section 8(a)(1) of the Act, the formation and domination of the ESS Employee Committee in violation of Section 8(a)(2) of the Act, and the unlawful discipline and discharge of employees in violation of Section 8(a)(3) and (4) of the Act. The ALJ concluded that a public Notice reading to the employees whom the Union is seeking to represent will "appropriately ameliorate the lasting impacts of the Respondent's coercive conduct."

Relying on the Board's decision in *Hickmott Foods*, 242 NLRB 1357 (1979), and referencing his "broad discretion in terms of fashioning an appropriate remedy," ALJ Carissimi also issued a broad order requiring the Employer to refrain from violating the Act "in any other manner." This language replaces that of the more typical order, which requires only that the charged party refrain from engaging in conduct that violates the Act "in any like or related manner." Judge Carissimi denied the GC's requests for certain other extraordinary remedies, including an extended Notice-posting period, permission for employees to post union literature and notices on bulletin boards at the Employer's facilities and Union access to public areas of the Employer's facilities, with the right to speak to employees during their non-working time.

Both of the parties and the GC have filed Exceptions to various findings made by ALJ Carissimi. Meanwhile, the single employer phase of the UPMC II case will be scheduled for hearing once the single employer subpoena dispute is resolved through the Federal Courts. Stay tuned as this long-running story develops.

On October 3, 2014, Administrative Law Judge (ALJ) David I. Goldman issued a decision in ***A. J. Myers and Sons, Cases 06-CA-119505***, JD-59-14, finding that Respondent, a school transportation company based in Kittanning, Pennsylvania, violated Section 8(a)(5) of the Act by refusing to recognize and bargain with the Amalgamated Transit Union Local 1738. Notably, the ALJ found that under Board law, Respondent was a *Burns* successor, even though Respondent took over only a portion of its predecessor's operations. Respondent A. J. Myers and Sons received the contract to provide school transportation services to the Greater Latrobe Area School District beginning in the 2013-2014 school year. The predecessor, First Student, had long provided these same services, as well as services to other school districts and entities, from its terminal located in Latrobe. Upon receiving the Latrobe schools

petition on our website at: www.nlr.gov (filing instructions detailed).

- Know the job titles used by the Employer and the employee shift schedules.
- Provide the Region with authorization or membership cards (or other proof of interest) signed and dated by at least 30 percent of the employees in the petitioned-for unit.
- Although more than 90% of elections are conducted pursuant to election agreements, be prepared for a hearing by knowing: (1) the employer's operations; (2) the community of interests of various employee job categories; and (3) who the "supervisors" are. Hearings are typically held 10-14 days from date of filing.

contract, Respondent opened a school bus terminal in Latrobe and hired its workforce for that terminal. The workforce consisted of only a portion of the former First Student employees, but those employees constituted a majority of the newly hired workforce. First Student also continued operations at its Latrobe terminal, serving districts other than the Greater Latrobe Area School District, and continuing to employ a remaining portion of its former bargaining unit.

In these circumstances, when the Union requested recognition and bargaining with Respondent A. J. Myers, Respondent was found to have unlawfully refused to recognize and bargain with the Union.

On September 20, 2013 ALJ Mark Carissimi issued **Alcoa, Inc. and its subsidiary Alcoa Commercial Windows d/b/a TRACO**, JD-66-13. The Complaint alleged that the Employer unlawfully prevented union represented persons from passing out USW organizing leaflets in the TRACO parking lots in Cranberry, PA. Union organizers and employees of Alcoa, Inc. from Iowa and Indiana went to the TRACO plant in September 2011 to pass out leaflets to TRACO employees. TRACO denied the employees of Alcoa from the Iowa and Indiana plants access to its parking lots on the ground they were not employees of TRACO. The Complaint also alleged that TRACO's plant manager had spied on some of the union leafletters who were positioned off the TRACO property.

The right of access to the TRACO parking lots and other exterior portions of the plant was the key issue at the hearing held in July 2013. The Board had long held that off duty employees of a company have the right to engage in organizing activity on company property. In 2001, the right of access was more broadly defined in the *Hillhaven Highland House*, 336 NLRB 646 (2001), enf. sub nom., *First Health Care Corp. V. NLRB*, 344 f.3d 523 (6th Cir. 2003), to include employees of a company who work at a different facility of that company. However, the precise question the Board has never spoken to is the one central to this case — do employees of another employer have the right of access to the property of a company under certain conditions. That condition is where two nominally separate employers constitute a "single employer" because they have a substantial degree of closeness based on some combination of common ownership and management, an interrelationship of operations and centralized control of labor relations.

Alcoa argued that it and TRACO were not a single employer under Board law and, even if they are, that the Board should not extend the right of access to employees of a different employer under any circumstances. The General Counsel successfully argued to the ALJ that Alcoa and TRACO are a single employer and that employees under the single employer umbrella have the same right to access as do employees of a lone business entity with multiple locations. The ALJ also found that TRACO's plant manager had interfered with employee rights by engaging in surveillance of the leafletters. JD-66-13

Alcoa filed exceptions with the Board to the ALJ's rulings against it in October 2013. It also argued in its appeal that, when the Complaint issued, the Acting General Counsel at the time had been unlawfully appointed by President Obama. The appeal is still pending.

- Be prepared for the election to be conducted within 42 days from the date of filing.
- Always call the assigned Board agent with questions or concerns.

Contact the Region

There is always an information officer available at an NLRB Regional Office to answer general inquiries or to discuss a specific workplace problem or question. The information officer can provide information about the Act and advice as to whether it appears to be appropriate to file an unfair labor practice charge or representation petition. If filing a charge or petition does appear to be appropriate, the information officer can assist in completing the form.

The information officer at Region 6 may be reached by telephone at:

1-866-667-6572
(Toll free)

Or

412-395-4400

Se habla español

A Representation Case of Interest

In *The Pennsylvania Cyber Charter School* (06-RC-120811), the PA Cyber School Education Association, PSEA/NEA, filed a petition to represent all virtual classroom instructors employed by the Employer. Because the National Labor Relations Act excludes “any state or political subdivision thereof,” a hearing followed in which raised the issue of whether this charter school was a political subdivision, thus precluding Board jurisdiction.

To establish jurisdiction in such a case, it must be determined that the school is not a “political subdivision” of the Commonwealth of Pennsylvania under the Supreme Court’s standard set forth in *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971). Under the *Hawkins County* decision, an entity is a political subdivision if it is created directly by a state so as to constitute a department or administrative arm of the government, or if it is administered by individuals who are responsible to either public officials or to the general electorate.

By application of the principles of *Hawkins* and the Board’s decision in *Chicago Mathematics & Science Academy Charter School*, 359 NLRB No. 41 (2012)(*CMSA*), the Regional Director concluded that the Employer was not a political subdivision. Specifically, it was determined that the charter school was not created by the Commonwealth but by individuals, and that no local or state officials had involvement in the selection or removal of any members of the Employer’s governing Board of Trustees, or in the hiring of the Employer’s staff. Accordingly, jurisdiction was asserted and an election followed. The Board denied the Employer’s request for review in a 2 to 1 decision.

Although neither this case nor *CMSA* establishes a “bright line” rule that all charter schools will necessarily be subject to NLRB jurisdiction, the factors that contributed to the pertinent findings here are largely statutory, and may compel a similar conclusion for other charter schools in Pennsylvania.

Practice Tips for the Practical Practitioner

Region Six’s Office hours are from 8:30 am to 5:00 pm Monday through Friday, excluding Federal Holidays. Each day there is a professional designated to serve as an information officer ready to assist the public and practitioners with questions about filing unfair labor practice charges and/or petitions. If you have any questions about the Act or filing documents with the Agency, please do not hesitate to contact our office and ask to speak to an information officer. The number to call for assistance is (412)395-4400.

To expedite the filling and processing of charges and petitions, the Region suggests that you submit the charge/petition with all of the information requested on the form completed. Missing information may cause a delay in docketing your charge/petition. For example, if the type of alleged unfair labor practice is not evident from the body of your charge, it may be necessary for one of our agents obtain this information from you before we can docket the charge/petition. If you are unwilling to state with specificity the allegations being alleged on the body of the charge, you are encouraged to include a separate statement identifying the specific unfair labor practice alleged. By doing so, you can avoid a delay in docking your charge, since this information is

Speakers Available

Members of the Region's staff are available to make presentations before any unions, employer organizations, social service organizations, high school or college classes and others interested groups. We are happy to describe the Act's protections, how the Region investigates and decides unfair labor practice cases and processes representation petitions, and other NLRB topics of interest. To arrange for a speaker and to discuss possible topics, call Patricia Daum at (412) 395-6367.

Recently, Region 6's staff spoke to groups of union stewards about the process of filing an unfair labor practice charge and what occurs when a charge is filed. Other presentations have been given on contract violations vis-à-vis unfair labor practice charges, and collective bargaining issues. We have also spoken before college classes providing an outline and history of the National Labor Relations Act and

required in order to complete the docketing of any charge in our electronic case filing system.

Another practical tip for the smooth and efficient processing of your charge/petition is to make sure that you allow sufficient time before the end of the business day to complete the electronic docketing process, including service of the charge on all parties by mailing copies together with the appropriate cover letter. Charges or Petitions that arrive after 4:30 pm may not be served until the next business day. Please also keep in mind that there is a 6-month statutory period for the timely filing and service of charges and it is ultimately the Charging Party's obligation to timely serve the charge upon the Charged Party.

Charging Parties are also asked to make sure that witnesses are available for interview within seven days after the charge is filed. While there will be exceptions to every rule, a quick start to the investigation fosters an atmosphere where all parties have time to fully articulate and support their positions. All parties are encouraged to electronically file documents in their cases. The only documents that may not be electronically filed are charges, petitions, petitions for advisory opinions and documents more than 20 megabytes in size. [An average Microsoft Word created document of 100 pages, not plain text, could be about 872 Kilobytes. There are 1,024 Kilobytes in a megabyte. So, setting aside video clips, photographs and audio recordings, all of which require greater bytes than a text filled document, a 20 megabyte limitation should not prohibit the electronic filing of most documents.] By following these simple guidelines, you can help ensure that your case is processed quickly and efficiently. Look for more practice tips in our next Newsletter where we will talk about effective position statements.

Make Sure to Utilize the NLRB E-filing System

The NLRB E-Filing system provides an easy way to electronically file most case documents. You may **not** E-File unfair labor practice charges, representation petitions, or petitions for advisory opinions.

For consolidated cases, it is sufficient to E-File the document solely under the lead (lowest) case number in order to file your document in all the cases. If you wish to file your document in fewer than all of the consolidated cases, file the document separately under each case number that applies.

The case number is required for all documents uploaded through the E-File system. The lead case number should be used for all documents when applicable. Please enter the case number for the document you are E-Filing. The Case Number must be in the format 2 digits dash 2 characters dash 6 digits (##-XX-#####).

The E-filing system accepts most documents allowed under Board rules, including: Answer to Complaint/Compliance Specification, Appeal Filings, Amicus Brief or Reply to Amicus Brief, Post Hearing Brief, Briefs in Support of Motions, Disclaimer of Interest, EAJA Applications, Evidence, Excelsior List, Exceptions or Cross Exceptions, Exhibits, Extension of Time Request, Formal Settlement Agreement, Letter, Motions, Oppositions to Motions, Replies to Oppositions to Motions, Motion to Stay Election, Notice of Appearance, Objections to Election, Petition to Revoke Subpoenas or Response, Position Statement, Request for

explaining the structure of the National Labor Relations Board. We have even conducted mock representation elections in front of law and graduate students.

Review and Oppositions to a Request for Review, Request for Special Permission to Appeal, Requests to Proceed with Election, Questionnaire, Settlement Agreement, Service Documents and Withdrawal Request.

E-filing results in better customer service because your documents are delivered directly to the electronic case file, you receive confirmation that your document was filed and the filing hours are extended past regular office hours to 11:59 pm. Eastern time.

Two Recent Board Decisions

In *Purple Communications*, 361 NLRB No. 126 (Dec. 11, 2014), the Board held that employees have a statutory right to use their employer's e-mail system for statutorily protected communications on nonworking time if they have been granted access to the e-mail system in the course of their work.

In *Babcock and Wilcox Construction Co*, 361 NLRB No. 132 (Dec. 15, 2014), the Board decided to modify the deferral standard and ruled that it will defer action on an unfair labor practice charge to an arbitral decision if the party urging deferral shows that: (1) the arbitrator was explicitly, either in the collective bargaining agreement or by agreement of the parties in the particular case, authorized to decide the unfair labor practice issue; (2) the arbitrator was presented with and considered the statutory issue, or was prevented from doing so by the party opposing deferral; and (3) Board law reasonably permits the award. The Board found that prospective application of this standard to be proper, and that the burden of proving that deferral is appropriate is properly placed on the party urging deferral. This modified framework is intended to rectify the deficiencies in the current deferral standard in a way that provided greater protection of the employees' statutory rights while, at the same time, furthering the policy of peaceful resolution of labor disputes through collective bargaining.