NLRB Region 6 *Outreach*

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National Labor Relations Board, Region 6

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NLRB WEBSITE Allows Public to Search for the Status of Cases

From the Director's Chair

The Region and the Agency continue to experience many changes. Change seems to be constant.

The Region was well prepared to implement the amended R-Case rules last

Spring. Many of you attended our training program held in Pittsburgh on May 2. The Region opened two R-Case hearings under the new rules and then on May 14, the District Court for the District of Columbia ruled that the amended rules were invalid because no quorum ever existed for the pivotal vote in question on the amended rules. The Board filed a Motion for Reconsideration to alter or amend the Judgment, but it was denied. We continue to operate using the previously existing R-Case rules.

There are currently four members of the Board. Both Chairman Mark Pearce and Member Brian Hayes are serving on confirmed appointments. Members Richard Griffin and Sharon Block have been serving on recess appointments since January 2012. Terry Flynn, who was also serving on a recess appointment, resigned in July.

Region 6 has been helping Region 12, Tampa, with a compliance case involving the *Raymond F. Kravis Center for the Performing Arts* in West Palm Beach, Florida. In July, Region 6 issued a Compliance Specification that calculates the Center owes about $2.6 million in backpay and benefits contributions plus interest that continues to accrue, to several hundred union members. The Compliance "Spec" has been consolidated for trial with ULP charges in Region 12 and the trial is scheduled to open in late October in West Palm Beach. Region 6 will handle the Compliance Specification portion of the hearing and Region 12 attorneys will handle the ULP allegations.

Point Park University, Case 6-RC-012276, involves an issue of whether the University faculty members are statutory employees or rather excluded managerial employees, consistent with the Supreme Court's decision in *NLRB. v. Yeshiva University, 444 U.S. 672 (1980)*. This case has been pending before the Board for several years and on May 22, 2012, the Board issued a Notice and Invitation to file briefs, asking that the briefs address some or all of eight questions. Many interested parties filed briefs and the issue is back under consideration by the Board.

Oral argument is scheduled for September 19 before the Third Circuit Court of Appeals in *Grane Healthcare and Ebensburg Care Center LLC d/b/a Cambria Care Center* to enforce a final Board Decision and Order issued on November 30, 2011, reported at *357 NLRB No. 123*. We will be able to report the results of that litigation in our next newsletter.

Bob Chester, Regional Director

Court Actions Impact Rules Issued By Board

Under a rule promulgated by the NLRB, most private sector employers were to be required, effective April 30, 2012, to post a notice advising employees of their rights under the National Labor Relations Act. (The original effective date had already been postponed once.) The notice was to be posted in a conspicuous place, where other notifications of workplace rights and employer rules and policies are posted. Employers also were to publish a link to the notice on an internal or external website if other personnel policies or workplace notices are posted there.

However, the DC Circuit Court of Appeals *temporarily enjoined* the NLRB's rule, which will not take effect until the legal issues are resolved. There is no new deadline for the posting requirement at this time.

How to File an Unfair Labor Practice Charge

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

After a full investigation,

Although the posting has been delayed, the Agency's website contains substantial information about the posting, including a detailed discussion of which employers are covered by the NLRA, and what to do if a substantial share of the workplace speaks a language other than English. You may also read a copy of the rule requiring the posting, and download and print the notice.

In response to a DC District Court decision issued in May, 2012, the NLRB temporarily suspended the implementation of changes to its representation case processes, which had taken effect April 30.

Board Chairman Mark Gaston Pearce said, "We continue to believe that the amendments represent a significant improvement in our process and serve the public interest by eliminating unnecessary litigation." He went on to say, "We are determined to move forward."

Acting General Counsel Lafe Solomon withdrew the *guidance to Regional offices* he issued prior to the effective date, and advised Regional Directors to revert to their previous practices for election petitions.

About 150 election petitions were filed under the new procedures. Many of those petitions resulted in election agreements, while several went to hearing. All parties involved in the 150 cases were contacted and given the opportunity to continue processing the case from its current posture rather than re-initiating the case under the prior procedure.

www.nlrb.gov

Continuing series of informational articles about the Agency's electronic portal.

NLRB WEBSITE allows public to search for the status of cases

Are you wondering if that charge you filed last October is still active? The new NLRB website has the answer. It allows the user to find a case based on certain search criteria. On the Home page, click "Find a Case Page." The associated icon is a magnifying glass. The resulting search page allows you to find a case by case number, case name (the employer name for a charge against the employer or the union name for a charge against a union), city, state, year filed or any combination of the above. The search will output the case or cases which match your criteria.

To review a particular case, click the case number. What is revealed for that case is information in the following categories: Case Details, Allegations, Docket Activity, and Participants.

- Case Details lists the Region to which the case is assigned and its current status (open or closed). The allegations are listed in standard Agency language, such as "8(a)(3) Refusal to Consider/Hire Applicant."
- Docket Activity will list the disposition actions, if any. For example, if a dismissal letter has issued, its date will be noted. In addition, a redacted copy of this letter is available for review.
- Listed under Participants are the name of the Charging Party, the Charged Party, and their legal representatives. Contact information for the parties is provided to the extent it existed on the original charge.

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 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.

NLRB Launches Protected Concerted Activity Webpage

In June, the NLRB made public a new webpage describing the rights of employees to act together for their mutual aid and protection. This page, available at www.nlrb.gov/concerted-activity, or by going to www.nlrb.gov and clicking the "rights we protect" tab, tells the stories of recent cases throughout the country involving protected concerted activities.

Just click on the markers on the site's map of the United States to read about these compelling stories. Among them involve incidents such as: A construction crew fired after refusing to work in the rain near exposed electrical wires; a customer service representative who lost her job after discussing her wages with a coworker; an engineer at a vegetable packing plant fired after reporting safety concerns affecting other employees; a paramedic fired after posting work-related grievances on Facebook; and poultry workers fired after discussing their grievances with a newspaper reporter.

The right to engage in certain concerted activities was written into Section 7 of the original National Labor Relations Act in 1935 and has been upheld by numerous appellate courts as well as the United States Supreme Court. Non-union protected concerted activity accounts for 5% of the agency's recent caseload. As NLRB Chairman Mark Pearce has said about this new initiative, "Our hope is that other workers will see themselves in the cases we've selected and understand that they do have strength in numbers."

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 and 26 counties in West Virginia.
- You may prepare your petition on our website at: www.nlrb.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 then 90% of elections are conducted

Regional Roundup

On March 22, 2012, in Case 6-CA-37267, Administrative Law Judge David I. Goldman issued a decision that effectively closed the final chapter on the long-running representational dispute between SEIU and UNITE HERE in Western Pennsylvania. In *Town Development, Inc. t/a Parkway Center Inn, JD-16-12, 2012 WL 983244 (NLRB Div. of Judges)*, Judge Goldman examined whether Parkway Center Inn ("the Employer") violated Section 8(a)(1) and (5) of the Act when it refused to recognize and deal with UNITE HERE Local 57 ("Local 57") as the designated agent and representative of Pennsylvania Joint Board a/w Workers United, SEIU, the Charging Party ("Joint Board"). The ALJ determined that the Employer was obligated to recognize and deal with Local 57 as the Joint Board's servicing agent and ordered it to do so.

In the summer of 2010, SEIU and UNITE HERE entered into a national global settlement agreement designed to resolve an ongoing dispute between the two labor organizations that involved resources, finances and bargaining unit representation. Pursuant to the settlement, the bargaining unit employed at the Employer's hotel, Parkway Center Inn, was to be transferred from the Joint Board to Local 57. When the Employer objected to the transfer, the Joint Board and Local 57 followed the procedure outlined in the SEIU-UNITE HERE global settlement, executing a servicing agreement under which Local 57 would act as the servicing agent for the Joint Board, performing representational duties, including grievance processing, while the Joint Board remained the actual collective-bargaining representative of the unit employees.

The Employer challenged the legitimacy of the servicing agreement, arguing that it was a "sham," and refused to meet with Local 57 representatives or give them access to the Employer's premises for grievance processing and other representational duties. Faced with this refusal, the Joint Board's representatives continued to handle grievances and meet with the Employer as necessary to administer the existing contract.

In reaching his conclusion that the Employer violated the Act by failing and refusing to deal with Local 57 as the Joint Board's designated agent for collective-bargaining, Judge Goldman examined 1) the parties' conduct surrounding the servicing agreement; i.e., whether the Joint Board "bowed out" of its responsibilities or transferred representational status to Local 27; 2) the actual terms of the servicing agreement; and 3) the context in which the servicing agreement was authorized. As to the first factor, the ALJ found that there was no actual conduct to evaluate because the Employer never permitted the servicing relationship to take place. With respect to the actual terms of the servicing agreement, Judge Goldman determined that the agreement appropriately retained for the Joint Board the ultimate responsibility for collective bargaining matters and for fulfilling the duty of fair representation to members of the bargaining unit. Finally, as to the context in which the servicing agreement was authorized, the ALJ rejected the Employer's contention that the servicing agreement was but a "transparent attempt to transfer the Inn's employees to Local 57," noting that there existed legitimate bases for the servicing arrangement and finding that there was no evidence that the Joint Board and/or Local 57 had taken any action "to offend the policies of the Act."

Concluding that the Employer violated the Act, as alleged, Judge Goldman affirmatively ordered the Employer, inter alia, to recognize Local 57 as the

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.

- 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.

servicing agent of the Joint Board, which is the designated collective-bargaining representative of the Unit employees, and upon request by the Joint Board, meet with Local 57's representatives for the purpose of discussing contract administration, including grievance processing. The ALJ also ordered the Employer to post an appropriate Notice to Employees.

The Employer did not file Exceptions to the ALJ's Decision. By Order dated May 22, 2012, the Board adopted Judge Goldman's findings and conclusions. The Employer began posting the Notice to Employees on July 31, 2012.

Even in non-union settings, the NLRA protects employees who engage in efforts to improve their working conditions or who protest employer actions impacting their working conditions. To quote parts of Section 7 of the Act, "Employees shall have the right ... to engage in other concerted activities... for mutual aid or protection." Cases involving employee rights in the non-union setting therefore involve interpreting whether employees are engaged in "concerted" activities, and whether those activities are "for mutual aid or protection." In addition, questions sometimes arise over whether the concerted activities of employees which are for mutual aid or protection are protected – that is whether the activities employees choose to engage in are so disloyal, reckless, or maliciously untrue as to lose the Act's protection.

A recent case litigated by Region 6, *MCPc, Inc., Case 6-CA-063690, JD-30-12, 2012 WL 2071758 (NLRB Div of Judges)* was decided on June 7, 2012 by ALJ Michael A. Rosas. Judge Rosas held that that MCPc ("the Employer") violated Section 8(a)(1) by maintaining an unlawfully overbroad confidentiality policy which stated that "dissemination of confidential information...such as personal information or financial information, etc. will subject the responsible employee to disciplinary action or possible termination" and by discharging the Charging Party because he engaged in protected concerted activity. The case centered on the Charging Party's expression of concern that the Employer had hired an executive at what he assumed, based on internet research, was a very high salary when the Employer was experiencing a shortage of engineers. The Employer accused the employee of accessing confidential records, but could not prove that he had done so. The Employer also belatedly raised concerns about the Charging Party's work performance, but had not used those concerns as reasons for the discharge. The Employer filed exceptions and the Region filed an answering brief. The case is currently before the Board.

In *FirstEnergy Generation Corp. and International Brotherhood of Electrical Workers, Local Union No. 272, AFL-CIO, 358 NLRB No. 96 (2012),* the Board found that the Employer violated the Act by unilaterally implementing a three-year cap on the subsidization of retiree healthcare costs for current employees, despite the Employer's contention that it had a past practice of making such unilateral changes and that the Union had waived its right to bargain. The Board noted, in agreement with the Administrative Law Judge, that the Union had objected to the last major change that eliminated retiree healthcare benefits for new employees, and that the Union's asserted acquiescence in the Employer's annual minor programmatic changes alone would not establish surrender of right to bargain over future changes (citing *Caterpillar, Inc. 355 NLRB 521, 523 (2010), enfd. mem. __F. 3d ___, (D.C. Cir. May 31, 2011)*. The Board also found that, even assuming a past practice of making minor changes, the change at issue was significantly different from previous minor programmatic changes and this change was a "material departure" from any such practice.

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

Recent Board Decisions on Bars, Bannering and Rules

In *Lamons Gasket Company*, *357 NLRB No. 72 (2011),* the Board re-established the recognition bar doctrine and overruled *Dana Corp.*, 351 NLRB 434 (2007). That doctrine bars, for a period of six months to one year, the processing of a representation petition challenging the voluntary recognition of a union by an employer as the exclusive bargaining representative of its employees.

Under *Dana*, employees could challenge a voluntary recognition by filing a decertification petition during a 45 day period following the posting of a notice to employees advising them of that right. In reestablishing the recognition bar, the Board found that a reasonable period to allow the parties to bargain without the interjection of a representation challenge was a period ranging from a minimum of six months to one year. This period dates from the first bargaining session, not the date of the voluntary recognition. The burden of establishing whether the bar period should extend beyond the six - month minimum rests on the party asserting the bar using the "multifactor test of *Lee Lumber.*" Slip op. at 10. The multifactor test of *Lee Lumber* considers: (1) whether the parties are bargaining for an initial contract; (2) the complexity of the bargaining issues; (3) the amount of time since bargaining commenced and the number of sessions; (4) the progress made in negotiations; and (5) whether the parties are at an impasse. Issues under the reestablished recognition bar can be raised in both representation cases and unfair labor practice cases under Section 8(a)(5).

In *UGI - UNICCO Service Company, 357 NLRB No. 76 (2011)* the Board restored the successor bar doctrine that was discarded in 2002. Successor bar had applied in situations where a successor employer recognizes the incumbent union that represented the employees with the predecessor and no other bar to challenging the union's representational status exists. The Board found:

> In such cases, the union is entitled to a reasonable period of bargaining, during which no question concerning representation that challenges its majority status may be raised through a petition for an election filed by employees, by the employer, or by a rival union; nor, during this period, may the employer unilaterally withdraw recognition from the union based on a claimed loss of majority support... Slip op. at 8.

When the successor adopts the existing terms and conditions as the starting point for negotiations, "[t]he reasonable period for bargaining will be 6 months measured from the date of the first bargaining meeting..." Slip op. at 9.

When the successor employer unilaterally establishes initial terms and conditions of employment,

> [t]he 'reasonable period of bargaining' will be a minimum of 6 months and a maximum of one year, measured from the date of the first bargaining meeting between the union and the employer. We will apply the multifactor analysis of *Lee Lumber* to make the ultimate determination of whether the period has elapsed...The burden of proof will be on the party who invokes

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, telephone ARD Mark Wirick at (412) 395 6846.

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. The Region has conducted an open meeting on new R case rules.

The Region routinely addresses college classes and other groups, providing an outline and history of the National Labor Relations Act and explaining the structure of the National Labor Relations Board. We

> the 'successor bar' to establish that a reasonable period of bargaining has not elapsed. *Id*.

One other caveat to the operation of the bar exists. If there was no open period during the final year of the predecessor bargaining relationship and a new contract is reached with the successor during the successor bar period, then the contract bar for the new agreement is two years instead of three.

In *Carpenters Southwest Regional Council Locals 184 & 1498 (New Star), 356 NLRB No. 88 (2011),* the Board found bannering by a union at reserve gates on construction sites did not violate Section 8(b)(4)(B), as the bannering did not constitute picketing necessary to finding a *Moore Dry Dock* violation. The Board found no evidence that the bannering constituted "signal picketing" as there was no work stoppage by any employees, no discussions by union agents about the dispute with any passersby, and handbills accompanying the bannering stated the unions were not urging anyone to refuse to work or deliver goods.

In *Sheet Metal Workers Local 15 (Brandon Medical Center)*, *356 NLRB No. 162 (2011)*, the Board found that displaying a large rat at a neutral's premises and holding out a leaflet with two arms to customers entering the neutral employer's parking lot was not picketing. The Board stated that,

> "because we find that the rat display and Holly's leaflet display did not involve any confrontational conduct, we reject the judge's finding that these displays constitute picketing." Slip op. at 3 (emphasis added).

In finding there was no confrontational conduct, the Board relied on the stationary nature of the conduct, the distance of the conduct from building entrances, and the lack of evidence anyone was accosted by the conduct. In dicta, the Board concluded that the conduct at issue was not signal picketing because it was aimed at consumers rather than employees of any secondary employers.

The foregoing two Section 8(b)(4)(B) cases are very fact specific, and they do not preclude finding that bannering accompanied by other conduct in some situations may constitute "signal picketing" or be coercive within the meaning of Section 8(b)(4)(B). Any confrontational factors associated with the bannering, rat displays or other conduct aimed at neutrals to have them cease doing business with the primary and whether that conduct is aimed at the employees of the neutrals or the public are still relevant considerations.

In *Banner Health System d/b/a Banner Estrella Medical Center*, *358 NLRB No. 93 (2012)*, the Board held that an employer may not maintain a blanket rule prohibiting employees from discussing ongoing investigations of employee misconduct because such rules impede employees' Section 7 rights to engage in concerted activities for their mutual aid and protection, regardless of whether the employees belong to a union.

In a ruling that affects both union and non-union employers, the Board held that employers must show a specific and legitimate business reason for requiring employees to maintain confidentiality during internal investigations of employee complaints.

Banner Health System had an employee complaint system in which employees were routinely advised to keep the matter confidential and not discuss their

have even conducted mock representation elections in front of law and graduate students and faculty.

complaints with coworkers during the course of the investigation. The employer's prohibition was based on a generalized concern with protecting the integrity of the employer's investigation which the Board found insufficient to outweigh the employees' Section 7 rights.

The Board outlined the employer's burden to identify a specific need to protect witnesses, avoid destruction of evidence or fabrication of testimony, or prevent a cover-up, and to do so in each individual case rather than maintaining a blanket approach.

In *Continental Group, Inc.*, *357 NLRB No. 39 (2011)* the Board clarified its analysis regarding when discipline pursuant to an unlawful rule violates Section 8(a)(1). The Board explained that an employer does not violate the Act by disciplining an employee for conduct prohibited by an overbroad rule if the conduct is "wholly distinct" from the concerns of Section 7. However, where discipline is imposed pursuant to an unlawfully overbroad rule for conduct that "touches the concerns animating Section 7," that discipline has a chilling effect on other employees' exercise of protected rights, even if the conduct could have been proscribed pursuant to a more narrowly drawn rule.

The NLRB And Social Media

Employee use of social media as it relates to the workplace continues to increase, raising concerns by employers. As a result, many employers are drafting new or revising existing policies to address these concerns. In an attempt to assist those who have become enmeshed in the quagmire of social media policies, the Acting General Counsel issued a report giving specific examples of employer policies for the purpose of providing guidance in this area. Below are a few cautionary points but be sure to read the full report *OM 12-59,* which is available on the Agency's website.

- Rules that are ambiguous as to their application to Section 7 activity and that contain no limiting language or context to clarify that the rules do not restrict Section 7 rights are unlawful. In contrast, rules that clarify and restrict their scope by including examples of clearly illegal or unprotected conduct, such that they could not reasonably be construed to cover protected activity, are not unlawful.

- Rules are unlawful if they would reasonably be construed to chill the exercise of Section 7 rights. The Board uses a two-step inquiry to determine if a work rule would have such an effect. First, a rule is clearly unlawful if it explicitly restricts Section 7 protected activities. If the rule does not explicitly restrict protected activities, it will only violate the Act upon a showing that: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights.

- Restricting discussion of confidential information, without defining confidential information, may be interpreted as limiting discussions of wages or other terms and conditions of employment, which is unlawful.

- Instructing employees to be sure that their posts are completely accurate

and not misleading and that they do not reveal non-public information on any public site, may not be wise. The term "completely accurate and not misleading" is overbroad because it would reasonably be interpreted to apply to discussions about, or criticism of, areas that would be protected by the Act so long as they are not maliciously false. This is especially true where the policy does not provide guidance as to the meaning of the term by specific examples or limit the term in any way that would exclude Section 7 activity.

- Requiring employees to gain permission before posting may run afoul of the Act. The Board has long held that any rule that requires employees to secure permission from an employer as a precondition to engaging in Section 7 activities violates the Act.

- In the absence of valid explanation, restrictions on using social media to post photos and videos of employees engaging in Section 7 activities would be ill-advised. This includes the restriction of the use of an employer's logo when used while engaging in Section 7 activities.

- Provisions which proscribe a broad spectrum of communications, such as protected criticisms of an employer's labor policies or treatment of employees, run afoul of the law. This includes instructions to employees to think carefully about "friending" co-workers and cautioning employees not to engage in on-line communications with coworkers that would be inappropriate in the workplace, when the instructions are ambiguous as to application to Section 7 rights.

- Policies instructing employees to report any unusual or inappropriate internal social media activity may be seen as encouraging employees to report to management the union activities of other employees.

- Warning employees not to pick fights and to avoid topics that might be considered objectionable or inflammatory limits on-line discussions about working conditions or unionism which have the potential to become heated.

- Likewise, cautions against negative conversations about managers may be unlawful in some contexts because of the potential chilling effect on protected activity.

Although this list of cautions may seem exhaustive, it is not. As you review, revise or write your policy, contemplate the words and keep these questions in mind.

- Does any part of the policy on its face restrict Section 7 rights?
- Can any part of the policy be construed as limiting employees' Section 7 rights?
- Is the policy ambiguous as to its application of Section 7 rights?

Most importantly, for in-depth guidance, see *OM 12-59*.

And, take heart; the report includes a social media policy found to be lawful in its entirety. It can be done!