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July 21 – 25, 2014

Recent NLRB Election Petitions

<u>Company</u>	<u>Location</u>	<u>Union</u>	<u>Employees in Unit</u>	<u>Comments</u>
Allied Die Casting Co	Franklin Park, IL	Production Workers Union of Chicago and Vicinity, Local 707, a/w National Production Workers Union	80	Union organizing
Affiliated Foods Midwest	Norfolk, NE	General Drivers and Helpers Union, Local No. 554	17	Union organizing
Emeritus at Champlin Shores	Champlin, MN	SEIU Healthcare Minnesota	44	Decertification
Ideal Ready Mix Company	West Burlington, IA	Teamsters Local 238, International Brotherhood of Teamsters	10	Union organizing
IUPAT, District Council #58	St. Louis, MO	Office & Professional Employees International Union, Local 13	7	Union organizing
R.S. Owens & Co./Div. of St. Regis, LLC	Chicago, IL	Local 743, International Brotherhood of Teamsters	50	Decertification
Railcrew Xpress, L.L.C.	Lenexa, KS	General Drivers & Helpers Union, Local No. 554	20	Union organizing
Thermal Energy Products, Inc.	Fargo, ND	Heat and Frost Insulators and Allied Workers Local 133	16	Decertification

Recent Unfair Labor Practice Charges

<u>Company</u>	<u>Location</u>	<u>Union</u>	<u>Allegations</u>
Arlington Metals Corporation	Franklin Park, IL	United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union AFL-CIO (USW)	8(a)(5) Refusal to Bargain/Bad Faith Bargaining (incl'g surface bargaining/direct dealing)
Birds Eye Foods, LLC	Darien, WI	United Food and Commercial Workers Union, Local 1473	8(a)(5) Refusal to Bargain/Bad Faith Bargaining (incl'g surface bargaining/direct dealing)

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			8(a)(1) Coercive Statements (Threats, Promises of Benefits, etc.) 8(a)(5) Refusal to Furnish Information
Celadon Trucking Services, Inc. and GSM Transportation, LLC	Janesville, WI	Teamsters Local 695	8(a)(1) Coercive Rules
Childserve	Johnston, IA	Individual	8(a)(1) Coercive Statements (Threats, Promises of Benefits, etc.) 8(a)(1) Coercive Actions (Surveillance, etc.) 8(a)(1) Coercive Rules
Enova Financial a Subsidiary of Cash America International, Inc.	Chicago, IL	International Brotherhood of Electrical Workers Local 1220	8(a)(3) Discharge (Including Layoff and Refusal to Hire (not salting))
Essentia Health	Duluth, MN	United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL-CIO, Local 9460	8(a)(5) Refusal to Furnish Information
Fairview Mesaba Clinics	Hibbing, MN	United Steelworkers, AFL-CIO, CLC	8(a)(3) Changes in Terms and Conditions of Employment 8(a)(5) Repudiation/Modification of Contract [Sec 8(d)/Unilateral Changes]
First Student, Inc.	Normal, IL	AFSCME Council 31, Local 2052	8(a)(5) Repudiation/Modification of Contract [Sec 8(d)/Unilateral Changes] 8(a)(5) Refusal to Bargain/Bad Faith Bargaining (incl'g surface bargaining/direct dealing) 8(a)(5) Refusal to Recognize
G4S Secure Solutions	Palm Beach Gardens, FL	Individual	8(a)(5) Refusal to Furnish Information 8(a)(3) Discipline 8(a)(1) Coercive Statements (Threats, Promises of Benefits, etc.)
Golan's Moving and Storage	Skokie, IL	Teamsters Local 705	8(a)(5) Refusal to Bargain/Bad Faith Bargaining (incl'g surface bargaining/direct dealing)
Gunite Corporation	Rockford, IL	United Auto Workers, Local 718	8(a)(5) Refusal to Bargain/Bad Faith Bargaining (incl'g surface bargaining/direct dealing)
Honeywell International	Metropolis, IL	United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service	8(a)(1) Coercive Rules

		Workers International Union (USW), AFL-CIO, Local 7-69	
Joint Logistics Managers, Inc.	Prince George, VA	Teamsters Local Union 371	8(a)(3) Discipline 8(a)(1) Coercive Statements (Threats, Promises of Benefits, etc.)
Lake Superior Community Health Center	Duluth, MN	Individual	8(a)(3) Changes in Terms and Conditions of Employment 8(a)(4) Changes in Terms and Conditions of Employment 8(a)(5) Repudiation/Modification of Contract [Sec 8(d)/Unilateral Changes] 8(a)(1) Coercive Actions (Surveillance, etc.)
Lewis Bakeries	La Porte, IN	United Steelworkers	8(a)(5) Repudiation/Modification of Contract [Sec 8(d)/Unilateral Changes]
Nevada Corporation d/b/a McDonalds @ 1220 N. 35th St. and McDonalds USA LLC, As a Single or Joint Employer	Milwaukee, WI	Milwaukee Workers Organizing Committee	8(a)(1) Coercive Actions (Surveillance, etc.) 8(a)(1) Coercive Statements (Threats, Promises of Benefits, etc.)
Nevada Corporation d/b/a McDonalds @ 420 E. Capitol D. & 5265 W. Fond Du Lac Ave. and McDonalds USA LLC, As A Single Or Joint Employer	Milwaukee, WI	Milwaukee Workers Organizing Committee	8(a)(1) Concerted Activities (Retaliation, Discharge, Discipline) 8(a)(1) Lawsuits 8(a)(1) Coercive Actions (Surveillance, etc.)
Northview Village	St. Louis, MO	SEIU Healthcare Missouri-Kansas, A Division of SEIU Healthcare Illinois-Indiana	8(a)(1) Coercive Actions (Surveillance, etc.) 8(a)(1) Coercive Statements (Threats, Promises of Benefits, etc.)
Ocean Spray Cranberries	Wisconsin Rapids, WI	Local Lodge 701, International Association of Machinist and Aerospace Workers, AFL-CIO	8(a)(1) Concerted Activities (Retaliation, Discharge, Discipline)
P&H Mining Equipment, Inc.	Milwaukee, WI	Individual	8(a)(1) Concerted Activities (Retaliation, Discharge, Discipline) 8(a)(3) Discipline
Spirit Aerosystems	Wichita, KS	Individual	8(a)(3) Discharge (Including Layoff and Refusal to Hire (not salting))
St. Luke's Hospital, Chequamegon Clinic	Duluth, MN	United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL-CIO, Local 9460	8(a)(5) Refusal to Bargain/Bad Faith Bargaining (incl'g surface bargaining/direct dealing)

Supportive Homecare Options, Inc.	Milwaukee, WI	Individual	8(a)(5) Repudiation/Modification of Contract[Sec 8(d)/Unilateral Changes]
Tavern at the Park	Chicago, IL	Individual	8(a)(1) Concerted Activities (Retaliation, Discharge, Discipline)
Tom Wood Automotive	Indianapolis, IN	Individual	8(a)(1) Coercive Rules
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United States Postal Service	St. Louis, MO	American Postal Workers Union Local 2250	8(a)(1) Coercive Actions (Surveillance, etc) 8(a)(5) Refusal to Furnish Information
United States Steel Gary Works Indiana Plant	Gary, IN	Individual	8(a)(3) Union Security Related Actions
University of Chicago Medical Center	Chicago, IL	Healthcare Professional, Technical, Office, Warehouse, Mail Order, Employees Union, Local 743, Ibt	8(a)(5) Refusal to Bargain/Bad Faith Bargaining (incl'g surface bargaining/direct dealing)
Vinayaka Hospitality Lisle LLC d/b/a Sheraton	Schaumburg, IL	Operating Engineers Local 399	8(a)(5) Repudiation/Modification of Contract [Sec 8(d)/Unilateral Changes] 8(a)(5) Refusal to Furnish Information
Women of Nations	St. Paul, MN	AFSCME Council 5	8(a)(5) Repudiation/Modification of Contract [Sec 8(d)/Unilateral Changes] 8(a)(3) Changes in Terms and Conditions of Employment 8(a)(1) Coercive Actions (Surveillance, etc.) 8(a)(3) Discipline

NLRB Approves Micro-Unit at Suburban Boston Macy's Store

By: Richard H. Wessels, Esq.

In mid-July, the NLRB in Washington ruled that a group of cosmetics and fragrance sales workers at a suburban Boston Macy's store constitute an appropriate voting unit. Naturally, Macy's fought this unit all the way as being far too narrow. There was a strong dissent in the opinion calling for the overruling of the Board's hotly controversial Specialty Healthcare ruling. The NLRB's 3-1 decision in the case upheld an acting Regional Director's decision that the cosmetics and fragrance sales staff in the 41 person unit was appropriate as a voting unit. The Macy's store has a total of 150 employees. 120 of the employees are classified as selling employees. So, the carve-out was for the 41 person micro-unit of cosmetics and fragrance sales employees.

The Specialty Healthcare decision (a 2011 case) raised the bar dramatically for an employer challenging a union's petition for a voting unit. In that case, the Board found that such a unit was appropriate if the employees of the unit constituted a readily identifiable group which shared a community of interest. But, the problem from

an employer's point of view is that the Board changed the burden of proof that had applied literally for generations. They held that a union's petition for a voting group can be overcome only if the party arguing for a larger unit demonstrates that it excludes other workers who share "an overwhelming community of interest." The bottom line here is that the Board has now made crystal clear its intent to approve these micro-units across a broad spectrum of industries. We can look for a flood of small cherry-picked units which will greatly favor a union in an election. This is all part of the pro-union NLRB's perceived mission of making it easier for unions to organize.

So, why is this case important for employers? Here is the simple explanation for those of you who don't deal with this stuff on a day-to-day basis. It is absolutely critical in an organizing campaign to determine who is eligible to vote. Unions will routinely try to define a unit where they have the most support, and therefore the best chance of winning an election. Before Specialty Healthcare, the NLRB pretty much said there was a presumption that a wall-to-wall (or plant-wide) unit was presumptively the voting unit. To get a different unit (presumably more favorable) a union had to show that the smaller unit has a separate and identifiable community of interest. Now, the pro-union NLRB has stood that principal on its head. It's the other way around. Now, the union's proposed voting unit is presumed appropriate, and to get a different unit, the employer has a huge burden (perhaps an impossible burden) of showing overwhelming community of interest by others. Make no mistake about it – this is a big change!

Experienced management-side labor lawyers know what is likely to happen if a union is able to win an election in one of these micro-units. And, they will win frequently because they will have a huge advantage of cherry-picking the voting unit. It is going to be exceedingly difficult for unions to obtain that first contract. There will be massive resistance on the part of employers in the bargaining process. Because unit employees work so closely with others, management will press for strong management-rights language on work assignments, language regarding other employees performing what might be perceived as bargaining unit work, seniority language, job transfer and job assignment language, right to subcontract, etc. It's a bit like fitting a square peg into a round hole and unions will eventually learn this when they find that getting that first contract will be a difficult process indeed. Stay tuned!