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NEWS & ANALYSIS

What? NLRB General Counsel ordered to bargain! – As previously reported in this newsletter, NLRB General Counsel Ronald E. Meisburg was often the target of union handbilling because he refused to recognize and bargain with a unit of approximately 130 NLRB attorneys who report to both Board members and the General Counsel. That dispute was recently resolved when an ALJ with the Federal Labor Relations Authority ordered Meisburg to bargain with the unit. The ALJ ruled that the NLRB had not offered any new evidence or special circumstances warranting a reconsideration of the Authority's earlier decision certifying the consolidated unit.

NLRB poised for changes. – While Senate action to confirm the three Obama nominees to the NLRB remains on hold, Board Chair Wilma Liebman is forecasting an "historic time" for changes in the field of labor law. She has expressed hope that a fully constituted Board will take "a different approach" by being "more flexible" and "less formulaic" in applying the National Labor Relations Act to today's workplaces. She predicts that rulemaking, especially in the area of representation cases, is gaining support, but admits rulemaking is time consuming, involves "lots of hurdles," and is an area in which the Agency does not have much expertise.

EFCA update. – Even though work on a possible compromise version of the Employee Free Choice Act is on hold until after Congress deals with health care and climate change legislation, the Department of Labor has begun the process of enacting nearly 100 new rules and regulations aimed at giving more power to workers and unions. According to Secretary of Labor Secretary Hilda L. Solis, the DOL is "committed to ensuring that workers are paid a fair wage, have a voice in the workplace, are provided a safe workplace and have a secure retirement."

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A key action in the Secretary's regulatory agenda will be proposed regulations to more aggressively implement the public disclosure objectives of the Labor-Management Reporting and Disclosure Act. The current regulations require consultants to file reports with the DOL only if the consultants directly communicate with workers (direct "persuader" activity). Employers are not now required to report on advice they receive from consultants, nor are consultants required to report on advice they provide to employers. For years, unions have pushed for more financial disclosure of management consultation. Rule changes were considered during the Clinton administration, but the Bush administration abandoned these efforts. Solis is expected to define "consultant's advice" more broadly, and many labor law practitioners believe the new rules would lead some companies to avoid hiring outside consultants. Of course, this could significantly hamper management's efforts to combat union organizing propaganda.

Supreme Court will hear two-member Board cases. – The Supreme Court has agreed to consider whether the NLRB has the legal authority to issue two-member rulings in unfair labor practice and representation cases. The appeals courts have split 3 to 1 in favor of recognizing that the two-member Board has such authority. The Supreme Court agreed to review the *New Process Steel* decision from the U.S. Court of Appeals for the Seventh Circuit. In that decision, the Seventh Circuit held that the plain language of Section 3(b) of the NLRA authorized action by a two-member Board. The First and Second Circuits have also upheld the authority of the two-member Board. Unfortunately, the high court did not grant review of the District of Columbia Circuit's decision in *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, which reached the opposite decision. That case is being held in abeyance by the Court. Constangy attorneys **Cliff Nelson** and **Chuck Roberts**, who represent Laurel Baye, have expressed their disappointment in the Court's decision not to consider the two opposite decisions at the same time.

THE GOOD, THE BAD AND THE UGLY

Teamsters Out for Blood? – When contract negotiations between Teamsters Local 929 and the American Red Cross Blood Services of Philadelphia stalled, a work stoppage and picketing followed. When the picketing blocked blood delivery vehicles from entering or leaving the Philadelphia headquarters, the Red Cross took legal action. A Philadelphia court granted an injunction that prohibited the union from any picketing activity that would hinder vehicles from entering or exiting the Red Cross premises, and limited the number of pickets allowed to be within 100 yards of the facility entrances. It was reported that at one point, Red Cross officials had to plead with the Teamsters to allow a vehicle to leave to save the life of a two-year-old child who needed blood to survive. A union spokesman retorted, "That is a crock of BS – we always let emergency vehicles through. That is just an attempt to give the Teamsters a black eye." According to the Red Cross, since the injunction was issued, the number of picketers has diminished. Blood continues to flow in the City of Brotherly Love.

Canadian court upholds Walmart store closing. – After a Walmart store in Quebec was unionized in 2005, Walmart began negotiating with the United Food and Commercial Workers. When the union's staffing demands would have added 30 new workers to the store, which was already struggling economically, Walmart closed the store. The employees filed suit, claiming they lost their jobs because the store was unionized. After the case wound its way through the Quebec legal system, the Canadian Supreme Court upheld the closing. Because Walmart permanently closed the store and terminated its lease on the building, and because "none of the parties . . . now contend that Walmart retains its option to re-open the store . . . it would be a waste of the parties' time and money" to send the case back to the Quebec Labor Relations Commission, the Court reasoned. In a statement, the

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National President of UFCW Canada expressed disappointment that the decision allowed Walmart to squeeze by on a “technicality.”

New nurses’ “super union” to become “organizing machine”? – The much-ballyhooed merger of the California Nurses Association, the United American Nurses and the Massachusetts Nurses Association to form a nurses’ “super union” became a reality on December 7, as the founding convention of National Nurses United adopted a constitution and elected officers. Speaking at the convention to thunderous applause, Karen Higgins, one of the three co-presidents of the NNU, warned health care employers that if “you seek to undermine the rights of one nurse, you’ll now have to answer to every nurse.” Rose Ann DeMoro, Executive Director of the new union, boasted that the NNU will be an “organizing machine” with its top priority to organize all the unorganized nurses in the country. However, DeMoro did not identify any specific targets. In addition to organizing, through legislation and collective bargaining the NNU will seek to achieve nurse-staff ratios in each of the 50 states. To finance the new union, delegates approved a dues structure of \$136 per member per year.

The formation of the NNU was allowed to take place after a federal judge refused to enjoin the merger of the three unions. Officials from the affiliates that opposed the merger did not attend the convention, and it remains unclear whether they will continue their legal challenges to the merger. With a “ruling triumvirate” from three different unions, it will be interesting to see how long the love will continue. As illustrated by the split within UNITE HERE, union mergers that create co-presidents are often short lived.

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