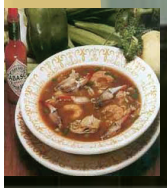
NATIONAL LABOR RELATIONS BOARD

The NLRB GUMBO



Gumbo - a thick, spicy, roux-based soup sometimes thickened with okra or file'. It can include sausage, chicken, ham, seafood, or a combination thereof, and is served over rice. It is a New Orleans *specialty*.

Region 15, New Orleans

WE ARE HERE TO HELP YOU

Posting of Employee Rights

Effective November 14, 2011, private-sector employers subject to the National Labor Relations Act are required to post a notice notify employees of their rights under the Act. Failure to post the notice may be treated as an unfair labor practice under the Act. If an employer knowingly and willfully fails to post the notice, the failure may be considered evidence of unlawful motive in an unfair labor practice case involving other alleged violations of the Act. Copies of the notice will be available on the NLRB website and from NLRB regional offices by October 1. Employers must also post the notice on an intranet or an internet site if personnel rules and policies are customarily posted there.

Voluntary Recognition Protection is Back

In Lamons Gasket Company, 357 NLRB No. 72, the Board returns to the law as it existed before the 2007 Dana Corp. decision for new bargaining relationships created by an employer's voluntary recognition of a union based on a showing of support by a majority of employees. Specifically, Lamons bars challenges to a union's representative status for a "reasonable period" following voluntary recognition, in order to give the new bargaining relationship a chance to succeed. The period of protection will range from six months to one year, depending on the circumstances.

September 2011:

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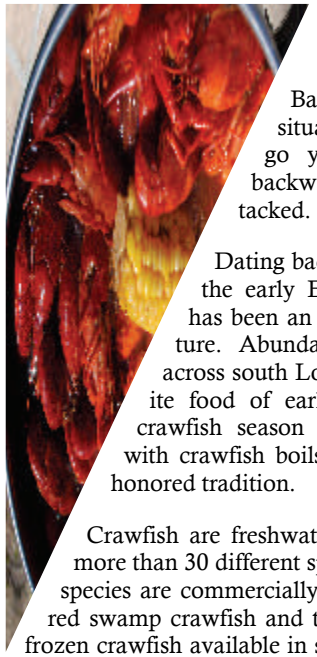


CRAWFISHING:

Backing out of a commitment or situation, especially when it doesn't go your way. A crawfish walks backwards when threatened or attacked.

Dating back to the native Americans and the early European settlers, the crawfish has been an inherent part of Louisiana culture. Abundant in the swamps and marshes across south Louisiana, crawfish were a favorite food of early residents. Centuries later, crawfish season in Louisiana is still exciting, with crawfish boils and backyard parties a time-honored tradition.

Crawfish are freshwater crustaceans. Louisiana has more than 30 different species of crawfish, but only two species are commercially important to the industry; the red swamp crawfish and the white river crawfish. Most frozen crawfish available in supermarkets in other states are inferior Chinese imports.

Steps to Eating Boiled Crawfish:

1. Remove the head - Hold the top of the crawfish with one hand, and place your other hand above the tail. Twist so that the tail separates from the head.

2. Pinch the very end of the tail with one hand, and pull the tail meat out with the other.

3. Enjoy the delicacy

Crawfish "season" typically runs from March through about June. This is when you will get your best crawfish.

Louisiana crawfish are usually boiled live in a large pot with heavy seasoning (salt, cayenne pepper, lemon, garlic, bay leaves, etc.) and other items such as potatoes, corn on the cob, onions, garlic, mushrooms and sausage. They are generally served at a gathering known as a crawfish boil. Other popular dishes in Louisiana include crawfish étouffée, fried crawfish, crawfish pie, crawfish dressing, crawfish bread and crawfish beignets

Allservice Plumbing and Maintenance, Inc.; 15-CA-19433, 19456; 15-RC-8819

In May 2011, the Region issued a Complaint and Notice of Hearing against Allservice Plumbing and Maintenance, Inc. for its violations of Sections 8(a)(1), (3), and (4) of the National Labor Relations Act. Unable to reach a settlement, a three-day trial was held in late June 2011, in Baton Rouge, Louisiana. Specifically, the complaint alleges Allservice committed several unfair labor practices from December 2009, through February 2010, the exact period when Plumbers and Steamfitters Local 198 began a campaign seeking to unionize Allservice employees. During those three months, the complaint alleges Allservice sought to squash the union drive and in doing so, it engaged in surveillance and interrogation of employees and made numerous anti-union statements, including one such statement from the owner, when he claimed that he would "close his doors before he went union." In addition, the Region alleges Allservice instituted unnecessary layoffs of three employees because of their union support and in retaliation for their NLRB activity. Although the Region saw Allservice's actions as straightforward violations of the Act, Allservice denied all allegations in the Complaint. Allservice denied any antiunion sentiments and/or statements. Further, at trial, Allservice argued that the three layoffs were due to a lack of work and were entirely unrelated to the union organizing campaign. Counsels for the Acting General Counsel Beauford Pines and Zachary Herlands countered through oral testimony and documentary evidence showing that there was not, in fact, a work slowdown and that Allservice's argument was to show simply a pretext. The Region is seeking its usual remedies, consisting of a notice posting and reinstatement and back pay for the three employees who were unlawfully laid off. Although an exact calculation has not been made, the Region estimates Allservice owes upwards of $15,000 to these three employees. A decision in this matter is still pending. For more information, please visit nlrb.gov.

Austal USA, LLC and Sheet Metal Workers International Assoc. Union, Local 441.

Cases 15–CA–18547, et al., and 15–RC–8394
Kevin McClue for the General Counsel

In 2002, a Board election was held involving Austal and the Sheet Metal Workers. Objections to the election were consolidated with pending unfair labor practice charges for hearing before an administrative law judge who issued his decision in April 2003. On March 21, 2007, the Board set aside the election and remanded Case 15–RC–8394, for a second election. A rerun election was conducted on April 9, 2008. On April 16, 2010, the Union filed Objections to the Conduct of the Election. On December 30, 2010, the Board issued its Decision, Order, and Direction of Third Election. The Board found Austal committed numerous violations of Section 8(a)(1) of the Act in the context of a union organizing. Additionally, the Board found Austal violated Section 8 (a)(3) and (1) by discharging employee because of her union campaign activity. Finally, the Board set aside an April 9, 2008 election and directed a new election be held. In discussing setting aside the election the Board determined even if the ALJ relied on unobjected-to unfair labor practices in setting aside the election, it was not error for him to do so. The Board noted it recently held in a consolidated hearing, "the interests of employee free choice require that the unfair labor practice allegations be considered as grounds for setting aside the election even though not specified in the election objections." *Community Medical Center*, 355 NLRB No. 128 (2010) (incorporating by reference *Community Medical Center*, 354 NLRB No. 26, slip op. at 1fn. 3 (2009) (citing *White Plains Lincoln Mercury*, 288 NLRB 1133, 1137–1138 (1988)); see also *Fisher Island Holdings*, 343 NLRB 189, 189 fn. 2 (2004) (citing *White Plains Lincoln Mercury* as establishing that "in a combined unfair labor practice/ representation proceeding, the Board has authority to set aside an election based on unfair labor practices that were not specifically alleged as objectionable conduct"). The 3rd Election was conducted on August 4 and 5, 2011.

Carey Salt Company and the United Steelworkers and Local Union 14425

On August 1, 2011, a NLRB Administrative Law Judge (ALJ) found Carey Salt, a Cote Blanche, Louisiana salt mining operation, committed approximately 15 unfair labor practices in dealing with its union employees, including making unlawful threats of termination, persistently refusing to bargain in good faith, and unlawfully implementing new working conditions without bargaining. Moreover, the ALJ found Carey Salt unlawfully refused to immediately reinstate about 84 unfair labor practice strikers. Approximately 31 are still not working. The ALJ found the Employer's conduct and pattern of regressive bargaining "effectively insured that no meaningful negotiations could follow" and "did not evidence a desire to reach an agreement." She also found Carey Salt maintains unlawfully imposed terms and conditions of employment. The ALJ ordered Carey Salt to offer reinstatement with full backpay, and to restore the employees' original terms and conditions of employment.

FIRST TRANSIT, INC. and HAROLD PERRY, an Individual

The Board adopted the Administrative Law Judge's findings that First Transit violated Section 8(a)(1) of the Act by discharging Perry for its mistaken belief that he tried to encourage other employees not to drive buses for a Saturday LSU football game. *Gulf-Wandes Corporation,* 233 NLRB 772, 778 (1977). Since working during LSU football games was voluntary work, Perry encouraging other employees not to sign up for this work did not constitute an unlawful partial strike, and constituted concerted activity protected by Section 7 of the Act. *The Dow Chemical Company,* 152 NLRB 1150, 1151 (1965).

It was found First Transit violated Section 8(a)(1) by enforcing its attendance policy against Perry more strictly than it had prior to its awareness of his protected concerted activity and more strictly than it enforced this policy with other employees. Finally, First Transit violated Section 8(a)(1) of the Act by telling Perry that organizing a boycott of voluntary work constituted insubordination and that this could cost him his job.

Specialty Healthcare and Rehabilitation Center of Mobile

On January 20, 2009, Region 15 issued a Decision and Direction of Election finding the petitioned-for unit of full-time and regular part-time Certified Nursing Assistants (CNAs) at the Specialty Healthcare (Employer) nursing home and rehabilitation facility constituted an appropriate unit in which to conduct an election. On February 19, 2009, the Board granted the Employer's request for review of the Regional Director's decision.

On February 20, 2009, an election was held to determine if the CNAs at the nursing home wanted to be represented by the United Steelworkers, District 9 (Union). The ballots were not counted at that time, but were impounded (held unopened) by the Region pending the findings in the Board's review.

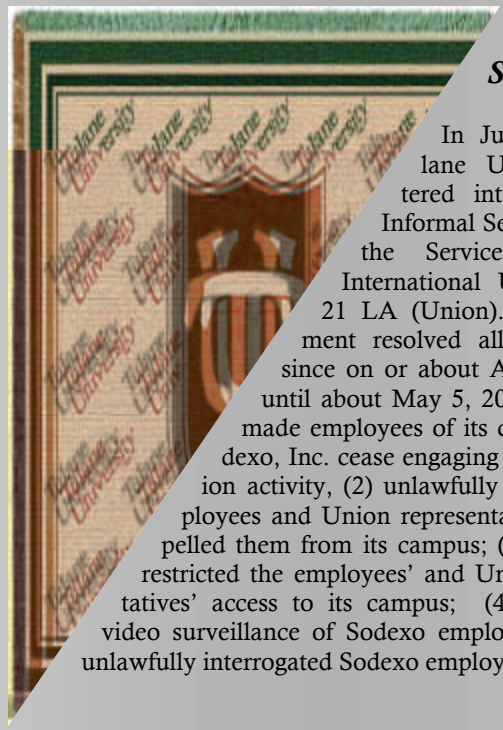
On August 26, 2011, the Board adopted a new approach for determining what constitutes an appropriate bargaining unit in health care facilities other than acute care hospitals. The Board found CNAs at a nursing home may comprise an appropriate unit without including all other nonprofessional employees; thereby, overuling its 1991 decision in *Park Manor.* Employees at such facilities will now be subject to the same "community-of-interest" standard the Board traditionally applies at other workplaces. Specifically, the Board found the 53 CNAs who sought an election in *Specialty Healthcare* constituted an appropriate unit, and remanded the case to Region 15. On September 16, 2011, the ballots were counted resulting in a 39-17 "**W**" for the Union.

Triple A Fire Protection, Inc. and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Road Sprinkler Fitters Local Union No. 669, AFL–CIO. Case 15–CA–11498

On October 31, 1994, the Board issued a Decision and Order which found, among other things, Triple A, a Mobile, Al. company, in February 1991 and March 1993, violated Section 8(a)(5) of the Act by (1) bypassing the Union and dealing directly with bargaining unit employees concerning wages, hours, and working conditions; (2) effective April 22, 1991, unilaterally failing to make required fringe-benefit payments to established benefit plans, and (3) effective Apri1 22, 1993, unilaterally reducing the wage rates for bargaining unit employees hired on or after April 22, 1991.

The Board ordered Triple A to cease and desist from its unlawful conduct and to take certain actions to remedy the unfair labor practices, if requested by the Union. Specifically, resuming participation in and making contributions to the fringe benefit plans to which Triple A stopped contributions effective April 22, 1991, and rescinding any or all changes in wage rates or benefits which Triple A implemented unilaterally effective April 22, 1991. The Board further ordered Triple A to make whole the unit employees and fringe-benefit funds. *Triple A Fire Protection, Inc.,* 315 NLRB 409 (1994). On March 3, 1998, the United States Court of Appeals for the Eleventh Circuit entered its judgment enforcing the Board's Order. *NLRB* v. *Triple A FireProtection, Inc.,* 136 F.3d 727 (1998), cert. den. sub nom. *Triple A Fire Protection* v. *NLRB,*30 325 U.S. 1067 (1999).

Thereafter the Region instituted compliance proceedings, and on August 26, 2011, a Second Supplemental Decision and Order issued. The Board agreed with the Administrative Law Judge concerning the backpay amounts owed to employees and the amounts owed by the Respondent to make the three benefit funds whole for its failure to make required payments to those funds. Further, the Board agreed the Respondent owes interest and liquidated damages on those delinquent fund payments, pursuant to the funds' governing documents, by which Triple A agreed to be bound in its collective-bargaining agreement with the Union. Total backpay owed is approximately $9,085,380.35.



Tulane Settlement

In July 2011, Tulane University entered into an NLRB Informal Settlement with the Service Employees International Union, Local 21 LA (Union). The settlement resolved allegations that since on or about April 12, 2010 until about May 5, 201, Tulane (1) made employees of its contractor Sodexo, Inc. cease engaging in lawful Union activity, (2) unlawfully detained employees and Union representatives and expelled them from its campus; (3) unlawfully restricted the employees' and Union representatives' access to its campus; (4) engaged in video surveillance of Sodexo employees; and (5) unlawfully interrogated Sodexo employees.

Representation Matters

If you wish to form or join a union, or decertify (remove) an existing union, you may file an election petition. The Information Officer at your nearest regional office will be happy to provide you with assistance.

Once a petition is filed it is assigned to a Board agent. The Board agent must first determine whether the unit of employees is appropriate and ensure that at least 30 percent of employees in that unit have signed the petition. The Board agent will then work closely with the Union and the Employer to arrange an election date. Elections are generally conducted at the workplace, or by mail. The NLRB will certify that a union is, or is not, the collective bargaining representative of the employees, after any disputed ballots, challenges, or other objections are investigated and resolved.

Reviews of election-related decisions, including dismissals of petitions and post-election decisions by Regional Directors, are handled by the Office of Representation Appeals in Washington, D.C. Requests must be filed within two weeks of the Regional Director's decision.

Voting at an NLRB Election

A Notice of Election (NOE) will be posted at strategic places at the Employer's facility to inform employees of an upcoming NLRB election. The NOE will inform you of the date, place and time of the election. Additionally, the NOE will describe the employees that are eligible to vote in the election. The NOE will show a sample ballot with the name of the Union. The Sample Ballot will ask if you want to be represented by the Union – Yes or No.

When you arrive at polling site, you will be greeted by a Board agent and asked for your identifying information. Generally, the Union and the Employer will have an employee representative (observer) present in the election area to assist in verifying your information. you will then be handed a paper ballot identical to the Sample Ballot on the NOE. If your right to vote in the election is not challenged by the observers or the Board agent, you will be directed to enter the voting booth provided by the NLRB and asked to indicate on the ballot if you want to be represented by the Union. Once you mark the ballot "Yes" or "No", you will then place your ballot in a box provided by the NLRB to collect all of the completed ballots. Please remember that while you are waiting to vote, and/or while you are voting it should not be used as an opportunity to let your feeling, for or against the Union, be known.

Remember the Board agent conducting the election is not for or against the Employer or the Union. Rather the Board agent is present to ensure during the voting period you have an opportunity to vote for or against the Union, free of any unlawful influence.

Defense Support Services (DS2) On December 14, 2010, the International Association of Machinists and Aerospace Workers, AFL-CIO file a petition to represent some employees of DS2 at Hulbert Field and Fort Walton Beach, Fl. The election was conducted on January 25, 2011. With a vote of 87 for and 73 against, the Union was certified as the representative of the designated bargaining unit employees.

Audubon Nature Institute On May 20, 2011, bargaining unit employee Melanie Litton filed a petition to decertify (remove) Teamsters, Local 270 as the bargaining representative for all zookeepers at Audubon Zoo in New Orleans, LA. The election was conducted on June 15, 2011. with a vote of 12 for and 19 against, the Union no longer represented the designated employees.

His extensive studies of sports and the law led to a fascination with labor law, combined with his love of New Orleans led him right to Region 15.

Matthew Dougherty graduated with a joint MBA/JD from the University of San Diego School of Law. He is originally from Pennsylvania and a former Military Police Officer in the Marine Corps. He has a prior NLRB and/or Labor background with Region 21 and is eager to start his new career with Region 15.

Summer 2011 Interns and Externs

Eugenia Apraku, is from Texas and a third-year law student at Loyola New Orleans College of Law. Her aim as an extern is to learn how the federal government resolves labor disputes. She hopes to one day travel to the Seychelles Island and is looking for sponsors!

Michael Martin, is a rising third-year law student at Tulane University Law School in New Orleans, LA. During his externship, Michael hopes to learn how the Labor Board uses its investigatory and adjudicatory powers to protect employee rights. Originally from the DC area, Michael hopes to become a permanent New Orleanian, but he knows that he has to go to Jazz Fest at least once before he can be bestowed with that honorable title.

Liz DeVleming is a third-year law student at the University of Washington School of Law in Seattle, Washington. She came to intern at the NLRB to gain experience with the interrelated practice of labor and employment law, and to Region 15 in particular for one last summer adventure in a new city before taking the Bar Exam. Liz is the proud owner of Tux, a rabbit, and is missing him while she's away from home!

Fall 2011 Externs:

Ashley Banks, a 3L at Tulane Law School in New Orleans, LA is originally from Winston-Salem, NC. She has always been interested in public service and the accessibility of the legal system. Her interest in labor law and externing with the NLRB derived from her interest in ensuring workers' rights are protected through the fair administration of the law.

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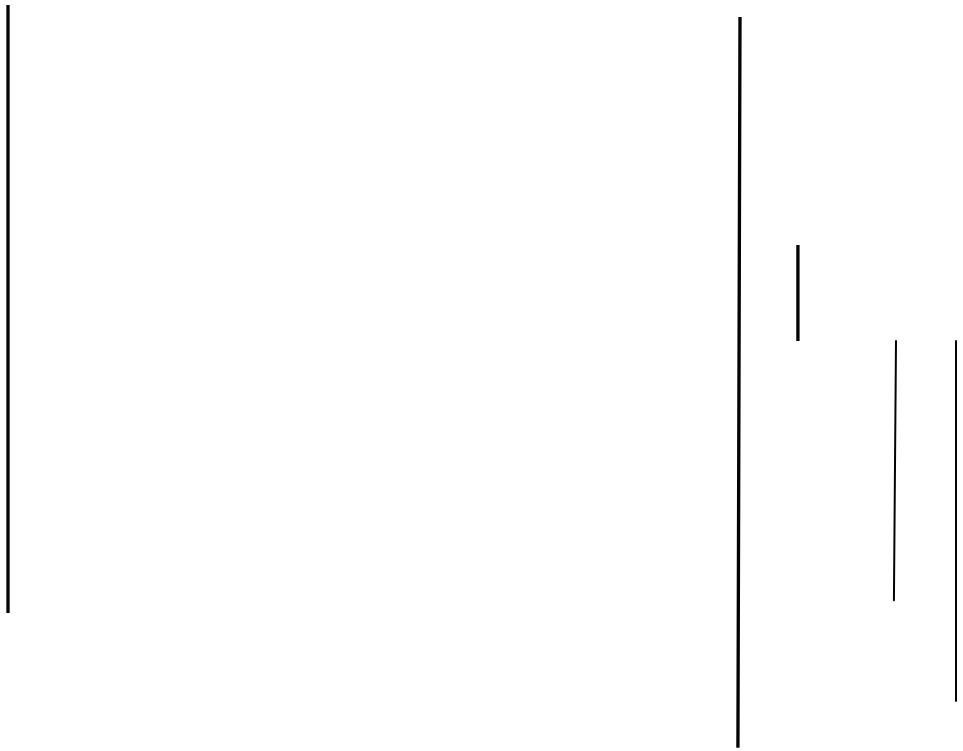

Aftermath of the NFL Lockout:

Moving forward, the owners and the players' union agreed on a new, and fairly complicated revenue model, but the basic split requires that players average at least forty-seven percent of all league revenue over the next decade (down from about fifty percent prior to the lockout). In exchange for their decrease in the revenue split, the players avoided the fate of a grueling eighteen-week regular season, received an increase in their minimum salary by $50,000, and will ultimately face a less strenuous workload due to stricter practice rules during the preseason and bye weeks (including no more two-a-day practices and less contact during practice.)

Perhaps the biggest impact of the new labor agreement will be for players no longer in the league and players yet to enter the league. Players who took the field before 1993 will see an increase in their pensions, and overall, retired players will receive more benefits under the new deal. Conversely, rookies selected within the top ten picks of the annual NFL draft will face a significant decrease in their contracts. Rules in the new contract also substantially decrease the likelihood a rookie will holdout from signing a contract with his draft team. The NFL Players' Association largely succeeded in reaching their goals of long-needed safety measures and better compensation for loyal, veteran players and ex-players.

Without a doubt the most momentous aspect of the new collective bargaining agreement is its term. While the majority of contracts in labor law span three-years or fewer, the owners and the union agreed to a whopping ten-year deal after the 2011 lockout, with no opt-out clauses. The players and owners ultimately provided the fans with a great gift: a decade of labor peace. After filing charges with the NLRB, dueling lawsuits in federal court, and the constant threat that there would be no football this year, sports fans can at least take some solace in knowing that there will not be a repeat until at least 2021. (Unless you're an NBA fan, that is…)