American Bar Association Section of Labor & Employment Law

Committee on Practice and Procedure Under the National Labor Relations Act
Midwinter Meeting

Rancho Mirage, California
March 1 – 4, 2006

PROGRAM AGENDA

Wednesday, March 1

7:30 a.m. - 8:30 a.m. Newcomers breakfast with the Board and General Counsel hosted by Co-Chairs

(Spouse/Guest Breakfast - 9:30 a.m. - 11:00 a.m.)

8:30 a.m. – 9:00 a.m. Welcome, Introductions and Council Liaison Report

Elaine S. Fox, Esquire – Employer Co-Chair
Seyfarth Shaw LLP, Chicago, Illinois
Hope Singer – Union & Employee Co-Chair
Geffner & Bush, Los Angeles, California
Gordon E. Krischer, Esquire – Employer Council Liaison
Los Angeles, California
Leonard Page, Esquire – Union & Employee Council Liaison
Cheboygan, Michigan

9:00 a.m. – 9:30 a.m. Review of Letter to National Labor Relations Board / General Counsel

Elaine S. Fox, Esquire – Employer Co-Chair
Seyfarth Shaw LLP, Chicago, Illinois
Hope Singer – Union & Employee Co-Chair
Geffner & Bush, Los Angeles, California

The “letter” reviews a number of critical and timely procedural issues impacting practice before the NLRB and encompassing the investigation and processing of representation and unfair labor practice matters at every level of the administrative and judicial process. The materials that form the basis for the presentation at this session are the result of a year-long process beginning in each of P&P’s geographical regions throughout the country and culminating in a national meeting with the National Labor Relations Board in Washington, D.C.
9:30 a.m. – 11:00 a.m.  “R” Case / “C” Case Updates With Emphasis on Procedural Issues

John E. Higgins, Jr., Esquire – Deputy General Counsel, National Labor Relations Board, Washington, D.C.
Barry J. Kearney, Esquire – Associate General Counsel, National Labor Relations Board, Washington, D.C.

This program will offer a timely and thought-provoking review of new and important unfair labor practice and representation cases issued by the NLRB and/or Administrative Law Judges during 2005.

11:00 a.m. – 11:15 a.m.  Break

11:15 a.m. – 12:15 p.m.  Making the NLRB More User-Friendly

What could be done to better meet the needs of the NLRB “customers”? A review of issues and ideas to assist practitioners in effectively dealing at all appropriate NLRB levels. Questions will range from “voice mail” to appeal notification practices to the appropriate means of informing employees of their section 7 rights. Discussion also will include the Board’s new Electronic Case and Information System (ECIS) and mediation after ALJ decisions.

Union – Nancy J. Schiffer, Esquire, Associate General Counsel, AFL-CIO, Washington, D.C.

Management – Gerard Morales, Esquire, Snell & Wilmer, LLP

Moderators and Presenters –

Richard A. Siegel, Esquire, Associate General Counsel, National Labor Relations Board, Washington, D.C.

Lester A. Heltzer, Esquire, Executive Secretary, National Labor Relations Board, Washington, D.C.

12:15 p.m.  Women’s Lunch (All Invited)

6:00 p.m. – 7:30 p.m.  Welcome Reception
Thursday, March 2

9:00 a.m. – 10:00 a.m. NLRB General Counsel Response to Committee’s Issues

This session involves presentations from the General Counsel and his staff addressing a number of current significant procedural issues impacting the union and management bar practicing before the Agency in dealing with the Agency’s processing of representation petitions and unfair labor practice charges and complaints throughout the Agency’s various regions and the General Counsel’s office.

Ronald E. Meisburg, Esquire, General Counsel, National Labor Relations Board, Washington, D.C.

10:00 a.m. - 11:00 a.m. NLRB Ethical Regulations and “Skip Counsel”

An in-depth review of current ethical issues and a review of the always controversial “skip counsel” issues.

Union – William Widmer, Esquire, Carmell, Charone, Widmer, Mathews & Moss

Management – Harry J. Secaras, Esquire, Neal, Gerber & Eisenberg, LLP

Presenter – John E. Higgins, Jr., Esquire, Deputy General Counsel, National Labor Relations Board, Washington, D.C.

11:00 a.m. – 11:15 a.m. Break

11:15 a.m. - 12:15 p.m. Imagine the World with the National Labor Relations Act

What labor relations scheme would be adopted/could be adopted if there were no NLRA? This will be a timely and thoughtful session moderated by a current member of the National Labor Relations Board, with two highly-respected advocates of their respective positions and an academician.


Management – C. John Holmquist, Jr., Esquire, Dickinson Wright PLLC
Moderator – Wilma B. Liebman, Esquire, Member, National Labor Relations Board, Washington, D.C.

Academic – Christopher David Ruiz Cameron, Esquire, Associate Dean, Southwestern University School of Law

1:00 p.m. Golf Outing (Pete Dye Course)

3:00 p.m. Book Club
When Hollywood Had a King by Connie Bruck

6:30 p.m. – 9:00 p.m. Reception and Dinner

Friday, March 3

9:00 a.m. – 10:00 a.m. NLRB Response to Committee’s Issues

This session involves presentations by the NLRB’s Chairman and Board Members and the Executive Secretary regarding significant/timely procedural issues involving the Board’s present and anticipated handling of a number of procedural issues of concern to members of the union and management bar who practice before the Board.

Robert J. Battista, Chairman, National Labor Relations Board, Washington, D.C.

Wilma B. Liebman, Member, National Labor Relations Board, Washington, D.C.
Peter C. Schaumber, Member, National Labor Relations Board, Washington, D.C.
Peter N. Kirsanow, Member, National Labor Relations Board, Washington, D.C.
Dennis P. Walsh, Member, National Labor Relations Board, Washington, D.C.

10:00 a.m. – 11:00 a.m. Representation – Private Elections, Card Checks – What Does the Future Hold?

What are the advantages/disadvantages of private elections and card checks? What legal difference is there between a majority of votes cast and a majority of the unit, and why does it matter? Is Gissel correct?
Union – Brent Garren, Esquire,
UNITE HERE, New York, New York

Management – James William Bucking, Esquire,
Foley Hoag LLP

Moderator – Sarah Wiley, Esquire,
Miller, Johnson, Snell & Cummiskey

11:00 a.m. – 11:15 a.m. Break

11:15 a.m. – 12:15 p.m. Ethical Issues Facing the Attorney as Witness in NLRB Proceedings

What are the ethical, legal and practical issues confronting an attorney who may or must testify in an NLRB proceeding? (Emphasis will be on a recent 7th Circuit case.) What is the impact of Model Rule 3.7 – Lawyer as Witness? How will the NLRB respond to different state ethical issues?

Union – Peter David Nussbaum, Esquire
Altshuler, Berzon, Nussbaum, Rubin & Demain, San Francisco, California

Management – John S. Irving, Esquire
Kirkland and Ellis

Moderator – Robert S. Giolito, Esquire, General Counsel,
Directors Guild of America

Commentator – Arthur F. Rosenfeld, Esquire, Director
Federal Mediation and Conciliation Service, Washington, D.C.

1:30 p.m. – 5:00 p.m. Palm Springs Aerial Tram Tour (optional ticketed event)

Saturday, March 4

9:00 a.m. – 10:00 a.m. Electronic Remedies and Other Electronic Issues Under the National Labor Relations Act

The NLRB continues to grapple with 21st Century communications issues, such as appropriate remedies and the scope of allowed employee communication.
10:00 a.m. – 11:00 a.m. **Bankruptcy and the National Labor Relations Act**

There are increasing intersections between the NLRA and the Bankruptcy Act. Two recent cases, one involving the “free and clear” doctrine, and the other involving collateral attacks on NLRB judgments, will be analyzed and discussed.

Union – Susan Davis, Esquire, Cohen, Weiss & Simon, New York, New York

Management – John J. Gazzoli, Jr., Esquire, Lewis, Rice & Fingersh, L.C.

Moderator – Allison Beck, Esquire, General Counsel, International Association of Machinists

11:00 a.m. – 11:15 a.m. **Break**

11:15 a.m. – 12:15 p.m. **Committee Reports and Updates**

Diversity Report and Outreach; Update and Planning for NLRA Basics Programs; Regional Committee Planning for 2006

Liaison Reports:
1. Equal Opportunity in the Legal Profession
2. Marketing
3. CLE
4. Newsletter
5. Pro Bono