

ROLAND|STOCK

ATTORNEYS AT LAW

John W. Roland
Edwin L. Stock
S. Whitney Rahman*
Robert R. Kreitz
John E. Muir
Deborah A. Sottosanti
Dante C. Cutrona
Gregory A. Shantz
Joseph P. Bradica
Victoria G. Schutt

A Limited Liability Company

Firm@RolandStock.com

www.RolandStock.com

Of Counsel

David H. Roland

Mary M. Bertolet

Jerry R. Richwine

Raymond C. Schlegel (2004)

D. Frederick Muth (2006)

September 16, 2011

* Also Member of New York Bar

****EMPLOYMENT LAW ALERT****

National Labor Relations Board Issues New Posting Requirements

By: S. Whitney Rahman

The National Labor Relations Board (“NLRB”) has issued its final rule requiring all employers covered by the National Labor Relations Act (“NLRA”) to post notice of employee rights under the NLRA. Covered employers include employers with more than \$50,000.00 in interstate sales, and do not include employers in the agricultural, railroad, or airline industries. Public employers are excluded as well. Under the rule, beginning November 14, 2011, all covered employers will have to post a notice that includes information on employees’ right to engage in concerted activity, to join a union, to engage in a collective bargaining, strike, and file unfair labor practice charges against an employer or union. It also will note that an employee need not join a union. The notice will contain contact information for the NLRB for questions or to file an unfair labor practice charge.

The posted notice must be at least 11” x 17”. The NLRB has indicated that it will have posters ready for dissemination by October 1, 2011. The notice must be posted conspicuously in

1

Copyright 2011 S. Whitney Rahman. All rights reserved.

No portion of this publication may be reproduced without prior written permission

627 North Fourth Street, P.O. Box 902, Reading, PA 19603-0902 • Phone (610) 372-5588 Fax (610) 372-5957

12 West Main Street, Fleetwood, PA 19522 • Phone (610) 944-6870

308 Main Street, Oley, PA 19547 • Phone (610) 987-3277

6462 Ridings Road, Syracuse, NY 13206 • Phone (610) 914-0001

all places where notices to employees concerning personnel rules or policies are customarily posted. If 20% or more of the employer's workforce speaks a different language, the employer must provide the notice in that language as well, either by posting more than one notice, or by posting in the language used by the majority of the workers, and providing other workers a copy of the notice in their language. If an employer requests from the NLRB a notice in a language that is not available from the NLRB, the employer will not be liable for noncompliance until the notice becomes available.

In addition to posting the notice, employers will be required to disseminate the notice to employees electronically on an intranet or internet site if the employer customarily communicates with its employees about personnel rules or policies through such means. This can be accomplished under the regulation either by placing on the intranet or internet site an exact copy of the NLRB's poster, displayed no less prominently than other notices to employees, or by providing a link to the NLRB website containing the poster. The link must read "Employee Rights Under the National Labor Relations Act." As outlined above, the electronic notice must be provided in other languages if 20% or more of the employer's workforce speak another language. 29 C.F.R. § 104.202.

The full text of the notice is as follows:

"EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT

The National Labor Relations Act (NLRA) guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected concerted activity or to refrain from engaging in any of the above activity. Employees covered by the NLRA* are

protected from certain types of employer and union misconduct. This Notice gives you general information about your rights, and about the obligations of employers and unions under the NLRA. Contact the National Labor Relations Board (NLRB), the Federal agency that investigates and resolves complaints under the NLRA, using the contact information supplied below, if you have any questions about specific rights that may apply in your particular workplace.

“Under the NLRA, you have the right to:

Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.

Form, join or assist a union.

Bargain collectively through representatives of employees’ own choosing for a contract with your employer setting your wages, benefits, hours, and other working conditions.

Discuss your wages and benefits and other terms and conditions of employment or union organizing with your co-workers or a union.

Take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and seeking help from a union.

Strike and picket, depending on the purpose or means of the strike or the picketing.

Choose not to do any of these activities, including joining or remaining a member of a union.

“Under the NLRA, it is illegal for your employer to:

Prohibit you from talking about or soliciting for a union during non-work time, such as before or after work or during break times; or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms.

Question you about your union support or activities in a manner that discourages you from engaging in that activity.

Fire, demote, or transfer you, or reduce your hours or change your shift, or otherwise take adverse action against you, or threaten to take any of these actions, because you join or support a union, or because you engage in concerted activity for mutual aid and protection, or because you choose not to engage in any such activity.

Threaten to close your workplace if workers choose a union to represent them.

Promise or grant promotions, pay raises, or other benefits to discourage or encourage union support.

Prohibit you from wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances.

Spy on or videotape peaceful union activities and gatherings or pretend to do so.

“Under the NLRA, it is illegal for a union or for the union that represents you in bargaining with your employer to:

Threaten or coerce you in order to gain your support for the union.

Refuse to process a grievance because you have criticized union officials or because you are not a member of the union.

Use or maintain discriminatory standards or procedures in making job referrals from a hiring hall.

Cause or attempt to cause an employer to discriminate against you because of your union-related activity.

Take adverse action against you because you have not joined or do not support the union.

“If you and your co-workers select a union to act as your collective bargaining representative, your employer and the union are required to bargain in good faith in a genuine effort to reach a written, binding agreement setting your terms and conditions of employment. The union is required to fairly represent you in bargaining and enforcing the agreement.

“Illegal conduct will not be permitted. If you believe your rights or the rights of others have been violated, you should contact the NLRB promptly to protect your rights, generally within six months of the unlawful activity. You may inquire about possible violations without your employer or anyone else being informed of the inquiry. Charges may be filed by any person and need not be filed by the employee directly affected by the violation. The NLRB may order an employer to rehire a worker fired in violation of the law and to pay lost wages and benefits, and may order an employer or union to cease violating the law. Employees should seek assistance from the nearest regional NLRB office, which can be found on the Agency's Web site: <http://www.nlr.gov>.

You can also contact the NLRB by calling toll-free: 1-866-667- NLRB (6572) or (TTY) 1-866-315-NLRB (1-866-315-6572) for hearing impaired.

If you do not speak or understand English well, you may obtain a translation of this notice from the NLRB's Web site or by calling the toll-free numbers listed above.

“*The National Labor Relations Act covers most private-sector employers. Excluded from coverage under the NLRA are public-sector employees, agricultural and domestic workers, independent contractors, workers employed by a parent or spouse, employees of air and rail carriers covered by the Railway Labor Act, and supervisors (although supervisors that have been discriminated against for refusing to violate the NLRA may be covered).

“This is an official Government Notice and must not be defaced by anyone.”

* * * *

The National Association of Manufacturers (“NAM”) has filed suit against the NLRB, seeking to block implementation of this new rule. NAM’s complaint alleges that the NLRB does not have authorization under the Act to make any rule that would require this posting.

At this time, however, the rule remains in force and all covered employers should be alert to their obligation to post this notice.