

Daily Journal

JULY 14, 2010

LABOR & EMPLOYMENT

Employment law has always represented a significant portion of legal work done in California. The practice has become even more crucial as California continues to build on its reputation as one of the nation's most employee-friendly states. As a result, some

of the nation's most sophisticated employment lawyers are based here. In this issue we highlight the very top practitioners in the field, and the cutting-edge cases they are handling across the state, the nation and even internationally.

— Editor's Note

EMPLOYMENT DEFENSE

California lawyers companies turn to first



J. KEVIN LILLY
Littler Mendelson
Los Angeles

Year in review: The lead counsel on behalf of Waste Management Inc., Lilly is working on a meal-and-rest break class action brought by drivers and employees in other related positions.

In 2010, Lilly successfully defended a summary judgment motion in an ERISA benefits claim against an ex-Nielsen Co. employee. The case was heard before the 9th U.S. Circuit Court of Appeals.

Lilly helped obtain summary judgment in Riverside federal court against the sole remaining plaintiff in a lawsuit against ABM Industries Inc., one of the largest facilities services contractors in the nation, and ABM Security Services, which provides private security to ABM clients.

Next challenge: Lilly is lead counsel for Safeway Inc., in a large employment matter pending in Los Angeles County Superior Court. The case involves whether the supermarket chain's managers and assistant managers are entitled to overtime.



GARRY MATHIASON
Littler Mendelson
San Francisco

Year in review: Mathiason's summer was off to a stellar start, with a victory in U.S. Supreme Court on behalf of client Granite Rock Co. in late June that confirmed, among other things, that courts, rather than arbitrators, should decide when contracts containing arbitration clauses were

formed. *Granite Rock Co. v. International Brotherhood of Teamsters*, 08-1214.

The long-running case involved a labor dispute between the company and the local and international unions that stemmed from a strike in June 2004. In its majority opinion in June, the U.S. Supreme Court concluded that contract formation issues were for courts to decide.

Next challenge: In addition to supervising the firm's more than 1,000 employment and labor attorneys, Mathiason founded Employment Law Training Inc., which offers online compliance courses for companies. Created 10 years ago, the business is growing roughly 40 percent a year, according to Mathiason.

LABOR

At the forefront of a renewed old practice



ROBERT MILLMAN
Littler Mendelson, Los Angeles

Year in review: Millman secured a win for his client, Tenet Healthcare Corp., in an arbitration with the California Nurses Association.

At issue: When CNA's organizing campaigns were delayed by third-party blocking charges at two Tenet operating facilities, CNA claimed it was entitled to organize two additional Tenet acute care hospitals in the state of Texas. CNA alleged that the National Labor Relations Board delays in holding elections resulting from the blocking charges triggered a clause in the Labor Relations Accord that could have been construed to grant the union additional organizing opportunities.

The arbitrator rejected CNA's claim that it wasn't able to successfully proceed with its campaigns and denied CNA the right to organize two new Tenet facilities.

On behalf of Metropolitan Interpreters and Translators Inc., Millman obtained a dismissal of complaint before the NLRB. At issue was a supervisor who was suspended by Metropolitan for conducting pro-

union activities, in violation of company policy. The union filed an unfair labor practice charge, contending that although she was a supervisor by title, she wasn't one based on her scope of duties.

The NLRB found in the company's favor.

In another matter, SEIU International took over SEIU-UHW and placed it into trusteeship, ousting Sal Rosselli and his colleagues from the union's leadership. Rosselli, in turn, formed a competing union, the National Union of Healthcare Workers. On behalf of the Daughters of Charity Health System, Millman successfully negotiated the first contracts with the SEIU-UHW, post trusteeship.

Next challenge: Looking ahead to the coming year, and noting the new composition of the NLRB, Millman said that he is concerned that the board will "engage in wholesale rulemaking in an effort to make union organizing easier."

He's also keeping an eye on what he said will be "extraordinary costs of health insurance and premiums as they impact unionized employees.

"It's breaking the bank," Millman said. "It's coming to the point where rubber will hit the road. There are only so many dollars, and it will lead to contentious collective bargaining throughout the state."