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By E-Mail

June 26, 2014

Anne Purcell, Esq.

Associate General Counsel

National Labor Relations Board

Division of Operations – Management

1099 14th Street, NW, Suite 10200

Washington, D.C. 20570

Re: Proposed Consolidation of NLRB Regions 3 and 6

Dear Ms. Purcell:

On behalf of the Labor and Employment Law Section of the New York State Bar Association, I want to begin by thanking the National Labor Relations Board for extending an invitation to us to comment on this important matter affecting our members across the State of New York, as well as the many employers, unions and employees whom they represent. We appreciate the opportunity to participate in the decision-making. We write to urge (i) that NLRB Region 3 be preserved with its current geographical boundaries, and (ii) that in the event of a consolidation with Region 6, that Buffalo be the location of the Regional Office for the expanded Region.

The L&E Section of the NYSBA has been in existence for nearly 40 years. Total Section membership stands at approximately 2,235 labor and employment law attorneys, many of whom practice regularly before the NLRB in Regions 2, 3 and 29 and are members of the Section's Committee on Labor Relations co-chaired by Peter D. Conrad (Proskauer Rose LLP) and Allyson L. Belovin (Levy Ratner, P.C.). The Section is proud to have many members who are regarded nationally as experts in the field of labor and employment law. We are particularly honored to have had as one of our members Board Chairman Mark G. Pearce.

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Anne Purcell, Esq.
National Labor Relations Board
June 26, 2014
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We understand from your June 5, 2014 letter that based on an analysis of staffing and case intake in Regions 3 and 6, a determination has been made that a merger of the Pittsburgh and Buffalo Regional Offices may be appropriate. Without access to all data on which such a preliminary determination was made, we are not in the best position to comment on that conclusion. However, we can say that our members who practice in Region 3, together with their clients, are accustomed to a very high level of service by staff in the Buffalo Regional Office and Albany Resident Office, and have in addition been very fortunate over the years to enjoy ready access to the Regional Director, Regional Attorney, Assistant to the Regional Director and Resident Officer, when necessary. Our members believe that Region 3's geographic scope is optimal and should not be expanded. If there is to be an expansion of Region 3 to unite upstate New York State with Western Pennsylvania and most of West Virginia, it is hard to imagine that the same level of service and access will be available. That is a great concern to us. We can only hope that the Agency's analysis of casehandling statistics and available resources takes these important intangibles into consideration.

We believe we are in a better position to comment on the most appropriate location for the Regional Office in the event that the Regions are consolidated. Plainly, for the many reasons discussed below, a Regional Office located in Buffalo will better serve the interests of the Agency, employers, unions and the working men and women of upstate New York.

We would first like to be sure you know that based on a surge in investment in upstate New York led by Governor Cuomo's "commitment to invest \$1 billion in the Buffalo area economy, which is designed to spur significantly greater private investment and create thousands of new, sustainable jobs," New York State proudly lays claim to being second in the nation in job growth. (See attached press release from the Office of Governor Andrew M. Cuomo dated March 28, 2014, announcing funding for "Buffalo Billion" projects.) In addition, "START-UP NY," a groundbreaking new initiative conceived by Governor Cuomo, will provide major incentives for businesses to relocate, start up or significantly expand in New York State." See <http://startup.ny.gov>. The program "is transforming communities across the state into tax free sites for new and expanding businesses" by offering the opportunity to operate 100% tax free for 10 years. Significant economic development and job growth also is expected across the upstate area as a result of the recent legalization of gambling. A process currently is under way to select operators of the first four casinos in various areas of upstate New York. The development of these casino-resorts can be expected to result in many thousands of new jobs in the heavily unionized hotel and gaming industries. All will be subject to NLRB jurisdiction.

The likely effect of "Buffalo Billion," Start-up NY" and the legalization of casino gambling in upstate New York will be to expand the need for the critical labor relations services provided by the NLRB. Reducing the efficacy of those services by consolidating Regions 3 and 6 and possibly downgrading the Buffalo Regional Office to a Sub-Regional office, with potential loss of staff to follow, would disserve the earnest efforts that are underway to revive the upstate economy. Indeed, it would reflect poorly on the federal government's outlook for upstate New York. We are unaware of economic development at anything like this same level in Pennsylvania or West Virginia. To be sure, there is no mention of it in the correspondence that you have received from members of the Pittsburgh legal community, who urge the NLRB to site the Regional Office in that city. In the event that the General Counsel and the Board conclude

that consolidation of Regions 3 and 6 will not have an adverse impact on the Agency's mission in any of the areas presently served by the Buffalo and Pittsburgh Regional Offices, and that such a merger is otherwise appropriate, we believe that a compelling case can be made for preserving the Buffalo Regional Office and converting Pittsburgh to a Sub-Regional Office, based on the management structure already in place in Buffalo, caseload and geography.

The Buffalo Regional Office has an experienced team of proven managers who have worked together for many years, including a Regional Director, Assistant to the Regional Director and Resident Officer in Albany.¹ By contrast, the Pittsburgh Regional Office has only an Acting Deputy Regional Director. Nor does the Pittsburgh Regional Office have any experience managing operations in a distant Resident Office, as does Buffalo. The presence of a seasoned management team in Buffalo strongly favors its designation as Regional Office. If Pittsburgh was selected as the location of the Regional Office for a consolidated Region, the Buffalo management team either would have to be uprooted and transferred to Pittsburgh, or allowed to operate the Region from a Sub-Regional office, which would be inconsistent with the existing NLRB Regional Office model. It certainly would make no sense at all to establish a new management team in Pittsburgh considering both the proven ability of the Region 3 team (even without an active Regional Attorney) to oversee Region 6, and the availability of an Acting Deputy Regional Director in Pittsburgh, who would seemingly be a perfect candidate for Officer-in-Charge of a Sub-Regional Office reporting to the Regional Director in Buffalo.

Buffalo also provides a more favorable location for the Regional Office based on its more central location within the expanded Region now under consideration. It is nearly equidistant between the southern-most point in West Virginia served by Region 6 and the northern-most point in New York's Adirondack area. To locate the Regional Office in Pittsburgh, in the southwest corner of Pennsylvania, would place it relatively close to one extreme end of the expanded Region. This could make it more time-consuming and expensive for Regional Office staff to travel, which certainly would not help to achieve whatever may be the fiscal objectives of the proposed Regional Office realignment. In addition to being very spread out, Region 3 also encompasses many separate and distinct population centers including Albany, Binghamton, Buffalo, Corning, Cortland, Dunkirk, Ithaca, Jamestown, Olean, Oswego, Plattsburgh, Poughkeepsie, Rochester, Schenectady, Syracuse, Troy, Utica and Watertown, each with their own industry and their own needs that contribute to the statewide caseload. We do not believe that the Region 6 population centers, either in Pennsylvania or West Virginia, are nearly as dispersed within those states. Rather, it is our understanding that the caseload in Region 6 is concentrated in the greater Pittsburgh area. If that is correct, preserving the Regional Office in Buffalo would be a far better location for supervising the delivery of Agency services to all population centers within the expanded Region. We would also point out that there is a higher density of union-represented employees in Region 3. In Buffalo, for example, we understand that in 2013 approximately 15.8% of the private sector workforce was unionized, as compared with only 8.3% in Pittsburgh. See www.unionstats.com.

¹ We understand that the Regional Attorney, Mike Israel, is retiring at the end of this month, leaving that position vacant. A temporary vacancy, we hope.

Finally, relative caseload also appears to favor Buffalo as the location for the Regional Office in the event that Regions 3 and 6 are consolidated. Although the Agency is in the best position to assess case handling statistics in both Regional Offices, it is our belief that Buffalo currently processes more representation petitions and unfair labor practice cases on an annual basis and that this has been the pattern for several years.² We firmly believe that the trend is likely to continue into the future. Indeed, given the extent of economic redevelopment in upstate New York, it is reasonable to expect that the gap in case handling statistics will only widen over time. Both of the letters that you received from our colleagues in Pittsburgh note that the "caseload of Region 6 has diminished over the past decade," but that "intake numbers have stabilized in the last six years," and that "the Region's caseload will likely rebound." We do not know what all that really means, but if that is the best argument that they are able to make on the important issue of caseload, it is clearly not a factor that the proponents of a Pittsburgh Regional Office believe weighs in their favor. Apparently recognizing that Region 6's record of cases handled in the recent past does not distinguish the Pittsburgh Regional Office, the writers speculate that demand for Board services will increase based on growth in health care, hospitality and the energy sectors, but no details are provided to support that speculation.

Our colleagues in Pennsylvania argue that the Pittsburgh Regional Office should be designated Regional Office following any consolidation based largely on factors that either do not set Pittsburgh apart or are simply irrelevant. To be sure, neither the fact that *NLRB v. Jones & Laughlin Steel Corp.*, which established the constitutionality of the NLRA, may have grown out of an unfair labor practice case processed in the Pittsburgh Regional Office, nor the claim that Pittsburgh may have played a "crucial role in the history and continuing development of labor law under the Act," nor even the characterization of Pittsburgh as the "cradle of labor law," provides any basis for a reasoned determination of Regional Office location. Such historical romanticization does not make for good policy in 2014. Their claim that they maintain a close working relationship with the Regional Director and Regional Office staff that "simply cannot be found in every region" may be true, but it is no basis for distinguishing Region 6 from the Buffalo Regional Office. You can be sure that our members would tell you the same thing about the collaborative manner in which they work with Regional Director Ley and her staff. Nor do we believe that the Pittsburgh Regional Office is able to distinguish itself from the Buffalo Regional Office on the basis of "legal and ethical standards and evenhandedness" or "its reputation for quality" or its "standard for excellence in efficient management of cases." We are certain that if the Agency did not have utmost confidence in Regional Director Rhonda Ley's management ability, and the highest regard for operations in Region 3, that she would not have been asked to serve as Acting Director of Region 6 while continuing to discharge her duties as Director of the Buffalo Regional Office. I would imagine that that is not something every Regional Director could do.

² We also have reason to believe that the Pittsburgh caseload statistics may make the intake appear larger than it actually is by a practice of some unions of filing multiple charges based on related claims that could be filed as a single charge.

Anne Purcell, Esq.
National Labor Relations Board
June 26, 2014
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For all these reasons, the Labor and Employment Law Section of the New York State Bar Association takes the position that if there is to be a consolidation of NLRB Regions 3 and 6, it should come only after the most careful analysis demonstrating that the merger will not impair the Agency's effectiveness in administering and enforcing the NLRA in the State of New York, particularly at this time, while substantial financial resources are being dedicated to bring economic vitality back to the upstate area. If based on all appropriate considerations a decision is nonetheless made to merge Regions 3 and 6, we most respectfully urge that the Regional Office for the expanded Region be located in Buffalo, with a Sub-Regional Office in Pittsburgh. Thank you once again for the opportunity to provide input on this very important decision. We would appreciate a chance to meet with you before any decision is made by the Board and General Counsel. Please let me know when that might be arranged.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Ronald G. Dunn", with a stylized flourish extending to the right.

Ronald G. Dunn, Chair
NYSBA Labor and Employment Law Section

Cc: NLRB Chairman Mark G. Pearce
NLRB General Counsel Richard F. Griffin, Jr.
Senator Charles E. Schumer
Senator Kirsten Gillibrand
Governor Andrew M. Cuomo
Peter D. Conrad, Esq., Co-Chair, Committee on Labor Relations Law
Allyson L. Belovin, Esq., Co-Chair, Committee on Labor Relations Law

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Contact Information:
Governor's Press Office
NYC Press Office 212 661 4640
Albany Press Office 518 474 8418
press.office@exec.ny.gov



Andrew M. Cuomo - Governor

Governor Cuomo Announces Funding for Buffalo Billion Projects

[Printer-friendly version](#)

Over \$168 million approved for high-tech, biomedical projects, investment to create approximately 2,000 new jobs in Buffalo and Western New York

Albany, NY (March 28, 2014)

Governor Andrew M. Cuomo today announced that more than \$168 million in Buffalo Billion initiative funding has been approved for three projects that will create nearly 2,000 new jobs and spur further investment and economic growth across Western New York. The funding was approved earlier today by the Empire State Development's (ESD) Board of Directors. This funding will also leverage more than \$1.7 billion in additional private investment from companies entering the market, while supporting future business growth and investment for Buffalo and Western New York.

"The Buffalo Billion is continuing to change the economic landscape of Western New York by bringing back jobs and businesses to Buffalo," Governor Cuomo said. "From supporting local manufacturing industries to advancing our medical and bioengineering fields, these projects will help create and retain nearly 2,000 jobs. By making these strategic investments to leverage the region's assets, we are attracting cutting-edge businesses and bringing more good-paying, sustainable jobs to Western New York."

"Under Governor Cuomo's leadership, the State is making smart investments and supporting innovative projects in up-and-coming industries. Western New York is embracing economic growth by focusing on the life sciences and advanced manufacturing sectors," said Empire State Development President, CEO & Commissioner Kenneth Adams. "Over the last three years, we have seen many companies growing and creating new jobs in New York and discovering that there is no better place to do business than the Empire State."

The Board approved funding for the following Buffalo Billion Initiatives:

Buffalo High-Tech Manufacturing and Innovation Hub @ RiverBend –Buffalo Billion Initiative (Western New York Region – Erie County) – \$118,000,000

The Buffalo High-Tech Manufacturing and Innovation Hub (the "BHTMI Hub"), a \$1.7 billion public and private-sector partnership to convert a vacant former manufacturing site into a state-of-the-art hub campus for high-tech and green energy manufacturing businesses, will use a grant of up to \$118 million to be used as reimbursement for design and planning costs and new machinery and equipment. This is part of a larger commitment of \$225 million by the State for the project.

RiverBend, which will be strategically located in a newly-developed "smart growth" urban commerce park with multi-modal transportation opportunities, will serve as a building block of continued growth in advanced manufacturing, which is a primary focus of the WNY REDC. Initially, two California-based clean energy companies, Sora and Silevo, will serve as the anchor tenants in the newly-constructed RiverBend complex by relocating major parts of their respective operations to Buffalo. It is expected that once fully constructed, RiverBend will house multiple industry-related companies. The \$118 million award will reimburse Fort Schuyler Management Company (FSMC) for planning/design costs and machinery and equipment acquisition. The remaining \$107 million will reimburse FSMC with the real estate acquisition, site and infrastructure development, and facility construction. The balance of \$107 million will be presented for consideration by the ESD Directors at a later time.

While Sora and Silevo will be the anchor tenants, establishing operations in the initial 280,000-square-foot facility, it is expected that RiverBend will consist of at least six new structures which will be constructed over time to accommodate approximately 1,200 new manufacturing jobs in the field of biotech, high tech and green energy.

The initial phase of the project is projected to create 650 new jobs, and establish Buffalo as a nexus for advanced research and manufacturing for clean energy technologies and attract businesses from around the world. The RiverBend project will promote smart growth by transforming

a vacant manufacturing site in a distressed area that was previously owned by Republic Steel into a vibrant hub of technology. Additionally, the project will spur adjacent private-sector investment for consumables, amenities, and services, increase demand for housing, and attract and retain people to the WNY Region by providing highly-skilled and unskilled employment options.

Buffalo Medical Innovation and Commercialization Hub – (Western New York Region – Erie County) – \$50,000,000

The Buffalo Medical Innovation and Commercialization Hub (the "BMIC Hub"), a \$250 million shared pharmaceutical research and development facility, will use a grant of up to \$50 million to support drug screening, pharmaceutical development, technology optimization, business attraction, workforce training, and bioinformatics operation research, development and technology.

The project involves a partnership between Fort Schuyler Management Company, College of Nano Science and Engineering, Albany Molecular Research Inc. and the Buffalo Niagara Medical Campus. BMIC is housed on the Campus, which is a 120-acre healthcare complex providing research, analytical and clinical service to more than one million patients and visitors annually in collaboration with its member institutions.

The \$50 million award will be used for the facility acquisition, renovation and mechanical and equipment costs.

The project will create 250 jobs.

Edison Welding Institute, Inc. (EWI) of the "Institute" – Buffalo Billion Initiative (Western New York Region – Erie County) – \$800,000

Edison Welding Institute, Inc. ("EWI" or the "Institute"), operator of a new state-of-the-art center aimed at spurring transformative growth in the high-tech advanced manufacturing sector by providing applied engineering services, will use a grant of \$800,000 for reimbursement for start-up activities including personnel, marketing, interim location base/operating costs, and finalizing partnership agreements necessary to establish a sustainable Buffalo-Niagara Institute for Advanced Manufacturing Competitiveness ("BNIAMC"). A grant of \$45 million will go to the Board at a later date, today's approval covers the initial startup funding for this year. Operator EWI, a non-profit engineering services R&D company that will provide services and support to help local industry develop more efficient operational processes –facilitating entry into new markets.

An investment of \$45 million from the Buffalo Billion will be used to provide machinery, equipment and future facility needs and operations. The institute's target is to generate more than \$6 million in annual revenues by year five and create or retain 841 manufacturing jobs in the region in that same span.

The University at Buffalo will be a partner with EWI on the institute. With strong research programs in fields from materials science to advanced computing, UB will play an integral role in helping companies to develop new manufacturing methods, innovative new materials and new testing technologies.

The center will allow companies an affordable way to tap into resources to test and develop technologies and improve their processes.

The Institute's technology focus areas are flexible automation and controls, advanced materials and testing, additive manufacturing and advanced manufacturing with technical capabilities being built in phases driven by industry demand for technology services in each area.

EWI expects to employ about 30 to 35 employees at the Institute within five years at its 847 Main Street location, near the Buffalo Niagara medical Campus.

About the Buffalo Investment Strategy

With Governor Cuomo's commitment to invest \$1 billion in the Buffalo area economy, which is designed to spur significantly greater private investment and create thousands of new, sustainable jobs, New York State is helping the Buffalo area to realize immediate economic growth to put "generation now" back to work while setting the foundation for sustainable economic opportunity for future generations.

The Western New York Regional Economic Development Council (WNYREDC) – a top economic development plan award winner – will play a key role in how the funding is used to support the expansion of local companies and how to target the attraction of new businesses across the country and around the globe to come to Buffalo. Those businesses will likely be related in some manner to the cluster industries identified by the WNYREDC in its strategic plan, which include, advanced manufacturing, agricultural/food processing, bi-national logistics and distribution, energy, life sciences/medical devices, professional services.

To learn more about each regional council and their economic development plans, visit www.regionalcouncils.ny.gov. For information on how the New New York is working for business, please visit www.thenewny.com.

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