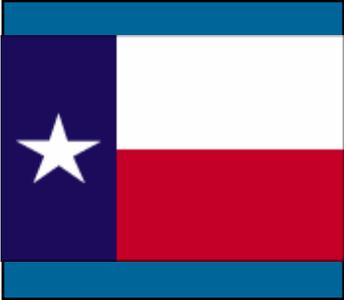


May 2007

TEXAS CIRCULATION
MANAGEMENT ASSOCIATION

TCMA Lone Star Review



Conference Update

Board to Form Study Committee

During the TCMA Business Meeting at the Annual Conference, **Andy Nelson**, from the Dallas Morning News, presented the following motion resulting in a committee appointed by the TCMA Board of Directors:

“In response to the declining staffs in the circulation departments and the increase of additional responsibilities, I make a motion that the TCMA Board of Directors study the possibility of including other supportive departments in the newspaper to become members of TCMA. I am suggesting including the marketing department, research department and the production departments. All of these departments provide services that were once exclusive to the circulation department.”

The Board accepted Andy’s motion and will make a report of its findings at the 2008 Conference in Dallas, Texas.

Membership Cards

For the third consecutive year, **Jerry Weinerth**, President of APHONECARDGUY.com, has provided a 2007 TCMA Membership card for all newspaper and associate members. In addition to a membership card, the card also has thirty-free minutes of long distance calling.

Cards were distributed at the 2007 Conference for members who attended and are included with this newsletter if you did not attend.

Carry your card with you and you’ll always have a long distance phone card for any emergency. Thanks, Jerry.

Thank you, Sponsors

Each year the Board of Directors solicits sponsorships from our vendors to make the conference possible. Their generous contributions enable TCMA to provide an affordable registration fee for our newspaper members. Included with this newsletter is another Buyer’s Guide Bookmark. Keep your buyer’s guide handy and when you need circulation supplies, please give our vendors an opportunity to meet your needs. And while you are talking to them, be sure to thank them for supporting TCMA. One last minute sponsor was John Greeley with **Newspaper Promotions**. He provided the 2007 Conference gift bags.

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THE ZINSER LAW FIRM

TCMA Legal Counsel

On May 8, 2007, the National Labor Relations Board (“NLRB”) issued its long awaited decision in *The Arizona Republic* Case. The issue in this case is whether the Regional Director erred in finding, that the newspaper carriers under contract with *The Arizona Republic* were statutory employees, and not independent contractors. The National Labor Relations Board found, contrary to the Regional Director, that under the standards of *Saint Joseph News-Press*, the newspaper carriers are **not** employees, but rather are independent contractors, excluded from the protection of the Act. This decision affected the status of 1,260 home delivery carriers; the decision did not address the status of 80 single copy carriers.

Delivery Sequence—The NLRB found that the Regional Director committed error when he found that the carriers were to follow a route sequence, strictly as defined in the employer-issued Soft Book. Although Soft Books do list the deliveries in that particular order, the carriers can deliver newspapers in whatever order they wish. Carriers can and do change sequence in the Soft Books, simply by notifying their district managers. The carriers testified that they do not follow the sequence in their Soft

Books, that they deliver papers in any order they choose, or that they have had their Soft Books re-sequenced.

Subscriber Collections

On this point the NLRB found it not to be relevant that the carriers did not bill customers, extend credit, or collect payment from subscribers. This was not a buy/sell relationship, but rather was a negotiated contract fee relationship. Customers paid *The Arizona Republic* directly. The NLRB found that this factor weighed in favor of finding that the carriers are independent contractors.

Progressive Discipline

Contrary to the Regional Director’s findings, the NLRB ruled that *The Arizona Republic* does **not** subject newspaper carriers to a “progressive discipline system” for problems with deliveries. NLRB did note that *The Arizona Republic* relayed customer complaints to carriers. However, that did not translate into progressive discipline. *The Arizona Republic* takes no adverse action against a newspaper carrier other than terminating the contract. NLRB found that it was not relevant that occasionally *The Arizona Republic*’s district managers follow carriers on their routes. This was merely a contract compliance check. The NLRB spe-

cifically ruled that newspaper carriers are not converted to employees simply because *The Arizona Republic* ensures that the newspaper carriers comply with their contract obligations. This is especially so when the newspaper carriers remain free to perform under the contract in any matter they wish.

Space does not allow including the entire NLRB decision.

To read the entire Zinser column logon to www.texascma.org. Go to the newsletter page and click on May 2007. The entire Zinser article will be inside the online newsletter.

Charles Lawson Wins \$100

It took Charles less than three minutes and he went home with \$100. Charles and two other conference attendees submitted a hot idea with their registration. During the Hot Ideas Breakfast, Charles presented his idea. Charles won \$100 in the drawing. Next year, submit your hot idea along with your registration and you, too, could be going home \$100 richer!

The Legal Aspects
by L. Michael Zinser
TCMA General Counsel

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Equipment and Supplies—The NLRB ruled that the newspaper carriers own, control, and maintain their own vehicles. The NLRB specifically noted that the newspaper carriers for a weekly fee of \$1.50 rented the Soft Book; the newspaper carriers are required to reimburse *The Arizona Republic* if the Soft Book is damaged.

The NLRB ruled that it is clear that once the newspaper carriers have collected the newspaper sections, they are in no way obligated to stay at the Distribution Centers. On the contrary, newspaper carriers are free to assemble the newspapers anywhere they wish, such as their vehicles, on the road, or at home. Newspaper carriers can and do download information to their Soft Books at home, via their personal telephone lines. “As such, we do not believe that the employer-provided distribution centers are a significant or necessary supply or place of work.” Noting that it is true that *The Arizona Republic* does provide free poly bags on rainy days, on other days the carriers purchase necessary poly bags and rubber bands. The NLRB found that the provision of limited supplies is insufficient to support a finding of employee status, especially when compared to the carriers’ obligation to provide and maintain a vehicle necessary for fulfilling contractual obligations.

Entrepreneurial Control—Contrary to the Regional Director, the NLRB ruled this factor evidenced independent contractor status. Newspaper carriers have the right to unlimited use of substitutes; distributor carriers have the right to contract for multiple routes. In fact, 29% of the newspaper carriers had exercised the right to negotiate multiple routes. Newspaper carriers have the right to deliver other newspapers and to have other jobs. Newspaper carriers have the right to negotiate their per piece rates and receive commissions for new starts. Many carriers operated in a corporate business form.

The NLRB also found that the Regional Director erred in relying on the fact that only 40% of the carriers actually solicited new subscriptions. The NLRB specifically ruled that “the fact that many carriers choose not to take advantage of this opportunity to increase their income does not mean that they do not have the entrepreneurial potential to do so.” The NLRB found that the fact that district managers exercise common sense when deciding whether to enter into a contract—i.e., by refusing to contract with a carrier, who obviously cannot meet the terms of the agreement—hardly undermines the fact that carriers who are able to perform can, presumably, contract multiple routes.

Parties’ Intent—The contract clearly states that the parties’ are forming an independent contractor agreement and the carriers are not subject to employee programs. As such, this is evidence of independent contractor status. The Regional Director erred in finding evidence of employee status because the newspaper carriers cannot negotiate the contract provisions declaring them to be independent contractors! The fact that this one provision may be nonnegotiable does not distinguish this case from *Saint Joseph News-Press*. Rather, the fact that *The Arizona Republic* is insisting on creating an independent contractor relationship is evidence of that status.

Carrier Accident Insurance—Contrary to the Regional Director, the NLRB ruled that the optional Accident Insurance is not a “significant insurance benefit.” That insurance provides coverage for accidental injuries, a disability benefit, and accidental death benefits. Should a carrier opt to enroll, that insurance covers

accidents only, not illnesses or other medical needs. Importantly, the carrier pays the entire premium, with no contributions from *The Arizona Republic*. Employees of *The Arizona Republic* are not eligible for the accident insurance; the newspaper carriers are not eligible for any insurance or other fringe benefit extended to employees at *The Arizona Republic*. The NLRB concluded, “We disagree that the insurance is a significant benefit, and in light of the clear indication in the parties’ contract, we conclude that this factor weighs in favor of finding that the carriers are independent contractors.”

Because the newspaper carriers are not employees protected by the act, the NLRB reversed the Regional Director and dismissed the petition for a union election.

The NLRB decision specifically notes that it carefully reviewed the record, including the brief on review and the *Amicus* brief which was filed by Cal-Western Circulation Managers Association, Northwest International Circulation Executives, Media News, Inc., Lee Enterprises, Inc., *Santa Cruz Sentinel*, Stephens Media Group, *The Columbian*, *The Register Guard*, Swift Newspapers, Inc., and Wilson Gregory Agency, Inc.

Editor’s note: The above referenced Companies and Organizations filing the *Amicus* brief were represented by L. Michael Zinser, The Zinser Law Firm, Nashville, Tennessee. L. Michael Zinser was lead counsel in *Saint Joseph News-Press*, the decision relied upon by the NLRB in *The Arizona Republic* case.

TCMA Board Update

The Board is delighted to welcome **Jeffrey Ferrazzano** as the new Associate Board Member. Jeffrey is President of The Ultimate Print Source, our printer for the Buyer's Guide. Jeffrey will serve for two years along with **Jeff Hechler** who is completing his second year.



Ferrazzano

There were no candidates for the First and Second Vice President positions on the Board of Directors. If you are interested in serving your Association, please contact Chairman **Dolan Stidom** at 817 215 2204 or **President Randy Schawe** at 281 286 5099. The next board meeting will be in mid June 2007, so if you would like to be a part of Board of Directors call one of these Board members now.

It pays to stay. . . .

During the Vendo-Rama, conference attendees completed signature cards by visiting each of the twenty-five vendor tables in the vendor room.

The cards were collected and at the end of the conference, **Associate Board Member, Steve Weidenheft**, presided over the drawing for the winners. There were four \$25 winners, two \$50 winners, a \$75 winner and a \$225.00 grand prize winner.

Heidi Stell from the Brownsville Herald won the grand prize. She kept the two year tradition of thanking Steve by kissing him on his bald head. Congratulations to Heidi and all of the winners and attendees who participated in Vendo-Rama.



Our Newest Members!

Gerry Marnien	LA Displays
Lorenzo Vigliante	Odessa American
J R Ramos	Odessa American
Nat Casas	Odessa American
David Minner	Corpus Christi Caller-Times
Sue Marvin	MediaSpan Software



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2007 Conference



2007 Carrier of the Year Winners



Betty Johnson

Fort Worth

Under 200 Route Size



Jonathan Lewis

New Braunfels

Over 200 Route Size



Karroll Parker

Fort Worth

Single Copy



Becky Reeder

Fort Worth

District Manager/Contractor

During the Carrier of the Year Banquet that was held at the 2007 Conference, the winner in each category was presented a check for \$300.00 and a framed certificate from the Governor of the State of Texas. The Carrier of the Year Banquet was moved to Tuesday night last year resulting in improved attendance.

To see the Carrier of the Year Winners and a list of the Finalists in each category, logon onto www.texascoma.org.

Vend-O-Rama Returns

Steve Weidenheft, Associate Board Member, hosted the return of Vend-O-Rama. Started as a trial run last year, Vend-O-Rama was held on **Tuesday, May 8, 2007**, at the Annual Conference in Austin.



After a continental breakfast in the Vendor Room, conference attendees were given a card with the name of each vendor participating in the display room. Attendees formed groups and circulated around the vendor tables. This ice-breaker gave the attendees and the vendor representatives an opportunity to meet. After each card was signed by the vendor, the cards were collected and a drawing for cash prizes was held at the end of the conference.

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