

Lone Star Review

National Circulation Hall of Fame



Mike Zinser, TCMA Legal Counsel, was recently inducted into the Anderson-Hanna Circulation Director Hall of Fame. Zinser is the founder of The Zinser Law Firm in Nashville with a heavy concentration of clients in communications media, representing over 250 newspapers. He is an honors graduate of the University of Cincinnati and received his law degree from Vanderbilt University School of Law in 1975. Since 1975, Zinser has spent the

great majority of his time representing communications companies and industry trade associations. He is General Counsel to Northwest ICE, Texas CMA, Mid-Atlantic CMA, Cal-Western CMA, Midwest CMA, Central States CMA, Ohio CMA and Inter-State CMA. He regularly speaks to industry trade associations and is a long time contributor to LEARNing More Circulation Idea Service and its predecessor, Circulation Idea Service. LMCIS owner, Steve Learn said, "Our entire industry should be thankful for Mike's contribution in so many areas but none more than his devotion to educating us on how to work and interact with independent carriers." —*Courtesy January 2014 RICMA Upbeat*



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“Coz” Wins Sales Rep of the Year



Schermerhorn Bros. Co. salutes **Constantine “Coz” Efstratiou**, winner of the 2013 Charles E. Scott Award for Sales Excellence. Mr. Scott is a revered figure in SBCO history, and served as our President from 1958 through 1977. The Scott Award is presented to the SBCO Sales Representative who writes the most new business during our fiscal year. Coz bested SBCO Reps from all over the U.S.A. to claim the 2013 Award after finishing a close second in 2011 and 2012. Coz joined SBCO Houston in 2010. His territory includes North Texas, Oklahoma, Florida, and The Carolinas. Clients count on Coz for great products, first class service, and advice they can trust. **Editor Note:** *Constantine Efstratiou serves as an Associate Director on the TCMA Board of Directors.*

TCMA Conference/Hotel Registration

2014 Texas Circulation Management Association Conference
Omni Southpark Hotel

April 3-4 2014
Austin, Texas

.01 >>REGISTRATION INFO

Please be sure to fill in all blanks which apply to your registration form as needed. Use names as you want them to appear on name tags. The prices for the conference are per person.

Pay online at www.texascma.org or

Make checks payable to TCMA.

Send to New Address

J W Smith, Secretary/Treasurer

PO Box 9577

The Woodlands TX 77387

Cancellation/Refund Policy

Reservation deadline is March 10, 2014

No refunds will be issued for no-shows. No cancellations after March 10, 2014.

Questions?

Call 713 822 0989

conference@texascma.org

.02 >>Conference Plans (*Includes conference fee AND Omni Hotel Room + tax*)

<u>Registration Fees</u>	<u>Number</u>	<u>Before March 10</u>	<u>Line Total</u>
Single Occupancy	_____ X	\$349.95	\$_____
Double Occupancy	_____ X	\$563.05 (includes 2 people)	\$_____

TCMA WILL RESERVE YOUR HOTEL ROOM

Includes one hotel night (April 3, 2014) including hotel tax

Other charges to hotel room will be guest's responsibility

Check in April 3, 2014, 3:00 pm; Check out April 4, 2014, 12 noon

Additional night(s) available; Single \$149; Double \$160 \$_____

_____ April 2; _____ April 4

Select Guest® Number (if applicable) _____ \$_____ Total

.03 >>ATTENDEE INFORMATION (for **double occupancy**, submit information forms together)

Please Print

Name _____

Address _____

City _____ ST _____ ZIP _____

Office Phone (____) _____ Fax Phone (____) _____

E-Mail Address _____

Newspaper/Vendor _____

Position/Title _____

Is this your first TCMA Conference? _____ Yes _____ No

TCMA Board Elections

Nominations for Second Vice President will be received at the 2014 Conference on Thursday afternoon. If you are interested in becoming a TCMA Board Member and have questions, contact **J W Smith** for more information about serving on the TCMA Board.

The TCMA Board of Directors is comprised of five members. Beginning with the Second Vice President which is elected at the annual conference, each board member advances to the next position following the close of the conference. The next position is First Vice President, President-Elect, President and then Chairman. The board typically meets two times a year and at the annual conference.

The President is responsible for the annual conference program. The President-Elect assists with the Buyer's Guide; the First Vice President is responsible for the Carrier of the Year Competition, and the Second Vice President is introduced to the board during the first year. The Chairman assists where needed after successfully completing the previous five positions.

If you would like to nominate someone for the Second Vice President be sure you have their permission and be ready to make a short nomination for them on Thursday afternoon at the conference. Again, if you have any questions please let me know.—J W Smith, tcma@texascma.org

2014 Conference Registration

Registration for the 2014 TCMA Conference is now open. The 2014 Conference will be held at the Omni Southpark Hotel in Austin, Texas, on April 3-4, 2014.

Hurry! Registration closes on **March 10, 2014**. Registration forms were sent by US Mail a few weeks ago but if you would like to register online you may do so. Go to the TCMA Conference web page and click on the link **Register for the 2014 Conference**. Complete the registration form and when you click submit you will be taken to the payment page where you can use your credit card.

Your registration fee **INCLUDES** your hotel accommodation plus tax at the Omni Southpark Hotel. If you would like to come in early or stay an additional day you may add this to your registration.

Sharing a room? This is a great bargain as you can save over \$136 compared to two separate registrations.

Come be a part of the first conference in our second century. The TCMA Board of Directors is planning a great conference for you.



2014 TCMA 101st Conference Beginning our Second Century

April 3-4, 2014

Omni Austin Hotel at Southpark
4140 Governor's Row
Austin, Texas 78744
512 448 2222

Hotel Registration will be included
in your conference registration fee



2014 Membership

Have you renewed your membership for 2014?

Your membership fee enables the Association to provide you with a quarterly newsletter as well as supporting the Carrier of the Year Competition.

PayPal has a new feature allowing TCMA to send you a customized invoice with a link to the TCMA PayPal site to pay your invoice. If you are interested and would like a special invoice please let our Secretary know at tcma@texascma.org

Don't forget! You can **renew online** and use your credit card to pay for your membership and other services provided by TCMA.



Welcome New Members

Thomas Kaspari	Houston Chronicle
Anthony Rapczynski	Houston Chronicle
Christina Post	RouteSmart Technologies
Richard Carlson	Wichita Falls Times Record News
Jimmy Baugh	San Angelo Standard Times
Tim Ritter	Abilene Reporter News
Ernesto Lopez	Houston Chronicle
Hamp Rogers	Corpus Christi Caller-Times

Advertising Space Available

To **renew or add** your business card ad on the back page or within the *Lone Star Review* with a link to your company web site for 2014, send your request for an invoice to:
J W Smith — tcma@texascma.org



ORAL ARGUMENTS SCHEDULED BY SUPREME COURT IN *NOEL CANNING*

As previously reported in this column, the U.S. Supreme Court agreed to hear *NLRB v. Noel Canning*. That case is scheduled for oral argument before the Supreme Court on January 13, 2014. The Court will be reviewing whether President Obama's recess appointments to the NLRB were unconstitutional.

The U.S. Court of Appeals for the D.C. Circuit ruled that the President's NLRB appointments were not made during "the Recess" as the term is used in the Constitution. Second, the vacancies filled by the President's recess appointments did not "happen" during "the Recess" of the Senate, as required under the Constitution. The D.C. Circuit ruled that the Constitution's use of the term "the Recess" could only mean the intersession break that occurs between Senate sessions, and not an intrasession break during a session.

Keep in mind that in the early days of our country, Senate recesses between its sessions were often six to nine months long. The recess clause was intended to provide continuity of government during these long recesses. Not only were recesses very lengthy, but transportation and communication was much more primitive.

This writer will go out on a limb and state that he believes the Supreme Court will uphold the D.C. Circuit's decision.

DEPARTMENT OF LABOR'S "PERSUADER RULE" POSTPONED UNTIL MARCH 2014

The Department of Labor pushed back from November 2013 to March 2014 its target date for publishing its final rule regarding the "Advice Exception" to the so-called "Persuader Rule" in the Labor/Management Reporting Disclosure Act of 1959 (LMRDA).

The LMRDA currently provides that Employers must report to the DOL each time they engage a consultant to persuade employees directly or indirectly regarding employees' rights to organize or bargain collectively. A failure to comply can result in jail time and a \$10,000 fine. However, the LMRDA carves out from the reporting requirements an "Advice Exception," which has consistently been interpreted to **exclude** an Employer's engagement of an attorney to assist them with organizing campaigns, so long as the attorney has no direct contact with employees.

The proposed rule currently narrows the Advice Exception significantly. Under the proposal, Employers who engage attorneys to assist in organizing campaigns will now have file publicly reports with the government detailing all the labor work that the law firm performs for the Employer.

The American Bar Association and the Association of Corporate Counsel have opposed the rule, stating that it is inconsistent with the rules of professional conduct pertaining to lawyer/client confidentiality. The proposed rule forces attorneys to disclose privileged attorney/client information and will discourage Employers from using counsel during union organizing campaigns.

Like the NLRB's "quickie election" rule, this proposed rule of the DOL is designed to squelch Employer First Amendment protected speech during union campaigns. Because of the failure to get



Congress to pass the so-called “Employee Free Choice Act,” which would have eliminated NLRB elections, the NLRB and the DOL have tag-teamed with two proposed administrative rules in an attempt to silence any opposition to union organizing.

NLRB EMBARKS UPON ADVENTURISM

On December 30, 2013, the Seattle Region of the NLRB issued a Complaint and Notice of Hearing in a case involving Pacific Publishing Company and Teamsters District Council No. 2, Local 747-M. On the surface, the Complaint alleges that the Company unlawfully withdrew recognition from Teamsters District Council 2.

On January 25, 2013, Pacific Publishing Company did withdraw recognition from the union because it had actual, certain knowledge that the union had lost majority support. A majority of employees had signed documents objectively stating that they no longer wanted to be represented by the union. Under existing case law (*Levitz Furniture*), an Employer is privileged to withdraw recognition when it has actual, certain knowledge that the union has lost majority status.

When the Regional Office of the NLRB investigated the union’s unfair labor practice charges, it did so thoroughly over a 4-month period. At the end of the investigation, NLRB Regional Director Ronald Hooks dismissed all charges against Pacific Publishing Company. The union then appealed the dismissal to the NLRB General Counsel’s Office of Appeals in Washington, D.C.

After languishing for three months, the Office of Appeals ordered the Regional Director in Seattle to issue the Complaint and Notice of Hearing. What is significant is the remedy sought:

The General Counsel additionally seeks to urge the Board to limit the rule enunciated in *Levitz Furniture*, 333 NLRB 717 (2001), precluding post-withdrawal pro-union evidence to cases involving an “anticipatory withdrawal.” The General Counsel asserts it is appropriate for the Board to reconsider and overrule *AMBAC*, 229 NLRB 505 (1990), and related Board decisions, and adopt the rule that post-withdrawal evidence of support for a union within a reasonable time following withdrawal of recognition may deprive an Employer of the privilege to withdraw recognition from the union. Under the General Counsel’s proposed new rule, an Employer that intends to withdraw recognition based on objective evidence of “actual loss” would have an affirmative obligation to immediately inform the union of its intention to withdraw recognition, and to maintain the status quo for a *reasonable period*. The presumption of majority union support would be deemed to continue, unless and until the incumbent union fails to demonstrate continued majority support during a *reasonable period* following the Employer’s announcement that it intends to immediately withdraw recognition. [*Emphasis added*]

This is a sea change in the law – and proof positive that the newly confirmed NLRB General Counsel Richard Griffin will be embarking upon legal adventurism in 2014 and beyond. I will keep you advised of the status of this case. (*Editor’s Note*: The Zinser Law Firm, P.C., is representing Pacific Publishing Company).

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