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Texas Circulation Management Association May 2014

Lone Star Review

Beginning Our Second Century

Welcome to an expanded edition of the TCMA *Lone Star Review.*

The first TCMA Conference of the TCMA's Second Century was held in Austin, Texas, April 3-4, 2014, at the Omni Southpark Hotel. The presentations were lively, informative and well attended by our members and vendors following the 100th Anniversary Conference last year.

To start the conference, **Katie Tankersley**, Manager at the Atlanta Journal Constitution's web site, told how social media can help the Circulation Department in securing new readers and subscribers. Following Katie, **Calvin Dean,** Single Copy Sales Marketing Manager at the Dallas Morning News (DMN), shared how the DMN was able to increase revenue and readers while commemorating the JFK Anniversary last fall. Calvin shared how every community has historical events that can be recognized while driving new sales and increasing revenue.

Calvin Dean was elected as TCMA's Second Vice President during the business session. A lively roundtable session moderated by **Bill Campbell** and NAA's **John Murray** closed out the Thursday afternoon session.

Dinner at the Iron Works BBQ and a hilarious comedy revue at Esther's Follies on Austin's Sixth Street capped a delightful Thursday evening.

On Friday morning, TCMA's Counsel, **Mike Zinser,** brought an update of current legal issues. **Arvid Tchivzhel,** from Mather Economics, delivered a very interesting presentation of using various metrics to determine subscriber pricing. The 101st Annual Conference ended with the JW Smith Carrier of the Year Luncheon where four newspaper carriers, selected from a competition, were honored for their service as carriers.

We welcomed several new Vendors this year to the Conference as well as several first time attendees. Work has already begun on next year's conference location. Determine today that you will be at our annual gathering in 2015.

Inside this issue

2014 Carrier of the Year Winners

The TCMA 2014 JW Smith Carrier of the Year winners were recognized for their achievement at a luncheon held in their honor at the conclusion of the TCMA Conference held in Austin, Texas, April 4, 2014. Each winner was presented a cash award along with a Certificate of Honor from the Governor of the State of Texas. During the luncheon attendees viewed a video of each winner's accomplishments. To view the YouTube videos go online to the **COTY** web page on the TCMA web site.

As pictured above, the Under 325 Route Size Category winner was **Sabra Anglin** from the Lubbock Avalanche-Journal. The Over 325 Route Size Category winner was **Bill Hukill.** The Single Copy Category winner was **Dominique Wiggins. Edward Freeman** was the District Manager/ Contractor winner. Hukill, Wiggins, and Freeman are from the Fort Worth Star-Telegram.

The 2015 JW Smith Carrier of the Year Competition will begin in September 2014.

2014 Buyer's Guide

The 101st Annual TCMA Conference Buyer's Guide is now online complete with links to the advertiser's web sites. There is a link to the PDF file on the TCMA web home page and on the 2014 TCMA Conference web page.

There area a few copies remaining of this year's guide. If you would like to have a copy send an email to our Secretary/Treasurer at tcma@texascma.org. He will send you a PayPal invoice for $2.25 to cover the cost of mailing the guide. Or send a check for $2.25 to TCMA, PO Box 9577, The Woodlands, TX 77387.

Thank you, TCMA Sponsors

Our vendor sponsors for the TCMA Conference are responsible in helping TCMA keep the registration cost for our attendees affordable. TCMA is proud to recognize and thank our sponsors for their support for the TCMA 101st Annual Conference this year. If you are responsible for purchasing or securing vendors for your company, please give these sponsors and all of our vendors an opportunity to submit a bid to you. If you are not the purchaser please let the person in your company know of our sponsors and vendors. Be sure to view the online version of the Buyer's Guide, too.

The Pisa Group

Schermerhorn Bros.

DeLoach named publisher of *Abilene Reporter-News*

The E.W. Scripps Company (NYSE: SSP) has appointed Jeff DeLoach, publisher of its *Standard-Times* newspaper in San Angelo, Texas, to also serve as publisher of the *Abilene Reporter-News*. His expanded role is effective immediately.

As publisher in San Angelo since 2009, DeLoach has been a driving force in transforming the *Standard-Times* into a multi-platform local media enterprise focused on strengthening the community and connecting advertisers with current and prospective customers. Now he will split his time between the two markets, sharing his marketing strategies and enthusiasm for building relationships with the team in Abilene. He succeeds Dave Hedge as publisher in Abilene, who announced his departure from the company on March 5.

"Jeff DeLoach understands the importance of relationships in building successful local media businesses," said Tim Stautberg, Scripps senior vice president of newspapers. "He also appreciates the vital role of the *Abilene Reporter-News* in the life and health of the community."

Prior to arriving in San Angelo, DeLoach served four years as vice president of circulation at the Scripps-owned *Corpus Christi Caller-Times*, adding responsibility for advertising sales in 2008. During his tenure, he restructured the advertising management team and implemented a management development program.

From 1996 to 2005 he worked in the circulation department at the *Commercial Appeal*, the Scripps newspaper in Memphis, Tenn. He started as circulation sales and marketing manager and then became director of circulation compliance. In that role he worked directly with publishers, controllers and circulation directors at all Scripps newspapers to evaluate and monitor circulation systems and processes. He started with Scripps in 1993 at the *Rocky Mountain News* in Denver, where he served as circulation manager, responsible for subscriber retention and the department's budgeting, forecasting, reporting and field verification. Prior to joining Scripps he worked for the Audit Bureau of Circulations.

DeLoach has served on numerous newspaper industry boards and committees, including the Texas Daily Newspaper Association and the Newspaper Association of America, and is a past president of the Southern Circulation Managers Association. In 2008 the Newspaper Association of America recognized him as the "National Circulation Sales Executive of the Year." In 2011 The Texas Daily Newspaper Association recognized DeLoach as the "Texas Newspaper Leader of the Year."

He serves on the board of directors of several local organizations, including West Texas Rehab Center, United Way of the Concho Valley, San Angelo Chamber of Commerce, Better Business Bureau, Downtown San Angelo, Inc., and the Angelo State Athletic Foundation. Jeff is a member of the Texas Circulation Management Association.

DeLoach earned a bachelor's degree in business from Roosevelt University in Chicago. He and his wife Laurette have three college-age children.

E.W. Scripps Company Press Release March 11, 2014

On February 5, 2014, the NLRB reissued its proposed rule to dramatically shorten the period of time between the filing of a union election petition and the holding of the election. The reissued rule is the text of the original "quickie election" rule, not the scaled back final version issued in December 2011.

As this column reported earlier, on December 9, 2013, the NLRB voluntarily dismissed its appeal of a lower court decision dismissing its December 2011 quickie election rule. A lower court had invalidated the rule as unlawfully promulgated because it had been promulgated without a quorum of at least three members. The Board is now simply starting over with the same rule, this time approved by a fully confirmed Board of five Members.

Currently, the NLRB's own time target is to hold an election no later than 42 days after the filing of election petitions; on average, the NLRB's General Counsel reports that an election is held 38 days after the filing of the election petition. This timeframe gives Employers the opportunity to communicate to employees the pros and cons of unionization *before* they go to the polls. This 38 to 42 day time frame provides for an informed electorate.

The proposed rule is an openly notorious retaliation for the failure of Congress to pass the so-called "Employee Free Choice Act." That law would have eliminated elections. The only reason for the proposed rule is to prevent Employers from campaigning against unionization.

THE PROPOSED RULE VIOLATES THE FIRST AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA

The United States is distinguished by the presence of the First Amendment. The very foundation of our country is Freedom of Speech. It is not surprisingly that, to emphasize the importance of free speech, it is enshrined in the First Amendment of our Constitution.

Our rights of free speech in our society are very broad and robust, in spite of the fact that the exercise of free speech may offend unions. The proposed rule is designed to shield unions from the competition of ideas in the workplace and the marketplace. The shortened length of time proposed by the rule prevents Employers from communicating to their employees the full range of the pros and cons of being represented by a labor union. Such a rule is repugnant to the First Amendment and many of the most important court decisions in our nation's history.

The proposed rule is a stealth attempt to in part repeal the Taft-Hartley Amendments of 1947. The Taft-Hartley Amendments added Section 8(c) to the National Labor Relations Act. That Section states, "The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printing, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

In 1969, the U.S. Supreme Court ruled that Section 8(c) codified the First Amendment into the National Labor Relations Act. In so ruling, the Supreme Court stated:

> *An Employer's free speech right to communicate his views to his employees is firmly established and cannot be infringed by a union or the Board. Thus, Section 8(c) merely implements the First Amendment by requiring that the expression of any views, argument, or opinion shall not be evidence of an unfair labor practice.*

The NLRB may not, through a rulemaking proceeding, usurp the role of Congress and amend

(Continued on page 8)

Zinser Law Firm Celebrates Milestone

Michael Zinser still puts out a print version of his monthly newsletter for clients of The Zinser Law Firm in an era when email would seem to be easier and cheaper.

"I just believe that symbolically, since I represent the print media, I should have a print bulletin," he said.

Mike Zinser, Senior Attorney Glenn Plosa and Associate Attorney Andrew Gossett at Schermerhorn Symphony Center

Newspapers aren't the only clients of the Nashville, Tenn., law firm that celebrated its 25th anniversary May 17. But since Zinser represents some 200 to 300 daily newspapers as well as several circulation trade associations, executives from across the country turned out for dinner, dancing and tributes at the Schermerhorn Symphony Center. Congressman Diane Black, R-Tenn., started the celebration by leading the pledge of allegiance to the flag of the United States of America.

The firm has made its mark in employment issues such as whether carriers are independent contractors or newspaper employees. Zinser has also been involved in labor and union issues. His firm counseled the Houston Chronicle through 8 decertification elections and did the same for Media General with 17 unions from 1999 to 2007. He's a regular contributor to SNPA publications, offering advice and summarizing the implications of the latest case law.

A graduate of the University of Cincinnati and Vanderbilt Law School, Zinser's early newspaper experience consisted of having high school sports stories occasionally picked up by a local Cincinnati paper, and spending Friday nights working in the pressroom of the Western Hills Press while working his way through college. Once out of law school, he was introduced to newspaper employment issues at the first law firm he worked for. He founded The Zinser Law Firm in 1989.

"I've had cases in every department of the newspaper, including the newsroom, the pressroom, the packaging and distribution center," Zinser said. "We've handled some of the really, really important cases."

Among the most important is a 2005 case involving the St. Joseph News-Press in Missouri. "That's the current leading precedent on the National Labor Relations Act that ruled newspaper carriers are independent contractors and not eligible to form a union," Zinser said.

Although the newspaper initially lost before an administrative law judge, Zinser said the ruling was reversed on an appeal to the National Labor Relations Board.

If carriers or freelancers are considered employees, there are implications for workers compensation, unemployment compensation and tort law, he said. The Zinser firm has represented newspapers in 40 states on those issues.

"Another big issue is whether or not employees should be able to use the employer's email system for union organizing purposes," Zinser said. In 2007 the firm represented The Register-Guard of Eugene, Ore., in rare oral argument before the NLRB, which had not scheduled oral arguments since

(Continued on page 7)

(Continued from page 6)

1999.

Many news organizations filed briefs in support of the Register-Guard, while labor organizations filed for the other side. The ruling was that company email is the property of employers. "That was a huge, huge case," Zinser said.

More recently, Zinser represented the Santa Barbara News-Press in California in a contentious case involving reporters and the Teamsters Union. At issue was who controlled the content of the paper – the reporters who covered the news and wrote the stories, or the owners. Zinser said eight reporters were discharged, six of them for publicly encouraging people to cancel their subscriptions while working and getting a paycheck from the employer.

Again, the first ruling went against the newspaper ownership, but in late 2012 the U.S. Court of Appeals for the D.C. Circuit went the other way. "The First Amendment affords a publisher – not a reporter – absolute authority to shape a newspaper's content," the court ruled.

None of the fired reporters were returned to work. "I've been practicing law since 1975 and I've represented newspapers the entire time," Zinser said. "And I've never had a case where the union was trying to take over the content of the paper.

"It was just very unusual. That was a very important case for the entire industry."

Obviously, Zinser doesn't consider newspapers to be a dying industry.

"The newspaper industry, I think, is a very important part of our society. I think the fact that the Founders chose to put the freedom of the press in the very first amendment to the Constitution gives me an idea of what they thought about it way back then."

"It has been a lot of fun representing newspaper people. They're entrepreneurial. They're in the information business. They're really in the vanguard of the First Amendment out there."

Mike Zinser is a TCMA Member and has represented TCMA as our legal counsel since 1980.

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Lone Star Review Sponsors

TCMA is delighted to welcome several new *Lone Star Review* sponsors. On the back page of each quarterly newsletter is a business card size ad that is linked to the sponsors own web page, if applicable.

Our new sponsors bought a buyer's guide package that included a buyer's guide ad, vendor space at the conference, quarterly newsletter ad and a web link on TCMA's home page.

Please take a minute to look at the ads and click to their web page. Your support of our vendors make it possible to produce a newsletter and help keep your conference costs as affordable as possible

Welcome New Members

Rick Rogers	America Consolidated Media
Chris McKee	MediaSpan Group
Chad Bruton	Fort Worth Star-Telegram
Misti Mynhier	Inka Solutions
Calvin Dean	Dallas Morning News

(Continued from page 5)

and/or delete the Taft-Hartley provisions of the Act.

Nothing is more honored or cherished in American culture and society than a secret ballot, democratic election conducted after a vigorous and thorough debate of the issues. A union election is a decisive event in an employee's working life. That employee should be able to have all of the available information before voting. Through the First Amendment, we have "staked… our all" upon the belief that "right conclusions are more likely to be gathered from a multitude of tongues."

By limiting an employee's opportunity to get his or her Employer's perspective on what a union means for the workplace, that employee is forced to vote on an uninformed basis. Protecting an employee's rights under the National Labor Relations Act must protect the employee's opportunity to be informed and to make an educated decision.

The Supreme Court, enforcing the First Amendment, once stated, "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value." The proposed rule seeks to prevent the circulation of ideas opposing unions. Without the **time** to circulate its perspective and point of view, an Employer's First Amendment right of Freedom of Speech will be of little value in NLRB elections.

The "bright light" of the First Amendment is a powerful force. The NLRB's proposed rule is an attempt to turn off that bright light.

CONGRESS HAS TWICE REJECTED THE "ELECTION NOW, HEARING LATER" AND THE "VOTE NOW, UNDERSTAND LATER" APPROACHES REFLECTED IN THE PROPOSED RULE

The proposed rule defers most important legal issues to a *post-election* hearing. Under the National Labor Relations Act as written, an Employer has the right to insist on a hearing **before** the election is even scheduled.

Prior to 1947, the Board conducted a number of elections that relegated a number of important election-related issues to a post-election hearing. With the Taft-Hartley Amendments' adoption in 1947, Congress repudiated this process by adding language in Sections 9(c)(1) and (4) of the Act, requiring the Board to conduct an appropriate hearing *before* any election, and permitting "the waving of hearings" only "by stipulation" of all parties.

Congress again rejected the "election now, hearing later" and "vote now, understand later" approaches in passing the 1959 Landrum-Griffin Act Amendments. Expressly rejected was legislation that would have allowed deferring important legal issues to a post-election hearing. The legislative history indicates, "The right to a formal hearing *before* an election can be directed is preserved without limitation or qualification."

THE NLRA'S REQUIRED PRE-ELECTION HEARING MANDATES THAT EVIDENCE BE RECEIVED REGARDING WHO IS ELIGIBLE TO VOTE

The proposed rule defers important issues to a post-election hearing. That includes key issues about who is actually eligible to vote. In particular, it defers until after the election issues of whether someone is or is not a Supervisor. It is important for an Employer to know who is a Supervisor, and who, therefore, may, on behalf of the Employer, exercise the First Amendment right to communicate during the period prior to the election. It is also critical to know who is a Supervisor be-

(Continued on page 9)

(Continued from page 8)

fore the election for unfair labor practice liability purposes. It is manifestly unfair to allow a union to file post-election objections over the conduct of an individual whose status the Employer was not permitted to clarify before the election. With pre-election clarification that an individual is a Supervisor, the Employer is in a position to control the individual's conduct. The proposed rule is contrary to the current expressed language of the National Labor Relations Act.

THE PROPOSED RULE UNLAWFULLY DELEGATES TO HEARING OFFICERS DECISION-MAKING AUTHORITY

The current language of the National Labor Relations Act prohibits Hearing Officers from even making "recommendations" about issues raised in pre-election hearings. Currently, the Hearing Officer then passes on the evidence to the Regional Director. Regional Directors then decide issues in pre-election hearings. However, Employers currently have a *statutory right* to seek Board review of any action by a Regional Director. The proposed rule eliminates an Employer's right, before the election, to seek review by the full Board regarding decisions of the Regional Directors. As stated previously, the proposed rule, contrary to the Act, defers most issues to a post-election hearing.

The proposed rule gives the Hearing Officer broad authority concerning the hearings. This is contrary to the statute. With respect to post-election hearings, decisions made in those hearings may not automatically be appealed to the Board. Review of decisions made at those hearings is discretionary. Under the current statute, Employers have a statutory right to Review by the Board of any decisions made at the hearing, including pre-election requests to "stay" the election.

The proposed rule deprives the parties of the right to file post-hearing briefs in all cases, unless there is "special permission" of the Hearing Officer. Even when permission is granted, the parties may only address "subjects permitted by the Hearing Officer." This raises serious due-process issues. This decision-making authority given to the Hearing Officer is contrary to the current language of the Act, which precludes Hearing Officers from even "making recommendations" regarding election issues.

THE PROPOSED RULE IMPOSES NEW OBLIGATIONS ON EMPLOYERS

Changes imposed by the rule are too many to summarize in this column. With respect to the requirement to provide to the union the names and addresses of voters, the new rule requires Employers to electronically transmit employee names, phone numbers, and e-mail addresses no later than two days after the Regional Director schedules the election. The proposed rule does *not* clarify whether it requires employees' personal e-mail addresses or business e-mail addresses. Under current law, unions may not use the Employer's e-mail system, in recognition of private property rights. The proposed rule raises privacy and private property concerns.

CONCLUSION

The NLRB is without authority to promulgate the proposed rule. The proposed rule is in direct conflict with express statutory provisions of the Act and its legislative history. The proposed rule is unconstitutional, in violation of the First Amendment of the Constitution of the United States of America.

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