

Lone Star Review

2015 Conference Report

Welcome to an expanded edition of the *Lone Star Review*. The 102nd Annual TCMA Conference concluded on April 10, 2015, after two one-half day sessions that began on April 9, 2015.

Our lead off speaker, **Bill Huffhine**, from Journal, Inc. (MS), delivered a challenging presentation, “**Five Bold Moves that Work.**” He likened the bold moves to his participation in building a school in Bolivia over several years. He then proceeded to elaborate on Five Moves that would help drive subscription acquisition and retention at any newspaper.

Following Bill was **Aaron Kotarek** who presented time tested and new ways to get your subscription message into “**Every Home, Every Day, Every Way.**” He used examples of marketing ideas he used at his newspaper (Lexington KY Herald-Leader) when Kentucky was in the NCAA Final Four Championship this year.

Thursday evening the attendees watched the sun set over Lake Travis at the Hill Country favorite, **The Oasis**, while enjoying dinner.

On Friday morning, TCMA’s Counsel, **Mike Zinser**, brought an update of current legal issues. **Matthew Wolfe** from the Raleigh (NC) News-Observer gave the attendees “**Proven and Effective Ways to Grow Single Copy.**” He had plenty of examples he has used in his career that grew his single copy circulation. Matthew is also the President of the Mid-Atlantic Circulation Managers Association.

We learned that this was the first visit to the Lone Star State for Bill Huffhine, Aaron Kotarek, and Matthew Wolfe. Ya’ll come back when you can!

Lisa Stuart from The Wall Street Journal was elected as TCMA’s Second Vice President during the business session.

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 2016.

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2015 Carrier of the Year Winners

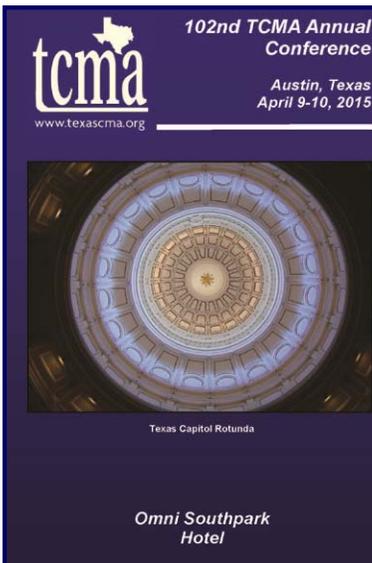
The TCMA 2015 JW Smith Carrier of the Year winners were recognized for their achievement at a luncheon held in their honor at the conclusion of the TCMA Conference held in Austin, Texas, April 10, 2015. Each winner was presented a cash award along with a Certificate of Honor from the Governor of the 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 **Faustino Pena** from the Galveston Daily News. The Over 325 Route Size Category winner was **Stacy Smead** from the Lubbock Avalanche-Journal. The Single Copy Category winner was **Robert Collins** from the Corpus Christi Caller-Times. There was no nominee for the District Manager/Contractor Category.

2015 Buyer's Guide

The 102nd Annual TCMA Conference Buyer's Guide is available 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 2015 TCMA Conference web page.



There are 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 102nd 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.



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Zinsergram a/k/a Legal Update

By L. Michael Zinser

The Zinser Law Firm, P.C.

PRESIDENT OBAMA VETOES CONGRESSIONAL ACTION ON NLRB RULE

On March 31, 2015, President Barack Obama vetoed a Joint Resolution under the Congressional Review Act that would block implementation of the National Labor Relations Board's "quickie election" Rule. The Senate adopted the Disapproval Resolution by a 53 to 46 vote on March 4, 2015. The House of Representatives passed the same measure by a vote of 232 to 186 on March 19, 2015.

The quickie election Rule is designed to take away the First Amendment rights of Employers to communicate to employees the other side of the unionization issue. The new Rule also forces employees to vote quickly, without being informed voters. Currently, there are two lawsuits in federal court attempting to stop the Rule.



QUICKIE ELECTION RULE IN EFFECT AS OF APRIL 14, 2015

The NLRB's quickie election Rule went into effect on April 14, 2015. The agency has been training its personnel to implement the policies. However, as we reported previously, two lawsuits are pending in an attempt to stop the Rule.

The Associated Builders and Contractors of Texas, Inc. joined with the National Federation of Independent Business/Texas to challenge the proposed Rule in the U.S. District Court for the Western District of Texas, filing suit in January 2015. An action filed by the Associated Builders is now set for an April 24, 2015 hearing on a Motion for Summary Judgment.

Also in January 2015, the U.S. Chamber of Commerce and Coalition for a Democratic Workplace filed suit in the U.S. District Court for the District of Columbia. While Motions for Summary Judgment have been filed in this case, no hearing has been scheduled as of this writing.

Editor's Note: Let us hope that one of these lawsuits is successful in stopping the new election Rule. We will keep you updated.

QUICKIE ELECTION RULE WEAKENS EMPLOYEE PRIVACY

One part of the quickie election Rule that is not often discussed is the part that requires Employers to disclose employees' private contact information to unions. As of April 14, 2015, Employers are now required to disclose to the NLRB and the organizing unions employees' personal e-mail addresses and telephone numbers.

Under the Rule, employees do not have the opportunity to opt out of sharing this private contact information with the union attempting to organize the workforce – neither does the Rule require the Employer to notify the employees that it is disclosing the information.

This is in sharp contrast to a Pennsylvania state law that allows individuals to fight the release of their home address before it is released under the Pennsylvania Right to Know

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Law. A recent court decision gives the individual the ability to claim that disclosure of information about them might put them at a personal security risk. A recent case in that state involved a union fighting access to its members' personal information under the state law.

Privacy, the First Amendment, and due process are of no concern to the NLRB. Its goal is to do anything it can to help unions organize new employees. At the present time, unions represent only 6.6% of the private sector workforce.

LAS VEGAS REVIEW-JOURNAL WINS CONTRACTOR CASE

On March 4, 2015, the District Court of Clark County, Nevada (Las Vegas) granted a Motion for Summary Judgment in favor of *Las Vegas Review Journal*, finding that the newspaper carrier who had an accident was an independent contractor. In this case, the newspaper carrier, while delivering newspapers, struck the plaintiff's vehicle. As a result, the plaintiff filed a lawsuit against the carrier and the *Las Vegas Review-Journal*, claiming the carrier was an employee.

The court stated that *Las Vegas Review-Journal* is not liable for the negligence or other torts of an independent contractor. The court relied upon the following factors to rule the carrier to be an independent contractor:

- The Independent Contractor Distribution Agreement required a finding that the parties' relationship was that of an independent contractor – the court placed great reliance on the language of the contract;
- The parties fully and freely intended to create an independent contractor relationship;
- The carrier had the sole right to control the manner, mode, method, and means of delivery;
- The carrier had the right to engage in any other business, including the delivery of other newspapers, and in fact held another job while delivering newspapers for the *Review-Journal*.
- The carrier had the right to determine the sequence of delivery;
- The carrier had the right to employ others and engage subcontractors to assist him with his deliveries, without limitation;
- The carrier's compensation fluctuated up and down based on the sale of newspapers;
- The carrier was not required to pick up his papers at any particular time;
- The carrier provided his own vehicle and paid for all expenses;
- The carrier was treated as an independent contractor for all tax purposes;
- The carrier was issued IRS Form 1099;
- The fact that a District Manager showed the carrier the route on one occasion was insufficient to demonstrate that the *Review-Journal* provided training or continuously supervised the carrier's performance; and
- While customer complaints were referred to the carrier, the court found that insignificant. What was significant to the court is that the carrier contract stated he was "free to

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ignore any and all suggestions” from the *Review-Journal*.

This case demonstrates the importance of having a carefully drafted Independent Contractor Agreement. Significantly, the court noted that the delivery deadline was the end result – not evidence of employee status.

Editor’s Note: The Zinser Law Firm, P.C. drafted the contract used by *Las Vegas Review-Journal* and was also consulted by the newspaper’s insurance defense counsel regarding this matter.



**Sunset at The Oasis
Thursday, April 9, 2015**



**More Conference
Photos on
TCMA 100th
Anniversary
Facebook page**

Welcome New Members

Libby Averyt	Corpus Christi Caller-Times
J R Goll	US Products
Jeff Card	Mechanism Exchange and Repair
Greg Parker	Bryan Eagle
Christine Dovers	Dallas Morning News
Eric Rossi	Dallas Morning News
Angie Grissom	Dallas Morning News
Cody Smithers	Dallas Morning News
Christopher Shipley	Dallas Morning News
Kevin Shields	Circulation Promotion Unlimited
Jon Alverson	Delta (MS) Democrat Times
Maurice Barcomb Jr	The Paris News

Welcome New Lone Star Review Sponsors

TCMA is proud to announce new sponsors of the *Lone Star Review*. The business card ads are on the last page of the newsletter. These companies join a list of distinguished sponsors of the newsletter. Welcome **Hamilton Circulation Supplies, Inka Solutions, Mechanism Exchange and Repair, Newspaper Subscription Services, TeleReach, the Pisa Group, and US Products**. Each of the sponsors purchased a newsletter ad as a part of several advertising packages with the 2015 Buyer’s Guide. These ads are linked, where available, to the company’s web page. Please take a minute to visit each sponsor’s page. Tell them you saw their ad in the *Lone Star Review*.

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 2015, send your request for an invoice to:

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