



THE READY-MIXER



Virginia Ready-Mixed Concrete Association Newsletter

April 2010

Bullock to Assume Role as VRMCA President

Larry Bullock, current Chairman of the VRMCA Advisory Council, will step into the job as VRMCA President at the conclusion of the upcoming Spring Conference at the Homestead. Current President, Morgan Nelson will complete his two-year term and move to the position of Immediate Past President.

Bullock, VP of Concrete for Boxley, has served as Vice President of VRMCA and earlier acted as Secretary/Treasurer of the Association. He also served as Chairman of the Southwest Virginia Concrete Advisory Council from 2000-2002.

Larry is a 1979 graduate of Virginia Tech and has worked in the construction materials industry for 31 years, first with Lone Star Industries and later with Boxley's aggregate operations. He has managed Boxley's concrete business



since 1998. He currently oversees more than 100 employees and 11 ready-mix operations, and is particularly proud of having 8 of Boxley's concrete plants achieve NRMCA Green Star Certification in 2009.

Larry is a very well liked and respected member of the concrete industry, and is a born-and-bred Virginian. Born in Ladysmith, he and wife Keith are both Tech graduates, as is soon-to-be-graduate daughter, Blair. Their son Drew currently lives in Greensboro and is a sales representative for Roanoke Cement. Larry and Keith live in Roanoke, which he describes as being a terrific place to live and raise a family.

Of his many accomplishments, Larry is most pleased by having watched Boxley's concrete business grow and his managers develop into skilled professionals. He will certainly continue to be an influential member of the construction industry as he leads VRMCA into the next decade. ❖

Bob Chandler to Head Advisory Council

In May, current VRMCA Secretary/Treasurer Bob Chandler will take on the duties of VRMCA Vice-President and Chairman of the Advisory Council.

As Executive Vice-President of Chandler Concrete, Bob has been an active member of the Association ever since his company expanded operations from its Burlington, NC headquarters and began operations in Virginia.

Bob and his wife Amy have two children – Maddie, a sophomore at the University of South Carolina, and Gatlin, currently in the 7th grade at Burlington Day School.

After graduation from NC State University, Bob worked for four years at Wachovia Bank & Trust and then joined the family company in 1989. He worked

in all facets of the company and is now responsible for sales and marketing at all operations in North Carolina, Virginia and Tennessee.

Bob remains active in the Burlington community, serving as Director or Chairman of several community groups, such as the Board of Directors of Twin Lakes, the BB&T Burlington Advisory Board, and as Past Chairman of the Administrative Board of Front Street United Methodist Church.

He also serves on the Board of Directors of Elon College. Bob is an enthusiastic runner and biker, and if you don't find him on the golf course he may be busy enjoying another pursuit – coaching YMCA basketball. ❖

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Visit us online
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VRMCA
Virginia Ready-Mixed Concrete Association

Welcome to VRMCA Online
Welcome to the Virginia Ready-Mixed Concrete Association's web site - your online source for information on ready-mixed concrete for design professionals, homeowners and managers of businesses in the industry.

Our Mission: To become the leading resource for concrete-related information and to assist our members, design professionals and homeowners by making this information easy to use and readily available.

Events
Congratulations to our 2010 Mixer Truck Rodeo winners!
The Virginia Truck Center hosted the 2010 VRMCA Mixer Truck Rodeo on Saturday, April 15. And the winners were...
Registration for the VRMCA Spring Convention is now open!
For more details and registration information, Click HERE.
2009 Fall Convention Presentations
Presentations from the Fall Convention are available for download.
Concrete Workshop Presentations
Presentations from "Building Green with Concrete Workshop", June 4th, 2009, WSSD, Gainesville, Virginia
VRMCA Spring Convention Presentations
Presentations are available from the 2009 Spring Convention held on May 17 - 19, 2009.

News
Newsletter for March 2010
The VRMCA Ready-Mix Newsletter for March is now available for download.
New! Printable Membership Roster
The Membership Roster is now available in print format (PDF).
Eight Boxley Materials Concrete Plants Receive Green-Star Certification
Boxley Materials recently announced that its eight concrete plants all received green-star certification.

ACI & Calendar

ACI Class - Hampton, VA (FULL)	4/20/2010
ACI Class - Hampton, VA (FULL)	4/21/2010
SWCAC Meeting	4/21/2010
ACI Exam - Hampton, VA	4/22/2010
NVCAC- Architectural Conc. w/ Colors and patterns	4/22/2010
Meeting with Va. Tech Bldg. Const Dept.	4/26/2010
ACI Class - Warrenton, VA	5/4/2010

Visit the Virginia Ready-Mixed Concrete Association Website at www.vrmca.com

Seminars Presented in Hampton Roads



Phil Kresge, Senior National Resource Director, NRMCA, presents a seminar on Pervious Concrete.

**By J. Keith Beazley,
Director of Industry Services**

A special seminar was presented to the Cities of Virginia Beach and Newport News on March 25 and March 26, sponsored by the VRMCA and the Hampton Roads Concrete Advisory Council. The seminar provided information on the Fundamentals of Pervious Concrete, Stormwater Management using Pervious Concrete, Sustainable Development and Low Impact Development, Benefits of Pervious Concrete, Concrete Construction, Pavement Design, Concrete Mixtures and Production, Maintenance, Inspections and Troubleshooting.

The seminar was led by Phil Kresge, Senior Resources Director, NRMCA, with extreme expertise in all aspects of this very special concrete product. The engineering staffs of both cities were very impressed with the opportunities that Pervious Concrete presented in special applications for Stormwater management in the municipalities and

the opportunities to have Pervious Concrete as part of the BMP for compliance with the Commonwealth DEQ and the Chesapeake Bay Act.

The benefits of Pervious Concrete include reduction of stormwater runoff, elimination for the need for detention ponds, replenishment of water tables and aquifers, more efficient land development, minimizes flash flooding and standing water, prevents warm and polluted water from entering streams and mitigates surface pollutants. The benefits were of high interest as stormwater management plans must include control of all of these items in reports to the Virginia DEQ.

The Co-chairman of the Hampton Roads Paving Committee Jim Pratt, TCS Materials, and George Mayotte, Lehigh Cement, arranged for the two days of seminar. Bill Denison, Titan America, the Council Chairman was also present. The recent record rainfall has increased the interest and opportunities for discussion of Pervious Concrete. ❖

VRMCA Teams with Global Giant

**By Hessam Nabavi,
Director of Industry Services**



VRMCA in Northern Virginia forges ahead in its attempt to unlock new doors, seek new opportunities and raise the bar for industry standards. VRMCA is working with CH2MHILL, a global leader in full-service engineering, consulting, construction and operations, on the sustainable benefits of concrete.

CH2MHILL, which closely resembles a chemical equation, is the firm of Cornell, Howland, Hayes, Merryfield and Hill. CH2MHILL employs more than 24,000 people worldwide in 116 countries. With 135 offices in the United States, the company's main headquarters is located in Denver, CO and its Northeast headquarters is located in Chantilly, VA.

The firm offers a variety of services which include architecture and planning, energy management, sustainable solutions, site and infrastructure planning, construction management and security and emergency management.

Recently, VRMCA partnered with NRMCA to conduct a presentation on pervious concrete for a large group in Chantilly. The line of questions were extensive and there was a great amount of interest in pervious concrete amongst the engineers in attendance.

VRMCA would like to thank Mr. Phil Kresge, Senior National Resource Director for NRMCA, for all of his assistance with this presentation. ❖

For coverage in future issues, please send announcements/press releases and accompanying photographs to marci.malinowski@easterassociates.com or mail to:



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Submissions may be edited for length. Inclusion is not guaranteed and may be excluded due to space.

Senate Approves \$120 Million Fort Lee Project

By J. Keith Beazley,
Director of Industry Services

The Senate Armed Services Committee Subcommittee on Personnel, chaired by Virginia Senator Jim Webb, has approved the \$120 million Fort Lee Hotel project and sent a letter signed by Senator Webb and ranking Republican member Senator Graham of South Carolina, notifying the Pentagon of its decision. This final congressional approval clears the last hurdle before construction can begin on the 1,000 room military hotel.

The Fort Lee Hotel will be the largest in Virginia and managed by the Army's Family and Morale, Welfare and Recreation Command. It serves similar to the Marriott Corporation providing lodging and vacation destinations around the world for service members and their families.

Construction originally was expected to start by the end of last year but was delayed after controversy erupted when detailed plans for the project were unveiled last summer. A number



of members of the business community were alarmed by the unexpected size of the proposed lodging and some governmental officials worried the facility would hurt the local economy. The hotel was scaled back to 1,000 rooms from the original 1,700 room facility. The Fort Lee Garrison Commander contended the hotel is essential to train soldiers and that military guidelines require it to house 80 percent of the students on the base. A special study on the Environmental Impact of the Hotel was included in the report to Congress and the finding was

that the facility would not adversely impact the quality of the environment.

The Army has stated that the regional economy will benefit from the \$120 to be spent on construction and the hiring of about 275 permanent employees for the hotel, as well as increased travel to the area by people who are eligible to stay in Army Lodging. The hotel will also pay about \$6.4 million in annual wages and will buy about \$2.1 million in goods and services. The increase student population is expected to produce \$4.2 million in annual revenue for area restaurants and bars.

The building will be a five story concrete and brick structure and will be completed by 2012. The original plans were for the building to be 15 stories tall and considering security issues and the target it presented the building was reduced to 5 stories and the footprint was spread. The parking facilities for the building are proposed to be of Pervious Concrete as part of the facility storm water management system. The Korte Company is the Construction Manager for the building.

The Federal Base Realignment and Closure Commission (BRAC) continues to have a very positive impact of the construction industry in the Richmond area. The population of Fort Lee will double by 2011 with over 50,000 students and support staff on the facility on a daily basis. The Garrison Commander is planning for all types of support facilities to be part of the ongoing construction at the base and our industry will continue to benefit from the Defense Department Structure. ❖

EISA: Pervious Concrete Aids in Reducing Water Pollution

By Hessam Nabavi,
Director of Industry Services

April showers bring May flowers, but those April showers also bring storm-water runoff from roads, sidewalks and buildings. This runoff is the leading source of water pollution.

Runoff on large areas of impervious surfaces during a rain storm often sees no infiltration. This creates much higher rates and volumes of stormwater runoff which ultimately increases pollution to surface water caused by flooding and erosion.

To protect water resources, federal agencies under *Section 438 of the Energy Independence and Security Act (EISA)* must abide by using a variety of stormwater management practices called "Low Impact Development" (LID). LID practices that reduce impervious surfaces are systems such as pervious pavements, vegetated swales, vegetated roofs and cisterns.

Section 438 of EISA has established stringent stormwater runoff requirements for federal development and redevelopment projects.

To learn more about *Section 438*, please visit www.epa.gov/owow/nps/lid/section438/. ❖

NVCAC Holds Roundtable on Concrete and Construction

By Hessam Nebavi,
Director of Industry Services

NVCAC Educational Committee recently organized a round table discussion for the concrete and construction industry. A panel of experts with more than 100 years cumulative experience were selected to discuss various industry topics.

Members of the panel included Ed Wiles, P.E., regional sales manager, Roanoke Cement Company; Sean Kennedy, P.E., regional director, O'Donnell & Naccarato; Robert Scheller, P.E., associate/senior engineer, Whitelock Darlymple Poston & Associates and current president of WACEL (Washington Area Council of Engineering Laboratories); Matthew Cockerham, project manager/estimator, North Star Foundations; Mike Lenkin, P.E., vice president, Miller and Long Concrete Construction; and Richard Franey, vice president, Southland Concrete (former vice president of sales, Virginia Concrete).

Panelists discussed a number of topics including concrete and seasonal changes, theory versus practice in concrete applications, sustainable construction and "greenbuilding" techniques and testing techniques for pervious concrete. They were also asked to make a short statement about their experience with concrete.

"I'm very appreciative of the quality of ready mixed concrete that is going out these days," said Kennedy. Robert Scheller agreed. "The technologies and variety of ad mixtures that are available are making a huge difference in the quality of ready mix."

"The concrete industry has become more professional. Testing and safety has become more stringent, but unfortunately contractors' superintendents are not taking the time to learn about the changes," said Matthew Cockerham of North Star Foundations.

"Engineers usually care about the end result and not the process. Specifica-



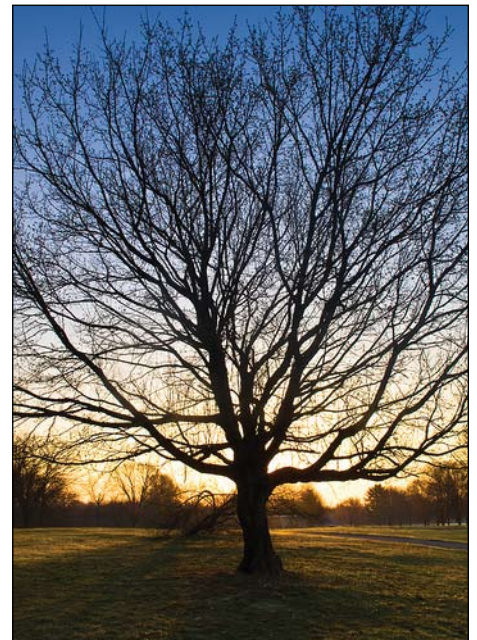
From left to right, Richard Franey, Mike linkin, Matthew Cockerham, Robert Scheller and Sean Kennedy.



Robert McPheeters of Holcim offers his views on the discussion.

tions need to improve because a lot of time things are being specified that are not even there. This is a people business even with all the technologies that we are surrounded by. Buildings are built by people and not by the computers. We need to try to bring the human factor back to the business," added Mike Lenkin.

"It is important to work on the specifications since producers, engineers, testing labs and contractors are partners in the projects. From the contracting standpoint the product has to perform as it is specified. Everybody wants to create quality. If someone is asking a question about the specification, in most cases they



The roundtable discussion was held at the Algonkian Park Golf Course in Sterling, VA.

are looking for clarifications to get the specified results and they are not arguing," Richard Franey explained.

VRMCA/NVCAC is very thankful to the members of the panel and Ed Wiles for taking the time from their busy schedule to participate in this educational event. Very special thanks to Marc Granahan of Lehigh Cement for his effort to put this event together. ❖

VMI Engineering Seminar Features Photocatalytic Cement

By Bob Nablo,
Director of Industry Services

The 11th annual dinner-seminar for VMI Civil and Environmental Engineering students and faculty was held in March at Moody Hall on the VMI Post. Each year the Southwest Virginia and Blue Ridge Councils try to develop an interesting, informative and sometimes “cutting edge” presentation for students who will be working in the design and construction industries within a couple of years. This year Jeremy Betts, Manager of Technical Services for Essroc Italcementi Group, presented a detailed description of photocatalytic cement and the intricate process of repelling pollutants.

Betts took care to explain the various pollutants that attack concrete structures and the chemical processes that can reduce or eliminate them. He also offered a number of before-and-after photos from both laboratory and field tests, as well



as photos of striking building designs currently using what has been called “self cleaning” cement. Additionally, he described how ongoing lab work is targeting layering systems – such as paint – to help hold down the costs

this connection with industry and that he specifically mentions the event when interviewing prospective engineering students and their parents as an example of how an academic program can help the student prepare for life after college. ❖

of using specialized cementitious materials.

About sixty students, faculty and industry members enjoyed the dinner and used the opportunity to network. Thanks to Dr. Ned Reister, CEE Department Head, for funding this continuing event and arranging the facilities. Reister says that his department has always enjoyed

Williamsburg Company Gains Certification Status



By J. Keith Beazley,
Director of Industry Services

Richard Hite, Richard Hite Concrete Construction, has completed all requirements for the NRMCA Pervious Concrete Craftsman certification and joins an elite group of only 22 individuals with the designation in the United States. Richard Hite Concrete Construction was founded in January 1995 by Richard Hite and incorporated in Williamsburg in June 1968. With over 25 years experience

in the concrete field, Richard enjoys an active role in the daily operation of the company. A commitment to quality workmanship and customer satisfaction led to an expansion from the residential marketplace to the commercial marketplace. Richard Hite Construction provides a full range of concrete services in the peninsula area including structural concrete, flatwork, pervious concrete, slip form, and site concrete.

The Pervious Concrete Craftsman certification examination was sponsored by the Virginia Ready Mixed Concrete Association and administered by Shelley Wright, P.E., TCS Materials. The individual must pass the NRMCA Pervious Concrete Contractor Certification Written Examination, possess a current ACI Flatwork Finisher Technician or Craftsman Certification and document work experience and pass a Performance Evaluation. Shelley Wright, P.E., conducted the examination on performance with Richard Hite with a Pervious Concrete placement in April at Fort Lee.

The goal of the certification program is to ensure that knowledgeable contractors are selected to place the product and thereby minimize the chance for failure. NRMCA has established the requirements and provides certification exams and performance evaluations to approved local sponsoring groups for administering the program such as the VRMCA.

With the completion of the Pervious Concrete Craftsman Certification, Richard Hite has demonstrated the ability to place, compact, finish, edge, joint, cure and protect pervious concrete pavements and has documented a higher level of field time-based experience in placing pervious concrete. Pervious Concrete is a unique product and part of a Stormwater Management System.

The proper placement and handling are imperative to the success of our marketing program. Congratulations to Richard Hite for this very special Craftsman Certification and hopefully many yards of placement of Pervious Concrete in the future. ❖

Roanoke Nears Completion of Third New Fire/EMS Station

By Bob Nablo,
Director of Industry Services

Sixteen months after the ground breaking ceremony, the third new fire/EMS station in Roanoke City is nearing completion. The first new station, opened in 2007, replaced two older, smaller stations – one of which was 100 years old.

The second station, opened in 2009 and heavily promoted by the Southwest Virginia Concrete Advisory Council, featured stained concrete interior floors and a pervious concrete parking area. That station was originally designed in tilt-up construction, but the site, in a residential area, was ultimately deemed to be too tight for lifting cranes to work. The station has received LEED Gold Certification and many of its concrete features have been incorporated in the third project.

The new \$5 million station will replace two facilities that are each nearly a century old. This new building will also house a Roanoke police substation

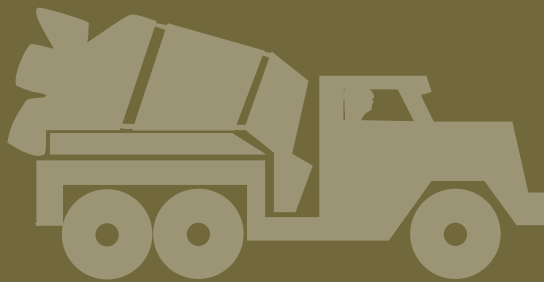


and a community room. Neighborhood residents originally opposed plans to close the old stations, but meetings with city officials and visits to the new second station helped sway opinions.

Councilman Sherman Lea said, "This is a shot in the arm for this locality. They realize that this is a good thing for the community." The new building will

feature a rainwater harvesting system, energy-efficient heating and cooling, and other water conservation systems. This time the interior floors are polished concrete that give a terrazzo-like appearance. Pervious concrete for the parking areas is under consideration. LEED certification will also be sought for this project. ❖

Save The Date



VRMCA Spring Convention
May 16-18, 2010
The Homestead Resort, Hot Springs, VA

NRMCA, Wildlife Habitat Council Announce Partnership

During the opening general session of the National Ready Mixed Concrete Association (NRMCA) 2010 Concrete Sustainability Conference in Tempe, AZ, NRMCA and the Wildlife Habitat Council signed a Memorandum of Understanding (MOU) that promotes the biodiversity of ready mixed concrete production facilities.

This new partnership is designed to encourage participation in the programs of each organization and to engage and demonstrate voluntary corporate leadership in environmental performance, including enhancement and restoration of wildlife habitat.

"The Wildlife Habitat Council programs encourage biodiversity on corporate lands. These programs support NRMCA's sustainability mission—which is to transform the built environment by improving the way concrete is manufactured and used in order to achieve an optimum balance among environmental, social and economic conditions," said NRMCA President Robert Garbini.

"The concrete industry has long been a leading partner in building biodiversity, wildlife habitat conservation and restoration programs into their operations," said Council President Robert Johnson. "We look forward to working with NRMCA and the good works this agreement will create on the ground."

Now in its fifth year, NRMCA's



Concrete Sustainability Conference is the ready mixed concrete industry's singular event that highlights the latest advances, technical knowledge, continuing research and solutions for sustainable concrete manufacturing and construction. Each year, industry experts discuss such topics as low impact development, carbon footprint and embodied energy and recycled materials.

The Wildlife Habitat Council is a nonprofit, non-lobbying organization dedicated to increasing the quality and

amount of wildlife habitat on corporate, private and public lands. The Council devotes its resources to building partnerships with corporations and conservation groups to create solutions that balance the demands of economic growth with the requirements of a healthy, biodiverse and sustainable environment. Council-assisted wildlife habitat and conservation education programs are found in 48 states, the District of Columbia and nine other countries. To learn more, visit www.wildlifehc.org. ❖



Wilt Wins Nomination

Tony Wilt, President of Superior Concrete in Harrisonburg, has been chosen as the Republican nominee for the District 26 seat in the Virginia House of Delegates.

Wilt won the Republican nomination with 658 votes plus 7 provisional votes in Harrisonburg and 939 votes plus 5 provisional in Rockingham County.

The seat was recently vacated by Delegate Matt Lohr, who was appointed Commissioner of the Virginia Department of Agriculture and Consumer Services.

Mr. Wilt will face the Democratic nominee, Harrisonburg Mayor Kai Degner, in a special election held on June 15, 2010. ❖

VIRGINIA READY-MIXED CONCRETE ASSOCIATION

CONGRATS TO OUR WINNERS!

The 2010 Mixer Truck Rodeo was held Saturday, April 10 at the Virginia Truck Center located in Chester and was a tremendous success! A total of 14 drivers participated in the competitions and over 30 total attendees helped set-up, judge and score.

Our First Place winner was Stephen Hobgood with Virginia Concrete Company! Stephen received a \$500 cash prize and will receive an all expense paid trip to the VRMCA Spring Convention at The Homestead Resort in May! The Second Place winner was Paul Heller with Essroc! Paul won a cash prize of \$350. The final scores for the day were determined by using the following formula: 50% driving course score, 25% written test score and 25% pre-trip inspection score.

Thank you
to all our
participants.



FINAL RESULTS

(in order of placement)

Stephen Hobgood, *Virginia Concrete*
Paul Heller, *Essroc*
Sam Britt, *TCS Materials*
William Duncan, *Chandler Concrete*
Luke Wims, *Capital Concrete*
Chris McCraw, *DuBrook Concrete*
Irvin Henry, *Cardinal Virginia*
William Lee, *TCS Materials*
Richard Seller, *Essroc*
George Miller, *Powhatan*
Camillo Bonillo, *DuBrook Concrete*
Mike Newton, *Titan America*
Chris Johnson, *S.B. Cox*
Dennis Robinson, *Chandler Concrete*

A Very Special **THANK YOU** to All of Our Sponsors

We would not have been able to pull off such a successful event without your support!

GOLD SPONSORS



SILVER SPONSORS



We would also like to thank the Virginia Truck Center for hosting the event, S.B. Cox Ready Mix for providing our outdoor facilities and McNeilus Truck & Manufacturing and TCS Materials for supplying mixer trucks for the event.



Visit us on the web at www.VRMCA.com

The Changing Face of the National Labor Relations Board

By John G. Kruchko and Paul M. Lusky*

On March 27, 2010, President Obama made two recess appointments to the National Labor Relations Board ("NLRB" or the "Board"). The NLRB is the federal agency that supervises and conducts union representation elections and rules on unfair labor practice charges filed by unions, employees and employers. The Board's rulings enforce and interpret the National Labor Relations Act, the statute that governs private sector labor-management relations.

The new appointees, Craig Becker and Mark Pearce, are both union-side labor attorneys and they will serve on the Board until the end of 2011. With these recess appointments, the NLRB now consists of three Democrats and one Republican. The new Board members are both expected to favor unions in their rulings on cases that come before the NLRB.

In particular, Craig Becker's nomination has generated significant opposition from business groups. Employers fear that Becker will not enforce the National Labor Relations Act ("NLRA") evenhandedly, but instead will alter the playing field to favor unions, especially during the organizing and election process. Becker has been the Associate General Counsel for the Service Employees International Union (SEIU) since 1990 and staff counsel for the AFL-CIO since 2004.

Becker's past writings are of particular concern to employers. He has opined that employers should not be parties to NLRB election procedures at all. He has suggested that only employees and unions should be parties to pre-election hearings. Becker has stated that employers can have some campaign rights, but such rights should be substantially limited. For example, he believes employers



New appointees to the NLRB are expected to favor union rulings.

should always be prohibited from conducting mandatory employee meetings as a campaign tactic and should be bound by their own solicitation and distribution policies when campaigning.

Becker strongly favors the card check legislation (Employee Free Choice Act) that is pending before Congress. Card check is the process by which an employer recognizes a union without an election if a union has obtained signed authorization cards from a majority of the employees. Employers fear that Becker would push the NLRB to institute card check elections by rule and without an amendment of the NLRA by Congress. At the very least, employers should expect that the newly-constituted Board will limit their right to campaign in response to union organizing. Employers may also be required to offer equal access to unions to enter their property and talk to employees.

Decisions of the NLRB Ripe For Reversal

The recess appointments of Becker and Pearce also increase the probability that a pro-union Board will reverse pro-employer decisions during the Bush administration. Specific cases that will likely be revisited by the newly-consti-

tuted Board are:

- *The Guard Publishing Company, 351 NLRB No 70 (Dec. 16, 2007).* - In *The Guard Publishing Co.*, the Board considered the validity of an employer's no-solicitation rule in the context of employee use of the company's e-mail system. The employer's e-mail policy stated that it could not be used for "non-job-related solicitations." Because of that prohibition, the employer disciplined an employee who sent out, via the e-mail, three union-related communications. The Board ruled that the employer's "non-job-related" restriction on the use of the e-mail system was lawful. With regard to the employer's enforcement of its e-mail policy, the Board found that it was permissible for an employer to distinguish between different kinds of solicitations. Applying this new standard, the Board concluded that Guard Publishing did not discriminatorily enforce its communication policy, even though the company permitted personal e-mails, "such as jokes, baby announcements, party invitations, and the occasional offer of sports tickets or requests for services such as dog walking."

The Board said that employers can

(continued on next page)

* John G. Kruchko is a Partner with the Management Labor & Employment Law Firm of Kruchko & Fries in McLean, Virginia; Paul M. Lusky is a Partner with the Firm. For more information, please contact Mr. Kruchko at (703) 734-0554 or JKruchko@KruchkoandFries.com, or Paul Lusky at (410) 321-7310 or PLusky@KruchkoandFries.com. This article is published for general information purposes, and does not constitute legal advice.

(continued from previous page)

“draw a line between charitable solicitations and non-charitable solicitations, between solicitations of a personal nature (e.g. a car for sale) and solicitations for commercial sale of a product (e.g., Avon products), between invitations for an organization and invitations of a personal nature, between solicitations and mere talk, and between business-related use and non-business use.” The Board’s decision in *The Guard Publishing Co.* case overturned years of previous Board precedent which held that an employer could not prohibit union solicitation by its employees unless it prohibited all forms of solicitation by employees. There is a real possibility that the Board’s standard on solicitation may return to this previous rule now that the President has appointed pro-union members to the NLRB.

- **Weingarten Rights** - Another reversal of policy is likely to occur on the issue of giving *Weingarten* rights to non-union employees. The *Weingarten* doctrine was announced in the 1975 decision of *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975). The Supreme Court affirmed a holding by the NLRB that an employer’s denial of an employee’s request that a union representative be present at an investigatory interview which the employee reasonably believed might result in disciplinary action constituted an unfair labor practice in violation of § 8(a)(1) of the National Labor Relations Act, 29 U.S.C. § 158(a)(1).

In July, 2000, during the Clinton administration, the Board held that *Weingarten* rights should be afforded to non-union employees. See *Epilepsy Foundation of Northeast Ohio*, 331 NLRB 676 (2000). As a result, non-union employees could ask for another employee to be their representative during a disciplinary interview. On June 15, 2004, however, during the Bush Administration, the NLRB reversed its 2000 ruling and once again limited *Weingarten* rights to union work places. See *IBM Corp.*, 341 NLRB 1288 (2004). Obviously, the pro-union Board appointed by Obama could revisit this issue and once again apply the doctrine to non-union employees.

- **Dana Corp.**, 351 NLRB No. 28 (Sept. 29, 2007) – In *Dana Corp.*, the

Board held that an employer’s voluntary recognition of a union bargaining representative will not bar the processing of a decertification petition filed during the first 45 days after recognition. Thus, employees seeking a decertification election can file a petition soon after an employer voluntarily recognizes a union, and in a departure from its past practice, the Board will not dismiss the petition as barred. Following the 45 day period, the recognized union still enjoys a presumption of majority status for a “reasonable” period of time. Given the opportunity, a pro-labor Board will clearly want to reverse the *Dana Corp.* case.

- **Toering Electric Co.**, 351 NLRB No. 18 (Sept. 29, 2007) – In *Toering Electric*, the Board significantly altered its standards in “salting” cases. Salting occurs when a union organizer seeks employment at an employer solely for the purpose of organizing the other employees and obtaining recognition of the union. Often “the salt” works solely to provoke the employer into conduct which then forms the factual basis for organizing propaganda and unfair labor practice charges. After the organizing effort, the salt often quits and moves on to another workplace. Until the *Toering* decision, this practice was entirely lawful and salts were protected from discriminatory refusals to hire, or terminations, on the basis of their union activities. In *Toering*, however, the Board placed on the General Counsel the ultimate burden of proving an individual’s genuine interest in seeking to establish an employment relationship with the employer. Any individuals who are not genuinely seeking an employment relationship do not qualify as “employees” protected by the Act. Again, unions are not enamored by this decision and will seek its reversal before the new Board.

It appears there may be many changes ahead for the NLRB and national labor policy. Employers faced with union organizing should be particularly wary of these new developments. Employers may find that unions have expanded rights to access their employees while their own rights to speak to their employees about unions have been curtailed. ❖

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On the Horizon Calendar of Upcoming Events

MAY 4-5, 2010

ACI Class*

8:30 AM - 4:30 PM

H.L. Pearson National
Guard Armory
692 Waterloo Road
Warrenton, VA

*pre-registration required

MAY 5, 2010

VRMCA Safety & Human Resources Committees Meeting

10:00 AM - 1:00 PM

Association Headquarters in
Charlottesville, VA

MAY 6, 2010

ACI Exam

8:00 AM - 1:00 PM

H.L. Pearson National
Guard Armory
692 Waterloo Road
Warrenton, VA

*pre-registration required

MAY 11, 2010

NVCAC Previous Concrete Certification

11:00 AM - 1:30 PM

Arlington, VA

Hampton Roads Concrete Advisory Council Business Meeting

11:00 AM - 1:30 PM

Holiday Inn Executive Center

MAY 12, 2010

BRCAC Meeting

12 NOON - 2 PM

Rowe’s Family Restaurant,
Staunton, VA

MAY 16-18, 2010

VRMCA Spring Meeting

Homestead Resort

Hot Springs, VA

For a detailed schedule of the event, please visit the association website at www.vrmca.com



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VRMCA Spring Convention

May 16-18, 2010
The Homestead Resort
Hot Springs, VA

Sunday, May 16

3 – 6 PM Registration (South Parlor)
6 – 7 PM VRMCA Welcome Reception (Crystal Room)
7 PM Dinner on your Own

Monday, May 17

7:30 AM Breakfast on your own
8:30 – 9 AM Registration Desk Opens (Regency Ballroom Foyer)
"Ash" and "EPA" are not 4 letter words! Proposed Federal and State Regulations Regarding Fly Ash (Pat Borders, Separation Technologies)
9 – 9:45 AM **UPDATE from The Meyers-Lawson School of Construction** (Yvan Beliveau, Director)
9:45 – 10 AM BREAK
10 – 10:45 AM Technical Committee Update and VRMCA Council Updates
10:45 – 11:30 AM **Strategic Options Available to Business Owners and Management Teams** (Clint Bundy and John Lee, The Bundy Group)
11:30 AM Annual Business Meeting (Election of Officers)
11:45 AM Adjourn for lunch, golf and relaxation
12:30 PM Sporting Clays (Gun Club) *Fee includes box lunch, 50-shot round sporting clay and ammunition*
1 PM Golf – Shotgun Start (Lower Cascades) *Fee includes box lunch, range balls and continuous beverages*
6:30 PM VRMCA Reception (Gun Club Pavilion)
7:30 PM Cookout (Gun Club Pavilion)

Tuesday, May 18

8:30 – 9 AM Breakfast on your own
9 – 10:30 AM Safety Committee Update & Safety Awards
11 AM **Who Needs Legs When You Have Wings?** A motivational presentation (Certified Speaking Professional, Chad Hymas)
Board of Directors Meeting (Empire Room)

REGISTER ONLINE
www.vrmca.com