

## NANCY A. NOALL



**NANCY A. NOALL** is a Partner with the Ohio-based law firm of Weston Hurd LLP and is the Chair of the firm's Labor Practice Group. She concentrates her practice in the areas of labor and employment law and has successfully defended clients in such industries as computer software, contract research and development, communications and manufacturing. She has represented clients in the defense of sexual harassment and other employment-related claims. Nancy has litigated cases ranging from employment discrimination to wrongful discharge in the states of

Arkansas, Florida, Illinois, Indiana, Georgia, Kentucky, Mississippi, New Jersey, Ohio and Texas. She has arbitrated grievances under union contracts in Arkansas, Kentucky, Indiana, New Jersey and Ohio.

Having worked her way through college and law school as a manager of a restaurant franchise in Northeastern Ohio, Nancy is particularly sensitive to the operational needs of her clients and regularly provides counseling in personnel and operating policies designed to fit each client's unique business needs. She provides counsel through each phase of the employment relationship, including pre-employment testing, hiring, performance evaluations, discipline and discharge, all designed to minimize the potential for employment-related litigation. She routinely provides advice to non-union clients on how to remain union-free while, at the same time, helping unionized clients develop positive relationships with their union.

Nancy received her B.A. *magna cum laude* from John Carroll University and her J.D. from Case Western Reserve University where she was a member of the Order of the Coif. In addition to her Ohio Bar admission, Nancy has admission before the United States District Court for the Northern District of Ohio, the United States Court of Appeals for the Fifth, Sixth and Eighth Circuits, the United States Court of Appeals for the District of Columbia, and the United States Supreme Court. She is an AV-rated attorney by Martindale-Hubbell. Nancy is a member of the Employment and Labor Law Sections of the Cleveland Metropolitan and Ohio State Bar associations.

### Contact Information

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## **REPRESENTATIVE MATTERS**

### **Workers' Compensation Experience**

- ) For most of her professional career, Nancy has done some workers' compensation law, but since 2008, she has represented clients at the Industrial Commission on average of one to two times per week.
- ) Defended employers in over 300 workers compensation cases, either before the Ohio Industrial Commission or in State Court.
- ) Advising employers on the compensability of claims and contesting workers' compensation cases.
- ) Represented employers in .512 appeals to Common Pleas Court in both state fund and self-insured cases, and both defending claimants' appeals and prosecuting employer appeals.
- ) Represented employers in workers' compensation retaliation claims.

### **Employment and Labor Litigation**

- ) Defending state common law wrongful discharge and defamation lawsuits;
- ) Defending both state and federal lawsuits alleging violations of fair employment practices statutes, including sexual discrimination, racial discrimination, disability discrimination, sexual harassment, sexual orientation discrimination, and national origin discrimination;
- ) Representing employers before the EEOC and state fair employment practices agencies when charges of discrimination have been filed;
- ) Defending employers against unfair labor practice charges filed by unions with the NLRB, including defending during the investigatory phase and in unfair labor practice complaint proceedings;
- ) Representing employers before the National Labor Relations Board with respect to various union election issues, including the appropriate scope of bargaining units and election objections;
- ) Defending employers in Department of Labor investigations of alleged wage and hour violations, as well as FMLA complaints;
- ) Defended employers in over 200 workers compensation cases, either before the Ohio Industrial Commission or in State Court;
- ) Arbitrating over 120 grievances arising under collective bargaining agreements ranging from relatively uncomplicated disciplinary issues to complex contract interpretation issues, such as COLA clauses and piecework rates for incentive jobs;
- ) Obtaining injunctive relief against mass picketing, violence, or illegal strikes;
- ) Representing employers who have been the targets of illegal or unfair labor practices by unions including unlawful secondary boycotts.

## **Employment and Labor Counseling**

- ) Advising non-union clients with respect to union avoidance tactics, including assisting clients in implementing alternative dispute resolution procedures, such as internal peer review programs and training company personnel in ADR procedures;
- ) Assisting employers in union organizing campaigns and in developing and implementing effective campaign strategies;
- ) Advising employers involved in collective bargaining negotiations, including developing bargaining strategies and providing advice so as to avoid unfair labor practice charges;
- ) Providing guidance to employers faced with difficult negotiations who may need advice on weathering a strike;
- ) Counseling employers, when necessary, on replacement of striking workers;
- ) Advising clients with respect to contract interpretations issues arising under collective bargaining agreements;
- ) Drafting or revising employee manuals or specific employment policies including FMLA policies, drug testing policies, no-solicitation and no-distribution policies and ADR policies;
- ) Advising employers concerning the hiring and firing of employees, including reductions in the workforce;
- ) Providing employers with advice concerning mass layoffs and plant closings under both state and federal law, including The WARN Act;
- ) Counseling employers through all phases of the employment relationship including hiring, discipline, evaluations, last-chance agreements, discharges and separation agreements;
- ) Advising employers on compliance with new or changing employment laws including providing supervisory training;
- ) Counseling employers on investigating claims of discrimination or harassment including sexual harassment;
- ) Assisting employers in complying with wage and hour laws and COBRA;
- ) Counseling employers and executives in analyzing, drafting and negotiating individual employment contracts, including retention bonus agreements, non-compete and confidentiality agreements, incentives plans and severance agreements.

## **Labor and Employment Law Experience Includes the Following:**

- ) Advised a major rubber manufacturer during negotiations with the United Steelworkers International Union and one of its Locals that eventually led to a three-month long lockout of Union employees that began in November 2011. Then successfully defended the company before the National Labor Relations Board when the USW filed numerous unfair labor practice charges against the company claiming that the company violated the National

Labor Relations Act. The majority of the charges alleged that the company failed to bargain with the union in good faith in a number of different ways. In addition, the union claimed that, because the company allegedly failed to bargain with the union in good faith, the lockout of union employees was also an unfair labor practice. The Regional Director dismissed the majority of the charges, including those charging the lockout was unlawful. This dismissal was upheld on the union's appeal to the Acting General Counsel of the NLRB in Washington. *Cooper Tire & Rubber Company and the USW*, NLRB Charge No. 08-CA-070209.

- ) Obtained jury verdicts in favor of employers in wrongful discharge actions in a two-day jury trial in an Ohio court and a three-day jury trial in a Mississippi court. *Klasson v. Park Corporation, Cuyahoga County Common Pleas Court, Case No. 197298*; *Rorie v. Cooper Tire & Rubber Company, County Court of Lee County, Miss., Case No. 4,144*.
- ) Obtained summary judgment in favor of the employer in a disability discrimination lawsuit. *Durst v. Cooper Tire & Rubber Company, U.S. District Court, Northern District of Ohio, Case No. 3:00-CV-7339 (2001)*.
- ) Assisted a major produce distributor in a decertification election in 2009, including defending unfair labor practice charges and litigating which employees were entitled to vote in the election, which resulted in the decertification of an incumbent union that had represented employees for nearly 60 years.
- ) Obtained summary judgment in favor of a plastic surgeon who was sued by a former nurse who claimed that she was constructively discharged after she filed a breast implant lawsuit against Dow Corning and that she was subject to a sexually hostile work environment. The summary judgment decision was upheld on appeal. *Takach v. American Medical Technology, (Cuyahoga County App. 1998), 1998 Ohio App. LEXIS 638*.
- ) Won summary judgment in favor of a national freight company in a sexual harassment lawsuit brought in federal district court. *Garcia v. ANR Freight Systems, 942 F.Supp. 351 (N.D. Ohio 1996)*.
- ) Gained summary judgment in favor of the employer in a sex discrimination claim brought by a former female security officer under Ohio's fair employment practices law. *Rita Photinos v. I-X Center Corporation, Park Corporation and Frank Petrella, Cuyahoga County Common Pleas Court Case No. 332406*.
- ) Secured summary judgment for two employers in Ohio state courts. This includes a major security service firm and one for a heat treat company on combined wrongful discharge/defamation actions brought by discharged employees. *Duhn v. Industrial Security Service, Cuyahoga County Common Pleas Court Case No. 88-160529-CV*; *Ceol v. Zion Industries, Lorain County Common Pleas Court, Case No. 90 CV 104913, Court of Appeals, Case No. 91CA-005110*. In the *Ceol* case, also obtained an award of attorneys' fees from the plaintiff's attorney for having filed a frivolous lawsuit.

- ) Obtained summary judgment for TRW, Inc. in an ERISA action filed by United Auto Workers seeking payment of supplemental unemployment benefits to employees of former TRW division. *International Union, United Automobile, Aerospace, Agricultural Implement Workers of America (UAW), et al. v. Argo-Tech Corporation, et al.*, U.S. District Court, N.D. Ohio, Case No. 1:89-CV-1925.
- ) Obtained summary judgment in favor of a national convenience store chain in a Title VII action brought by a discharged employee who claimed she was a victim of racial discrimination. *Howard v. Dairy Mart Convenience Stores*, U.S. District Court, N.D. Ohio, Case No. 1:91 CV 2239.
- ) Successfully defended a Storer Cable System in New Jersey against unfair labor practice charges filed by the International Brotherhood of Electrical Workers over the discharge of an employee who had engaged in union organizing activities. *CATV*, 279 NLRB 1081.
- ) Successfully defended unfair labor practice charges filed by the International Alliance of Theatrical and Stage Employees against a Cleveland television station which had bargained to impasse over changes in employees' work assignments. The union appeal to the U.S. Court of Appeals was unsuccessful. *IATSE L. 666 v. NLRB*, 904 F.2d 47 (D.C. Cir. 1990).
- ) Persuaded a Regional Director for the NLRB to dismiss charges that the Distribution Center for a major rubber manufacturer had discriminatorily discharged a leading Union activist at the conclusion of the IBEW's second Union campaign.
- ) Obtained dismissal of unfair labor practice charges filed by two former employees of a contract research laboratory who were discharged by their employer after they had filed lawsuits for alleged physical injuries resulting from exposure to workplace chemicals.
- ) Persuaded an NLRB Regional Director to dismiss charges brought against a major rubber company alleging that the company was a successor to the unionized company that had previously owned the facility and assets of the newly opened plant in Guntersville, Alabama. In addition, the Regional Director dismissed charges claiming a discriminatory refusal to hire brought by several union employees of the former owner who were not hired by the new company. *Hercules Rubber Company*, NLRB Case Nos. 10-CA-29175 and 10-CA-29188.
- ) Assisted in four successful union election campaigns for Cooper Tire & Rubber Company, two in Tupelo, Mississippi and two in Albany, Georgia.
- ) Assisted a number of smaller employers throughout Ohio in overcoming union organizational campaigns and in defending election objections and unfair labor practice charges brought by the defeated union in connection with their failed organizing attempts.
- ) Advised a company who bargained to impasse for a first contract then implemented its final offer thereafter.
- ) Persuaded a Regional Director for the NLRB to dismiss unfair labor practice charges brought by the Union alleging numerous underlying claims of bad faith bargaining. *Hercules Tire & Rubber Company*, Case No. 8-CA-32348-1.

- ) Persuaded the U.S. Court of Appeals to overturn a trial judge decision in favor of an age discrimination plaintiff. The Sixth Circuit found the lower court's decision to be "clearly erroneous" and held that the plaintiff was legitimately discharged when his job was eliminated as a result of a corporate reorganization. *Brownlow v. Edgecomb Metals Company*, 867 F.2d 960 (6th Cir. 1989).
- ) Litigated a petition for review of a withdrawal liability assessment issued by the Central States Southeast and Southwest Areas Pension Fund against a large Ohio dairy during the course of a strike against the dairy by the Teamsters Union and convinced the Central States Pension Fund that the "labor dispute" exemption to an assessment of withdrawal liability applied.
- ) Persuaded a federal district court to order the plaintiff in a wrongful discharge case to submit his dispute to the company's internal grievance procedure. The court later enforced the grievance panel award upholding the discharge and dismissed the lawsuit. *Betts v. Cooper Tire & Rubber Company*, 1994 U.S. Dist. LEXIS 21190 (N.D. Miss. 1994)
- ) Obtained a dismissal of an ERISA lawsuit against a health care insurance company requiring the participant to pursue the grievance and arbitration procedure set forth in the insurance policy. *University Hospital of Cleveland v. Phelps, et seq.*, U.S. District Court, N.D. Ohio, Case No. 1:94CV2340.
- ) Obtained summary judgment in favor of a moving and storage company in a lawsuit brought by a former employee who claimed that she had been discharged in retaliation for filing a workers' compensation claim. *Roth v. Andrews Moving & Storage*, Cuyahoga County Common Pleas Court Case No. 255653.
- ) Won summary judgment for a large convenience store chain in a lawsuit brought by a former employee who claimed he was discharged for failing a polygraph test in violation of the Employee Polygraph Protection Act. *Gentile v. Dairy Mart Convenience Stores, Inc.*, U.S. Court of Appeals, Sixth Circuit, Case No. 94-3662.
- ) Successfully defended employers in 120 labor arbitrations over the past 25 years in Arkansas, Connecticut, Indiana, Mississippi, New Jersey and Ohio.
- ) Successfully defended a subsidiary of Dairy Mart before the NLRB against unfair labor practice charges filed by the Teamsters. The NLRB held that Dairy Mart was entitled to withdraw the final offer made to the Teamsters before the strike and to submit "regressive" proposals to the Union once Dairy Mart had successfully weathered the strike. The Lawson Company, NLRB Case Nos. 8-CA-19115 and 8-CA-19116.