



National Labor Relations Board

Weekly Summary of NLRB Cases

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Basic Industries, Inc. (15-CA-17525, et al.; 348 NLRB No. 89) Baton Rouge, LA Dec. 18, 2006. The Board affirmed the administrative law judge's dismissal of the complaint allegations that the Respondent violated Section 8(a)(3) and (1) of the Act by laying off employees Jorge Pinto and Oscar Madrid, discharging employee Jorge Chavez, and refusing to reinstate Norberto Hernandez following an unfair labor practice strike and discharging Hernandez because of his union and protected concerted activities. [\[HTML\]](#) [\[PDF\]](#)

In affirming the judge's dismissal of the allegations, the Board found that the General Counsel established that Pinto, Madrid, and Chavez engaged in union activity and that the Respondent had knowledge of that activity. However, it agreed with the judge that the General Counsel failed to meet his burden of establishing that the Respondent harbored antiunion animus. Turning to Hernandez, the Board concluded, as did the judge, that the General Counsel failed to prove any unfair labor practice that would support the complaint allegation that Hernandez was an unfair labor practice striker. Also, there is no credited evidence regarding the reasons why Hernandez engaged in the strike. Accordingly, the Board decided that the General Counsel failed to demonstrate that the strike constituted either union or other protected concerted activity.

(Chairman Battista and Members Schaumber and Kirsanow participated.)

Charges filed by Asbestos Workers Local 53; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Baton Rouge, Jan. 30 and 31 and Feb. 1, 2006. Adm. Law Judge Keltner W. Locke issued his decision May 23, 2006.

Electrical Workers IBEW Local 2326 (Vermont Telephone Co.) (1-CB-10497; 348 NLRB No. 91) Boston, MA Dec. 18, 2006. In agreement with the administrative law judge, the Board dismissed the complaint allegations that the Respondent violated Section 8(b)(3) of the Act by failing and refusing to honor the Employer's request to execute a written contract embodying the complete agreement it had reached with the Employer on the terms and conditions of employment. The judge concluded that there was no meeting of the minds and since there was no meeting of the minds the Union did not violate the Act when it failed and refused to execute the collective-bargaining agreement sent to it by the Employer, which contained the language that was in the 2001-2004 agreement, but not in the tentative agreement signed off on by both parties on Oct. 27, 2004. [\[HTML\]](#) [\[PDF\]](#)

(Members Schaumber, Kirsanow, and Walsh participated.)

Charge filed by Vermont Telephone Co.; complaint alleged violation of Section 8(b)(3). Hearing at Boston on March 28, 2006. Adm. Law Judge Martin J. Linsky issued his decision July 24, 2006.

Five Star Manufacturing, Inc. (17-CA-22626, et al.; 348 NLRB No. 94) Crane, MO Dec. 26, 2006. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employee David Tanksley on Feb. 11, 2004 and by discharging him for a second time on April 26, 2005; violated Section 8(a)(3), (5), and (1) by confiscating employees' keys to its facility and changing employees' work schedules on Feb. 12, 2004; violated Section 8(a)(3), (4), and (1) by reassigning Tanksley to different and more difficult work on April 19, 2004; and violated Section 8(a)(5) and (1) by continuing to award or deny discretionary bonuses and vacation pay after Teamsters Local 245's certification. [\[HTML\]](#) [\[PDF\]](#)

The Board amended the judge's recommended narrow cease-and-desist order, finding that a broad order is appropriate despite the fact that the Respondent does not have a prior history of violations of the Act. It focused on the egregious and widespread nature of the Respondent's misconduct, saying: "The mere fact that the Respondent has no prior history of violations does not, in and of itself, undermine the necessity for a broad order."

(Members Schaumber, Kirsanow, and Walsh participated.)

Charges filed by Teamsters Local 245; complaint alleged violation of Section 8(a)(1), (3), (4), and (5). Hearing at Springfield, Nov. 29-30 and Dec. 1, 2005. Adm. Law Judge John H. West issued his decision May 4, 2006.

Morris Healthcare & Rehabilitation Center, LLC, and Prism Healthcare Group, Inc. (13-CA-42882; 348 NLRB No. 96) Morris, IL Dec. 29, 2006. The Board concluded, in agreement with the administrative law judge, that the Respondent violated Section 8(a)(1) of the Act by telling employees or job applicants that it would operate with no union when it was obligated to recognize and bargain with AFSCME Local 3903 on behalf of members of the bargaining unit and asking job applicants about their views of the Union or any other labor organization. [\[HTML\]](#) [\[PDF\]](#)

In affirming the judge's finding that the Respondent violated Section 8(a)(5) and (1) by unilaterally setting initial terms and conditions of employment upon taking over the operation of a nursing home from a predecessor employer, the Board relied solely on the judge's finding that the Respondent was a "perfectly clear" successor and was not privileged to set initial terms and conditions of employment. See *Spruce Up Corp.*, 209 NLRB 194, 195 (1975), *enfd. per curiam* 529 F.2d 516 (4th Cir. 1975).

Accordingly, the Board found it unnecessary to pass on the judge's additional finding that the Respondent was equitably estopped from setting initial terms because of its coercive statements to employees that it would operate nonunion. See *Advanced Stretchforming International*, 323 NLRB 529 (1997), *enfd. in part on other grounds, remanded in part* 208 F.3d 801 (9th Cir. 2000), amended and superseded on rehearing and *enfd. in relevant part* 233 F.3d 1176 (9th Cir. 2000), cert. denied 534 U.S. 948 (2001), remanded by the Board 336 NLRB 1153

(2001). Any such finding would not materially affect the remedy in this case. As requested by the Charging Party, however, the Board corrected the judge's inadvertent attribution of the coercive statements to Kathy Minor, when in fact they were made by Alma Woods and Suzanne Day.

The Board modified the judge's recommended Order to conform to the violations found and its standard remedial language, and modified the unit description in the Order to reflect the unit description alleged in the complaint and admitted by the Respondent in its answer.

(Members Liebman, Kirsanow, and Walsh participated.)

Charge filed by AFSCME Local 3903; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Chicago, Feb. 6-7, 2006. Adm. Law Judge Michael A. Rosas issued his decision May 30, 2006.

Operating Engineers Local 150 (13-CD-751; 348 NLRB No. 97) Markham, IL Dec. 29, 2006. The Board decided that employees of Royal Components, Inc. represented by Teamsters Local 786, rather than those represented by Operating Engineers Local 150, are entitled to drive the material delivery trucks with hoisting equipment attached and to unload the materials with those trucks at any place on the Yorkville, IL or Elgin, IL jobsites as directed by the contractors' supervisors. The Board relied on the factors of collective-bargaining agreements, employer preference, current assignment and past practice, industry practice, relative skills and training, and economy and efficiency of operations. [\[HTML\]](#) [\[PDF\]](#)

Royal Components, Inc. sought a broad award that encompassed all of its jobsites. The Board found however that the requirements for a broad award have not been satisfied. It noted that the Employer failed to present any evidence that the disputed work in this case is likely to be a continuous source of controversy or that Local 150 has a proclivity to engage in unlawful conduct to acquire the disputed work.

The Board advised that the Employer's request for a 10(j) injunction should be brought to the Regional Director, not the Board under NLRB procedures.

(Members Schaumber, Kirsanow, and Walsh participated.)

Park Maintenance, Palisades Maintenance and Park View Towers, alter egos (22-CA-26709, 27008; 348 NLRB No. 98) West New York, NJ Dec. 29, 2006. The Board affirmed the administrative law judge's findings that Respondent Park Maintenance is the alter ego and successor of Respondent Palisades Maintenance; that Respondents Park View Towers, Park Maintenance, and Palisades Maintenance constitute a single employer; that as the alter ego of and single employer with Palisades, Park Maintenance is bound by the collective-bargaining agreement entered into by Palisades and Teamsters Local 11; and that the Respondents violated Section 8(a)(5) and (1) of the Act by certain conduct. [\[HTML\]](#) [\[PDF\]](#)

The judge found that the Respondents violated Section 8(a)(5) and (1) by refusing to recognize and bargain with the Union, refusing to execute the memorandum of agreement, which is effective from June 1, 2004 to Dec. 31, 2007, refusing to give effect to and apply the terms of the memorandum of agreement, and transferring unit employees from the Northern New Jersey Teamsters Benefit Plan to the plan maintained by Park View Towers without offering to bargain with the Union and without the Union's consent. No party excepted the judge's findings that the Respondents violated Section 8(a)(5) and (1) by refusing to recognize the Union since Aug. 6, 2004, and by transferring employees from the union health plan to a different plan in Sept. 2004 without offering to bargain and without the Union's consent.

In affirming the judge's alter ego finding, Chairman Battista adhered to his position that the General Counsel must show, among other things, an intent to avoid legal obligations under the Act in order to prove alter ego status. See *Crossroads Electric, Inc.*, 343 NLRB 1502 at fn. 2 (2004), enfd. 178 Fed. Appx. 528 (6th Cir. 2006). The Chairman noted however that the Respondents did not assert this contention and accordingly, he affirmed the finding of alter ego status without reaching the motive for creation of Respondent Park Maintenance.

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by Teamsters Local 11; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Newark on March 21, 2006. Adm. Law Judge Steven Davis issued his decision May 18, 2006.

Southern Nuclear Operating Co., et al. (10-CA-32861, et al.; 348 NLRB No. 95) Birmingham, AL Dec. 29, 2006. The administrative law judge found, and the Board agreed, that Respondents Southern Nuclear Operating Co., Alabama Power Co., Savannah Electric and Power Co., and Gulf Power Co. violated Section 8(a)(5) and (1) of the Act by unilaterally changing bargaining unit employees' future retiree health insurance benefits and retiree welfare life benefits without providing notice of the proposed changes and adequate opportunity for the Unions to bargain about the changes. [\[HTML\]](#) [\[PDF\]](#)

Member Schaumber did not participate in *Georgia Power Co.*, 325 NLRB 420 (1998), enfd. mem.176 F.3d 494 (11th Cir. 1999), cert. denied 528 U.S. 1061 (1999), and *Trojan Yacht*, 319 NLRB 741 (1995), which are cited in the judge's decision, and expressed no view as to whether the cases were correctly decided. He would find that the judge's decision was correct under either a contract coverage or a waiver analysis.

The Board found that the judge's recommended general affirmative bargaining orders are not necessary to remedy the Respondents' unlawful unilateral changes in terms and conditions of employment and modified his recommended Order accordingly. See, e.g., *Eugene Iovine, Inc.*, 328 NLRB 294 (1999), enfd. 1 Fed. Appx. 8 (2d Cir. 2001).

(Members Schaumber, Kirsanow, and Walsh participated.)

Charges filed by Electrical Workers IBEW System Council U19, Electrical Workers IBEW Local 1208, and Electrical Workers IBEW Local 1055; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Birmingham on May 3, 2002. Adm. Law Judge Pargen Robertson issued his decision Oct. 17, 2002.

The Wackenhut Corp. (5-CA-31927; 348 NLRB No. 93) Takoma Park, MD Dec. 19, 2006. The Board affirmed the administrative law judge's findings that (a) the Respondent violated Section 8(a)(1) of the Act by making statements at a Feb. 26, 2004 meeting that created the impression of surveillance and that conveyed to employees that they would lose their jobs if they unionized, and (b) that the Respondent did not violate the Act at this meeting by stating to employees that their activity would be monitored by cameras and that any employee that was "unionizing on or near your post" would be physically removed. [\[HTML\]](#) [\[PDF\]](#)

Chairman Battista and Member Liebman adopted the judge's finding that Project Manager Alexander Steele's statement at the meeting to the effect that the International Monetary Fund (IMF) contract prohibited unions violated Section 8(a)(1). Member Schaumber disagreed. While there was testimony that Steele said that the Respondent would not "formulate a union," he noted that the judge did not discuss this testimony, nor is the statement equivalent to saying "the IMF contract prohibited unions."

On another alleged violation, the Board reversed the judge and dismissed the allegation that the Respondent violated Section 8(a)(1) by engaging in surveillance of union activities on March 3, 2004.

Union organizer Elizabeth O'Connor and four other union organizers had assembled on the sidewalk outside the IMF headquarters to distribute union literature to the Respondent's employees. A few minutes after their arrival, Respondent's assistant shift supervisor Ware exited the building. O'Connor approached Ware and asked if he worked for the Respondent. Ware replied that he would not talk to O'Connor, but he continued to stand 2–3 feet away from her with a walkie-talkie in his hand. O'Connor then asked Ware why he continued to stand

there, and Ware replied, “I just want to keep you company”. Steele and Milling exited the building about 5-10 minutes later and stood 2-3 feet away from O’Connor. At O’Connor’s request, the two identified themselves to her, and O’Connor took their pictures. Ware, Steele, and Milling remained for a few more minutes and then returned into the building. O’Connor and the other organizers left the area.

The Board found that the judge erroneously relied on *NLRB v. Town & Country Electric, Inc.*, 516 U.S. 85, 94–95 (1995). In *Town & Country Electric*, the Supreme Court held that paid union organizers are statutory employees when they apply for a job with, or are employed by, an employer. It noted that neither O’Connor nor the other union organizers were employees of, or applicants for jobs with, the Respondent and, therefore the Respondent’s conduct did not constitute surveillance of the Respondent’s employees. In addition, the Board noted, and the judge acknowledged, that there is no evidence that any of the Respondent’s employees were in the vicinity of the area where the incident occurred.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Service Employees; complaint alleged violation of Section 8(a)(1). Hearing at Washington, DC, Oct. 4-6, 2004. Adm. Law Judge Michael A. Rosas issued his decision April 20, 2005.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

All Pro Vending, Inc. (an Individual) Washington, DC and Baltimore, MD Dec. 27, 2006. 5-CA-32734; JD-85-06, Judge John T. Clark.

CDA, Inc. (Government Security Officers Local 401) Fort Rucker, AL Dec. 27, 2006. 15-CA-17832; JD(ATL)-42-06, Judge George Carson II.

Honeywell International, Inc. and Chemical Workers Union Council of the UFCW Local 591-C (an Individual) Hopewell, VA Dec. 26, 2006. 5-CA-32884, 5-CB-9942; JD-90-06; Judge David I. Goldman.

Church Homes, Inc. d/b/a Avery Heights (New England Healthcare Employees District 1199, SEIU) Hartford, CT Dec. 27, 2006. 34-CA-9168; JD(NY)-51-06, Judge Eleanor MacDonald.

J. Shaw Associates, LLC (an Individual) Perrysburg, OH Dec. 27, 2006. 8-CA-36568; JD-88-06, Judge Ira Sandron.

SEIU Healthcare Workers-West (California Pacific Medical Center) San Francisco, CA Dec. 29, 2006. 20-CG-65; JD(SF)-67-06, Judge Jay R. Pollack.

Howmet Castings & Services, Inc. (Steelworkers District 8) Hampton, VA Dec. 29, 2006. 5-CA-32642, 32823; JD-89-06, Judge Michael A. Rosas.
