



National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information

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All Pro Vending, Inc. (5-CA-32734; 350 NLRB No. 46) Baltimore, MD July 31, 2007. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by threatening not to reinstate employee Frederic Traube because of his protected activities and by telling Traube that he could not engage in union activities at work. In addition, the Board affirmed the judge's finding that the Respondent violated Section 8(a)(1) and (3) by suspending and discharging Traube from his vending position at RFK Stadium because of his protected activities. Finally, the Board affirmed the judge's finding that the Respondent violated Section 8(a)(1), (3), and (4) by discharging Traube from his vending position at M & T Bank (Ravens) Stadium because of his protected activities and because he filed an unfair labor practice charge with the Board. [\[HTML\]](#) [\[PDF\]](#)

The Respondent provides food and beverage vending services at various stadiums and arenas. On Aug. 4, 2005, Traube was engaged in an altercation with another employee at RFK Stadium, and he was suspended from his position. When he spoke to Respondent's president David McDonald about getting his job back, McDonald told him that he could not help someone who was trying to organize the workers and bring in a union. Traube was fired a few days later. On Aug. 29, he filed an unfair labor practice charge against the Respondent. On Sept. 11, 2005, Traube reported to Ravens Stadium to work at an exhibition football game. McDonald told Traube that he would not let Traube stir up union trouble at that stadium too. McDonald told Traube that he did not work for All Pro anymore and that he would see him "at the hearing." The judge found that the "hearing" referred to the unfair labor practice hearing before the Board. On the basis of this conduct, the judge found, and the Board affirmed, the violations cited above.

(Members Schaumber, Kirsanow, and Walsh participated)

Charges filed by Frederic Traube, an individual; complaint alleged violations of Section 8(a)(1), (3), and (4). Hearing at Baltimore, May 23-25, 2006. Adm. Law Judge John T. Clark issued his decision Dec. 27, 2006.

B.A. Mullican Lumber & Manufacturing Company (11-CA-19451, 19547; 350 NLRB No. 45) Norton, VA July 31, 2007. The Board adopted the administrative law judge's finding that the Respondent did not violate Section 8(a)(5) and (1) of the Act by refusing to execute a collective-bargaining agreement because the parties had not agreed upon a substantive term of the agreement – that is, the effective date. The Board, applying the withdrawal-of-recognition test announced in *Levitz Furniture Co.*, 333 NLRB 717 (2001), also adopted the judge's finding that the Respondent violated Section 8(a)(5) and (1) by withdrawing recognition because the Respondent did not prove that the Union had lost the support of a majority of the unit employees. [\[HTML\]](#) [\[PDF\]](#)

Chairman Battista, concurring in the Section 8(a)(5) withdrawal-of-recognition finding, expressed "substantial doubts" regarding *Levitz* but applied *Levitz* here in the absence of a full-Board majority to use the case as a vehicle to overrule or modify *Levitz*. In Chairman Battista's view, a Board election pursuant to an RM petition is superior to a unilateral withdrawal of recognition but RM petitions are often blocked by unfair labor practice charges; he explained

that, for these reasons, he was “*inclined*” to retain *Levitz* subject to a requirement that an employer’s RM petition would be processed notwithstanding the filing of unfair labor practice charges.

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by the Mine Workers; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Norton, Oct. 7-8, 2002. Adm. Law Judge George Carson II issued his decision Nov. 27, 2002.

Glens Falls Building and Construction Trades Council, et al. (3-CE-55; 350 NLRB No. 42) Corinth, NY July 31, 2007. The Board found that the Respondents violated Section 8(e) of the Act by entering into agreements with Indeck, the owner of a planned power cogeneration plant, and CRS Sirrinc, Inc. (Sirrinc), Indeck's project manager for construction of the plant, in which Indeck agreed that it would instruct its construction contractor to execute a specified project labor agreement with the Respondents, and Sirrinc agreed that any contractor or subcontractor employed on the project shall be a signatory to and abide by all the terms of a specified project labor agreement with the Respondents. The Board found that the Respondents violated Section 8(e) by entering into the union signatory subcontracting provisions of the above agreements and by reaffirming those agreements by filing a civil breach of contract action against Indeck. Both the Indeck and Sirrinc agreements prohibited the construction contractor from contracting or permitting subcontracting of any work on the project to a company that was not itself a party to the project labor agreement with the Respondents and that did not agree to perform all work on the project under the terms of the project labor agreement. [\[HTML\]](#) [\[PDF\]](#)

The Board found that the agreements were not protected by the construction industry proviso to Section 8(e) because they were not entered into in the context of a collective-bargaining relationship between the Respondents and Indeck and were not executed for the purpose of preventing conflict between union and nonunion labor on a common construction situs. See *Connell Construction Co. v. Plumbers Local 100*, 421 U.S. 616 (1975).

The Board found it unnecessary to decide whether Indeck was an employer in the construction industry within the scope of the construction industry proviso or whether a union signatory subcontracting agreement that is not executed in the context of a collective-bargaining relationship may still be protected by the construction industry proviso if it in fact was intended to prevent common-situs labor friction.

(Chairman Battista and Members Schaumber and Kirsanow participated.)

Hearing at New York on six days between Dec. 14, 1998 and Feb. 9, 1999. Adm. Law Eleanor MacDonald issued her supplemental decision Feb. 15, 2000.

Shaw, Inc., Rapid River Enterprises, Inc., S&R Cable, Inc., Kimron, Inc., a Single Employer and/or Joint Employers (7-CA-37450(3), et al., 350 NLRB No. 37)Atlanta, MI July 30, 2007. A unanimous Board Panel adopted the administrative law judge’s supplemental decision finding that the Respondents violated Section 8(a)(3) of the Act by discriminatorily failing to hire 13 union affiliated applicants – 10 operating engineers and 3 laborers – but not by refusing to hire 12 union affiliated welders and/or pipefitter applicants. The record established that the Respondents were hiring operating engineers and laborers at the time qualified union-affiliated applicants in those classifications applied, but there was no evidence that they were hiring or had plans to hire welders or pipefitters. [\[HTML\]](#) [\[PDF\]](#)

The Board also adopted several Section 8(a)(1) violations, including the maintenance of an overly-broad “no-distribution” rule and making various threats and promises linked to employees’ union activities.

In addition, the Board unanimously reversed the judge’s determination that the Respondents’ foremen are statutory supervisors, finding that the evidence fails to establish that they exercise independent judgment in the performance of their duties. Given their non-supervisory status, the Board accordingly reversed the judge’s finding of Section 8(a)(1) violations (interrogation and creating the impression of surveillance) attributable to certain foremen.

Finally, a panel majority (Chairman Battista and Member Kirsanow) reversed a finding of Section 8(a)(1) based on a statement made to employees by a foreman in the presence of an admitted supervisor, i.e., that unionized employees had to provide their own transportation to work sites. It was the Respondents’ practice to drive employees to job sites in company trucks. The majority found the comment not coercive, but rather merely reflective of the foreman’s understanding of how union jobs operated. Member Liebman disagreed, observing that the circumstances in which the statement was made—during a meeting called by the Respondents to counter the nascent union organizing effort and in which other unlawful threats and promises were made—were such that employees would reasonably interpret it as a threat that unionizing would result in more onerous working conditions.

(Chairman Battista and Members Liebman and Kirsanow participated.)

Charges filed by the Plumbers, Laborers Local 324, and Operating Engineers Local 324; complaint alleged violations of Section 8(a)(3) and (1). Hearing at Alpena, MI, March 12-15, May 14-16, June 18-19, and Aug. 20-22, 1996. Adm. Law Judge John H. West issued his decision Sept. 18, 1997 and his supplemental decision March 23, 2001.

United States Postal Service (28-CA-18682(P), et al.; 350 NLRB No. 43) Albuquerque, NM July 31, 2007. In this case, the Board considered numerous 8(a)(5), 8(a)(3), and 8(a)(1) allegations against the Respondent. The Board unanimously adopted, without comment, the

majority of the administrative law judge's numerous findings. In addition, the Board adopted (Member Liebman dissenting) the judge's finding that the Respondent did not violate Section 8(a)(5) and (1) by implementing a rule prohibiting union stewards from soliciting grievances at "stand up" meetings, and reversed (Member Schaumber dissenting) the judge's finding that the Respondent did not violate Section 8(a)(5) and (1) by implementing a new rule requiring stewards to obtain pre-approval of all statements or announcements that they wanted to make at such meetings. [\[HTML\]](#) [\[PDF\]](#)

The Board adopted (Member Schaumber dissenting) the judge's finding that the Respondent violated Section 8(a)(3) and (1) by threatening a union steward after the steward visited the union's office and for disciplining the steward for his protected conduct. The Board also found (Member Liebman dissenting), contrary to the judge, that the Respondent violated Section 8(a)(3) and (1) by placing the steward on off-duty status after the steward insubordinately removed information requests from a supervisor's table and ignored direct orders to return the documents.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Letter Carriers, Sunshine Branch 504; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Albuquerque, March 9-12, 2004. Adm. Law Judge Thomas M. Patton issued his decision April 21, 2005.

US Reinforcing, Inc., and its alter ego, U.S. Steelworkers, LLC (3-CA-25314; 350 NLRB No. 41) Gouverneur, NY July 31, 2007. The Board majority of Chairman Battista and Member Schaumber reversed the administrative law judge's finding that a non-union rebar company, U.S. Steelworkers, was the alter ego of a unionized rebar company, US Reinforcing. The majority thus found that U.S. Steelworkers, which was started and owned by the girlfriend of US Reinforcing's owner, was not bound by the collective-bargaining agreement previously entered into by US Reinforcing. The majority held that the lack of substantially identical common ownership precludes a finding of alter-ego status. It noted that the Board frequently infers substantially identical ownership where people in a close familial relationship are owners of the alleged alter egos. The majority found, however, that such inference was not warranted here. Although the owners of the two companies lived together and testified that they were a committed couple, the majority pointed out that:

[t]hey have not taken the step of entering into the legal arrangement of a marriage, with the familial connection and attendant presumption of commonality of finances that such a legal arrangement may imply. In no instance has the Board applied this inference in the context of unmarried cohabitating couples. [\[HTML\]](#) [\[PDF\]](#)

The majority also found no evidence of any shared financial arrangements between the two owners and no claim by the General Counsel that their personal arrangement was that of a common-law marriage.

Further, the majority found that the evidence does not show that the owner of US Reinforcing retained financial control over the operations of U.S. Steelworkers such that their relationship warrants application of the “close familial” exception. The owner of U.S. Steelworkers independently incorporated and capitalized her company, and she was the only person authorized to conduct business on its behalf. Although the owner of US Reinforcing was a key employee of U.S. Steelworkers, the majority noted that he was not an owner or financial controller, and he was not shown to participate in its profits. The majority also pointed out that the General Counsel did not show that U.S. Steelworkers went into business with an anti-union motive or that it was created to evade US Reinforcing’s contractual and statutory obligations.

In dissent on this issue, Member Walsh found that the facts and the law overwhelmingly support the judge’s finding that U.S. Steelworkers is an alter ego of the unionized company. Finding this to be a classic alter-ego case, he stated:

A unionized company is unable to meet its obligations under a collective-bargaining agreement and goes out of business. With no hiatus in operations, a nonunion company comes into existence at the same address to perform the same work, operating out of the same office, with essentially the same employees, supervisors, managers, equipment, and customers. The new company is ostensibly owned and operated by an individual who has absolutely no relevant business experience, but who lives with the owner of the unionized company, with whom she shares a close personal relationship. The owner of the unionized company confesses to the union that ‘he was having a little financial problem,’ that ‘he was more or less thinking of going nonunion,’ and that ‘he wanted to go with his girlfriend [who] was going to start another company.’

Accordingly, he would find that U.S. Steelworkers unlawfully failed to abide by the collective-bargaining agreement entered into by US Reinforcing.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by Iron Workers Local 12, 33, 60, and 440; complaint alleged violation of Section 8(a)(5) and (1). Hearing at Syracuse on Aug. 23, 2005. Adm. Law Judge Richard A. Scully issued his decision Feb. 21, 2006.

Writers Guild of America, West, Inc. (31-CB-12062, 12063; 350 NLRB No. 40) Universal City, CA July 31, 2007. The Board affirmed the administrative law judge’s findings that the Respondent did not violate Section 8(b)(1)(B) of the Act by restricting its show runners’ contract interpretation duties through implicit threats of fines or punishment. The Board ordered that the complaint be dismissed. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Liebman and Walsh participated)

Charges filed by Universal Network Television, LLC and NBC Studios, Inc.; complaint alleged violation of Section 8(b)(1)(B). Hearing at Los Angeles, Dec. 11-13, 2006. Adm. Law Judge Gregory Z. Meyerson issued his decision Feb. 13, 2007.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Rochelle Waste Disposal, LLC (Operating Engineers Local 150) Rochelle, IL Aug. 1, 2007. 33-CA-15298; 33-RC-5002; JD(ATL)-21-07, Judge Lawrence W. Cullen.

Transportation Solutions, Inc. (Teamsters Local 249 and an Individual) Pittsburgh, PA Aug. 1, 2007. 6-CA-35206, et al.; JD-54-07, Judge Mark D. Rubin.

The Lorge School (an Individual) New York, NY Aug. 3, 2007. 2-CA-37967; JD(NY)-36-07, Judge Raymond P. Green.

Wegmans Food Markets, Inc. (an Individual) Hunt Valley, MD Aug. 3, 2007. 5-CA-33228; JD-53-07, Judge Richard A. Scully.

NO ANSWER TO COMPLAINT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

Seneca Falls Foods, LLC d/b/a Seneca Falls IGA (Food & Commercial Workers Local 1) (3-CA-26051; 350 NLRB No. 47) Seneca Falls, NY July 31, 2007. [\[HTML\]](#) [\[PDF\]](#)

NO ANSWER TO COMPLIANCE SPECIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the compliance specification.)

Paragon Custom Homes, Inc. (Carpenters Local 587) (18-CA-17312; 350 NLRB No. 39) Madison SD July 30, 2007. [\[HTML\]](#) [\[PDF\]](#)

TEST OF CERTIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgment on the grounds that the Respondent has not raised any representation issue that is litigable in this unfair labor practice proceeding.)

I.H.S Acquisition No. 114, Inc. d/b/a Lynwood Manor (Service Employees Local 79) (7-CA-49482; 350 NLRB No. 44) Adrian, MI July 31, 2007. [\[HTML\]](#) [\[PDF\]](#)

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to Reports of Regional Directors or Hearing Officers)

DECISION, DIRECTION, AND ORDER
[remanding proceeding to the Regional Director
for further processing]

L & L Welding and Fabrication, Inc., Greenfield, IN, 25-RC-10380, July 31, 2007
(Chairman Battista and Members Liebman and Walsh)

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Cooperativa de Ahorro y Crédito de Juana Diaz, Juana Diaz, PR, 24-RC-8562, Aug. 3, 2007
(Chairman Battista and Members Kirsanow and Walsh)

Voorhees, Inc. d/b/a Voorhees Concrete Cutting Specialists, Fairbanks, AK, 19-RC-14954,
Aug. 3, 2007 (Chairman Battista and Members Kirsanow and Walsh)

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

San Miguel Hospital Corp. d/b/a Alta Vista Regional Hospital, Las Vegas, NM, 28-RC-6518,
28-RM-605, et al., Aug. 2, 2007 (Chairman Battista and Members Kirsanow and Walsh)

Mid Atlantic Truck Centre, Inc., Linden, NJ, 22-RC-12806, Aug. 2, 2007
(Chairman Battista and Members Kirsanow and Walsh)

ORDER [amending Regional Director's decision to permit certain individuals to vote by challenged ballot, and denying request for review in all other respects]

Community Medical Center, Scranton, PA, 4-RC-21274, Aug. 2, 2007
(Chairman Battista and Members Kirsanow and Walsh)

Miscellaneous Decisions and Orders

ORDER [denying Employer's Emergency Motion for Clarification of Board's July 25, 2007 Order]

Sinai Health System, Chicago, IL, 13-RC-21601, Aug. 1, 2007 (Members Schaumber, Kirsanow, and Walsh)

CERTIFICATION OF REPRESENTATIVE AS BONA FIDE UNDER SECTION 7(B) OF THE FAIR LABOR STANDARDS ACT OF 1938

City of Concord, Concord, CA, 32-WH-8, July 30, 2007
