



# National Labor Relations Board

## Weekly Summary of NLRB Cases

Division of Information

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*Cast-Matic Corp., d/b/a Intermet Stevensville (Intermet Stevensville II)* (7-CA-45550, et al.; 350 NLRB No. 93) Stevensville, MI Sept. 17, 2007. *Intermet Stevensville II* concerned the Respondent's alleged continuation of unfair labor practices directed at the Respondent's production and maintenance employees who supported the Union during the organizational campaign in issue in *Intermet Stevensville*, 350 NLRB No. 94 (*Intermet I*). Relying on its decision in *Intermet Stevensville I*, a divided panel in *Intermet Stevensville II*, dismissed the administrative law judge's finding of several Section 8(a)(5) violations arising from the Respondent's alleged refusal to bargain and provide information to the Union, direct dealing with employees, and unilateral changes in employees' terms and conditions of employment. Consistent with his dissent in *Intermet Stevensville I*, Member Walsh dissented on these Section 8(a)(5) issues. [\[HTML\]](#) [\[PDF\]](#)

The panel also considered several instances of alleged discriminatory conduct. Contrary to the judge, the panel unanimously found that the Respondent had not constructively discharged several foundry employees. The majority rejected the judge's conclusion that these employees, who were unilaterally assigned new tasks in the months following the election in issue in *Intermet I*, faced a "Hobson's Choice"; instead, the panel found that the Respondent did not condition its employees' continued employment upon their "abandonment of . . . the right to bargain collectively through representatives of their own choosing." *Superior Sprinkler*, 227 NLRB 204, 210 (1976).

Further, the unanimous panel refused to adopt the judge's findings that the Respondent had discriminated against its maintenance technicians, several of whom were involved in the earlier organizing drive. First, the panel found that the Respondent lawfully issued to these employees job descriptions that demonstrated a heightened emphasis on skills necessary to maintain equipment related to the Respondent's new manufacturing process. Consistent with this finding, the panel reversed the judge's finding that the Respondent violated Section 8(a)(3) by giving the maintenance technicians unfavorable evaluations when they failed to obtain the skills set forth in the job descriptions.

Nevertheless, the unanimous majority adopted the judge's finding that the Respondent violated Section 8(a)(3) when it subsequently laid off and reassigned several of the maintenance technicians. The panel found, consistent with the judge, that the Respondent demonstrated that its financial situation was such that layoffs were necessary. Nevertheless, the panel determined that the Respondent failed to show that it would have laid off or reassigned these specific individuals. The panel relied on the Respondent's failure to explain why it targeted maintenance technicians when its stated concern was a need to stem production. The panel also relied on shifting testimony, all of which was inconsistent with the Respondent's established layoff policy, concerning how it decided which employees within the maintenance department to lay off.

(Members Schaumber, Kirsanow, and Walsh participated.)

Charges filed by Auto Workers (UAW); complaint alleged violation of Section 8(a)(5), (3), and (1). Hearing at Stevensville on 11 days between Oct. 28, 2003 and Aug. 18, 2004. Adm. Law Judge Earl E. Shamwell Jr. issued his decision July 21, 2005.

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*Cast-Matic Corp., d/b/a Intermet Stevensville* (7-CA-44878, et al.; 350 NLRB No. 94) Stevensville, MI Sept. 17, 2007. In *Intermet Stevensville I*, a divided panel refused to enforce the administrative law judge's recommended *Gissel* bargaining order, notwithstanding the unanimous panel's decision to adopt the judge's findings of several unfair labor practices. The panel instead ordered a second election. The case concerned the Respondent's reaction to an organizing drive among the production and maintenance employees in its manufacturing facility. In agreement with the judge, the unanimous panel found that the Respondent violated Section 8(a)(1) of the Act in several ways, including: prohibiting, confiscating, and disposing of union paraphernalia; interrogating applicants about their union sentiments; making statements that it would be futile to select the union; and threatening loss of benefits should the employees select the union. A divided panel (Member Schaumber dissenting) also adopted the judge's findings that, among other things, the Respondent violated Section 8(a)(1) by removing employee bulletin boards from the break room, interrogating employees about their union sentiments and activities. The same panel majority adopted the judge's findings that the Respondent violated Section 8(a)(3) by disciplining an employee because it suspected her of supporting the union. A different panel majority reversed the judge's findings that subsequent adverse actions taken against that employee also violated Section 8(a)(3), finding instead that the employee's poor work record effectively demonstrated that she would have been demoted even in the absence of her perceived union support. [\[HTML\]](#) [\[PDF\]](#)

Despite these findings of violation, a divided panel refused to enforce the judge's recommended *Gissel* bargaining order or to find violations of Section 8(a)(5). Noting that no employees lost their jobs as a result of the Respondent's unfair labor practices, and that only a few of the Respondent's actions affected a material portion of the proposed unit, the panel majority, consistent with its views in several recent cases, determined that the Respondent's unlawful conduct could adequately be remedied by traditional remedies. *Abramson, LLC*, 345 NLRB No. 8 (2005); *Jewish Home for the Elderly of Fairfield County*, 343 NLRB 1069 (2004). Consistent with the dissenting positions in those cases, and relying in part on his dissent from the majority's decision with respect to the demotion, Member Walsh dissented from the majority's refusal to issue a *Gissel* bargaining order and to find the Section 8(a)(5) refusal to bargain violation. In his view, "the seriousness of the violations and the pervasive nature of the [unlawful] conduct, considering such factors as the number of employees directly affected by the violations, the size of the unit, the extent of dissemination among employees, and the identity and position of the individuals committing the unfair labor practices" supported the issuance of a bargaining order.

(Members Schaumber, Kirsanow, and Walsh participated.)

Charges filed by Auto Workers (UAW); complaint alleged violation of Sections 8(a)(5), (3), and (1). Hearing at Stevensville on 5 days between Sept. 11 and Oct. 23, 2002. Adm. Law Judge C. Richard Miserendino issued his decision May 16, 2003.

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*Suburban Electrical Engineers/Contractors, Inc.* (30-CA-15473, et al.; 351 NLRB No. 1) Appleton, WI Sept. 20, 2007. The Board adopted the administrative law judge's findings that the Respondent did not violate Section 8(a)(1) of the Act concerning certain alleged misconduct by the Respondent during the Union's organizing campaign. The Board noted that some of this misconduct was allegedly perpetrated by three foremen. The judge dismissed the allegations against them on the grounds that none of the three foremen was a statutory supervisor. The Board agreed with this but also noted that none of the three foremen was an agent of the Respondent. Therefore the Board adopted the judge's recommended dismissals of the complaint allegations against the three foremen. See *Pan-Osten Co.*, 336 NLRB 305, 305-307 (2001). [\[HTML\]](#) [\[PDF\]](#)

The judge found that the Respondent violated Section 8(a)(1) when Project Manager Sam Schultz unlawfully threatened employees. The Board reversed the judge and found that Schultz' statement was ambiguous given the surrounding circumstances. The Board noted the long-term organizing campaign, the absence of any express or implicit references to adverse employment consequences for the employee allegedly threatened, an atmosphere of morning geniality, and the absence of any other unfair labor practices. See *Illinois Institute of Technology*, 195 NLRB 375 (1972).

The Board also adopted the judge's findings that the Respondent violated Section 8(a)(3) when it failed to hire "salts" Terry Roovers and Corey Wiegel on two occasions. The Board modified the judge's analysis pursuant to *FES*, 331 NLRB 9 (2000), supplemented by 333 NLRB 66 (2001), enfd. 301 F.3d 83 (3d Cir. 2002). The Board noted that there was no dispute as to the first part of the *FES* test. The Respondent was hiring at the time of the alleged unlawful conduct. The Board noted that there was also no dispute as to the second part of the *FES* test. Roovers and Wiegel had experience or training relevant to the job at issue. Finally, the Board noted that as to the third and final part of the *FES* test, the animus requirement, the Board's analysis was different from that of the judge. The Board found animus in the Respondent's proffering of false reasons for its failure to hire Roovers and Wiegel. The Board noted that it was not true that Roovers had been rude and Wiegel had refused a prior job offer, and that both of them were without current experience because they had been serving as union agents immediately before they applied for the Respondent's jobs. The Board thereby rejected the judge's finding of animus in the mere fact that Roovers and Wiegel were affiliated with the Union and the Union was attempting to organize the Respondent's employees. See *Loudon Steel*, 340 NLRB 307, 312 (2003).

Finally, the Board reversed the judge's finding that the Respondent violated Section 8(a)(3) by failing to consider for hire Roovers and Wiegel on yet another occasion. The Board again applied *FES* and its two part test requiring showings of exclusion from the hiring process, and antiunion animus. The Board found that the General Counsel failed to establish the first part of the test. The Board noted the uncontroverted testimony of Executive Vice President David Maass that he considered all the relevant applications, including those of Roovers and Wiegel. Compare *Progressive Electric*, 344 NLRB no. 52, slip op. at 10 (2005), enfd. 453 F.3d 538 (D.C.Cir. 2006).

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Electrical Workers IBEW Local 577; complaint alleged violations of Section 8(a)(1) and (3). Hearing at Appleton, Aug. 7-9 and 20-21, 2002. Adm. Law Judge Bruce D. Rosenstein issued his decision Dec. 2, 2002.

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### **LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES**

*Pennant Foods Co., a wholly-owned Subsidiary of CS Bakery Holdings, Inc., et al.*  
(Auto Workers [UAW]) North Haven, CT Sept. 17, 2007. 34-CA-11385, et al.; JD(ATL)-25-07,  
Judge Michael A. Marcionese.

*Jeffs Electric, LLC* (Electrical Workers [IBEW] Local 35) Brooklyn, CT Sept. 17, 2007.  
34-CA-11371, 11398; JD(NY)-41-07, Judge Steven Davis.

*Consolidated Delivery & Logistics, Inc.* (Teamsters Local 481) Teterboro, NJ Sept. 18, 2007.  
22-CA-23543; JD(NY)-42-07, Judge Steven Fish.

*El Paso Electrical Co.* (Electrical Workers [IBEW] Local 960) El Paso, TX, Las Cruces, NM  
Sept. 21, 2007. 28-CA-21111, et al.; JD(ATL)-28-07, Judge George Carson II.

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### **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.)*

*Guardsmark, LLC* (Fire Fighters Local I-35) (7-CA-50296; 351 NLRB No. 2)  
Rockefeller Plaza, NY Sept. 21, 2007. [\[HTML\]](#) [\[PDF\]](#)

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### **LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES**

*(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**

*King Beverage, Inc.*, Spokane, WA, 19-RD-3750, Sept. 19, 2007 (Chairman Battista and  
Members Liebman and Walsh)

*Lifegas, a Division of Linde Gas USA, LLC*, Wyoming, MI, 7-RC-23112, Sept. 21, 2007  
(Chairman Battista and Members Liebman and Walsh)

*Treasure Island Foods, Inc.*, Chicago and Wilmette, IL, 13-RD-2515, Sept. 21, 2007  
(Chairman Battista and Members Liebman and Walsh)

**DECISION AND ORDER [remanding proceeding to  
Regional Director for further appropriate action]**

*Ace Karaoke Corp.*, City of Industry, CA, 21-RC-20943, Sept. 20, 2007  
(Chairman Battista and Members Liebman and Walsh)

*C.A.C. Industries*, New York, NY, 29-RC-11066, Sept. 21, 2007 (Chairman Battista and  
Members Liebman and Walsh)

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***(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)***

*Iron Mountain Record Management, Inc.*, Jersey City, NJ, 22-RC-12817, Sept. 19, 2007  
(Chairman Battista and Members Liebman and Walsh)

*Structural Preservation Systems LLC*, Hawthorne, NJ and Hanover, MD, 22-RC-12793, 12807;  
Sept. 19, 2007 (Members Liebman and Walsh; Chairman Battista dissenting)

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***Miscellaneous Decisions and Orders***

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

*City of Jacksonville*, Jacksonville, IL, 33-WH-3, Sept. 17, 2007

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