

## ABOUT THE WEEKLY SUMMARY

The Weekly Summary of NLRB cases, as the name implies, is a publication that summarizes each week all published NLRB decisions in unfair labor practice and representation election cases, except for summary judgment cases. It also lists all decisions of NLRB administrative law judges and direction of elections by NLRB regional directors. Links are established from the weekly summary index to the summaries and from the summaries to the full text of the decisions.



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August 27, 1999

W-2701

**CASES SUMMARIZED**

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[Acme Markets, Inc.](#), PA, DE, ME, and NJ

[Auto Workers International and Various of its Local Unions](#), Los Angeles, CA

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*Auto Workers Local 735* (7-CB-11729; 328 NLRB No. 172) Ypsilanti, MI Aug. 16, 1999. As recommended by the administrative law judge, the Board dismissed complaint allegations that the Union violated Section 8(b)(1)(A) of the Act when its agent Gary O'Neal threatened employees of General Motors Corporation with physical harm because they did not pay union dues. Based on his review of the evidence and evaluation of the witnesses' testimony, the judge found that O'Neal did not make the statements as alleged by the General Counsel. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Liebman and Brame participated.)

Charge filed by Thomas G. DeMiro; complaint alleged violation of Section 8(b)(1)(A). Hearing at Detroit on Feb. 8, 1999. Adm. Law Judge Bruce D. Rosenstein issued his decision May 7, 1999.

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*Acme Markets, Inc.* (4-RC-18933; 328 NLRB No. 173) PA, DE, ME, and NJ Aug. 16, 1999. The Board found that a four-state, employerwide unit consisting of all employees employed by the Employer in all of its pharmacies in Pennsylvania, Delaware, Maryland, and New Jersey is appropriate for collective bargaining; and remanded the proceeding to the Regional Director for further appropriate action. The Board agreed with the Regional Director that the petitioned-for unit consisting of pharmacy employees in only three of the four states in which the Employer operates is inappropriate. Contrary to the Regional Director, however, it found that separate units limited to pharmacies in each of three separate states also are not appropriate for bargaining. The Board wrote: "Although it is clear that the employees in the originally petitioned-for unit share a significant community of interest, the record fails to show that their community of interest is distinct from the community of interest they share with the employees of the Employer's New Jersey stores." The Board affirmed the Regional Director's finding that the Employer's pharmacy managers are not statutory supervisors. [\[HTML\]](#) [\[PDF\]](#)

In affirming the Regional Director's findings concerning the pharmacy managers' lack of supervisory authority, Member Brame found it unnecessary to rely on *Providence Hospital*, 320 NLRB 717 (1996); *Ten Broeck Commons*, 320 NLRB 806 (1996); and *Altercare of Hartville*, 321 NLRB 847 (1996).

(Members Fox, Liebman, and Brame participated.)

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*Auto Workers International and various of its Local Unions* (31-CB-7841, et al.; 328 NLRB No. 175) Los Angeles, CA Aug. 16, 1999. The Board held that the Respondent International's use of the "local presumption" in its 1991 Expenditures Report provided to nonmember objectors did not breach its duty of fair representation in violation of Section 8(b)(1)(A) of the Act, and that the Respondent International and Respondent Local 376 did not violate Section 8(b)(1)(A) and 8(b)(2) or breach their duty of fair representation in providing charging party George Gally with notice regarding his *Beck* rights prior to seeking his discharge. The Board denied the General Counsel's Motion for Summary Judgment, granted the Respondents' cross-motion, and dismissed the complaint in its entirety. [\[HTML\]](#) [\[PDF\]](#)

The complaint alleges that beginning in June 1992, the Respondent International distributed a Report on Expenditures Incurred in Providing Collective Bargaining Related Services for Fiscal Year 1991 to all nonmember unit employees of various employers who, at the time, had on file with the International a current objection to the payment of dues or fees for nonrepresentational activities within the meaning of *Beck*, and that the report contained no information regarding the expenditures of the specific Respondent Locals other than a discussion of the application of the International's allocation between chargeable and nonchargeable expenditures to that portion of dues and fees retained by the various locals.

The Board found that the Respondent International's failure to provide objecting nonmembers further information regarding the expenditures of the various locals and its use of this "local presumption" in its Report did not breach its duty of fair representation. It agreed with the General Counsel that the use of a totally unreasoned or unsupported local presumption would not meet a union's duty of fair representation, because it would not provide objectors with sufficient information to enable them to decide whether or not to challenge the union's figures. Contrary to the General Counsel, however, it found that the Respondents provided adequate support for their use of the local presumption in this case.

The complaint also alleges that in August 1989 and June 1990, the International provided Gally, a nonmember employee of Colt, with *Beck* notices included in its *Solidarity* magazine containing certain information. Subsequently, the Respondent requested Gally to pay monetary amounts equivalent to full union dues. When Gally did not comply, the Respondents requested that Colt discharge him under the terms of the union-security clause in the parties' collective-bargaining agreement.

The Board found that the International's initial *Beck* notices satisfy its duty of fair representation, and that the International and Local 376 did not act unlawfully by failing to provide Gally with additional information concerning dues and fees before

seeking his discharge. In agreement with the Respondent, the Board concluded that the duty of fair representation does not require that initial *Beck* notice must contain the percentage of union funds spent in the last accounting year on nonrepresentational activities. It wrote: "The record is clear that Gally had resigned his union membership but had not exercised his right under *Beck* to object to the payment of his dues and fees on nonrepresentational activities. Thus, the failure to provide Gally with this information did not violate the Respondents' duty of fair representation as embodied in Section 8(b)(1)(A) of the Act."

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charges filed by Various Individuals; complaint alleged violation of Section 8(b)(1)(A) and 8(b)(2). General Counsel filed motion for summary judgment June 10, 1993.

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

*Bill's Electric, Inc.* (Electrical Workers IBEW Local 95) Webb City, MO August 10, 1999. 17-CA-18629-1, et al.; JD(SF)-68-99, Judge William L. Schmidt.

*Drew Division of Ashland Chemical Co., a Division of Ashland Oil, Inc.* (Teamsters Local 97) Keamy, NJ August 12, 1999. 22-CA-21748; JD(NY)-59-99, Judge Steven Davis.

*1849 Sedgwick Realty LLC and R & S Management a/k/a Arandess Management Co.* (an Individual and Service Employees Local 32E) August 13, 1999. 2-CA-30569, 2-CA-31011; JD(NY)-60-99, Judge Eleanor MacDonald.