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.

Weekly Summary of NLRB Cases

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September 3, 1999 W-2702

CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

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Amoco Chemical Co. et al. (16-CA-16278, et al.; 328 NLRB No. 174) Texas City, TX, Wood River, IL, and Yorktown, VA Aug. 18, 1999. The Board reversed the administrative law judge's dismissal of the complaint and held that the Respondents, corporate subsidiaries of Amoco Corporation, violated Section 8(a)(5) of the Act by unilaterally implementing changes affecting the health and medical insurance benefits for collective-bargaining units of employees working at facilities in Texas City, Texas, Wood River, Illinois, and Yorktown, Virginia, without the Unions' consent and during the term of the collective-bargaining agreements covering each of the units. The judge concluded that the Respondents acted lawfully in accord with reservation-of-rights language, set forth in summary plan documents describing the Amoco Medical Plan (AMP), that he found to be incorporated by reference into the parties' collective-bargaining agreements. The Board disagreed. Citing *Georgia Power*

Co., 325 NLRB No. 59 (1998), enfd. mem. 176 F.3d 494 (11th Cir. 1999), it found that the reservation-of-language relied on by the Respondents does not meet the standard for clear and unmistakable waiver of the Unions' right to bargain about the AMP. [HTML] [PDF]

(Chairman Truesdale and Members Fox and Liebman participated.)

Charges filed by Oil Workers Locals 4-449, 7-776, 3-1, and 4-449; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Houston, Oct. 12-14 and Nov. 21, 1994. Adm. Law Judge Richard J. Linton issued his decision March 17, 1995.

* * *

Teamsters Local 299 (Overnite Transportation Co.) (7-CB-10490 and 7-RC-20512; 328 NLRB No. 178) Romulus, MI Aug. 19, 1999. Affirming the decision of an administrative law judge, Chairman Truesdale and Member Liebman dismissed a complaint alleging that the Respondent Union violated Section 8(b)(1)(A) of the Act and interfered with an election held on March 15, 1995 by photographing and/or videotaping employees who were entering and leaving Overnite's facility before, during, and after the polling periods. The majority certified Teamsters Local 299 as the exclusive representative of all drivers, dock workers, mechanics and switchers employed by Overnite at its Romulus, Michigan facility. In affirming the judge's decision, the majority relied on *Randell Warehouse of Arizona*, 328 NLRB No. 153 (1999), which issued subsequent to the judge's decision. *Randell Warehouse* overruled *Pepsi Cola Bottling Co.*, 289 NLRB 736 (1988), relied on by the Employer in this case, and held that a union's photographing or videotaping of employees engaged in protected activities during an election campaign, in the absence of any express or implied threats or other coercion, is not objectionable. [HTML] [PDF]

Consistent with well-established law before Randell Warehouse and with his dissent in that case, dissenting Member Hurtgen would find that the Respondent Union engaged in objectionable conduct and violated Section 8(b)(1)(A).

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charge filed by Overnite Transportation Co.; complaint alleged violation of Section 8(b)(1)(A). Hearing held June 27-28, 1995. Adm. Law Judge Peter E. Donnelly issued his decision Oct. 5, 1995.

* * *

Plumbers Local 562 (14-CD-940, 941; 328 NLRB No. 176) St. Louis, MO Aug. 20, 1999. The Board awarded the disputed work to the employees represented by Plumbers consistent with the Employers' current assignments. As to C & R Heating & Service Co., it concluded that the Plumbers-represented employees are entitled to perform the installation of covers and backs on the tube radiators at the construction site of the Washington University School of Law in St. Louis, Missouri based on company preference and past practice, area practice, and economy and efficiency of operations. As to Corrigan Co. Mechanical Contractors, a Division of Corrigan Brothers, Inc., the Board awarded the installation of sheet metal duct sleeves at Stockhouse 19, Anheuser-Bush, St. Louis, Missouri to the Plumbers-represented employees based on collective-bargaining agreements, company preference and past practice, and economy and efficiency of operations; and it awarded the installation of the dirty side intake piping of the scruber system at the MEMC facility in O'Fallon, Missouri to the Plumbers-represented employees based on collective-bargaining agreements, company preference and past practice, area practice, relative skills, and economy and efficiency of operations. [HTML] [PDF]

(Chairman Truesdale and Members Hurtgen and Brame participated.)

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U.S.A. Polymer Corp. (16-CA-17189, 17455; 328 NLRB No. 177) Houston, TX Aug. 24, 1999. The Board agreed with the administrative law judge's findings that the Respondent committed numerous, egregious violations of Section 8(a)(1), (3), and (4) of the Act and that a bargaining order should issue under the principles enunciated in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). Chairman Truesdale and Member Fox found that "the Respondent's intimidating course of conduct places it among those exceptional cases warranting a bargaining order under category I of the *Gissel* standard, because traditional

remedies cannot erase the coercive effects of the conduct, making the holding of a fair election impossible." They added: "Even if we were to find, however, that the violations were less than 'outrageous,' a bargaining order is warranted under category II standards." Member Hurtgen found it unnecessary to pass on whether a bargaining order is warranted under category I standards. He agrees with his colleagues that a bargaining order is warranted under category II standards. [HTML] [PDF]

The Respondent embarked on a series of pervasive and increasingly coercive unfair labor practices within weeks of the advent of the employees' union activity. The first union contact with employees occurred in the latter part of September 1994, and the Union began its formal organizing campaign in the early part of October 1994. By January 27, 1995, the Union had attained majority status in the bargaining unit.

The Respondent's unlawful conduct included interrogating employees about their union activity and the union activity of their fellow employees, and threatening employees with more onerous working conditions, physical harm, layoff, discharge, and other unspecified reprisals for engaging in union and protected concerted activity. Employees were unlawfully subjected to surveillance and unlawfully promised a bonus or other rewards for not supporting the Union. The interrogations were widespread, involving 7 different supervisors and at least 20 different employees. The Respondent made good on its threat of layoff or discharge by laying off 29 unit employees or 45 percent of the proposed bargaining unit between January 27 and 30, 1995. The Respondent continued to violate the Act after the General Counsel issued the complaint by penalizing employees who testified as witnesses for the General Counsel at the ensuing unfair labor practice hearing.

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charges filed by Texas-Oklahoma-Arkansas District Council-UNITE; complaint alleged violation of Section 8(a)(1), (3), and (4). Hearing at Houston, June 5-21 and Oct. 17-18, 1995. Adm. Law Judge Wallace H. Nations issued his decision March 25, 1996.

* * *

President Container, Inc. (22-RC-11667; 328 NLRB No. 181) Moonachie, NJ Aug. 26, 1999. Contrary to the hearing officer, the Board sustained the Intervenor's Objection 17, which alleged that the Employer's owner, Marvin Grossbard, interfered with the election held on March 5, 1999 by announcing to gathered employees on the eve of the election that he would not deal or negotiate further with the Intervenor, the incumbent union. The Board said that it did not take issue with the hearing officer's concern that Grossbard's conduct may have been intended to furnish the basis for an objection should the Petitioner (President Container Employees Association) win the election, adding: [HTML] [PDF]

"Here, however, Grossbard's refusal to bargain was not directed at both unions or at the prevailing Petitioner, but solely at the Intervenor, which was the losing party. Of course, it is not beyond imagination that the Intervenor could have colluded with the Employer to manufacture an election objection in this fashion. Had such collusion been shown, this would be a different case; we would not allow a party to profit from its own misconduct. On the record before us, however, we cannot find that the Intervenor played any role in orchestrating Grossbard's statement and walkout. Thus, even assuming that the Employer had a hidden agenda in engaging in objectionable conduct, there is no evidence that the Intervenor was anything other than an injured party."

The Board set aside the election on the basis of the conduct at issue in Objection 17 and found it unnecessary to pass on the other exceptions to the Regional Director's findings and the hearing officer's recommendations besides those that it adopted pro forma. The tally of ballots shows 138 votes for the Petitioner, 65 votes for the Intervenor, 7 votes against union representation, and 12 challenged ballots, an insufficient number to affect the results. In the absence of exceptions, the Board adopted pro forma the hearing officer's recommendation that Intervenor's Objections 11, 12, and 19 be overruled and the Regional Director's finding that the Intervenor's Objections 2, 3, 4, 6-10, 13, and 18 be overruled.

(Members Fox, Liebman, and Hurtgen participated.)

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WBAI Pacifica Foundation (2-UC-496, 517; 328 NLRB No. 179) New York, NY Aug. 26, 1999. The Board concluded, contrary to the Regional Director, that unpaid staff are not employees within the meaning of Section 2(3) of the Act and, accordingly, clarified the existing bargaining unit in the collective-bargaining agreement between the Employer and Electrical Workers (UE) and its Local 404 to exclude them. [HTML] [PDF]

The Employer is a not-for-profit corporation engaged in operating a noncommercial FM radio station. On February 12, 1997, the Regional Director issued a Decision and Order Clarifying Unit finding it appropriate to include the classifications of Business Director and unpaid staff in the existing unit. On June 4, 1997, the Board granted the Employer's request for review of the Regional Director's inclusion of the unpaid staff.

In this decision on review, the Board found that the unpaid staff are not employees within the meaning of Section 2(3) because there is no economic aspect to their relationship with the Employer, either actual or anticipated, explaining:

"In this connection, we, like the Court in *Pittsburgh Plate Glass* [404 U.S. 157 (1971)], find that this case is not a doubtful one. The ordinary meaning of employee does not include unpaid staff; unpaid staff do not work for another for hire. As we have observed earlier, to work for hire is to receive compensation for labor or services. Unpaid staff do not receive compensation for their work at the station."

The Board noted these factors in reaching its conclusion. The unpaid staff receive no wages or fringe benefits. To the contrary, they often raise money or contribute money to the station. To the extent that unpaid staff receive compensation for their work, it is not compensation from the Employer and is not economic in nature. The testimony of the unpaid staff showed that they work out of an interest in seeing the station continue to exist and thrive, out of concern for the content of the programs they produce, and for the personal enrichment of doing a service to the community and receiving recognition from the community. Nor do the contractual provisions allowing unpaid staff to receive reimbursement for travel and a child care allowance require a different result. That unpaid staff are paid when they substitute for paid staff is also not evidence that they receive compensation from their work for the Employer. Finally, the finances that unpaid staff receive for their programs is not a form of remuneration for services they have rendered to the Employer.

(Members Fox, Liebman, and Hurtgen participated.)

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Saint Barnabas Medical Center (Communications Workers Local 1091) Livingston, NJ August 4, 1999. 22-CA-22907; JD (NY)-62-99, Judge Joel P. Biblowitz.

A & P Brush Mfg. Corp., and its Alter Ego A & P Diversified Technologies Inc. (Leather Goods, Plastic & Novelty Workers Local 60) Metuchen, NJ August 24, 1999. 2-CA-28129; JD(NY)-62-99, Judge Steven Davis.

WXGI, Inc. and its Successor Gee Communications, Inc. (Food and Commercial Workers Local 400) Richmond, VA August 25, 1999. 5-CA-27367; JD-107-99, Judge Thomas R. Wilks.

PPG Industries, Inc. (Auto Workers (UAW)) Evansville, IN August 24, 1999. 25-CA-25475; JD-108-99, Judge Richard H. Beddow, Jr.

Precision Concrete (Building Trades Organizing Project) Las Vegas, NV August 23, 1999. 28-CA-14982, et al.; JD(SF)-59-99, Judge Michael D. Stevenson.

Penske Logistics, Inc. (Teamsters Local 14) Las Vegas, NV August 23, 1999. 28-CA-15285; JD(SF)-70-99, Judge Albert A. Metz.