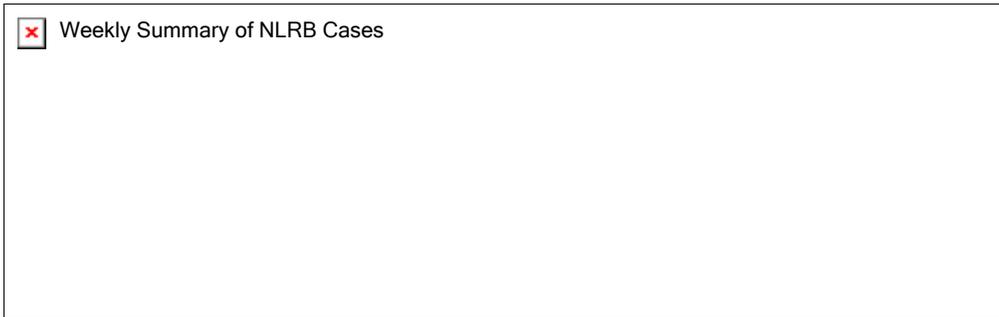


ABOUT THE WEEKLY SUMMARY

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.



[Index of Back Issues Online](#)

September 10, 1999

W-2703

CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

[Atlas Concrete Construction Co.](#), Louisville, KY
[Laborers' Local 210](#), Buffalo, NY
[Naomi Knitting Plant, a Div. of Andrex Industries Corp.](#), Zebulon, NC
[Polymark Corp. and Electrical Workers IUE and its Local 795](#), Cincinnati, OH
[State Materials, Inc.](#), Girard, OH
[Teamsters Local 75 \(Schreiber Foods\)](#), Green Bay, WI

OTHER CONTENTS

[List of Decisions of Administrative Law Judges](#)

[List of No Answer to Complaint Cases](#)

[List of Test of Certification Cases](#)

[List of No Compliance Specification Cases](#)

Press Release:

[\(R-2340\) NLRB Issues Updated Manual on Procedures For Handling Representation Cases](#)

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Naomi Knitting Plant, a Div. of Andrex Industries Corp. (11-CA-15771, 16376, 11-RC-5954; 328 NLRB No. 180) Zebulon, NC Aug. 30, 1999. Chairman Truesdale and Member Liebman found, in addition to the administrative law judge's conclusions, that the Respondent violated Section 8(a)(1) of the Act through Frank Carter's and Barbara Alson's interrogation of employee Deborrah Baines, Carter's interrogation of the members of the "Design Team," and Supervisor Renate Hord's solicitation of grievances from employees; and violated Section 8(a)(3) and (1) by discharging Mary K. Harris for engaging in protected activity. The Chairman and Member Liebman found that the allegations raised in the Union's Objections 2, 3, and 7 to the election held in Case 11-RC-5954, and other objections coextensive with the additional unfair labor practices are sufficient to warrant a finding that the Respondent interfered with the conduct of the election and that a second election should be held. [\[HTML\]](#) [\[PDF\]](#)

Member Brame, dissenting in part, would not find the additional Section 8(a)(1) violations. He agreed with the judge that the interactions between the Respondent's agents and the employees would not reasonably tend to interfere with their Section 7 rights.

No exceptions were filed to the judge's findings that the Respondent violated Section 8(a)(1) by granting employees benefits to discourage union support, threatening to withhold scheduled pay raises to discourage employees from union activity, and threatening employees with a loss of benefits if they selected the Union, engaged in union activity, or filed charges with the Board; violated Section 8(a)(2) and (1) by dominating or interfering with the formation or operation of a labor organization called the Design Team; and that a *Gissel* bargaining order is not appropriate in this case. In the absence of exceptions, the Board adopted pro forma, the judge's recommendation that Objections 2, 3, and 7, concerning the threat of a loss of benefits, the granting of benefits, and a threat to withhold benefits be sustained, and that a new election be held.

(Chairman Truesdale and Members Liebman and Brame participated.)

Charges filed by Ladies' Garment Workers International; complaint alleged violation of Section 8(a)(1), (2), and (3). Hearing at Raleigh for 7 days between March 13 and May 23, 1995. Adm. Law Judge Richard J. Linton issued his decision Jan. 25, 1996.

* * *

Atlas Concrete Construction Co. (9-CA-35198-2, 35410; 329 NLRB No. 1) Louisville, KY Sept. 1, 1999. The Board upheld the administrative law judge's findings that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to execute and abide by a collective-bargaining agreement reached with Teamsters Local 89 on August 1, 1997, withdrawing recognition of the Union, and failing to provide information requested by the Union. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Fox and Liebman participated.)

Charges filed by Teamsters Local 89; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Louisville on April 7, 1998. Adm. Law Judge Karl H. Buschmann issued his decision July 22, 1998.

* * *

State Materials, Inc. (8-CA-28582, 8-RC-15431; 328 NLRB No. 184) Girard, OH Aug. 31, 1999. The Board found, in affirming the administrative law judge's recommendation, based on *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), that a bargaining order is warranted in this case, that this case clearly falls within the second *Gissel* category comprising "less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes." Id. at 614. The Board wrote: [\[HTML\]](#) [\[PDF\]](#)

"We stress that beginning immediately after the organizing campaign commenced, the Respondent, through its manager and co-owner, Tony Bucci, committed numerous and pervasive unfair labor practices, including such 'hallmark' violations as discharging five employees for their union or protected concerted activities and threatening virtually all the employees with discharge and closure of the business if they supported the Union. The discharges and threats are highly coercive violations directed by a top management official against employees working in a relatively small unit of only approximately 33 employees. The threats of job loss followed by the discriminatory discharges demonstrated to the unit employees the

Respondent's willingness to carry out its threats and brought home to employees that the penalty for union support would be severe. As the judge correctly noted, these are among the most flagrant of unfair labor practices that can be committed during an organizing campaign and are of a type that are likely to have a lasting inhibiting effect that renders unlikely the holding of a fair election."

The Board found it unnecessary to pass on the judge's finding that the unfair labor practices fall within *Gissel* category one--those so outrageous and pervasive that a bargaining order might be justified even without "inquiry into majority status on the basis of cards or otherwise." *Id.* at 613.

(Chairman Truesdale and Members Fox and Liebman participated.)

Charge filed by Teamsters Local 377; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Cleveland, April 8-11, 1997. Adm. Law Judge Bruce D. Rosenstein issued his decision June 17, 1997.

* * *

Laborers' Local 210 (3-CD-628-1, 628-2; 328 NLRB No. 182) Buffalo, NY Aug. 31, 1999. Relying on the factors of the collective-bargaining agreements, employer preference and past practice, area practice, relative skills, and economy and efficiency of operations, the Board decided that the employees of Concrete Cutting & Breaking, Inc. represented by Laborers Local 210, rather than those represented by Operating Engineers Local 17, are entitled to operate the self-propelled concrete slab or flat saws, self-propelled concrete curb cutting saws, and self-propelled concrete wall cutting saws used by the Employer on various jobsites in New York State. [\[HTML\]](#) [\[PDF\]](#)

(Members Fox, Liebman, and Brame participated.)

* * *

Polymark Corp. and Electrical Workers IUE and its Local 795 (9-CA-28091, 9-CB-7783-1, 7783-2; 329 NLRB No. 7) Cincinnati, OH Sept. 1, 1999. Citing *Marquez v. Screen Actors Guild*, 525 U.S. 33 (1998), the Board affirmed the administrative law judge's finding that the union-security clause in the Respondents' collective-bargaining agreement is not facially invalid; and citing *California Saw & Knife*, 320 NLRB 224 (1995), it affirmed the judge's finding that the Respondent Union unlawfully refused to honor Robert Mohat's attempt to file a Beck objection because it occurred outside of the window period in violation of Section 8(b)(1)(A) of the Act. The Board reversed the judge's finding that the Union violated Section 8(b)(1)(A) and (2) by failing to advise Mohat that the only condition of employment was the payment of dues and fees relating to representational purposes; and relying on *Auto Workers Local 1752 (Schweizer Aircraft Corp.)*, 329 NLRB 528 (1995), *affd. sub nom. Williams v. NLRB*, 105 F.2d 787 (2d Cir. 1996), it reversed his finding that the Respondent Employer violated Section 8(a)(1), (2), and (3) by failing to honor Mohat's post-resignation attempt to revoke his dues-checkoff authorization. [\[HTML\]](#) [\[PDF\]](#)

Members Fox and Liebman, dissenting in part, would not find that the Respondent Union violated its duty of fair representation by refusing to honor Mohat's November 1990 *Beck* objection because it was not filed during April pursuant to the Union's established procedures. They would overrule *California Saw* insofar as it holds that a union may not lawfully refuse to honor *Beck* objections filed by employees who resign after the expiration of an annual window period, and would dismiss the complaint altogether.

In a separate concurrence, Member Hurtgen said that he agreed that the union-security clause is not unlawful on its face. However, contrary to the majority, he noted that the clause does not track the statute, i.e., it reads in terms of "member in good standing" rather than "member." But, there is no evidence of any Respondent constitution or by-law which defines "member in good standing," Member Hurtgen pointed out, adding: "If there were, and if the terms were defined in ways that go beyond the payment of dues and fees, I would consider whether the language of the union-security clause in that context was unlawful."

Member Brame concurred in part and dissented in part. While he agreed that the Union violated the Act in failing to follow Mohat's instructions respecting his dues objection promptly, it is based on a "very different reading of the law" from that of his

colleagues. Member Brame would also find that the majority erred in dismissing the allegations against the Respondent Employer for failing to accept Mohat's revocation of his dues-checkoff authorization. He explained that "because cases dealing with the lawfulness of a union's window period for dues objections under *Beck* involve the statutory prohibition against 'restraint or coercion,' I would hold that a union must accept and give immediate effect to *all* dues objections from any nonmember, at the election of the nonmember rather than at the convenience of the union. In addition, I would require an employer to honor a nonmember's revocation of dues-checkoff authorization and a union to recognize this obligation on the part of an employer."

(Full Board participated.)

Charge filed by Robert J. Mohat, an individual; complaint alleged violation of Section 8(a)(1), (2), and (3). Hearing at Cincinnati on Dec. 11, 1991. Adm. Law Judge Karl H. Buschmann issued his decision Sept. 30, 1992.

* * *

Teamsters Local 75 (Schreiber Foods) (30-CB-3077; 329 NLRB No. 12) Green Bay, WI September 1, 1999. As in *Polymark Corp.*, this case presents several issues regarding the Beck rights of employees subject to a contractual union security clause. The charging parties, Sherry and David Pirlott, resigned from the Union in 1989, stating they would pay for a "financial core obligation" but not for "any non-collective bargaining activity." Subsequently, they filed charges rejecting both the union's financial disclosure statements and its appeal procedures. Citing *Marquez*, the full Board affirmed the Administrative Law Judge's finding that the union security clause was not unlawful. It reversed the judge's finding, however, that the Union did not violate the Act by failing to notify newly-hired employees of their *Beck* rights, relying on *California Saw* and *Weyerhaeuser* which issued after the judge's decision. The Board noted on this issue that a union official testified that the union never informed any unit employees hired after May 1989 of their Beck rights prior to joining the Union. [\[HTML\]](#) [\[PDF\]](#)

A Board majority of Chairman Truesdale and Members Fox, Liebman and Hurtgen, reversed the judge's finding that the union's financial disclosure statements to the charging parties contained insufficient information. Applying *California Saw*, the majority said a Union is "to disclose to the objector a breakdown of its calculations by 'major categories' of expenditures, designating which expenditures it claims are chargeable or nonchargeable to objectors. The major categories must be sufficient 'to enable objectors to determine whether to challenge' a union's claim that its designated expenditures are for representational activities." In dissent, Member Brame agreed with the judge that the information provided by the Union was insufficient contended and that the Board's standard permits a union to include in its financial disclosure statements to objectors numbers that bear no "relation to reality."

The Board severed and remanded to the judge issues pertaining to the chargeability of union expenses for activities outside the bargaining unit, including organizing expenses and expenses attributable to the representation of public sector employees. It noted that this case was litigated prior to the issuance of *California Saw*. Dissenting Member Brame said he would find that the organizing costs in both the private and public sectors are not chargeable, as well as representational expenses for public sector units.

(Full Board Participated)

Charge filed by Sherry Lee Pirlott and David E. Pirlott, individuals; complaint alleged violation of 8(b)(1)(A). Hearing at Green Bay, WI on March 5, 1992. Adm. Law Judge Joel P. Biblowitz issued his decision September 4, 1992.

* * *

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Thompson Roofing & Sheet Metal Co, Inc. and Danny Thompson, Inc. (Roofers Waterproofers and Allied Workers Local 74) Niagara Falls, NY September 1, 1999. 3-CA-20993; JD-99, Judge Marion C. Ladwig.

Easton Hospital (United Independent Union) Easton, PA September 1, 1999. 4-CA-27704; JD-106-99, Judge Martin J. Linsky.

GATX Logistics, Inc. (Teamsters Local 7) Kalamazoo, MI September 1, 1999. 7-CA-40799; JD-111-99, Judge Robert M. Schwarzbart.

The New Silver Palace Restaurant (318 Restaurant Workers Union and an Individual) New York, NY 2-CA-30820, et al.; JD (NY)-63-99, Judge Howard Edelman.

H.E. Williams, Inc. (Machinists District No. 71) Carthage, MO August 26, 1999. 17-CA-19861; JD(SF)-72-99, Judge Gerald A. Wachknov.

Southern Container, Inc. (Paperworkers, Local 1430) Syracuse, NY September 2, 1999. 3-CA-21430; JD-112-99, Judge Jerry M. Hermele.

* * *

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 answer the complaint.)

Baumgartner Masonry (30-CA-14633; 329 NLRB No. 4) Kaukauna, Wisconsin September 2, 1999.

* * *

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 issues that are litigable in these unfair labor practice proceedings.)

Millsboro Nursing & Rehabilitation Center, Inc. (5-CA-28355; 328 NLRB No. 183) Millsboro, Delaware August 31, 1999.

* * *

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.)

Kiddy City, Inc. (Individual) (13-CA-36827; 329 NLRB No. 2) Chicago, IL September 2, 1999.