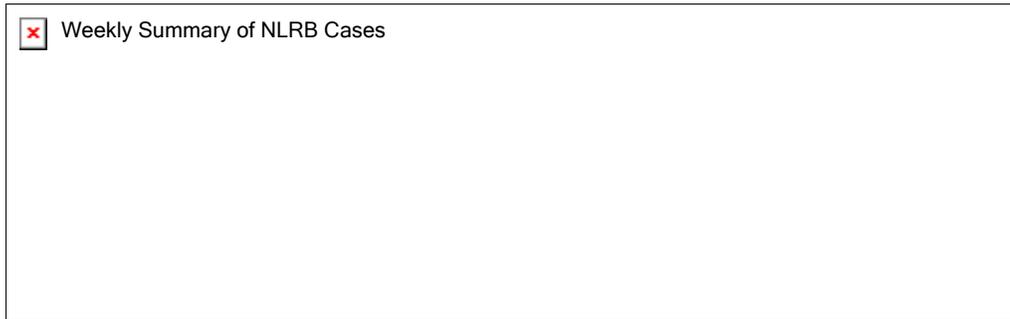


ABOUT THE WEEKLY SUMMARY

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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October 1, 1999

W-2706

CASES SUMMARIZED

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Naperville Ready Mix, Inc.; et al. (13-CA-31031, et al.; 329 NLRB No. 19) Naperville, IL Sept. 21, 1999. The Board found that Naperville Ready Mix, Inc., T&W Trucking, Inc., and Wehrli Equipment Co., as affiliated business enterprises, comprise

a single employer and violated Section 8(a)(5), (3), and (1) of the Act; and that a strike by unit employees which began on June 17, 1992, was an unfair labor practice strike by virtue of the Respondent's unlawful conduct. Specifically, the Respondent violated the Act by transferring out unit work to owner-drivers without bargaining in good faith to impasse with Teamsters Local 673 and discharging unit employees and replacing them with owner-drivers, refusing to provide the Union with information it requested concerning the transfer of ownership of trucks formerly driven by unit employees, dealing directly with employees concerning the continuation of their employment on a non-union basis, threatening unit employees with the loss of their jobs and encouraging striking employees to abandon their full support of the Union, and refusing to reinstate unfair labor practice strikers. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Fox and Liebman participated.)

Charges filed by Teamsters Local 673; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Chicago, June 27-July 12, 1994. Adm. Law Judge Robert T. Wallace issued his decision Oct. 13, 1995.

* * *

CCY New Worktech, Inc., et al. (29-CA-22260, 22469; 329 NLRB No. 24) Brooklyn, NY Sept. 21, 1999. The Board affirmed the administrative law judge's decision granting the General Counsel's motion for summary judgment against Respondents CCY New Worktech, KAM FAI Fashion, Inc., and XMG Fashions, Inc., and finding that KAM FAI, CCY, and XMG are affiliated businesses and constitute a single employer and violated the Act by discharging and failing to offer to reinstate five employees because of their protected concerted activities. The Respondents did not file answers to the complaint or appear at the hearing. CCY and KAM FAI did not file exceptions to the judge's decision. The Board found XMG's exceptions to be without merit. In its exceptions, XMG's president asserts that neither he nor his employees read English, that he did not receive any notices or letters informing him that XMG was the subject of a complaint made by employees of the other Respondents, and that none of his employees recall receiving any mail from the Board. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Liebman and Brame participated.)

Charges filed by Qui F. Zhu and Zhen Lui Li, individuals; complaint alleged violation of Section 8(a)(1). Hearing at Brooklyn on June 22, 1999. Adm. Law Judge Raymond P. Green issued his decision July 12, 1999.

* * *

Waste Management of Palm Beach (12-CA-19010; 329 NLRB No. 20) Boynton Beach, FL Sept. 22, 1999. Chairman Truesdale and Member Liebman, emphasizing the timing of the announcement with respect to the representation election, agreed with the administrative law judge that the Respondent violated the Act by announcing, at a company sponsored dinner party held on October 14, 1997, 3 days prior to the election, that as of January 1, 1998, there would be a corporatewide increase in its matching contribution to the 401(k) plan. They reversed his finding that the holding of the dinner party was an independent violation of Section 8(a)(1). Affirming the judge, Chairman Truesdale and Member Liebman also held that the Respondent unlawfully promulgated, maintained, and threatened to enforce by removal from the property an invalid no-solicitation/no-distribution rule; and unlawfully solicited employee grievances and impliedly promised to remedy them. When the Respondent asked employees at employer-held meetings during the organizing campaign to identify their concerns, they complained about monetary penalties imposed on drivers involved in on-the-job traffic accidents at the Palm Beach location but not at other facilities. The judge found that the Respondent violated Section 8(a)(1) by promising to refund the penalties and violated Section 8(a)(3) by the actual refunding of them. [\[HTML\]](#) [\[PDF\]](#)

Member Hurtgen, dissenting in part, found that the Respondent did not violate the Act by announcing to employees a corporatewide increase in matching contributions to its 401(k) plan because the decision and grant of the benefit occurred in July 1997 before the petition was filed; or by promising to refund and the actual refund of monetary penalties because the penalties were contrary to a practice at the Respondent's facilities and in violation of a policy that was set prior to the union campaign.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charge filed by Teamsters Local 390; complaint alleged violation of Section 8(a)(1) and (3). Hearing held June 15-16, 1998. Adm. Law Judge Lawrence W. Cullen issued his decision July 13, 1998.

* * *

International Ship Repair & Marine Services (12-CA-18879, 12-RC-8105; 329 NLRB No. 27) Tampa, FL Sept. 23, 1999. Affirming the decision of an administrative law judge, the Board held that the Respondent violated the Act and interfered with an election held on June 30, 1997 by suspending, laying off, refusing to recall, and assigning Arthur Davenport more onerous working conditions because of his union activities; threatening employees with plant closure, relocation, and unspecified reprisals if they selected the Tampa Metal Trades Council to represent them; and warning employees that it would be futile to choose to be represented by the Union. The Board sustained the Union's election objections that track the unfair labor practices found, set aside the election (the Union lost 103-50), and directed that the Regional Director conduct a second election among the production and maintenance employees. The Board affirmed the judge's dismissal of two additional union objections alleging that the Respondent interfered with the election by (1) assisting employees who campaigned against the Union, and (2) promising and granting benefits in order to discourage employees from voting for the Union. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Liebman and Brame participated.)

Charge filed by Tampa Metal Trades Council; complaint alleged violation of Section 8(a)(1). Hearing held on eight dates from March 5 through June 15, 1998. Adm. Law Judge David L. Evans issued his decision Feb. 17, 1999.

* * *

OXY USA, Inc. (17-CA-17689; 329 NLRB No. 26) State of Kansas Sept. 23, 1999. The Board, in finding that the Respondent's bargaining proposal is not unlawful under Section 302 of the Act, deferred to the opinion of the U.S. Department of Justice, which has the responsibility for enforcing that Section, and dismissed complaint allegations that the Respondent violated Section 8(a)(1) and (5) by insisting to impasse, and as a condition to reaching any collective-bargaining agreement, that the Oil, Chemical, and Atomic Workers International agree to serve as the sponsor and administrator of the health care plan of bargaining unit employees. The Board in 1996 approved the parties' stipulation of facts and motion to transfer the case directly to the Board for a decision and order. Subsequently, it solicited the views of the U.S. Department of Labor and the Criminal Division of the U.S. Department of Justice. Both agencies submitted comments. [\[HTML\]](#) [\[PDF\]](#)

The Respondent (OXY) is engaged in the exploration and production of petroleum from various sites throughout Kansas and other locations in the U.S. The parties' most recent collective-bargaining agreement covering the Respondent's Kansas employees expired on January 31, 1994 and negotiations for a new contract began about January 11 and 12, 1994. On October 21, 1994, the parties agreed that they were at impasse on several issues, including who would serve as sponsor of the health insurance plan. The Union requested that the Respondent continue to serve as sponsor of the health care plan. The Respondent reiterated that it would prefer not to continue in that role given the time, expense, and administrative burden involved. About October 26, 1994, the Respondent implemented certain terms of its final offer. It did not implement any change with respect to health care and has remained the sponsor of the existing health care plan provided by Aetna.

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charge filed by the Oil, Chemical and Atomic Workers International; complaint alleged violation of Section 8(a)(1) and (5). Parties waived their right to a hearing before an administrative law judge.

* * *

Beverly Enterprises-Massachusetts, Inc., d/b/a Cape Cod Nursing & Retirement Home (1-RC-19926; 329 NLRB No. 28) Buzzards Bay, MA Sept. 24, 1999. The Board granted the Employer's request for review of the Regional Director's supplemental decision with regard to the role of the Employer's licensed practical nurses (LPNs) in evaluating employees and concluded, contrary to the Regional Director, that the LPNs are statutory supervisors within the meaning of Section 2(11) of the Act because they exercise independent judgment in completing evaluations of the Employer's nursing assistants (NAs) on

an annual basis, and the evaluations are the basis on which the Employer awards specific merit increases. The Board denied the Employer's request for review with respect to the LPNs who act as "float" nurses, as the record established that they do not complete evaluations of NAs. Thus, it found that they are not supervisors in this or any other respect. Member Brame would also grant review of the unit placement issues involving the LPNs who act as "float" nurses. The Board remanded the case to the Regional Director for further appropriate action. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Hurtgen and Brame participated.)

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Transport America, Inc. (an Individual) Shirley, IN September 23, 1999. 25-CA-23179; JD-131-99, Judge Eric M. Fine.

Kanawha Stone Company, Inc. (Operating Engineers Local 132) Nitro, WV September 23, 1999. 9-CA-35738 and 36216; JD-127-99, Judge Karl H. Buschmann.

Hahn Bookbinding Company (Graphic Communications Local 1B-Twin Cities and an Individual) Minneapolis, MN September 23, 1999. 18-CA-14990 and 15016; JD-129-99, Judge William J. Pannier, III.

O-J Transport Company, Inc. and Gratiot Driver Leasing, Inc. (Auto Workers (UAW)) Detroit, MI September 23, 1999. 7-CA-41105; JD(ATL)-39-99, Judge Philip P. McLeod.

Riverboat Services of Indiana, Inc. (Individuals) East Chicago, IN September 23, 1999. 13-CA-36708, et al.; JD-113-99, Judge David L. Evans.

Secco, Inc. (Carpenters Local 546) Linton, IN September 24, 1999. 25-CA-26206 and 25-RC-9790; JD-121-99, Judge Marion C. Ladwig.

Knitwrite Knitting Mills, Inc. (Production Workers Local 17-18) Brooklyn, NY September 24, 1999. 29-CA-22498; JD(NY)-66-99, Judge Joel P. Biblowitz.

Bender Shipbuilding & Repair Company, Inc./White Electrical Construction Company, Joint Employers (an Individual) Mobile, AL September 23, 1999. 15-CA-15005; JD-(ATL)-41-99, Judge George Carson II.

Webco Industries (Steelworkers) Sand Springs, OK September 17, 1999. 17-CA-19898; JD(SF)-78-99, Judge Michael D. Stevenson.

D & E Electric, Inc. (Electrical Workers (IBEW) Local 1) St. Louis, MO September 22, 1999. 14-CA-25491 and 14-RC-12015; JD-125-99, Judge Jerry M. Hermele.

Asplundh Tree Expert Company (an Individual) Cincinnati, OH September 22, 1999. 9-CA-36005; JD-126-99, Judge Richard H. Beddow, Jr.

Mastronardi Mason Materials Co. and its successor and alter ego Queens Ready-Mix, Inc. (Teamsters Local 282) Jamaica, NY September 17, 1999. 29-CA-20989 and 21060; JD(NY)-65-99, Judge Steven Davis.

* * *

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.)

Tradefair Discount, Inc. d/b/a Mike's #1 (Food and Commercial Workers Local 880) (8-CA-30460; 329 NLRB No. 21)
Cleveland, OH, September 20, 1999.