

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](#)

October 8, 1999

W-2707

CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

[Bake-Line Products, Inc.](#), Des Plaines, IL
[Bethlehem Steel Corp. \(5-UC-336\)](#), Sparrows Point, MD
[Bethlehem Steel Corp. \(5-UC-334\)](#), Sparrows Point, MD
[Bethlehem Steel Corp. \(5-UC-341\)](#), Sparrows Point, MD
[Bridon Cordage, Inc.](#), Albert Lea, MN
[First Security Services Corp.](#), Bridgeport, CT
[Machinists Lodge 169 and Local Lodge 79 \(American National Can Co.\)](#), Kent, WA
[Russo, A. & Sons, Inc.](#), Watertown, MA
[St. Elizabeth Manor, Inc.](#), Florissant, MO
[Teknion, Inc.](#), Flushing NY
[Tinius Olsen Testing Machine Company](#), Willow Grove, PA
[Trump Taj Mahal Casino](#), Atlantic City, NJ

OTHER CONTENTS

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

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Bethlehem Steel Corp. (5-UC-336; 329 NLRB No. 31) Sparrows Point, MD Sept. 27, 1999. The Board reversed the Regional Director's finding that the petition was untimely; reinstated the petition seeking to exclude the product marketing

representatives, product application consultant, and secretaries (product marketing employees) from the existing unit of employees working at the Employer's Sparrows Point, Maryland facility; and remanded the case to the Regional Director for a determination on the merits. [\[HTML\]](#) [\[PDF\]](#)

The Regional Director had found that the existing contract between the Employer and the Steelworkers defined the scope of the unit and that the product marketing employees were not included. The Board wrote: "Because the petition seeks to have the Board determine the placement of employee classifications which are not expressly covered in the contract, which did not exist at Sparrows Point at the time the parties executed their contract, and which have been in dispute since they came into being at that location, we find that it would not be disruptive of the collective-bargaining relationship to entertain the clarification petition at this time."

(Full Board participated.)

* * *

Bethlehem Steel Corp. (5-UC-334; 329 NLRB No. 32) Sparrows Point, MD Sept. 27, 1999. The Board granted the Employer's request for review of the Regional Director's Decision and Order dismissing the unit clarification petition seeking the exclusion of customer service account representatives, telephone operators, and administrative assistants (customer service employees) from the existing unit; and affirmed the dismissal of the petition. [\[HTML\]](#) [\[PDF\]](#)

In doing so, Chairman Truesdale and Members Fox and Liebman did not rely on the Regional Director's finding that the petition was untimely under *Wallace Murray Corp.*, 192 NLRB 1090 (1971), and found instead that the customer service employees have been historically excluded from the bargaining unit represented by the Steelworkers, and since no party has established that recent and substantial changes have occurred, the Employer's claims are not appropriately resolved in a unit clarification proceeding.

Members Hurtgen and Brame, concurring, agreed that the petition is not dismissable under *Wallace Murray*, but they would entertain the petition, and on the merits, would continue the historic exclusion of the classification contested herein.

(Full Board participated.)

* * *

Bethlehem Steel Corp. (5-UC-341; 329 NLRB No. 33) Sparrows Point, MD Sept. 27, 1999. The Board reversed the Acting Regional Director's finding that the petition was untimely under *Wallace Murray Corp.*, 192 NLRB 1090 (1972), reinstated the petition seeking the exclusion of senior credit representatives from the existing unit, and remanded the case to the Regional Director for a determination on the merits. [\[HTML\]](#) [\[PDF\]](#)

The Board decided that unit clarification is appropriate here because the petition seeks to clarify the unit placement of a "new" classification that did not exist at the Employer's Sparrows Point, Maryland facility before the execution of the parties' most recent contract in 1973. It explained:

"Contrary to the Acting Regional Director, we find that the exempt status of the senior credit representatives is not determinative, albeit the unit description covers only nonexempt employees." In agreeing with his colleagues, Member Brame stressed that the exempt status of the senior credit representatives remains a relevant factor in determining whether these employees belong in the historical bargaining unit.

(Full Board participated.)

* * *

First Security Services Corp. (34-RC-1472; 329 NLRB No. 25) Bridgeport, CT Sept. 27, 1999. Members Fox and Liebman, with Member Brame dissenting, found no sufficient basis to rebut the presumption of a single-facility unit and held that the

unit petitioned-for by the United Plant Guard Workers limited to guards working for First Security Services Corp. at the Bridgeport Community Hospital, is an appropriate unit for bargaining and directed an election in that unit. [\[HTML\]](#) [\[PDF\]](#)

The Employer provides guard services pursuant to contracts with business entities in Maine, Massachusetts, Rhode Island, Connecticut, New York, Maryland, and the District of Columbia. Its operations are divided into four regions. Region 2 covers the Employer's Connecticut, Westchester County, New York, and Southern Massachusetts operations. Region 2 is further subdivided into three districts, with Bridgeport Hospital and 16 other clients comprising the southern district. The contracts with the 17 clients involve 30 sites. The nearest of the other Connecticut sites to Bridgeport is 5-10 miles away while the furthest is 28 miles away. The Employer contends that a Bridgeport Hospital unit is too narrow and that the smallest appropriate unit must include the 230 guards working in the southern district of the Employer's region 2.

Members Fox and Liebman wrote after reviewing the record: "The evidence overall establishes that the identity of the Employer's guards is with the Bridgeport Hospital site, not with the southern district or with any other of the Employer's client sites, some of which are located a substantial distance from Bridgeport." They noted that the level of interchange between Bridgeport Hospital employees at other sites is marginal, as best; that a substantial number of the guards in the unit are former Bridgeport Hospital guards, who are strongly identified with Bridgeport Hospital and only Bridgeport Hospital; the authority of local supervision at the Bridgeport Hospital, while limited, involves critical day-to-day workplace issues such as work assignments and employee evaluations; and the guards wear uniforms that identify them with this site.

Dissenting Member Brame wrote: "In stretching the single-facility presumption beyond its intended limits, my colleagues find that an appropriate guard unit here can be restricted to only one of the 17 client accounts for which the Employer's New Haven, Connecticut district office is responsible. Such a result conflicts with the Board's unit determinations made in comparable situations involving employers who provide contract security service to other businesses. Like, the Regional Director, I would follow existing precedent and find that the Bridgeport Hospital guard unit requested by the Petitioner is an inappropriate unit."

(Members Fox, Liebman, and Brame participated.)

* * *

Trump Taj Mahal Casino (4-UD-342; 329 NLRB No. 30) Atlantic City, NJ Sept. 28, 1999. Chairman Truesdale and Member Fox overruled the individual Petitioner's objection and certified that a majority of the employees eligible to vote have not voted to withdraw the authority of Operating Engineers Local 68-68A-68B and Theatrical Stage Employees Local 917 to require, under their agreement with the Employer, that employees make certain lawful payments to the Unions as a condition of employment, in conformity with Section 8(a)(3) of the Act. Member Hurtgen dissented in part. [\[HTML\]](#) [\[PDF\]](#)

In her objection, the Petitioner alleged that the Unions coerced employees by making threatening statements about what would ensue if the unit employees voted in favor of deauthorization, including a threat that the Unions would cease to represent the employees and a threat that their continuation in the union pension fund might be sacrificed. The Regional Director found that the threat to cease representation was objectionable, relying on *Hospital 1115 Joint Board (Pinebrook Nursing Home)*, 305 NLRB 802 fn. 1 (1991), which held that a union's statement in connection with a deauthorization election that it would no longer represent the unit employees if they voted to deauthorize the union-security clause of the collective-bargaining agreement coerces employees in violation of Section 8(b)(1)(A) of the Act and constitutes objectionable conduct unless the union provides the unit employees with objective evidence that it would be economically infeasible to represent them in the absence of the clause.

Chairman Truesdale and Member Fox, in finding that the statements concerning cessation of representation, did not interfere with the election, overruled *Pinebrook* and relied on *Bake-Line Products*, 329 NLRB No. 29 (1999). They agreed with the Regional Director that the Unions' statement regarding pension coverage was a permissible statement about the consequence of a termination of the collective-bargaining relationship between the Unions and the Employer.

For the reasons set forth in his dissenting opinion in *Bake-Line Products*, Member Hurtgen found that the Unions' threat to cease representation if the unit employees voted in favor of deauthorization is objectionable conduct sufficient to set aside the election results. He found it unnecessary to pass on the statement concerning the pension plan.

(Chairman Truesdale and Members Fox and Hurtgen participated.)

* * *

Production and Maintenance Local 101 (Bake-Line Products, Inc.) (13-CB-15575, 13-UD-433; 329 NLRB No. 29) Des Plaines, IL Sept. 28, 1999. Chairman Truesdale and Members Fox and Liebman, with Members Hurtgen and Brame dissenting, overruled *Hospital Employees 1115 Joint Board (Pinebrook Nursing Home)*, 305 NLRB 802 (1991), which found unlawful certain statements made during an election campaign, because it is "at odds with earlier cases reflecting the sound views of the Board and reviewing courts concerning the circumstances under which union disclaimers of representation should be freely allowed and given effect." [\[HTML\]](#) [\[PDF\]](#)

The majority explained: "These [earlier] cases make clear that a union may disclaim its role as collective-bargaining representative and may do so even in apparent response to the employees' filing of a deauthorization petition or the loss of a deauthorization election. We further hold that a union may so inform employees without providing them with objective evidence that its continued representation of them would be infeasible." In this regard, the majority agreed with concurring Member Stephens' view in *Pinebrook*, (id at 802): "Nothing in the Act necessarily prevents a union from abandoning its role as collective-bargaining representative or informing employees that it will no longer act as their bargaining representative should the employee[s] decide to revoke the union-security provisions of the contract."

The majority, in finding that the dissent's analogy between plant closure statements and cessation of representation statements fails, wrote: "Thus, when a union says it may disclaim representation if it loses a deauthorization petition, this is a statement based on the objective reality of representation. Unlike the plant closure statements, there is full symmetry between cessation of representation statements and the decision to cease representation in the deauthorization context. Member Fox added: "Because there is no Section 7 right to compel a particular union to represent employees, there is no need to specify stringent conditions that a union must satisfy before telling unit employees that it will not represent them if the unit does not assure continuing financial support for the representation."

Turning to the instant case, the majority dismissed the complaint, finding that the Respondent neither violated the Act nor engaged in conduct that warrants setting aside a deauthorization election by (1) telling employees that if it lost the election by a decisive margin it would consider disclaiming recognition and that this would leave the employees unrepresented and would void the collective-bargaining agreement, and (2) telling employees in the absence of the contract the Employer might not give them the next scheduled wage increase and would be free to fire employees without good cause.

Members Hurtgen and Brame would adhere to *Pinebrook* and find the Respondent's conduct here to be unlawful and objectionable. They wrote: "If a union threatens to abandon representation of employees, in reprisal for their deauthorization of union-security, we believe that the threat is unlawful and objectionable. . . . Our colleagues start with the proposition that a union can disclaim representation of employees. They then leap to the conclusion that a union can threaten to do so. We agree with the first proposition. However, the second proposition is a non-sequitur, and we disagree with it. . . . We would treat a statement about cessation of representation in the same way as the law treats statements about plant closure."

(Full Board participated.)

Charge filed by Efrain Jimenz, an individual; complaint alleged violation of Section 8(b)(1)(A). Hearing at Chicago on March 11, 1998. Adm. Law Judge William G. Kocol issued his decision May 19, 1998.

* * *

Bridon Cordage, Inc. (18-CA-13178, et al.; 329 NLRB No. 35) Albert Lea, MN Sept. 29, 1999. Unlike the administrative law judge who dismissed the allegation, the Board held that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to notify the Steelworkers of a May 23, 1994 group layoff and affording the Union an opportunity to bargain over the layoff and its effects as a direct result of its nonbargainable decision to reduce inventory. The Board found that the Respondent was not required to bargain with the Union over its decision to reduce inventory, which resulted in a series of four layoffs, because that decision was made prior to the Union's victory in a Board election. The first three layoffs were announced before the Board

election, but the fourth layoff was announced May 9, 1994, 3 days after the Union's certification. The Board found that the fourth layoff on May 23 was a mandatory subject of bargaining as an *effect* of the decision to reduce inventory. See *Fast Food Merchandisers*, 291 NLRB 897, 900 (1988); and *Litton Business Systems*, 286 NLRB 817, 820 (1987), *enfd.* in pertinent part 893 F.2d 1128 (9th Cir. 1990), reversed in part on other grounds 501 U.S. 190 (1991). [[HTML](#)] [[PDF](#)]

(Chairman Truesdale and Members Fox and Liebman participated.)

Charges filed by the Steelworkers; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Minneapolis, Sept. 5-6, 1995. Adm. Law Judge William J. Pannier issued his decision Feb. 29, 1996.

* * *

Electrical Workers IBEW Local 3 (Teknion, Inc.) (29-CC-1267; 329 NLRB No. 34) Flushing, NY Sept. 30, 1999. Affirming the administrative law judge, the Board held that the Respondent Union violated Section 8(b)(4)(ii)(B) of the Act by threatening James G. Kennedy & Company, and PEM, Inc., that its members would not install Teknion, Inc.'s workstations, in order to cause Kennedy and PEM to pressure Securities Industry Automation Corp. to cease using, selling, handling, transporting, or otherwise dealing in the products of, and to cease doing business with Teknion. The Board, in affirming the judge's recommended broad remedial order, relied particularly on the fact that in July 1996, a little more than 2 years ago, the Respondent consented to entry of an order by the Second Circuit Court of Appeals requiring the Respondent to comply with its obligations under prior outstanding court judgments and not to further violate Section 8(b)(4) of the Act. The violation of Section 8(b)(4)(ii)(B) in the instant case sufficiently demonstrates that the Respondent has a proclivity for violating the Act, the Board said. [[HTML](#)] [[PDF](#)]

(Members Fox, Liebman, and Brame participated.)

Charge filed by Teknion, Inc.; complaint alleged violation of Section 8(b)(4)(ii)(B). Hearing at Brooklyn on May 11, 1999. Adm. Law Judge Michael A. Marcionese issued his decision June 17, 1999.

* * *

Tinius Olsen Testing Machine Company (4-RC-19586; 329 NLRB No. 37) Willow Grove, PA Sept. 30, 1999. The Board overruled the Petitioner's (Teamsters Local 115) Objection 5 which alleges that the Employer violated *Kalin Construction Co.*, 321 NLRB 649 (1996), by distributing employee paychecks containing raises retroactive to December 21, 1995 on the morning of an election held January 13, 1999, in an attempt to sway the election. The tally of ballots shows 20 for the Petitioner and 23 for the Intervenor (Electrical Workers UE Local 155). The Board certified the Intervenor as the exclusive representative of the Employer's production and maintenance employees. [[HTML](#)] [[PDF](#)]

Chairman Truesdale and Member Fox found that it is not clear that the inclusion of the retroactive pay constitutes a change in employees' paychecks within the meaning of *Kalin*. In *Kalin*, the Board adopted a "strict rule against changes in the paycheck process for the purpose of influencing the employees' votes in the election, during a period beginning 24 hours before the scheduled opening of the polls and ending with the closing of the polls." *Id.* at 652. Even viewing the inclusion of the retroactive pay as a change encompassed by *Kalin*, Chairman Truesdale and Member Fox found that the Employer established a legitimate business reason for making the change (the collective-bargaining agreement providing for the retroactive increase was ratified by employees on about January 7). Thus, they held that by granting the wage increase with retroactive pay in the next regular paycheck, the Employer honored its collective-bargaining agreement with the Intervenor and respected the rule set out in *RCA del Caribe, Inc.*, 262 NLRB 963 (1982).

Member Hurtgen, concurring in the result, does not agree with his colleagues' *Kalin* analysis. As stated in his dissent in *United Cerebral Palsy Association of Niagara County, Inc.*, 327 NLRB No. 14 (1998), he does not "subscribe to the holding in *Kalin* that any of four enumerated changes in the payroll process within 24 hours of the election is per se objectionable, absent an employer justification for the action which is unrelated to the election." Instead of presuming per se employer misconduct (and placing the consequent burden on the employer of disproving an objectionable act, Member Hurtgen would consider all of the facts and circumstances surrounding an employer's changes to the paycheck process shortly before an election, including but

not limited to, employer motive, justification, and the circumstances of the changes. Considering all of the relevant factors, he found that the Employer's election-day grant of a wage increase did not interfere with the election.

(Chairman Truesdale and Members Fox and Hurtgen participated.)

* * *

St. Elizabeth Manor, Inc. (14-RM-700; 329 NLRB No. 36) Florissant, MO Sept. 30, 1999. By a 3 to 2 decision, the Board held that once a successor employer's obligation to recognize an incumbent union has attached (where the successor has not adopted the predecessor's contract), the union is entitled to a reasonable period of time for bargaining without challenge to its majority status through a decertification effort, an employer petition, or a rival petition, and therefore overruled *Southern Moldings, Inc.*, 219 NLRB 119 (1975), where the Board held that, absent the successor's adopting the existing contract, the union has only a rebuttable presumption of continuing majority status. The majority (Chairman Truesdale and Members Fox and Liebman) said it saw "no reason to distinguish between those situations in which the predecessor had no current contract with the incumbent at the time of the successorship and one in which there was an existing contract which the successor chose not to assume," adding: [\[HTML\]](#) [\[PDF\]](#)

"Understandably, the historical use of the term 'recognition bar' has come to mean situations arising from voluntary recognition based on an employer's good faith acceptance of a union's demonstrated showing of majority status. In that context, an employer's recognition is voluntary since it may refuse to offer recognition and instead demand that an election be held. By contrast, in the successorship situation, the employer's recognition is voluntary only to the extent that it chooses to hire its predecessor's employees represented by the incumbent union as the majority of its work force. Once an employer has made that choice, the incumbent union's majority status is presumed by operation of law. Thus, the use of the term 'recognition bar' may not be the best choice of terms in this context. To avoid confusion, henceforth we will employ the term 'successor bar' to describe the preclusion of petitions challenging the union's majority status for a reasonable period after a successor employer's obligation to recognize an incumbent unit is triggered."

The majority reversed the Regional Director's Decision and Direction of Election, to the extent that it is based on *Southern Moldings* and found that the successor Employer-Petitioner's voluntary recognition of Service Employees Local 50 did not constitute a bar to the instant petition because under extant law, recognition bar applies only in initial organizing situations, and not where recognition has been accorded by a successor employer. The case was remanded to the Regional Director to determine whether a reasonable period for bargaining had elapsed at the time the instant petition was filed and to take further appropriate action.

Dissenting Members Hurtgen and Brame would continue to follow *Southern Moldings* and *Harley-Davidson Transportation Co.*, 273 NLRB 1531 (1985), and would direct the opening and counting of the impounded election ballots. They wrote: "Unlike our colleagues, we do not believe that an otherwise timely petition challenging the majority status of an incumbent union following its recognition by a successor employer should be barred, nor do we think such an employer should be precluded from withdrawing recognition before a contract is agreed upon, if based on the traditional test for withdrawal, it appears that a majority of the successor's employee complement no longer support the incumbent union. Of paramount importance to us is the employees' exercise of their Section 7 right to select a union representative of their own choice or to have no union represent them at all. Imposition of a 'successor bar' defeats this goal and runs counter to the purposes and policies of the Act."

(Full Board participated.)

* * *

A. Russo & Sons, Inc. (1-RC-20508; 329 NLRB No. 43) Watertown, MA Sept. 30, 1999. Addressing an issue specifically left open in *Esco Corp.*, 298 NLRB 837, 841 fn. 7 (1990), the Board held (3-2) that *A. Harris & Co.*, 116 NLRB 1628 (1956), does not apply where an employer operates on both a wholesale and retail basis and that it will instead apply the traditional community of interest test in deciding whether a warehouse unit in a combined retail and wholesale operation is appropriate. Chairman Truesdale and Members Fox and Liebman thus overruled *Napa Columbus Parts Co.*, 269 NLRB 1052 (1984).

Applying the traditional community of interest test, the majority also affirmed the Regional Director's conclusion that the petitioned-for warehouse unit, consisting of the Employer's truckdrivers, order pickers, and processors constitute an appropriate unit for bargaining. The majority wrote: [\[HTML\]](#) [\[PDF\]](#)

"Our dissenting colleagues rely on the fact that *Napa* has been on the books for 15 years and is therefore established precedent. Contrary to the dissents, we view *Napa* as an aberration. *Napa* failed to mention that *A. Harris* was designed to apply only to retail store warehouse operations, let alone to explain why it should apply to mixed wholesale/retail operations. During the 15 years from the *Napa* decision to the present, no other published Board case has applied *A. Harris* to mixed wholesale/retail operations. We therefore believe, contrary to our dissenting colleagues, that compelling policy considerations support the overruling of *Napa*."

Member Hurtgen, dissenting, would uphold extant law, find the unit to be inappropriate, and dismiss the petition filed by Teamsters Local 829. He wrote: "I do not believe that the *A. Harris-Napa* analysis is inconsistent with a community-of-interest approach. Rather, that analysis takes into account community-of-interest facts, and the character of a retail/wholesale operation. Based on these factors, *A. Harris/Napa* formulates general rules for guidance. I would apply those rules here."

Dissenting Member Brame, would reverse the Regional Director and find the petitioned-for unit to be inappropriate. He would adhere to the Board's *Napa* decision and include the store clerk, cashier, bagger, and florist classifications in the unit as well. Member Brame explained: "Indeed, unlike the majority, I see no tension between the application of the *A. Harris* criteria to employers like *Napa* and the Board's community of interest test. . . . Furthermore, contrary to the majority, I think that the same storewide unit result would be reached if we were to apply the community-of-interest approach to the instant facts. The Employer's operations are at one location; there they are functionally integrated and interdependent. The retail store employees and warehouse employees share some supervision, have similar working conditions. This factual scenario fully supports the larger employee unit."

In *A. Harris*, the Board set forth a restrictive test, consistent with its policy at that time of favoring wall-to-wall units in the retail industry, that warehouse units may be appropriate in a retail operation if certain criteria are met. Applying this test, the Board concluded that the establishment of a separate unit of warehouse employees was appropriate. Subsequently, the Board applied the *A. Harris* criteria, to a combined wholesale and retail operation (*Napa Columbus Parts*) and a wholesale operation (*Roskin Bros. Inc.*, 274 NLRB 413 (1985)), finding the petitioned-for units to be inappropriate.

(Full Board participated.)

* * *

Machinists District Lodge 160 and Local Lodge 79 (American National Can Co.) (19-CB-7970; 329 NLRB No. 41) Kent, WA Sept. 30, 1999. Chairman Truesdale and Member Hurtgen found unlawful that portion of the Respondents' *Beck* procedure that provides that objections be filed during a 1-month period, solely with respect to the failure to grant employees who resign their union membership a separate window period following resignation in which to file a *Beck* objection, and that the Respondents violated their duty of fair representation by requiring unit members who register their objections during the October window period to wait until January to receive the reduction in their dues. Accordingly, the Respondents violated Section 8(b)(1)(A) of the Act by maintaining and applying that portion of their *Beck* procedure which prevents unit employees who have resigned from the Union from filing *Beck* objections within a reasonable time after their resignation, and by maintaining and applying that portion of their *Beck* procedure which provides that dues reductions will not become effective, for unit members who file *Beck* objections during the 1-month October window period, until the following January 1. [\[HTML\]](#) [\[PDF\]](#)

Member Liebman, dissenting in part, would dismiss the complaint allegation that the Respondents violated the Act by maintaining and applying to newly resigned employees a 1-month window period for the invocation of their *Beck* rights.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charge filed by Keith Zurn and Majorie Zurn, individuals; complaint alleged violation of Section 8(b)(1)(A). Parties waived their right to a hearing before an administrative law judge.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Fowler Dehydrator, a Joint Venture of Peter Boghosian and Paul Boghoshian (Teamsters Local 616) Fresno, CA September 20, 1999. 32-CA-17375; JD(SF)-81-99, Judge James M. Kennedy.

New Jersey State Federation of Teachers (Office & Professional Employees Local 32) Trenton, NJ September 28, 1999. 22-CA-22394; JD-(NY)-67-99, Judge Eleanor MacDonald.

McDonald Partners, Inc. d/b/a Rodgers & McDonald Graphics (Communications Workers Local 14904) Carson, CA September 17, 1999. 21-CA-32908; JD-(SF)-77-99, Judge Mary Miller Cracraft.

DaimlerChrysler Corporation (Auto Workers (UAW) Local 412, Unit 1) Auburn Hills, MI September 29, 1999. 7-CA-41665; JD-133-99, Judge Arthur J. Amchan.

A.R.E.B.A. Casriel, Incorporated and Amalgamated Union Local No. 1 (N.O.I.T.U.) (Individuals) New York, NY September 29, 1999. 2-CA-30284, 30707, 2-CB-16789; JD(NY)-68-99, Judge Steven Fish.

Martech Medical Products, Inc. d/b/a Martech MDI (Teamsters Local 384) Harleysville, PA September 30, 1999. 4-CA-27466; JD-135-99, Judge Thomas R. Wilks.

Electrical Workers (IUE) Local 22I (Kidder, Inc.) Agawan, MA September 30, 1999. 1-CB-9338; JD-134-99, Judge Richard H. Beddow.