

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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November 5, 1999

W-2711

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Topside Construction, Inc. (20-CA-27725, et al., 20-RC-17245; 329 NLRB No. 75) Sacramento, CA Oct. 22, 1999. Affirming the decision of the administrative law judge, the Board held that the Respondent violated Section 8(a)(3) and (1) of the Act by failing to recall Mike Buttacavoli, Mike Munoz, and Chris McBride because of their activities for Operating Engineers Local

3; and violated Section 8(a)(1) by interrogating employees about their union activities and threatening them with discharge and closure of its operations if they select a union to represent them. [\[HTML\]](#) [\[PDF\]](#)

In Case 20-RC-17245, the challenges to 4 ballots cast in the election held on April 25, 1997 were sustained, the challenge to one ballot was overruled, and the withdrawal of the challenges to 4 ballots was granted. In the absence of exceptions, the Board adopted, pro forma, the judge's recommendations that the Employer's Objections 3, 4, 6, and 7 be overruled, and his conclusion that the absence of union objections is no bar to setting aside the election (based on the Respondent's unlawful conduct that occurred between the filing of the representation petition and the conduct of the election) in the event the revised tally of ballots shows that the Union did not receive a majority of the valid ballots cast.

The Board remanded the case to the Regional Director to open and count the ballots of Steve Peterson, Matt Haser, Doug Young, Don Young, Mike Buttacavoli, Michael Drury, Stan Thrall, Michael Munoz, and Chris McBride and to issue a revised tally of ballots and a certification of representative if the union has received a majority of the valid ballots. If the revised tally shows that the Union did not receive a majority of the valid ballots cast, the Board ordered that the election be set aside and a new election be held.

(Chairman Truesdale and Members Fox and Liebman participated.)

Charges filed by Operating Engineers Local 3; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Sacramento, Aug. 20-22, 1997. Adm. Law Judge Clifford H. Anderson issued his decision March 10, 1998.

* * *

Walt Disney World Co. (12-CA-18484; 329 NLRB No. 77) Orlando, FL Oct. 26, 1999. The administrative law judge found, and the Board agreed, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to furnish the Actors' Equity Association with relevant and necessary information it requested about the job assignments of employees covered by the parties' collective-bargaining agreement and the Respondent's alter ego relationship with other corporations, and by delaying the production of such information. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Liebman and Brame participated.)

Charge filed by the Actors' Equity Association; complaint alleged violation of Section 8(a)(1) and (5). Hearing by telephone July 27 and Aug. 3, 1998 and at Tampa on Aug. 5, 1998. Adm. Law Judge Howard I. Grossman issued his decision Dec. 23, 1998.

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The Hertz Corporation (12-CA-19733; 329 NLRB No. 78) West Palm Beach, FL Oct. 26, 1999. The Board affirmed the administrative law judge's dismissal of the complaint alleging that the Respondent, through its agent and supervisor Hoffman, threatened employees with loss of retroactive pay if they chose to participate in a strike. The one complaint allegation pertained to a conversation between employee McClintock and Hoffman. The General Counsel did not call McClintock to testify, nor, was any reason advanced for the failure to do so. The credited testimony of Hoffman did not contain any unlawful threat. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Hurtgen and Brame participated.)

Charge filed by Teamsters Local 390; complaint alleged violation of Section 8(a)(1). Hearing at Miami on May 13, 1999. Adm. Law Judge William N. Cates issued his decision June 8, 1999.

* * *

Eckert Fire Protection Co. (25-CA-26184; 329 NLRB No. 79) Indianapolis, IN Oct. 28, 1999. Chairman Truesdale and Members Fox and Liebman found that the one-page memorandum purporting to be an answer to the complaint dated February

8, 1999 and filed by the Respondent's president, Wayne Bennett, does not constitute a proper answer to the complaint under Section 102.20 of the Board's Rules and Regulations because it fails to address any of the factual or legal allegations of the complaint, and therefore is legally insufficient under the Board's Rules. See *American Gem Sprinkler Co.*, 316 NLRB 102, 103 (1995) (respondent's apparently pro se answer stating that it does not "agree with the Union's position" too vague to constitute an acceptable answer). Even under the more lenient standard applicable to pro se respondents, the majority found that the Respondent's answer is still inadequate because it fails to specifically address the substance of any complaint allegations. See e.g., *American Gem*, supra, 316 NLRB at 103, fn. 5. [\[HTML\]](#) [\[PDF\]](#)

In the absence of good cause being shown for the failure to file a sufficient answer, the majority granted the General Counsel's motion for summary judgment and held that the Respondent violated Section 8(a)(3) and (1) of the Act by failing to reinstate striking employees upon their unconditional offer to return to work, refusing to hire or consider for hire certain applicants, increasing employees' wages, and changing its work rules; and violated Section 8(a)(1) by threatening its employees with plant closure if they select Indiana State Pipe Trades Association and Plumbers Local 669 as their collective-bargaining representative.

Members Hurtgen and Brame, dissenting, would deny the General Counsel's motion for summary judgment. They wrote: "The unrepresented employer has acknowledged receipt of the papers and timely responded. In response to the complaint, the pro se Respondent said that it denied any and all of the allegations. The Respondent clearly puts the General Counsel's allegations in issue, and we believe that this is a sufficient denial to put the General Counsel to his proof at a hearing."

(Full Board participated.)

Charges filed by Indiana State Pipe Trades Association and Plumbers Local 669; complaint alleged violation of Section 8(a)(1) and (3). General Counsel filed motion for summary judgment June 24, 1999.

* * *

Produce Warehouse of Coram, Inc. (29-CA-22012; 329 NLRB No. 80) Coram, NY Oct. 27, 1999. Agreeing with the administrative law judge, the Board held that the Respondent legally discharged Richard Davis for being out of uniform at work (wearing a union hat and refusing to replace it with a company hat) in violation of company policy that employees wear company supplied clothing; and dismissed the complaint alleging that the Respondent violated Section 8(a)(3) and (1) of the Act. The judge found that the Respondent's rule requiring employees to wear company supplied clothing, including hats, is a valid special circumstance to justify prohibiting employees from wearing union insignia and an exception to an employee's general right to display union insignia. The General Counsel failed to establish discriminatory enforcement of the valid uniform policy, the judge ruled. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Hurtgen and Brame participated.)

Charge filed by Food and Commercial Workers Local 342-50; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Brooklyn on Jan. 21, 1999. Adm. Law Judge Steven Fish issued his decision June 15, 1999.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Central Plumbing Specialties, Inc. (Teamsters Local 456) Yonkers, NY October 18, 1999. 34-CA-8296; JD(NY)-71-99, Judge Raymond P. Green.

Heritage Container, Inc. (Teamsters Local 578) Riverside, CA October 19, 1999. 21-CA-32412, et al.; JD(SF)-90-99, Judge Michael D. Stevenson.

Precision Concrete (Building Trades Organizing Project) Las Vegas, NV October 20, 1999. 28-CA-14982, et al.; JD(SF)-91-99, Judge Michael D. Stevenson.

Trent Investigation and Security International Corp. (Allied International Union) New York, NY October 21, 1999. 2-CA-31475, et al.; JD(NY)-72-99, Judge Steven Davis.

Transit Management of Southeast Louisiana, Inc. (An Individual) New Orleans, LA October 22, 1999. 15-CA-14577; JD-137-99, Judge Bruce D. Rosenstein.

Tecumseh Corrugated Box Company (Paperworkers (PACE) and Teamsters Local 436) Hebron, OH October 22, 1999. 8-CA-29868; JD-139-99, Judge George Aleman.

Performance Friction Corporation (Auto Workers (UAW)) Clover, SC October 28, 1999. 11-CA-16040, -18044; JD(ATL)-46-99, Judge Richard J. Linton.

Pro-Type Builders, Inc. (Iron Workers Local 8) Green Bay, WI October 28, 1999. 30-CA-13961; JD-145-99, Judge Eric M. Fine.