

## 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 19, 1999

W-2713

**CASES SUMMARIZED**

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*California Pie Co.* (32-CA-16411, 16435; 329 NLRB No. 88) Livermore, CA Nov. 8, 1999. The administrative law judge found that the Respondent violated Section 8(a)(5), (3), and (1) of the Act by: refusing to discuss Manuel Zuniga's grievance and Nelly Benitez' warning with Bakery Workers Local 125, refusing to provide the Union with requested information concerning the warning, unilaterally adopting a requirement limiting Zuniga's after-shift access to its lunchroom, insisting to impasse on an unlawful "most favored nations" (MFN) proposal, issuing a written warning to Ricardo Pena, coercively interrogating Pena, and limiting Zuniga's after-shift access to its lunchroom. No exceptions were filed to these findings. The Board found no merit to the Union's exception to the remedy recommended by the judge for his finding that the Respondent

insisted to impasse on an unlawful "most favored nations" proposal, i.e., that the Respondent withdraw the MFN proposal and return to negotiations in an effort to reconcile the parties' remaining differences. [\[HTML\]](#) [\[PDF\]](#)

(Members Fox, Liebman, and Hurtgen participated.)

Charge filed by Bakery Workers Local 125; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Oakland on May 18, 1998. Adm. Law Judge William L. Schmidt issued his decision June 30, 1999.

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*Beverly California Corp.* (6-CA-20188-28, et al.; 329 NLRB No. 90) Meyersdale, PA Nov. 10, 1999. Affirming the administrative law judge's supplemental decision, the Board ordered the Respondent to pay Debra Wiley the sum of \$29,203 and Janet Glen the sum of \$19,169. In a decision reported at 310 NLRB 222, the Board found that the Respondent had committed over 130 violations of Sections 8(a)(1), (3), and (5) of the Act at 33 nursing home facilities throughout the U.S. It ordered the Respondent to make whole Wiley, Glen, and 13 other employees for any loss of earnings they suffered as a result of the Respondent's unlawful conduct. The parties have resolved the backpay issues with respect to the 13 individuals. On February 28, 1994, the U.S. Court of Appeals for the Second Circuit enforced the Board's order in pertinent part, but declined to enforce the extraordinary, corporatewide order. Thereafter, the Court directed the Board to prepare a supplemental decision setting forth a series of cease-and-desist orders and other affirmative relief to remedy the violations found at the individual facilities. The Board issued a decision on remand in 1995, ordering the Respondent to take certain affirmative action. On August 23, 1996, the Court issued a supplemental judgment enforcing in full the Board's remedial order provisions. [\[HTML\]](#) [\[PDF\]](#)

(Members Fox, Liebman, and Hurtgen participated.)

Supplemental hearing at Pittsburgh on Jan. 13, 1997 and in Indianapolis on April 28, 1997. Adm. Law Judge Margaret M. Kern issued her decision Feb. 24, 1998.

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*Overnite Transportation Co.* (18-CA-13481, et al.; 329 NLRB No. 91) Richmond, VA Nov. 10, 1999. Agreeing with an administrative law judge, the Board found the Respondent had committed numerous "hallmark" unfair labor practices in the course of an organizing campaign by the Union that warranted the issuance of a Gissel bargaining order at four service facilities notwithstanding election losses. "[T]he Respondent's course of misconduct, both before and after the elections, clearly demonstrates that the holding of fair elections in the future would be unlikely," the Board concluded. Employees' wishes would be better gauged by old card majorities than by new elections, it stated, citing *Charlotte Amphitheater Corp. v. NLRB*, 82 F. 3d 1074 (D.C. Cir. 1996). [\[HTML\]](#) [\[PDF\]](#)

All bargaining unit employees were directly affected by the Respondent's misconduct, the Board pointed out. "On a nationwide basis, the Respondent orchestrated a highly coercive 'carrot and stick' campaign." For example, in March 1995, at the height of the organizational effort, the Respondent unlawfully granted its unrepresented employees an unprecedented second wage hike two months after its traditional annual increase.

Other "serious and pervasive" violations committed at each terminal included threats that employees would lose their jobs and that the business would be closed if they selected the Union; asserting to employees that it would be futile to select the Union as their representative; promising employees better benefits, including better uniforms, overtime policies and vacations, and participation in employee committees to determine how benefits dollars would be spent if employees voted to keep out the Union; threatening employees with stricter discipline and adherence to work rules and more onerous working conditions if the employees voted in the Union; threatening employees with loss of pension benefits; threatening employees that their relationship with supervisors would deteriorate if the Union won; inviting employees to quit working for the Respondent if they wanted to have a job with a 'union company'; discriminatorily denying employees access to company bulletin boards to post pronoun information; soliciting and promising to remedy employee grievances through supervisors, managers, and troubleshooters, and failing to observe the Johnnie's Poultry safeguards when the Respondent's attorneys interviewed

employees in connection with this case.

Member Liebman, in a separate statement, denied the Respondent's recusal motion. She said her prior employment as a Teamsters attorney (1980-1989) would not impede her ability to decide this case fairly on its merits.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charges filed by Teamsters International and its affiliated locals; complaint alleged violation of Section 8(a)(1), (3), and (5). Adm. Law Judge Benjamin Schlesinger issued his decision on April 10, 1998.

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#### **LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES**

*Cassis Management Corp.* (Service Employees Local 32E) New York, NY November 10, 1999. 2-CA-29311; JD(NY)-76-99, Judge Howard Edelman.

*Labor Ready, Inc.* (an Individual) San Francisco, CA October 27, 1999. 20-CA-28946-1; JD(SF)-93-99, Judge Michael D. Stevenson.

*The Brookdale University Hospital and Medical Center* (an Individual) Brooklyn, NY November 2, 1999. 29-CA-22466; JD(NY)-74-99, Judge D. Barry Morris.

*RGC (USA) Mineral Sands, Inc.* (Individuals and Machinists District Lodge 112) Green Cove Springs, FL November 5, 1999. 12-CA-19258, et al.; JD(ATL)-45-99, Judge Howard I. Grossman.