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.

Weekly Summary of NLRB Cases

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Crowley Marine Services, Inc. (32-CA-16596; 329 NLRB No. 92) Oakland, CA Nov. 10, 1999. The Board found, in agreement with the administrative law judge, that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to provide the Union (Inlandboatmen of the Pacific, ILWU) with requested relevant and necessary information (a copy of an arbitration award between the Respondent and the Seafarers International (SIU) awarding the crewing of a newly purchased oil tanker to the SIU)). The judge found that the Union demonstrated that it had a reasonable and objective belief that the Respondent, in awarding the crewing of the new oil tanker to the SIU, had diverted bargaining unit work to an affiliate in violation of the parties' collective-bargaining agreement. [HTML] [PDF]

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charge filed by Inlandboatmen of the Pacific, ILWU; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Oakland on Feb. 9, 1999. Adm. Law Judge Joan Wieder issued her decision April 29, 1999.

* * *

Rondout Electric, Inc. (3-CA-18643, et al.; 329 NLRB No. 87) Poughkeepsie, NY Nov. 8, 1999. The Board affirmed the administrative law judge's dismissal of the complaint alleging that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Chris Gallo because of his activities for Electrical Workers IBEW Local 363; and violated Section 8(a)(1) by interrogating individuals during prehire interviews about their union affiliation, refusing to hire 11 named applicants because of their union affiliation, and filing state court criminal trespass charges against union organizers John Sager and Stephen Rockafellow. The Board set forth other reasons, in addition to those stated by the judge, for finding that the General Counsel failed to show that the Respondent's preferential hiring of certain individuals over the 11 applicants was discriminatory; and it set forth a different analysis in agreeing with the judge that the Respondent's charges against Sager and Rockafellow did not violate the Act. [HTML] [PDF]

(Chairman Truesdale and Members Hurtgen and Brame participated.)

Charges filed by Electrical Workers IBEW Local 363; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Poughkeepsie, April 29-30 and May 1-2, 1996. Adm. Law Judge Howard Edelman issued his decision Dec. 5, 1996.

* * *

Ryder Integrated Logistics, Inc. (7-CA-39781; 329 NLRB No. 89) Canton, MI Nov. 12, 1999. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by threatening employees with the closure of its warehouse facilities if they designated the Auto Workers (UAW) as their bargaining agent; and violated Section 8(a)(1) and (2) by threatening closure of its facility and loss of jobs for warehouse employees if they refused to sign membership applications for Service Employees District 2A (Party in Interest). [HTML] [PDF]

The Board agreed with the judge's findings that the disputed warehouse employees employed at the Respondent's Redford, and then Canton, Michigan Logistics Optimization Center were not accreted into the existing unit of the Respondent's drivers servicing the GM Detroit/Hamtramck, Michigan plant, and that the Respondent violated Section 8(a)(2) and (1) by its February 28, 1997 recognition of the Party in Interest as the representative of the nonaccreted employees. It also agreed with the General Counsel, as stated in his cross-exceptions, that this violation taints any subsequent showing of majority status by the Party in Interest. The Board found it unnecessary to pass on whether the Party in Interest's purported subsequent majority status was the result of misrepresentations made during its solicitation of employee membership applications.

(Chairman Truesdale and Members Liebman and Brame participated.)

Charge filed by Auto Workers (UAW); complaint alleged violation of Section 8(a)(1) and (2). Hearing at Detroit, Dec. 3-5, 1997. Adm. Law Judge Thomas R. Wilks issued his decision May 6, 1998.

* * *

United States Postal Service (16-CA-18520(P); 330 NLRB No. 3) Port Neeches, TX Nov. 12, 1999. Chairman Truesdale and Member Hurtgen affirmed the administrative law judge's dismissal of the complaint alleging that the Respondent violated Section 8(a)(3) and (1) of the Act by refusing to hire Sharon Jacqueline Lee, a former employee, because she filed a grievance against the Respondent during her initial employment. The majority agreed with the judge that the General Counsel failed to prove the allegation. Applying a *Wright Line* analysis, it affirmed the judge's finding that the grievance filing was not a motivating factor in the Respondent's decision not to choose Lee from the five candidates for two letter carrier positions. Further, the majority agreed with the judge's alternative finding that, even assuming that Lee's grievance filing was a motivating factor in the decision not to hire her, the Respondent proved that it would not have hired Lee because of her prior poor work performance. [HTML] [PDF]

Member Fox, dissenting, would not affirm the judge's dismissal of the complaint and would remand for requisite credibility findings. She concluded that the judge failed to make credibility findings crucial to two dispositive issues: (1) whether the General Counsel established a prima facie case, i.e., showed that animus against Charging Party Lee's grievance filing was a motivating factor in the Respondent's failure, in 1997, to hire her into a transitional employee position; and (2) whether the Respondent established that it would not have hired her into the position even in the absence of her protected grievance filing.

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charge filed by Sharon Jacqueline Lee; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Port Arthur on Jan. 27, 1998. Adm. Law Judge Jerry M. Hermele issued his decision April 10, 1998.

* * *

Dynatron/Bondo Corp. (10-CA-30523; 330 NLRB No. 5) Atlanta, GA Nov. 16, 1999. The Board dismissed complaint allegations that the Respondent violated Section 8(a)(5) and (1) of the Act by disciplining and discharging Raleigh Bell, and other employees similarly situated, pursuant to its unlawfully implemented "late arrival to work station" rule. [HTML] [PDF]

The Board had found in 1997 that the Respondent violated Section 8(a)(5) by unilaterally implementing the "late arrival to work station" rule and by discharging employee Lamar Shelton pursuant to the rule. 324 NLRB 572. See also *Dynatron/Bondo Corp.*, 323 NLRB 1236 (1997), in which the Board found that the Respondent violated Section 8(a)(5) by unilaterally

changing its employees' terms and conditions of employment. The two cases are collectively referred to as *Dynatron/Bondo I*. On March 6, 1998, the Regional Director issued the instant complaint relying on the Board's 1997 decision. On May 25, 1999, the U.S. Court of Appeals for the Eleventh Circuit issued its decision in *Dynatron/Bondo I* enforcing the majority of the Board's unfair labor practice findings. 176 F.3d 1310. The court, however, reversed the Board's conclusions that the Respondent unlawfully implemented the "late arrival to work station" rule and that Shelton was unlawfully discharged. The court found that the underlying complaint allegations were time-barred by Section 10(b) of the Act.

In this decision, the Board noted that the court's opinion foreclosed finding that the Respondent's "late arrival to work station" rule was unlawfully implemented and that there was no other basis for concluding that the Respondent violated the Act by disciplining and discharging Raleigh Bell, and other employees similarly situated, pursuant to the rule.

(Chairman Truesdale and Members Liebman and Hurtgen participated.).

* * *

Less Express Courier Systems (2-CA-31600; 330 NLRB No. 6) New York, NY Nov. 17, 1999. The Board upheld the administrative law judge's findings that the Respondent interrogated an employee in violation of Section 8(a)(1) of the Act and discharged Kevin Walker because of his activities for Industrial Service, Transport and Health Employees District 6 in violation of Section 8(a)(3) and (1). [HTML] [PDF]

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charge filed by Industrial Service, Transport and Health Employees District 6; complaint alleged violation of Section 8(a)(1) and (3). Hearing at New York on June 3, 1999. Adm. Law Judge Margaret M. Kern issued her decision Aug. 18, 1999.

* * *

Graphic Communications Local 735-S (Quebecor Printing Hazleton) (4-CB-7981; 330 NLRB No. 1) Hazleton, PA Nov. 17, 1999. The administrative law judge found, and the Board agreed, that Charging Party Patrick Quick resigned union membership by his March 1997 letter to the Union and that the Respondent violated Section 8(b)(1)(A) of the Act by accepting and retaining dues deducted from Quick's wages in the absence of a lawful union-security clause that requires the payment of such dues and after Quick resigned union membership, threatening to take legal action against Quick if he did not pay dues to Respondent, and filing and maintaining a lawsuit against Quick because he did not pay dues. The Board found that the judge correctly recommended that the Respondent reimburse Quick only for the personal expenses he actually incurred in defending against the lawsuit filed by the Respondent, contrary to the Charging Party's exceptions. [HTML] [PDF]

(Chairman Truesdale and Members Liebman and Brame participated.)

Charge filed by Patrick Quick, an individual; complaint alleged violation of Section 8(b)(1)(A). Hearing at Philadelphia on July 21, 1998. Adm. Law Judge William G. Kocol issued his decision Sept. 14, 1998.

* * *

Standard Commercial Cartage, Inc., and its Successor and Alter Ego Standard Environmental Systems Corp. (29-CA-20844; 330 NLRB No. 12) Smithtown, NY Nov. 12, 1999. The Board affirmed the administrative law judge's findings that Respondent Standard Environmental Systems Corp. is the alter ego of Respondent Standard Commercial Cartage, Inc.; and that the Respondents violated Section 8(a)(5) and (1) of the Act by refusing to recognize Teamsters Local 813 and refusing to apply the terms of the Union's collective-bargaining agreement with Standard Commercial Cartage to their unit employees. [HTML] [PDF]

(Members Fox, Liebman, and Brame participated.)

Charge filed by Teamsters Local 813; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Brooklyn on July 20,

1998. Adm. Law Judge Eleanor MacDonald issued her decision Jan. 19, 1999.

* * *

Cross Island Telephone Services (29-CA-22290, 22351; 330 NLRB No. 2) Islip, NY Nov. 17, 1999. The administrative law judge found, with Board approval, that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to execute the initial collective-bargaining agreement that it had previously agreed to with Communications Workers Local 1105, and by unilaterally modifying the contractual terms by recalling laid-off employees out of seniority. The Board modified the judge's recommended remedy to provide that the Respondent shall apply the terms of its collective-bargaining agreement retroactive to April 23, 1998, noting that the normal remedy for violations like those found here is limited to the 10(b) period, in this case 6 months prior to the filing of the charge on October 23, 1998. See *Al Bryant, Inc.*, 260 NLRB 128 fn. 3 (1982). [HTML] [PDF]

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charges filed by Communications Workers Local 1105; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Brooklyn on May 20, 1999. Adm. Law Judge Joel P. Biblowitz issued his decision July 8, 1999.

* * *

Baltimore Gas & Electric Co. (5-RC-14351; 330 NLRB No. 9) Baltimore, MD Nov. 9, 1999. Members Fox and Liebman denied the Employer's request for review of the Regional Director's Order approving Electrical Workers IBEW Local 1900's withdrawal of the petition as it raised no substantial issues warranting review, and denied the Employer's motion to dismiss, or in the alternative to stay, Cases 5-RC-14906, 14907, 14908, and 14909. Member Hurtgen, dissenting, would not permit the Union to "abort the election process after two elections have been held." [HTML] [PDF]

The first election was held in December 1996. It was set aside by agreement of the parties. The second election was held on October 14-15, 1998. The results were 1178 for, and 1298 against, the Union, with 726 challenged ballots. The Employer and the Union filed objections. The challenges and the Union's objections are pending. On October 14, 1999, the Union requested withdrawal of the petition. At the same time, it filed four separate petitions seeking elections in varying units of the Employer's operations.

Members Fox and Liebman held that Section 11116.3 of the Board's Casehandling Manual, cited by their dissenting colleague, "squarely grants the Regional Director the discretion to approve the Petitioner's withdrawal request, since a new election would not be held within 12 months of the previous, October 1998 election." They found "misplaced" Member Hurtgen's attempt to analogize this case to an employer's effort to withdraw its RM petition where the union has won the election and the employer has filed objections.

Members Fox and Liebman noted that if they were to refuse to allow withdrawal of the petition, a hearing must be held and determinations made as to the eligibility of more than 700 challenged voters and the merits of the Union's 17 objections. They wrote: "Rulings on these matters at the regional level may be appealed to the Board and, if the Board proceedings result in certification of the Union, may ultimately be reviewed by a circuit court of appeals. To require the parties and the Board to expend the resources necessary to complete that process in order to reach a result which, at best from the Employer's point of view, would be the same as that which obtains as a result of the union's withdrawal of its petition would, in our view be the height of bureaucratic folly."

Dissenting Member Hurtgen noted that reading the first and second sentences of Section 11116.3 in tandem, "it is clear that the Regional Director lacks the discretion to approve a withdrawal request if neither of the two conditions is present." He added: "The Regional Director has discretion to approve the request if either of the conditions is present. However, that discretion must take into account the first sentence and the strong policy considerations behind it. Phrased differently, there must be a strong showing as to why the preferred policy is not being followed. There is no such showing here." Member Hurtgen conceded that a denial of the withdrawal request would mean that there is additional work to be done; the challenges and objections must be resolved. But, he said the Board should not shrink from its statutory obligation "simply because one party wants it to do so." He believes that his colleagues have "missed the essential similiarity" in RM and RC cases, noting that in

both cases, the "critical point is that we should allow the employees' secret-ballot choice to be effectuated."

(Members Fox, Liebman, and Hurtgen participated.)

* * *

Freund Baking Co. (32-CA-16293, 32-RC-4221; 330 NLRB No. 13) Hayward, CA Nov. 16, 1999. Chairman Truesdale and Member Fox vacated the decision and order in Case 32-CA-16293 (324 NLRB No. 175), reopened Case 32-RC-4221, set aside the election held on January 30, 1997, revoked the certification of representative, and remanded the case to the Regional Director to conduct a second election. Member Hurtgen dissented. [HTML] [PDF]

In the earlier decision in Case 32-CA-16293, the Board granted the General Counsel's motion for summary judgment, found that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with Bakery Workers Local 119 following its certification as exclusive representative, and issued cease-and-desist and bargaining orders. The Respondent petitioned the D.C. Circuit for review of the Board's Order and the Board filed a cross application. On January 22, 1999, the court granted the Respondent's petition for review and denied enforcement of the Board's Order. 165 F.3d 928. The court found that the Union impermissibly interfered with the underlying representation election by filing, at its own expense and during the critical period, a class action lawsuit seeking overtime and breaktime pay allegedly due unit employees. The court concluded that the Board erred in not setting aside the election.

Chairman Truesdale and Member Fox in this supplemental decision found no merit to the Respondent's contention that, in the absence of a remand, the Board no longer has jurisdiction over the representation case. They explained: "Sec. 9(d) of the Act does not give the court general authority over the representation proceeding, but authorizes review of the Board's actions in the representation proceeding for the limited purpose of deciding whether to 'enforc[e], modify[ ] or set[ ] aside in whole or in part the [unfair labor practice] order of the Board.' The Board retains authority under Sec. 9(c) of the Act to resume processing the representation case in a manner consistent with the rulings of the court." Chairman Truesdale and Member Fox pointed out that the Board informed the court in its brief in Case 32-CA-16293 that it retained jurisdiction over Case 32-RC-4221 to resume processing it in a manner consistent with the ruling of the court; the direction of a second election is consistent with the court's decision. Thus, in the absence of a statement to the contrary from the court, they saw no reason to delay processing of the representation case by "once again advising the court of the Board's intention." The Respondent's contention that a second election is inappropriate since the showing of interest is stale was also rejected.

Member Hurtgen would return to the court and advise it of the Board's intention to resume processing of Case 32-RC-4221 and, thus, avoid "any misunderstanding" as to whether the court would agree that it never had jurisdiction over Case 32-RC-4221. See *NLRB v. Lundy Packing Co.*, 81 F.3d 25 (1996).

(Chairman Truesdale and Members Fox and Hurtgen participated.)

* * *

Avondale Industries (15-CA-12171-1, et al.; 329 NLRB No. 93) New Orleans, LA Nov. 10, 1999. A Board majority (Chairman Truesdale and Member Fox) affirmed an administrative law judge's findings of numerous unfair labor practices by the Respondent and concluded a broad cease-and-desist order was warranted enjoining it from violating the Act in any other manner, citing *Hickmott Foods*, 242 NLRB 1357 (1979). While the Board adopted the judge's recommendation that the Respondent comply with special mailing and published notice remedies, it disagreed that the company's president (or vice president) should personally be required to sign the written notice and read the notice to employees (or permit it to be read by a Board agent in his presence). The Board noted that there was no finding that the company president directly committed any unfair labor practice in this case. [HTML] [PDF]

The judge issued a 426-page decision on February 26, 1998, finding the Respondent had violated Section 8(a)(1) on 73 different occasions from March 1993 through June 1994. He further found 68 violations of Section 8(a)(3) (discriminatory discharges, suspensions, warning notices, assignment of more onerous work, denial of benefits, and a refusal to hire).

In a dissenting opinion, Member Hurtgen said he would "dismiss on 10(b) grounds any 8(a)(1) allegation that is not 'closely related' to a timely filed charge under the test set forth in Redd-I." He also disagreed that there has been a showing of need for special access remedies.

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charges filed by New Orleans Metal Trades Council; complaint alleged violation of Section 8(a)(1) and (3). Hearing at New Orleans, 165 dates from July 11, 1994, through July 15, 1996. Adm. Law Judge David L. Evans issued his decision Feb. 26, 1998.

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LIST OF DECISIONS OF ADMINSTRATIVE LAW JUDGES

Macy's East (Retail, Wholesale and Department Store Local 108) Paramus, NJ November 15, 1999. 22-CA-22807; JD(NY)-75-99, Judge Steven Davis.

Action Air Heating & Electrical, Inc. (Sheet Metal Workers Local 20) Merrillville, IN November 15, 1999. 13-CA-37713 and 13-CA-37726; JD(ATL)-48-99, Judge Jane Vandeventer.

Metropolitan Taxicab Board of Trade, Inc., and its Constituent Members (Service Employees Local 74) New York, NY November 15, 1999. 2-CA-31330; JD(NY)-77-99, Judge Raymond P. Green.

Victor's Café 52, Inc. (Hotel and Restaurant Employees Local 100 and an Individual) New York, NY November 15, 1999. 2-CA-25886; JD(NY)-78-99, Judge Howard Edelman.

Electrical Workers (IBEW) Local 3 (Genmar Electrical Contracting, Inc.) Bethpage, NY November 12, 1999. 29-CP-622; JD-150-99, Judge Karl H. Buschmann.

* * *

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.)

Carman Contracting Company (an Individual) (14-CA-25582; 330 NLRB No. 8) Alton, IL November 16, 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 this unfair labor practices proceedings. The case did not present any other issues.)

Care Initiatives, Inc. d/b/a Dubuque Nursing and Rehab Center (Teamsters Local 421) (30-CA-13076; 330 NLRB No. 4) Dubuque, IA November 15, 1999.

* * *

NO ANSWER TO COMPLAINCE 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.)

Basic Metal and Salvage Co., Inc. (29-CA-19324 and 29-CA-19597; 330 NLRB No. 1) Brooklyn, NY November 16, 1999.

NATIONAL LABOR RELATIONS BOARD
DIVISION OF INFORMATION
WASHINGTON, D.C.

November 24, 1999

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