

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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December 3, 1999

W-2715

CASES SUMMARIZED

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CORRECTION: In the last issue (W-2714), a case name on the cover and page 6 should read "Freund Bakery" instead of "Fruend Bakery."

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Bro-Tech Corp. t/a Purolite (4-CA-23458; 330 NLRB No. 7) Philadelphia, PA Nov. 18, 1999. On remand from the Third Circuit, the Board held that the Union's election day broadcasts of pro-Teamsters songs from a sound truck parked across the street from the Employer's facility, violate the standards set forth in *Peerless Plywood Co.*, 107 NLRB 427 (1953), prohibiting campaign speeches to a massed assembly of employees within 24 hours of an election. The Board set aside the election held in Case 4-RC-17846 on July 17, 1992 and remanded the proceeding to the Regional Director to conduct a new election. It vacated the 1995 Decision and Order (317 NLRB No. 20) finding that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with Teamsters Local 10, and the 1994 Supplemental Decision and Certification of Representative (315 NLRB 1014) overruling the Employer's Objection 4(a) which alleged that the Union's sound truck broadcast violated the Board's prohibition of campaign speeches set forth in *Peerless Plywood*. The Board wrote: [\[HTML\]](#) [\[PDF\]](#)

"Thus, contrary to the reasoning in the Board's original representation case decision (and in deference to the court's remand), we find that the partisan content of the songs is sufficient to place it within the realm of campaign speech under *Peerless Plywood*. Whether in the form of lyrics to a pro-Teamsters song, a nonmusical partisan oration, or a dry recitation encouraging support for a particular electoral choice, we find that they all fall within the broad rubric of campaign speech within the proscription of *Peerless Plywood*."

(Chairman Truesdale and Members Fox and Hurtgen participated.)

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Petrochem Insulation, Inc. (20-CA-24071; 330 NLRB No. 10) Vallejo, CA Nov. 19, 1999. The Board granted the General Counsel's motion for summary judgment, denied the Respondent's cross-motion for summary judgment, and held that the Respondent violated Section 8(a)(1) of the Act by filing and maintaining a civil lawsuit against the Charging Party Unions (the Plumbers and various of its affiliated locals) in Federal district court to enjoin them from engaging in protected concerted activity and to recover damages from them. Based on the Respondent's admission of relevant allegations in the complaints, as well as other factual admissions made in its briefs, the Board found that there were no material issues of fact warranting a hearing and that as a matter of law the Respondent violated Section 8(a)(1), as alleged. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Fox and Liebman participated.)

Charges filed by Plumbers and various of its affiliated locals and Thomas J. Hunter, an individual; complaint alleged violation of Section 8(a)(1). General Counsel filed motion for summary judgment Oct. 9, 1996.

* * *

Ebroadburl Realty Corp. t/a Power Equipment Co. (4-CA-26249; 330 NLRB No. 20) Hainesport, NJ Nov. 22, 1999. The Respondent violated Section 8(a)(3) and (1) of the Act by discharging Jonathan Smith because he supported and assisted Electrical Workers IBEW Local 269, the Board held in agreement with the administrative law judge. [\[HTML\]](#) [\[PDF\]](#)

(Members Fox, Liebman, and Brame participated.)

Charge filed by Electrical Workers IBEW Local 269; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Philadelphia on May 18, 1999. Adm. Law Judge Earl E. Shamwell Jr. issued his decision Oct. 16, 1998.

* * *

TNT Technologies Ltd., d/b/a Ambrose Electric (3-CA-20165-1; 330 NLRB No. 23) Latham, NY Nov. 22, 1999. The Board held, contrary to the administrative law judge, that the Respondent violated Section 8(a)(1) of the Act by attempting to exclude union representatives from jobsites to which the Respondent lacked the right to control access, during nonworking time and on portions of such jobsites where the representatives would not pose a threat to safety or interfere with the Respondent's equipment or with its employees in the performance of their job duties. However, the Board agreed with the judge that the General Counsel failed to prove that animus against five applicants' union affiliation was a motivating factor in the Respondent's failure to hire or to consider them, and it affirmed his dismissal of the allegation that the Respondent violated

Section 8(a)(3) by failing to hire, or to consider for hire, the five Union members. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Fox and Liebman participated.)

Charge filed by Electrical Workers IBEW Local 724; complaint alleged violation of Section 8(a)(1). Hearing at Albany on May 12, 1997. Adm. Law Judge Michael A. Marcionese issued his decision July 18, 1997.

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USF Red Star, Inc., a U.S. Freightways Co. and Teamsters Local 118 (3-CA-19698, 19739, 3-CB-6734, 6894; 330 NLRB No. 15) Rochester, NY Nov. 22, 1999. Chairman Truesdale and Member Fox agreed with the administrative law judge that the Union violated Section 8(b)(1)(A) and (2) of the Act by its "efficacious demand" that Red Star discharge John Hayes from his job as a casual truckdriver because of his internal union activities, that Red Star violated Section 8(a)(3) and (1) by discharging Hayes pursuant to the Union's request, and violated Section 8(a)(1) by discharging Wayne Zakofsky, its Rochester, New York terminal manager, for refusing to follow orders by his superiors that he discharge Hayes in violation of the Act. [\[HTML\]](#) [\[PDF\]](#)

Member Brame, dissenting, would find that the Respondent lawfully terminated Hayes who had a preventable accident, pursuant to its well-established company rule that requires the discharge of any casual driver causing such an accident. As he would dismiss that allegation, Member Brame disagreed with the additional violations found by the judge and the majority because they are dependent on whether the Respondent unlawfully discharged Hayes.

The Board had in 1997 remanded the proceeding to the judge for findings of fact, including certain credibility resolutions, and conclusions of law to determine whether, based on the Board's *Wright Line* test, Hayes and Zakofsky's discharges were unlawful as alleged in the complaint.

(Chairman Truesdale and Members Fox and Brame participated.)

Adm. Law Judge Raymond P. Green issued his supplemental decision May 30, 1997.

* * *

Center State Beef and Veal Co. (3-CA-21521, et al.; 330 NLRB No. 14) Cortland, NY Nov. 18, 1999. Absent good cause being shown for the Respondent's failure to file an answer, the Board granted the General Counsel's motion for summary judgment, found that a bargaining order under the *Gissel* category II standards is necessary to remedy the Respondent's unfair labor practices, deemed the allegations in the compliance specification to be admitted as true, concluded that the net backpay due the discriminatees is as stated in the compliance specification, and ordered the Respondent to pay the amounts. [\[HTML\]](#) [\[PDF\]](#)

In an earlier decision, the Board granted the General Counsel's motion for summary judgment and found that the Respondent committed numerous violations of Section 8(a)(1) and violated Section 8(a)(3) and (1) by discharging or permanently laying off four employees because of their union and other protected activities. It denied the General Counsel's motion insofar as it alleged that a *Gissel* bargaining order was appropriate, and that the Respondent therefore violated Section 8(a)(5) and (1) by failing to recognize and bargain with Teamsters Local 317 over the effects on employees of its decision to close its Cortland, New York facility. The Board remanded the case for a hearing before an administrative law judge on the 8(a)(5) allegations. 327 NLRB No. 209. Subsequently, the General Counsel issued an amendment to the second amended consolidated complaint and compliance specification and notice of hearing. The Respondent failed to file an answer.

In this supplemental decision, the Board found that the allegations in the April 1999 amendment to the complaint, which the Respondent has admitted, set forth sufficient facts to assess the propriety of a *Gissel* bargaining order without the need for hearing. Further, it held that the Respondent had a bargaining obligation since September 17, 1998 and violated Section 8(a)(5) and (1) by closing its Cortland facility and terminating all of the unit employees on about December 18 without prior notice to and without giving the Union an opportunity to bargain over the effects of the closing on the employees. The Board included a

limited backpay requirement related to the closing with the bargaining order.

(Chairman Truesdale and Members Hurtgen and Brame participated.)

General Counsel filed motion for summary judgment June 23, 1999.

* * *

Pickett Industries, Inc. (15-CA-13903, 13048; 330 NLRB No. 24) Shreveport, LA Nov. 23, 1999. The Board, adopting an administrative law judge's bench decision, found the Respondent violated Section 8(a)(1) of the Act by threatening its employees with termination in February 1996, a few weeks after the Union won an election, because they had aided the Union. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Liebman and Brame participated.)

Charges filed by the Paperworkers International; complaint alleged violation of Section 8(a)(1). Hearing at Vidalia, June 3-4, 1998. Adm. Law Judge Keltner W. Locke issued his decision July 10, 1998.

* * *

Erman Corp. (17-RD-1558; 330 NLRB No. 26) Kansas City, KS Nov. 24, 1999. In a Decision and Direction, a Board majority of Chairman Truesdale and Member Fox agreed with the hearing officer that 16 former unreplaced economic strikers were eligible voters in a June 15, 1999 election in which there were 0 ballots for the Union, 5 against the Union, with the 16 ballots of the strikers challenged by the Employer. The majority determined the strikers were not barred from voting under Section 9 (c)(3) of the Act, although the election was held more than 12 months after the strike began, citing *Gulf States Paper Corp.*, 219 NLRB 806 (1975). It also rejected the Employer's argument that the strikers lost their eligibility to vote because their jobs were eliminated as a result of changed methods. [\[HTML\]](#) [\[PDF\]](#)

In a dissenting opinion, Member Hurtgen would have sustained the Employer's challenges to the 16 striker ballots and certified the results of the election. He agreed with the Employer that *Lamb-Grays Harbor Co.*, 295 NLRB 355 (1989), supports the proposition that economic strikers, like other employees, lose their eligibility to vote if the employer eliminates their jobs for economic reasons.

(Chairman Truesdale and Members Fox and Hurtgen participated.)

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LIST OF DECISIONS OF ADMINSTRATIVE LAW JUDGES

Jonbruni, Inc. d/b/a Temptations (Individuals) San Francisco, CA November 2, 1999. 20-CA-28393 and 28525; JD(SF)-94-99, Judge Mary Miller Cracraft.

AT&T Corp. (Communications Workers Local 7026) Tucson, AZ October 29, 1999. 28-CA-14967; JD(SF)-95-99, Judge Gerald A. Wacknov.

Lockheed Martin Corporation (Syracuse Draftsmen's Association) Syracuse, NY November 22, 1999. 3-CA-21200; JD-144-99, Judge Wallace H. Nations.

Ebenezer Rail Car Services (Auto Workers (UAW)) Buffalo, NY November 22, 1999. 3-CA-21809, Judge Bruce D. Rosenstein.

* * *

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.)

Vantron, Inc., d/b/a Advance Electrical Services (Electrical Workers IBEW Local 716) (16-CA-18840; 330 NLRB No. 16) Deer Park, TX November 18, 1999.

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NO ANSWER TO COMPLIANCE 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.)

Capital Bakery, Inc. (3-CA-17723; 330 NLRB No. 18) Long Island City, NY November 18, 1999.