

## 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 17, 1999

W-2717

**CASES SUMMARIZED**

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[Flamingo Hilton-Laughlin](#), Laughlin, NV  
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*Courier-Post, a Div. of Gannett Satellite Information Network* (4-RC-19471; 330 NLRB No. 39) Cherry Hill, NJ Nov. 30, 1999. Chairman Truesdale and Member Fox certified Teamsters Local 628 as the exclusive bargaining representative of all single-copy merchandisers employed by the Employer at its Cherry Hill facility. They denied in part and granted in part the Union's motion to strike the documents in the appendix of the Employer's brief in support of its exceptions. The motion was denied as to those documents submitted to the Region prior to issuance of the Acting Regional Director's December 23, 1998 report in the context of a closely related unfair labor practice investigation in Case 4-CA-27435. Chairman Truesdale and

Member Fox however did not consider the appended documents submitted after issuance of the Acting Regional Director's report, noting that no motion was filed to reopen the record in the representation proceeding. Member Hurtgen, dissenting in part, would not strike the additional documents submitted by the Employer to the Region on December 31. Instead, he would remand the case to the Regional Director to consider them and to determine if a hearing is warranted on the issue of whether the unit consists of a single employee. [\[HTML\]](#) [\[PDF\]](#)

The tally of ballots for the election held on August 26, 1998 shows 1 for and 0 against the Union, with 1 challenged ballot, a sufficient number to affect the results of the election. In the absence of exceptions, the Board adopted, pro forma, the Acting Regional Director's recommendation to sustain the challenge to the ballot of Robert Walker.

(Chairman Truesdale and Members Fox and Hurtgen participated.)

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*Fleming Companies* (26-RC-7907; 330 NLRB No. 32) Memphis, TN Nov. 30, 1999. Affirming the hearing officer's recommendations, Chairman Truesdale and Member Fox sustained the Union's Objection 2 and the challenges to 2 ballots, overruled the challenges to seven ballots, including leadman Robert Marston's, and remanded the proceeding to the Regional Director to open and count the seven ballots and to issue a revised tally of ballots. If the revised tally shows that Teamsters Local 667 received a majority of the votes cast, the Regional Director shall issue a certification of representative. If the revised tally of ballots shows that the Union has not received a majority of the votes cast, the election shall be set aside and a second election shall be conducted. Member Hurtgen, dissenting in part, would find that leadman Marston is a statutory supervisor and sustain the challenge to his ballot. [\[HTML\]](#) [\[PDF\]](#)

In the absence of exceptions, the Board adopted, pro forma, the hearing officer's recommendations to overrule the Union's Objections 4, 5, 6, and 7 and the Employer's objections in their entirety.

(Chairman Truesdale and Members Fox and Hurtgen participated.)

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*Flamingo Hilton-Laughlin* (32-CA-15627; 330 NLRB No. 34) Laughlin, NV Nov. 30, 1999. The Board agreed with the administrative law judge that the Respondent violated Section 8(a)(1) of the Act by maintaining in its employee handbook: (1) code of conduct and disclosure rules that could be interpreted as limiting its employees' right to discuss wages and working conditions; (2) a rule prohibiting employees from wearing unauthorized pins and decals; (3) a rule prohibiting off-duty employees from engaging in solicitation or distribution in public areas of its facility other than gaming areas; (4) a rule prohibiting making "false, vicious, profane, or malicious statements regarding another employee, guest, patron, or the Hotel itself"; (5) rules prohibiting "using loud, abusive or foul language" and prohibiting "disorderly conduct in the Hotel, including fighting, horseplay, threatening, insulting, abusing, intimidating, coercing or interfering with any guests, patrons, or employees"; and (6) a rule restricting off-duty employees' patronizing of the hotel. [\[HTML\]](#) [\[PDF\]](#)

The Board reversed the judge's findings that the Respondent further violated Section 8(a)(1) by maintaining: a rule prohibiting "off-duty misconduct that materially and adversely affects job performance or tends to bring discredit to the hotel"; and a rule prohibiting "insubordination, derogatory behavior towards management personnel, refusal of job assignments, or harassment of another employee or guest." It agreed with the judge that the Respondent did not violate Section 8(a)(1) by maintaining: (1) a rule prohibiting employees from wearing hotel uniforms off hotel premises without management permission; (2) a policy requiring prior management approval before any employee posts a written notice on the hotel's premises; (3) a rule prohibiting nonemployees from soliciting off-duty employees in certain areas of the hotel open to the public; and (4) a rule prohibiting "failure to have or maintain in management's sole judgment, satisfactory attitude . . . and/or relationships with other guests, employees, including supervisors."

Member Brame, unlike his colleagues, would not affirm the judge's findings that the Respondent violated Section 8(a)(1) by maintaining: the code of conduct and disclosure rules; the rule prohibiting employees from "[m]aking false, vicious, profane, or malicious statements regarding another employee, guest, patron, or the Hotel itself; and the rule that prohibited "[u]sing

loud, abusive or foul language" and prohibited "[d]isorderly conduct in the Hotel, including fighting, horseplay, threatening, insulting, abusing, intimidating, coercing or interfering with any guests, patrons, or employees. In joining his colleagues in the remaining violations that they find, Member Brame notes that the violations are "highly theoretical in nature."

Member Liebman found, contrary to her colleagues and the judge, that the Respondent violated Section 8(a)(1) by maintaining a rule prohibiting employees from: Failing] to have or maintain in management's sole judgment, satisfactory attitude . . . and/or relationships with other guests, employees, including supervisors.

(Chairman Truesdale and Members Liebman and Brame participated.)

Charge filed by Hotel Employees and Restaurant Employees Local 86; complaint alleged violation of Section 8(a)(1). Hearing at Sparks on Dec. 17, 1996. Adm. Law Judge Jay R. Pollack issued his decision Dec. 11, 1997.

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*Hospital Shared Services* (27-CA-14321, et al.; 330 NLRB No. 40) Grand Junction, CO Nov. 30, 1999. Members Fox and Liebman agreed with the administrative law judge that the Respondent committed a single violation of Section 8(a)(3) of the Act and numerous violations of Section 8(a)(1), including such "hallmark violations" as threats of job loss, when it learned of the Union's petition seeking to represent the security officers in the Respondent's employ at St. Mary's Hospital in Grand Junction, Colorado. They declined however to enter the judge's recommended bargaining order and found instead that an election is the most appropriate method for determining the employees' wishes regarding representation in the circumstances here: the threats by Respondent's President Schiel to the effect that the hospital would cancel its contract with the Respondent if the employees selected the union to represent them, while serious and coercive, were not made by any representative of the Hospital-the entity with the power to carry it out; the remarks were not the same as a plant closing threat made by the employer itself to be carried out as an "economic reprisal to be taken solely on [its] own volition," as was the case in *NLRB v. Gissel Packing*, 395 U.S. 1422, 618-619 (1969); and the other violations found do not rise to the level of "hallmark." [\[HTML\]](#) [\[PDF\]](#)

Member Hurtgen, dissenting in part, would not find that the Respondent violated Section 8(a)(1) with respect to an alleged threat that the contract between the Respondent and its client, St. Mary's Hospital, would be canceled if employees voted for union representation and by impliedly promising to grant benefits to employees if they rejected the Union. He concluded that the judge did not resolve the conflict between Schiel's testimony and the testimony of employee witnesses with respect to the alleged threat of contract cancellation and would remand the issue to the judge to make an explicit credibility resolution. Member Hurtgen also found that the statement about bringing complaints to the attention of the Hospital was not a clear and unambiguous promise to remedy those complaints and that the clear and express disclaimer of any promise clarifies the ambiguity, i.e., it says that no promises are being made.

(Members Fox, Liebman, and Hurtgen participated.)

Charges filed by Guards Region 6 and Ty A. Powell, an individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Grand Junction on several days from Oct. 8-Nov. 7, 1996. Adm. Law Judge James L. Rose issued his decision Feb. 13, 1997.

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### LIST OF DECISIONS OF ADMINSTRATIVE LAW JUDGES

*Alliant Foodservice, Inc. and Service Employees Local 1222* (Teamsters Local 628) Swedesboro, NJ December 3, 1999. 4-CA-27669, 27913 and 4-CB-8242; JD-161-99, Judge Richard H. Beddow, Jr.

*Convention Hotels, Inc.* (Hotel and Restaurant Employees Local 76) White Plains, NY December 3, 1999. 3-CA-21909; JD-157-99, Judge Margaret M. Kern.

*Rolls-Royce Energy Systems, Inc.* (Machinists District Lodge 34) Maineville, OH December 6, 1999. 9-CA-36375; JD-154-99,

Judge George Aleman.

*Gabriel Security Corporation, Inc. d/b/a Gabriel Security Corp., Inc.* (Security Officers Local 51) Seattle, WA November 30, 1999. 19-CA-20655 and 26161; JD(SF)-99-99, Judge Burton Litvack.

*Teamsters Local 710 (United Parcel Service, Inc.) (Individuals)* Elkhart, South Bend and Fort Wayne, IN December 9, 1999. 25-CB-8150 et al.; JD(ATL)-51-99, Judge Jane Vandeventer.

*The Bauer Group, Inc., Bauer Communications, Inc., et al.* (an Individual) Miami, FL December 8, 1999. 12-CA-17150; JD(ATL)-52-99, Judge Richard J. Linton.

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### NO ANSWER TO COMPLAINT

*(In the following cases, the Board granted the General Counsel's motion for summary judgment based on the respondent's failure to answer the complaints.)*

*Bolivar Glass & Window Company and Glaziers (Painters Local 1786)* (17-CA-20065; 330 NLRB No. 37) Bolivar, MI November 30, 1999.

*MZ Movers, Inc.* (an Individual and Teamsters Local 338) (34-CA-8736; 330 NLRB No. 38) White Plains, NY November 30, 1999.

*Butler Hall Terrace Restaurant, Inc.* (Hotel and Restaurant Employees Local 100) 2-CA-32090; 330 NLRB No. 41) New York, NY November 30, 1999.

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### TEST OF CERTIFICATION

*(In the following cases, 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 these unfair labor practice proceedings. The cases did not present any other issues.)*

*Country Ford Trucks, Inc.* (Machinists District Lodge 190, Local 1528) 32-CA-17664-1; 330 NLRB No. 42) Ceres, CA November 30, 1999.

*Carriage Enterprises Ltd. d/b/a Land Rove Redwood City* (Machinists District Lodge No. 190, Local Lodge No. 1414) 20-CA-29287-1; 330 NLRB No. 43) Redwood City, CA November 30, 1999.