

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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January 14, 2000

W-2721

CASES SUMMARIZED

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Avery Dennison (31-CA-22125, et al.; 330 NLRB No. 56) Monrovia, CA Dec. 30, 1999. Members Fox and Liebman concluded, contrary to the administrative law judge, that deferral to the parties' negotiated grievance/arbitration procedure is not appropriate and remanded the proceeding to the judge for a hearing on the merits of complaint allegations that the Respondent unlawfully transferred unit work from its Monrovia, California facility, withdrew recognition from the Union, and unilaterally implemented changes in terms and conditions of employment. They agreed with the judge that the meaning of the

management-rights clause of the parties' agreement is the threshold issue and a matter well suited for arbitration. However, Members Fox and Liebman noted that if the arbitrator finds that the management rights clause did not privilege the Respondent's unilateral transfers of unit work, the statutory issues of the legality of its actions subsequent to the work transfers will need to be decided--issues that are not appropriate for deferral. They found it inappropriate to bifurcate the proceedings. [\[HTML\]](#) [\[PDF\]](#)

Member Brame, dissenting in part, would bifurcate this proceeding, deferring to arbitration on the threshold contractual issue and retaining jurisdiction over the statutory questions for subsequent consideration, if necessary, by the Board.

(Members Fox, Liebman, and Brame participated.)

Charges filed by Graphic Communications District Council No. 2; complaint alleged violation of Section 8(a)(1) and (5). Hearing held March 25, 1998. Adm. Law Judge James M. Kennedy issued his Order Deferring Case to Arbitration on April 10, 1998.

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One Stop Immigration and Education Center (21-CA-32068, 32280; 330 NLRB No. 68) Los Angeles, CA Dec. 30, 1999. The Board upheld the administrative law judge's findings that the Respondent violated Section 8(a)(3) of the Act by discharging Gumaro Oviedo-Flores and transferring and discharging Hector Alvarado; and violated Section 8(a)(1) by interrogating employees about their union activities, threatening employees with unspecified reprisals unless they ceased engaging in union activities, and offering to reinstate an employee if the employee stopped engaging in union activities. It modified the judge's recommended Order to provide the usual reinstatement remedy for Oviedo-Flores. The Respondent will have the opportunity to prove in compliance that Oviedo-Flores is not entitled to reinstatement because of alleged misconduct occurring after his unlawful discharge (the issue was not fully litigated at the hearing). [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Liebman and Brame participated.)

Charges filed by Electrical Workers IUE District 11; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Los Angeles, July 21-24 and 28-30, 1998. Adm. Law Judge Mary Miller Cracraft issued her decision Feb. 16, 1999.

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Ernest Lee Tile Contractors (5-CA-26004; 330 NLRB No. 61) Tuxedo, MD Jan. 5, 2000. The Board granted the General Counsel's motion for summary judgment and held that the Respondent violated Section 8(a)(1) of the Act by discharging employees Ernest Lindsay, Calvin E. Ramey, Jr., Gregory L. Ramey, and Robert S. Wise because they engaged in concerted activities by discussing the Respondent's failure to pay the scale wages required on federally funded Davis-Bacon jobs, writing letters to the government contact person to report the Respondent's failure to do so, demanding that the Respondent pay the correct wages, and complaining to the Respondent regarding employees' wages, hours, and working conditions. [\[HTML\]](#) [\[PDF\]](#)

The Respondent initially filed an answer to the complaint and thereafter entered into a settlement agreement. The agreement included an 18-month installment payment plan through which the Respondent agreed to make whole Lindsay, Ramey Jr., Ramey, and Wise. The Respondent made 14 payments, but the last four installments under the agreement have been unpaid for more than 4 months. The agreement provided that the Respondent's answer to the complaint would be considered to be withdrawn if it failed to comply with the settlement. Such noncompliance has occurred.

(Members Fox, Liebman, and Hurtgen participated.)

Charge filed by Washington D.C. Building and Construction Trades Council; complaint alleged violation of Section 8(a)(1). General Counsel filed motion for summary judgment Nov. 8, 1999.

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Ronin Shipbuilding, Inc. (24-CA-7717; 330 NLRB No. 65) Ponce, PR Jan. 7, 2000. The Board found, contrary to the administrative law judge, that the General Counsel failed to make the requisite initial showing that antiunion sentiment was a motivating factor in the Respondent's decision to discharge Elias Martinez and dismissed complaint allegations that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Martinez on June 2, 1997. Even assuming that the General Counsel made the requisite showing, the Board found that the Respondent met its rebuttal burden of showing that it would have discharged Martinez because of his attendance problems even in the absence of his union activities. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charge filed by Union De Trabajadores Industriales De Puerto Rico; complaint alleged violation of Section 8(a)(1) and (3). Hearing at San Juan, Feb. 2-3, 1998. Adm. Law Judge Arthur J. Amchan issued his decision April 14, 1998.

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Lockheed Martin Astronautics (27-CA-14557, et al.; 330 NLRB No. 66) Littleton, CO Jan. 6, 2000. The Board agreed with the administrative law judge that, in discussing the effects of security guard Jolene Conn's medical restrictions on other guards as possibly grievable, the Respondent's employees were discussing working conditions that affected them, and thus were engaged in protected concerted activity; and that the Respondent therefore violated Section 8(a)(1) of the Act by directing employees not to speak of those issues. The Board rejected the Respondent's argument in its exceptions that the restrictions on employee discussions were justified by the need to effectively investigate Conn's discrimination allegations and to fulfill obligations under the Americans with Disabilities Act (ADA) to prevent development of a hostile work environment, to avoid harassment of and retaliation against employees with disabilities, and to maintain the confidentiality of medical information. [\[HTML\]](#) [\[PDF\]](#)

On another alleged violation, the Board held, contrary to the judge, that the Respondent did not violate Section 8(a)(3) and (1) by reprimanding Conn and Arthur Romano for discussing Conn's complaint, finding merit in the Respondent's argument in its exceptions that Romano acted on his own in approaching Conn and that their conversation was therefore not concerted and not protected. Neither Conn nor Romano testified. The record does not indicate the content of their conversation which started as Romano's attempt to apologize to Conn (despite supervisors directing him not to) for discussing her medical restrictions and denegated into a confrontation over the general subject of the ADA investigation.

The Board remanded two issues to the judge for further consideration—complaint allegations that the Respondent violated Section 8(a)(3) and (1) by its May 1996 suspension and January 1997 discharge of Gutierrez.

(Chairman Truesdale and Members Fox and Liebman participated.)

Charges filed by Joseph F. Fiala, Anthony H. Romano, and Lee Gutierrez; complaint alleged violation of Section 8(a)(1). Hearing at Denver, July 28-29, 1997. Adm. Law Judge Albert A. Metz issued his decision Nov. 18, 1997.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

The Hertz Corporation (Teamsters Local 385) Orlando, FL January 4, 2000. 12-CA-19664; JD(ATL)-58-99, Judge Keltner W. Locke.

Oil Capital Sheet Metal, Inc. (Sheet Metal Workers Local 270) Tulsa, OK January 3, 2000. 17-CA-19714; JD(ATL)-54-99, Judge William N. Cates.

* * *

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.)

Advanced Shipping, Inc. (21-CA-32512; 330 NLRB No. 62) Vacaville, CA and Bend, OR December 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 had not raised any representation issue that is litigable in these unfair labor practice proceedings. These cases do not present any other issues.)

General Fabrications Corp. (8-CA-31000; 330 NLRB No. 60) Sandusky, OH December 30, 1999.

Quinnipiac College (34-CA-8988; 330 NLRB No. 63) Hamden, CT January 7, 2000.