

## 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.



[Index of Back Issues Online](#)

January 21, 2000

W-2722

**CASES SUMMARIZED**

SUMMARIES CONTAIN LINKS TO FULL TEXT

[Defiance Hospital](#), Defiance, OH  
[GATX Logistics, Inc.](#), Kalamazoo, MI  
[Insight Communications Co.](#), Noblesville, IN  
[K.B.I. Security Services](#), Bridgeport, CT  
[Pepsi-Cola Company](#), Piscataway, NY

**OTHER CONTENTS**

[List of Decisions of Administrative Law Judges](#)

[List of Test of Certification Cases](#)

The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information and is available on a paid subscription basis. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board. The case summaries constitute no part of the opinions of the Board. The Division of Information has prepared them for the convenience of subscribers.

If you desire the full text of decisions summarized in the Weekly Summary, you can access them on the NLRB's Web site ([www.nlr.gov](http://www.nlr.gov)). Persons who do not have an Internet connection can request a limited number of copies of decisions by writing the Information Division, 1099 14th Street NW, Suite 9400, Washington, DC 20570 or fax your request to 202/273-1789. Administrative Law Judge decisions, which are not on the Web site, also can be requested by contacting the Information Division.

All inquiries regarding subscriptions to this publication should be directed to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, 202/512-1800. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

*Insight Communications Co.* (25-CA-25583; 330 NLRB No. 64) Noblesville, IN Jan. 7, 2000. The Board agreed with the administrative law judge that the Respondent seized on the discriminatees' alleged violation of its break policy as a pretext for discharging them in retaliation against their union activities and that the Respondent discharged David Beebe, Ki Young Choi, and Lonnie Phillips in violation of Section 8(a)(3) and (1) of the Act. The judge found, with Board approval, that the Respondent further violated Section 8(a)(3) and (1) by providing new tools to employees, reimbursing them for copayment expenses with their health insurance, and giving employees coupons for "pay-per-view" movies; and violated Section 8(a)(1) by promising employees additional benefits and interrogating employees. [\[PDF\]](#)

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charge filed by David Beebe, an individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Indianapolis on March 2-6, 1998. Adm. Law Judge Nancy M. Sherman issued her decision June 9, 1999.

\* \* \*

*K.B.I. Security Services* (34-CA-6495, 6667; 330 NLRB No. 67) Bridgeport, CT Jan. 10, 2000. On remand from the U.S. Court of Appeals for the Second Circuit, the Board ordered the Respondent to offer reinstatement and full backpay to discriminatees Orlando Febus and Hector Rosenthal. The Board agreed with the administrative law judge that there is no proven basis for denying Febus and Rosenthal reinstatement based on thefts that took place at a client's premises where the Respondent employed them and others as security guards. But, it disagreed with the judge's finding that Febus' use of the telephone to make unauthorized calls at the same premises warranted denial of reinstatement. There is insufficient proof that Febus made the disputed telephone calls, the Board said. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Fox and Liebman participated.)

Adm. Law Judge Stephen J. Gross issued his supplemental decision April 3, 1997.

\* \* \*

*Pepsi-Cola Company* (22-CA-21941; 330 NLRB No. 69) Piscataway, NY Jan. 10, 2000. The Board remanded the proceeding to the administrative law judge because his decision, finding that the Respondent violated Section 8(a)(1) and (3) of the Act by suspending and discharging shop steward Sean Reilly because of his protected concerted activity, did not include the appropriate analysis and findings required under *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964). [\[HTML\]](#) [\[PDF\]](#)

The Board found that the judge failed to make an explicit determination of whether the Respondent affirmatively established that it had an honest belief that Reilly engaged in misconduct (calling for a work stoppage in violation of the collective-bargaining agreement). It further found that, even assuming the judge's decision could be construed as having found that the Respondent did establish its honest belief defense under *Burnup & Sims*, his analysis does not adequately discuss the next part of the test, i.e., whether the General Counsel carried his burden of showing that Reilly did not engage in the misconduct. The only evidence the General Counsel offered on this point was the testimony of Reilly, who denied making the statements attributed to him by product manager Vaughan Dickinson. The judge did not make a specific credibility finding concerning Reilly's denials.

Member Hurtgen agreed that the case should be remanded. He noted that the judge appeared to have concluded that the Respondent established that it had a reasonable belief that Reilly engaged in misconduct, adding: "[I]t is also arguable that the judge concluded that the evidence was in equipoise as to whether Reilly actually engaged in the misconduct." Had the judge clearly reached that conclusion, Member Hurtgen would find that the General Counsel failed its burden of establishing that Reilly had not, in fact, engaged in the misconduct. However, because the judge's findings are ambiguous on the point, and because clear credibility determinations were not made, he agrees that the case should be remanded.

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charge filed by Teamsters Local 125; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Newark on Feb. 17, 1999. Adm. Law Judge Raymond P. Green issued his decision April 15, 1999.

\* \* \*

*GATX Logistics, Inc.* (7-CA-40799; 330 NLRB No. 71) Kalamazoo, MI Jan. 10, 2000. The administrative law judge found, with Board approval, that the Respondent coercively interrogated an employee concerning his union sympathies, threatened employees that it would use unlawful means to keep out the Union, that it would make its employees' efforts to become represented by a union futile, and that it would take disciplinary action if the employees engaged in protected concerted

activities, all in violation of Section 8(a)(1) of the Act. The Board also affirmed the judge's conclusion that the Respondent legally discharged Dennis Bury for insubordinately and without timely explanation refusing to accept an assigned route and did not violate Section 8(a)(3) and (1) by discharging him. [\[HTML\]](#) [\[PDF\]](#)

(Members Fox, Liebman, and Brame participated.)

Charge filed by Teamsters Local 7; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Kalamazoo, March 24 and June 8, 1999. Adm. Law Judge Robert M. Schwarzbart issued his decision Sept. 1, 1999.

\* \* \*

*Defiance Hospital* (8-CA-27724, et al.; 330 NLRB No. 70) Defiance, OH Jan. 11, 2000. The Board, finding that the Respondent presented the Unions with a fait accompli, affirmed the judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by announcing its unilateral decision to grant a wage increase for bargaining unit employees without affording Service Employees District 1199 and Office & Professional Employees Local 514 (the joint representative) adequate notice and the opportunity to bargain over the amount of the increase. The Board rejected the Respondent's contention, in its exceptions and a motion to strike, that comments the judge made off the record and in his decision show the judge was biased and prejudiced, and therefore the decision should be struck. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Liebman and Brame participated.)

Charges filed by Service Employees District 1199 and Office & Professional Employees Local 514; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Defiance, Jan. 16-17 and Dec. 1, 1997. Adm. Law Judge Marion C. Ladwig issued his decision March 30, 1998.

\* \* \*

### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

*PCI, Inc.* (Pace International Union) Wurtland, KY January 11, 2000. 9-CA-35855, et al.; JD-147-99, Judge Marion C. Ladwig.

*Brandt Construction Co.* (Operating Engineers Local 150) Rock Island, IL January 12, 2000. 33-CA-12420, et al.; JD-3-00, Judge Bruce D. Rosenstein.

*Paul Mueller Company* (Sheet Metal Workers Local 208) Springfield, MO January 12, 2000. 17-CA-20003, 20266; JD-(ATL)-01-00, Judge Pargen Robertson.

*Stellar Electric Corp.* (an Individual) College Pt., NY January 12, 2000. 29-CA-22355; JD(NY)-03-00, Judge Raymond P. Green.

*MCAR, Inc.* (State, County and Municipal Employees District Council 85) Hermitage, PA January 13, 2000. 6-CA-30300; JD-6-00, Judge Martin J. Linsky.

*Environmental Construction, Inc.* (Sheet Metal Workers Local 2) Independence, MO December 30, 1999. 17-CA-19890; JD(SF)-103-99, Judge Mary Miller Cracraft.

\* \* \*

### 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.)*

*The Davenport Lutheran Home* (33-CA-13138; 330 NLRB No. 74) Davenport, IA January 12, 2000.

*M.J. Metal Products, Inc.* (27-CA-16575; 330 NLRB No. 73) Casper, WY January 12, 2000.

*Madison Center, Genesis Eldercare, Inc.* (22-CA-23580; 330 NLRB No. 72) Matawan, NJ January 13, 2000.