

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 28, 2000

W-2723

CASES SUMMARIZED

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[\(R-2374\) Donald Zavelo Named NLRB Deputy Regional Attorney in New York City Office](#)

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Detroit Newspapers (7-CA-40012; 330 NLRB No. 78) Detroit, MI Jan. 14, 2000. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally and without agreement of the Unions, and without having reached a valid impasse, implementing its final offers affecting changes in the unit employees' working conditions while violations found in two other cases remained unremedied. The Board agreed with the judge that the Respondent failed to meet its "heavy burden" of showing that the Unions' publication of an interim newspaper (the Detroit Sunday Journal) constituted clear and present danger of a conflict of interest interfering with the collective-bargaining process.

Noting that the Unions have made an unequivocal commitment to shut down the interim publication once the labor dispute is resolved, the Board said: "It has not been established that the Unions' operation of its newspapers-for this specifically limited duration-would present a conflict of interest which would jeopardize good-faith bargaining." [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charges filed by Detroit Mailers Union No. 2040, Teamsters; Detroit Typographical Union No. 18; Communications Workers; GCIU Local 13N; and Teamsters Local 372; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Detroit, Jan. 21-23 and March 24-26, 1998. Adm. Law Judge Karl H. Buschmann issued his decision March 10, 1999.

* * *

Ferguson Electric Co. (3-CA-19630; 330 NLRB No. 75) Plainville, CT Jan. 19, 2000. Chairman Truesdale and Member Fox, in ordering the Respondent to pay David Carr gross backpay in the amount of \$25,626, made these findings. Carr's status as a paid, full-time union organizer, or "salt," does not deprive him of the Act's protection. The backpay period ran from August 30, 1995 (when the Respondent first employed electricians at the Kendall jobsite following Carr's August 21, 1995 application for work as an electrician there) through July 1, 1996 (when Carr would have quit his employment with the Respondent to work exclusively for the Union). Carr's earnings from his secondary employment, akin to moonlighting, as a full-time union organizer during the backpay period should not be counted as interim earnings and offset against gross backpay. The General Counsel satisfied his burden to show the gross amount of backpay to which Carr is entitled and the Respondent failed to produce evidence that would mitigate its liability by arguing that Carr should be denied backpay because he unreasonably limited his search for interim employment to nonunion contractors who were targeted by the Union for organizing. [\[HTML\]](#) [\[PDF\]](#)

Member Hurtgen, dissenting in part, would place certain evidentiary burdens on the General Counsel that have not been met. He noted that here, unlike the traditional 8(a)(3) case where the burden is on the employer to show that employment would have been terminated at some subsequent point even if the discriminatory discharge had not occurred, the Union effectively controls the duration of employment. Thus, the Union (General Counsel) should bear the burden of going forward with the evidence as to the duration of an organizational campaign and whether the Union wishes to organize the new site. Because those matters have not been shown, the Union and the General Counsel have not established the backpay period or the amount of gross backpay, Member Hurtgen found. In addition, even if they had done so, he would place the burden on the General Counsel and the Union to go forward with evidence that the Union was prepared to lift its limitations on the type, and hence the number, of employers from whom Carr could have sought interim employment, as well as the potential duration of his interim employment.

(Chairman Truesdale and Members Fox and Hurtgen participated.)

* * *

D.L. Baker Electric (5-CA-24131, 24190; 330 NLRB No. 79) Vienna, VA Jan. 19, 2000. The Board found that the general denials in the Respondents' answers to paragraphs 17, 18, 19, 24, and 32 of the compliance specification do not meet the specificity requirements of Section 102.56 of the Board's Rules and Regulations, and granted the General Counsel's motion for partial summary judgment as to those matters (the formulae and calculations of gross backpay for all claimants and interim earnings and calendar quarter net backpay for claimants who worked for the original Respondent D.L. Baker, Inc. t/a Baker). The proceeding was remanded to the Regional Director to schedule a hearing before an administrative law judge limited to the remaining allegations of the compliance specification. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

General Counsel filed motion for partial summary judgment May 11, 1999.

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Hovey Electric, Inc. and Christian Labor Association Local 18 (7-CA-40164(E), 7-CB-11532(E); 330 NLRB No. 76) Midland, Portage, and Harbor Beach, MI Jan. 18, 2000. The Board agreed with the administrative law judge for the reasons stated in sections B and C of his supplemental decision, that the General Counsel was substantially justified in issuing and pursuing the complaint allegations against Respondent Hovey Electric, Inc. and denied the application for attorney's fees and expenses pursuant to the Equal Access to Justice Act filed by Hovey. The Board found it unnecessary to pass on the judge's findings in section D of his supplemental decision rejecting certain of the arguments the General Counsel advanced in support of his position because they have no bearing on the result in this case. Member Brame noted that Respondent Hovey did not except to the judge's failure to make an explicit finding that the General Counsel was substantially justified in filing exceptions to his original decision in this case. [\[HTML\]](#) [\[PDF\]](#)

In the underlying unfair labor practice proceeding, the Board affirmed the judge's recommended dismissal of complaint allegations that the Respondents violated the Act when Hovey granted recognition to Local 18 premised upon Section 9(a) of the Act and entered into and maintained a collective-bargaining agreement with Local 18 that includes a union-security clause, withheld from the wages of its employees, and transmitted dues and initiation fees to the Union, all at a time when it did not represent a majority of Hovey's employees.

(Chairman Truesdale and Members Liebman and Brame participated.)

Adm. Law Judge Bruce D. Rosenstein issued his supplemental decision Aug. 27, 1999.

* * *

Detroit Newspapers and The Detroit News, Inc. (7-CA-40759, et al.; 330 NLRB No. 81) Detroit, MI Jan. 21, 2000. The Board denied the Respondents' motions to dismiss the complaints alleging that they violated Section 8(a)(3) and (1) of the Act by discharging 59 employees because of their assistance to the Charging Party Unions and because they engaged in protected strike activity against the Respondents. The Respondents have not demonstrated that the General Counsel's issuance of the instant complaint is untimely under Section 10(b) of the Act or otherwise beyond its discretion, the Board held. [\[HTML\]](#) [\[PDF\]](#)

The charges in the instant case were filed during the course of the hearing on the consolidated complaints in Cases 7-CA-38079, et al., alleging that certain striking employees were disciplined or discharged because of their concerted protected activity related to the strike. The instant charges are based on evidence obtained during that proceeding and allege that Respondent Detroit Newspaper Association (DNA) and Detroit News unlawfully discharged a number of additional strikers while issuing lesser forms of discipline to nonstrikers for comparable or more severe alleged misconduct. The General Counsel sought to litigate the instant allegations in the other proceeding, but the Respondents opposed the General Counsel's motion, the judge denied it, and the Board denied the General Counsel's request for special permission to appeal the judge's ruling on the ground that no abuse of discretion had been shown. The Board noted, however, that it did not pass on whether the allegations sought to be added were barred by Section 10(b) or whether the allegations could be properly pled and litigated separately. On July 19, 1999, the Regional Director issued the instant complaint.

The Board wrote in denying the Respondents' motions to dismiss: "We find that the judge's denial of the General Counsel's earlier motion to amend the complaint leaves the General Counsel free to litigate the rejected allegations in the instant proceeding. Where as here the Respondents opposed the General Counsel's earlier motions to amend the underlying consolidated complaint, they cannot now claim that it is a breach of due process to have two separate hearings." The Board also rejected the Respondents' contention in their second motion to dismiss that 11 of the alleged discharges are barred by Section 10(b) because they were not mentioned in any charge. All of the additional alleged discharges in the complaint are closely related to the timely charge allegations in Cases 7-CA-38079 et al., and are therefore not time-barred regardless of whether they were specifically mentioned in any charge, the Board said. Further, it agreed with the General Counsel that the Respondents had sufficient notice that the 11 alleged discriminatees were at issue.

(Chairman Truesdale and Members Fox and Hurtgen participated.)

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Electrical Workers Local 3 (White Plains) (Individuals) White Plains, NY January 13, 2000. 34-CB-2179, et al.; JD(NY)-02-00, Judge Michael A. Marcionese.

Covenant Homecare (an Individual) Knoxville, TN January 14, 2000. 10-CA-31593; JD(ATL)-02-00, Judge Keltner W. Locke.

Datco, Inc. (Service Employees Local 760M) Hartford, CT January 14, 2000. 34-CA-8596 and 8658; JD(NY)-04-00, Judge Raymond P. Green.

Jackie's Cleaning, Inc. (an Individual and Laborers Local 872) Las Vegas, NV January 7, 2000. 28-CA-15423; JD(SF)-01-00, Judge Clifford H. Anderson.

Beth Abraham Health Services (1199 National Health and Human Services) Bronx, NY January 18, 2000. 2-CA-31830; JD(NY)-05-00, Judge Steven Davis.

Elmhurst Care Center and Food and Commercial Workers Local 300S (Service Employees Local 1115) Queens, NY January 21, 2000. 29-CA-22674 and 26-CB-10843; JD(NY)-07-00, Judge Joel P. Biblowitz.

Caval Tool Division, Chromalloy Gas Turbine Corp. (an Individual) Newington, CT January 21, 2000. 34-CA-8702; JD(NY)-08-00, Judge Michael A. Marcionese.

King Soopers, Inc. (Individuals) State of CO January 14, 2000. 27-CA-14882, et al.; JD(SF)-02-00, Judge Jay R. Pollack.