

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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February 18, 2000

W-2726

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Nor-Cal Beverage Co. (20-CA-28556; 330 NLRB No. 91) West Sacramento, CA Jan. 31, 2000. Members Fox and Liebman

reversed the administrative law judge's dismissal of the complaint allegations and found that the Respondent violated Section 8(a)(3) and (1) of the Act by issuing a warning notice to employee Tom Gould for calling fellow employee Chris Dugan a "scab." The majority found that Gould, in his two conversations with Dugan, was engaged in union activity protected under the Act (attempting to engender support among his fellow employees for the Teamsters strike and to induce them to honor the Teamsters picket line); and that Gould did not lose the Act's protection by using the word "scab" in the course of the conversations. [\[HTML\]](#) [\[PDF\]](#)

Member Hurtgen, dissenting, found that the Respondent acted under its lawful antiharassment policy in issuing the warning notice to Gould. He noted that Dugan was exercising his Section 7 right to refrain from union activity, was harassed for having done so, and complained to management.

(Members Fox, Liebman, and Hurtgen participated.)

Charge filed by Longshore and Warehouse Local 17; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Sacramento, March 24-25, 1998. Adm. Law Judge Jay R. Pollack issued his decision Feb. 12, 1999.

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Cal-West Periodicals (32-RC-4475; 330 NLRB No. 87) Stockton, CA Jan. 31, 2000. Members Fox and Hurtgen agreed with the Regional Director that the two statements allegedly made by a nonagent employee supporter of the Union are not grounds for setting aside the election held August 13, 1998 (Teamsters Local 439 won 9-7). Member Brame, dissenting, found that the Employer has made out a prima facie case sufficient to require a hearing. [\[HTML\]](#) [\[PDF\]](#)

The majority treated the affidavits submitted by the Employer as true and accepted the following as the relevant facts. About 8 days before the election, an employee accompanied by two fellow workers approached employee Philpott as he was sitting at a lunch table in the employee lunchroom. As the three stood around Philpott's table, within earshot of another employee, one of the three told Philpott that he had better vote "Yes" for the Union, and if he did not, he could just wait and see what happened to him. Philpott (but not the other listening employee, who says he left after the first statement) alleges that "they" then said that if he crossed a picket line, they would beat him up.

The majority wrote: "There are no allegations that there were any picket lines around the Employer's premises and no allegations of any incidents of violence or other threats during the campaign that might give meaning to the 'wait and see' reference or immediacy to the picket line remark. With particular respect to the 'wait and see' remark, we agree with the Regional Director that this ambiguous statement does not necessarily establish a threat of physical harm. And, even if it did, the threat was by a nonagent and was not pervasive. And as noted above, the picket line reference had no context of immediacy."

Dissenting Member Brame found it important to consider the two alleged threats together along with the surrounding circumstances. He noted that the threat of physical violence was made in conjunction with the "wait and see" threat, which related directly to Philpott's vote and could reasonably be interpreted as an attempt to influence his vote; that the threats occurred just eight days prior to the election; and that the election was very close—a shift in a single vote could have changed the outcome. Member Brame wrote in finding his colleagues' emphasis on the fact that the statements were not made by agents of the Union is misplaced:

"The issue in the present case is the effect that the prounion employees' statements had on a free election: thus, agency is relevant only in determining the standard against which the allegedly objectionable conduct is to be judged." Applying what he believes is the "correct" standard for third-party or nonagent behavior (whether the misconduct created a general atmosphere of fear and reprisal rendering a free election impossible), Member Brame found that the Employer made out a prima facie case requiring a hearing on the issue.

(Members Fox, Hurtgen, and Brame participated.)

* * *

Corporation for General Trade (WKJG-TV 33) (25-CA-23757, 24038; 330 NLRB No. 92) Fort Wayne, IN Feb. 8, 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 implementing its proposal affecting changes in unit employees' terms and conditions of employment. The judge found, and the Board agreed, that the parties had not reached impasse in their negotiations in view of the fact that there had been substantial movement in negotiations immediately prior to and after the Respondent implemented its proposals, and the Respondent had not informed the Union that it believed the parties were at impasse or otherwise indicated that further bargaining would be in vain. [\[HTML\]](#) [\[PDF\]](#)

Contrary to the judge, the Board dismissed the complaint allegation that the Respondent further violated Section 8(a)(5) and (1) because the proposal that it unilaterally implemented included a provision that merged the two historically separate units (production and technical unit and the talent unit) into one unit. The Board explained: "It is undisputed that on September 4 or 5, 1994, the Respondent sent the Union its proposal for a successor contract, which included, inter alia, a recognition clause that combined the two historically separate units into one unit. It is also undisputed, however, that the Respondent abandoned this proposed new recognition clause in its November 2, 1994 proposal. From that time forward, the Respondent proposed combining the substantive terms covering the two separate units into one contract, instead of two, with separate addenda for each unit. Since such proposal did not seek to alter, or have the effect of altering, the scope of the bargaining units, we dismiss this complaint allegation."

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charges filed by Electrical Workers IBEW Local 723; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Fort Wayne, June 2-4, 1997. Adm. Law Judge John H. West issued his decision Sept. 30, 1997.

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Chicagoland Television News (13-RC-19844; 330 NLRB No. 94) Oak Brook, IL Feb. 9, 2000. The Board denied the Union's motion for reconsideration of its prior finding that the Employer did not engage in objectionable conduct by hosting a 12-hour party for employees on the day before the election, concluding that the attendance of five unit employees at the party was de minimis and does not warrant overturning the election. [\[HTML\]](#) [\[PDF\]](#)

The Board had found previously that three unit employees--Dwight Casimere, Nadine Arroyo, and Greg Prather--extended their normal meal breaks to attend the pre-election party, in part, on worktime. 328 NLRB No. 48 (1999). The Union contends that three other unit employees (for a total of six)-Tressa Pankovits, John Marsheets, and Mark Gambino-attended the party on worktime. The unchallenged testimony of Pankovits was that she attended the party after she had finished her shift. In denying the Union's motion for reconsideration, the Board found that the evidence in the record, inadvertently overlooked in its earlier decision, that Marsheets and Gambino attended the party on worktime, did not warrant a reversal of the prior decision.

(Members Fox, Hurtgen, and Brame participated.)

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Monroe Custom Utility Bodies (25-CA-25922; 330 NLRB No. 93) Cumberland, IN Feb. 8, 2000. The Board granted the General Counsel's motion for summary judgment and held that the Respondent violated Section 8(a)(3) and (1) of the Act by refusing to hire and consider for hire employment applicants Mark Moran and Kurt Tucker. There are no material issues of fact or law in dispute and all material allegations of the complaint are true, the Board held. The Respondent agrees that its affirmative defense regarding backpay due the discriminatees can properly be litigated in a compliance proceeding and the Respondent does not oppose the General Counsel's motion. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charge filed by Sheet Metal Workers Local 20; complaint alleged violation of Section 8(a)(1) and (3). General Counsel filed motion for summary judgment July 13, 1999.

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Information Processing Services (5-CA-27896; 330 NLRB No. 95) Alexandria, VA Feb. 9, 2000. The Board concluded that it was a sham for the Respondent to claim that it had no knowledge as to paragraphs 1, 2, and 3 of the complaint, granted the General Counsel's motion to strike the Respondent's answer as to the paragraphs, and deemed the allegations in the paragraphs true. Given the Respondent's pro se status, the Board found its answer and attached letter sufficiently responsive to the complaint allegations containing the operative facts of the alleged violations and denied summary judgment as to paragraphs 4, 5, 6, and 7. The case was remanded to the Regional Director to arrange a hearing before an administrative law judge limited to the allegations in paragraphs 4, 5, 6, and 7. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Hurtgen and Brame participated.)

General Counsel filed motion to strike answer and for summary judgment June 2, 1999.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

New York Newspaper Printing Pressmen's Union No. 2 (New York Times Company) Flushing, NY and Edison, NJ February 8, 2000. 29-CB-10663; JD(NY)-10-00, Judge Michael A. Marcionese.

Top Knotch Productions Inc., an alto ego of A. Terzi Productions and A. Terzi Productions (Theatrical Stage Employees Local One) February 8, 2000. 29-CA-20492 and 20652; JD(NY)-11-00, Judge Raymond P. Green.

St. George Warehouse, Inc. (Teamsters Local 641) Newark, NJ February 8, 2000. 22-CA-23223, et al., 22-RC-11703; JD(NY)-12-00, Judge Howard Edelman.

Grinnell Fire Protection Systems Company (Plumbers Local 669) Exeter, NH February 8, 2000. 5-CA-28153 and 28440; JD-18-00, Judge Karl H. Buschmann.

Allied Mechanical Services, Inc. (Plumbers Local 357) Kalamazoo, MI February 8, 2000. 7-CA-40907 and 41390; JD-14-00, Judge David L. Evans.

Odyssey Capital Group (an Individual) Pittsburgh, PA February 8, 2000. 6-CA-30010; JD-13-00, Judge Jerry M. Hermele.

I. Epstein & Sons, Inc. (Teamsters Locals 802) Newark, NJ February 9, 2000. 22-CA-22745; JD(NY)-06-00, Judge Jesse Kleiman.

Midwestern Personnel Services, Inc. (Teamsters Local 215) Evansville, IN February 9, 2000. 25-CA-25503, et al.; JD-(ATL)-10-00, Judge Jane Vandeventer.

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TEST OF CERTIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgment on the grounds that the respondent has not raised any representation issue that is litigable in the unfair labor practice proceeding. This case does not present any other issues.)

Deferiet Paper Company (3-CA-21988; 330 NLRB No. 89) Deferiet, NY February 8, 2000.

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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.)

Stuart Siebert d/b/a Avalanche Location Tenting (21-CA-33338; 330 NLRB No. 90) Fullerton, CA February 8, 2000.