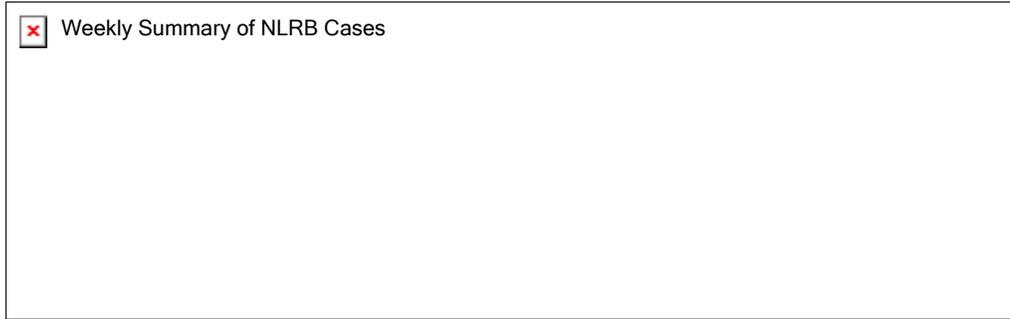


ABOUT THE WEEKLY SUMMARY

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 25, 2000

W-2727

CASES SUMMARIZED

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[Cross Pointe Paper Corp.](#), West Chicago, IL
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[\(R-2376\) NLRB Certifies Major League Umpires Union](#)

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Waste Management Inc. (4-RC-19571; 330 NLRB No. 96) Pen Argul, PA Feb. 14, 2000. Agreeing with the hearing officer,

Members Fox and Liebman found that the Employer's bulletin board policy, both on its face and as applied (Union's Objections 2 and 10) and Supervisor McClain's threat to discharge Paul Trueman because he had defaced a piece of the employer's antiunion campaign literature (Union's Objection 6), constituted objectionable conduct. They set aside the election held December 18, 1998 (Teamsters Local 463 lost 108-70) and directed that a second election be held. Member Hurtgen, dissenting, would overrule all of the Union's objections and certify the results of the election. [\[HTML\]](#) [\[PDF\]](#)

In the absence of exceptions, the Board adopted pro forma the hearing officer's recommendation to overrule Union's Objections 1, 3, 5, 6 (except for that portion related to a threat of discharge), and 9.

(Members Fox, Liebman, and Hurtgen participated.)

* * *

Novato Disposal Services, Inc. (20-RC-17513; 330 NLRB No. 97) Petaluma, CA Feb. 10, 2000. The Board granted the Union's (Teamsters Local 624) request for review of the Regional Director's supplemental decision and direction of election finding that the smallest appropriate unit for bargaining consisted of drivers, drivers' helpers, mechanics, mechanics' helpers, recycle laborers, bailers, and buy-back attendants at all of the Employer's unrepresented companies. It found, contrary to the Regional Director, that the Employer's mechanics and mechanics' helpers do not share such a close community of interest with the included employees as to require their inclusion in the unit. [\[HTML\]](#) [\[PDF\]](#)

The Employer's operation includes two primary facilities at Petaluma and Santa Rosa, California, a yard in Gualala, California, and five transfer stations. The Regional Director previously found appropriate the petitioned-for unit of drivers and drivers' helpers employed at the Employer's Petaluma facility. The Board found, contrary to the Regional Director, that the Employer had rebutted the single facility presumption and that the petitioned-for unit was not appropriate; and remanded the case to the Regional to determine the appropriate unit for bargaining. 328 NLRB No. 118 (1999).

(Members Fox, Liebman, and Hurtgen participated.)

* * *

Sir Francis Drake Hotel (20-RC-17317; 330 NLRB No. 98) San Francisco, CA Feb. 14, 2000. Members Fox and Liebman held, in agreement with the hearing officer, that the brief remarks of the Unions' observer, Jose Lee, to five or six voters in the polling area during the election could not have affected the results of the election and certified Hotel Employees and Restaurant Employees Local 2 and Service Employees Local 14 (winner by a 64-28 vote in the November 19, 1997 election) as the exclusive representative of certain employees. The majority relied on the Union's large margin of victory and its finding that Lee's disregard of the Board agent's admonitions not to talk to voters did not suggest to voters that the Unions were conducting the election, not the Board. [\[HTML\]](#) [\[PDF\]](#)

Member Hurtgen, dissenting, would set aside the election, stating: "I would not permit a party, through its agent, to repeatedly flaunt the admonitions of a Board agent. Thus, for the sake of the integrity of the electoral system, I would sustain the objections in this case."

(Members Fox, Liebman, and Hurtgen participated.)

* * *

Office Depot (7-CA-38847; 330 NLRB No. 99) Plymouth, MI Feb. 16, 2000. The administrative law judge found, and the Board agreed, that the threat allegations in the complaint are closely related to the discharge allegation in the charge and are not barred by Section 10(b), and that the Respondent violated Section 8(a)(1) of the Act by threatening the employees that they would earn less money if they selected the Union and by discharging Denise DeLaura because of her protected concerted activity of making common cause with the employees of another employer who were engaged in a protected work stoppage. [\[HTML\]](#) [\[PDF\]](#)

The evidence shows that on July 8, 1996, DeLaura was approached by a person indicating that he was to pick up an order for one of the Respondent's customers, the Detroit Newspaper Agency (DNA). DeLaura said to him in a normal tone of voice, "Oh, you work for the scab newspaper." DNA employees were engaged in a lawful work stoppage at the time. The DNA employee explained that he had worked for his employer for many years and had a family to feed. There was no further exchange between DeLaura and the DNA employee. DNA subsequently complained to the Respondent about the incident. On July 10, Kenneth Zill, the Respondent's top manager, went to the shipping and receiving office where DeLaura worked and asked whether someone in that office had called the DNA employee a scab two days earlier. DeLaura admitted that she had told the DNA employee that he worked for a scab newspaper. The Respondent conceded that it discharged DeLaura for her use of the term "scab" to the DNA employee.

In a reversal of the judge, the Board found that the Respondent did not violate Section 8(a)(1) by telling employees that if they selected the Union, they would not be able to communicate with management in the same way and would have to pay union dues.

(Chairman Truesdale and Members Fox and Liebman participated.)

Charge filed by Denise M. DeLaura; complaint alleged violation of Section 8(a)(1). Hearing at Detroit on May 6, 1997. Adm. Law Judge Steven M. Charno issued his decision June 13, 1997.

* * *

Leather Agent, Inc. (3-CA-20451; 330 NLRB No. 100) Gloversville, NY Feb. 16, 2000. The Board found, contrary to the administrative law judge, that the record does not establish that the Respondent failed to recall employee Larry Burdick in December 1996 because of his union activities and dismissed the complaint in its entirety. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Hurtgen and Brame participated.)

Charge filed by Glove Cities District of the Amalgamated Northeast Regional Joint Board, UNITE; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Albany on Sept. 15, 1997. Adm. Law Judge Joel P. Biblowitz issued his decision Oct. 23, 1997.

* * *

Cross Pointe Paper Corp. (13-CA-33121, 13-RC-18874; 330 NLRB No. 101) West Chicago, IL Feb. 17, 2000. Affirming the administrative law judge's decision, the Board overruled the Respondent's Objections 1, 2, and 3; sustained Objection 5; set aside the election held on November 4, 1993; and directed that a second election be conducted. Because Member Hurtgen would direct a second election based on Objection 5, he does not pass on the judge's analysis of Objection 2. [\[HTML\]](#) [\[PDF\]](#)

The Board held in 1995 that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with PACE, Paper, Allied-Industrial, Chemical and Energy Workers International, following its certification as exclusive bargaining representative. It rejected the Respondent's contention that the union certification was invalid based on its arguments in support of its objections. All representation issues raised by the Respondent were or could have been raised in the underlying representation proceeding, the Board held. 317 NLRB 558. On review, the Seventh Circuit denied enforcement and remanded the matter for further proceedings. 89 F.3d 447 (7th Cir. 1996).

On November 20, 1998, the Board remanded the proceeding for a hearing on the objections-four remain for consideration here. Objection 1 alleged that either the Union or third parties engaged in objectionable conduct by deliberately exacerbating "racial/ethnic feeling among employees by inflammatory appeals," Objection 2 alleged that the Respondent's supervisors instigated and assisted the Union's organizing activities, Objection 3 alleged that an eligible voter disrupted the election by screaming and complaining about the secrecy of his ballot, and Objection 5 alleged that a Union observer engaged in list keeping.

(Members Fox, Liebman, and Hurtgen participated.)

Adm. Law Judge Robert A. Giannasi issued his supplemental decision April 19, 1999.

* * *

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Lexus of Concord, Inc. (Machinists District Lodge 190 and Local Lodge 1173) Concord, CA February 3, 2000. 32-CA-17396 and 17442; JD(SF)-06-00, Judge Joan Wieder.

Wexler Meat Company (an Individual) Chicago, IL February 14, 2000. 13-CA-37659; JD-23-00, Judge Richard H. Beddow.

Alpine Log Homes, Inc. (Laborers and an Individual) Victor, MT January 28, 2000. 19-CA-26004, et al.; JD-(SF)-04-2000, Judge Gerald A. Wacknov.

Adtranz, ABB Daimler-Benz (Machinists) Oakland, CA January 31, 2000. 32-CA-17172, et al; JD(SF)-05-00, Judge Jay R. Pollack.

Heavenly Valley Limited Partnership d/b/a Heavenly Valley Ski Resort (Teamsters Local 533) January 31, 2000. 32-CA-17195; JD(SF)-03-00, Judge Thomas M. Patton.

256 Food Corporation d/b/a Met Food; and Its golden State Successor, Bafter Food Corporation (United Food & Commercial Workers Local 1500) Bronx, NY February 16, 2000. 2-CA-30788, et al.; JD(NY)-13-00, Judge Steven Davis.

* * *

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.)

Corrections Corporation of America, d/b/a Servicios Correccionales de Puerto Rico (24-CA-8381; 330 NLRB No. 102) Guayama, PR February 18, 2000.

* * *

NO ANSWER TO COMPLIANCE SPECIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the respondent's failure to answer to the compliance specification.)

Elliott Metal Processing Co. (7-CA-41062 and 41179; 330 NLRB No. 103) Detroit, MI February 18, 2000.