

## 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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March 17, 2000

W-2730

**CASES SUMMARIZED**

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*Gulf Caribe Maritime, Inc., a subsidiary of Foss Maritime Co. and the Seafarers International* (31-CA-23820, 23918, and 31-CB-10449; 330 NLRB No. 120) Redondo Beach, CA March 2, 2000. The Board affirmed the administrative law judge's finding that the Respondent Employer violated Section 8(a)(4), (3), (2), and (1) of the Act by granting recognition to the Respondent Union at a time when it did not represent an uncoerced majority of employees, discriminating and retaliating against employees because of their union activities and/or having engaged in activities before the Board, and rolling back their wages and benefits to the level they were at before Respondent Employer granted recognition to the Respondent Union.

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The Board also affirmed the judge's finding that the Respondent Union violated Section 8(b)(1)(A) by offering on March 12, 1999, to waive its \$600 initiation fee if all eight unit employees signed union authorization cards by March 15, 1999, demanding and accepting recognition as the exclusive collective-bargaining representative of the Respondent Employer's employees at a time when it did not represent an uncoerced majority of the employees, and coercing employees to designate it as their representative.

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charges filed by Longshoremen's and Warehousemen's International; complaint alleged violation of Section 8(a)(1), (2), (3), and (4) and Section 8(b)(1)(A). Hearing at Los Angeles, July 27-29, 1999. Adm. Law Judge Frederick C. Herzog issued his decision Sept. 30, 1999.

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*Brook Meade Health Care Acquirors, Inc. d/b/a Maple Grove Health Care Center* (11-CA-17212, 17409; 330 NLRB No. 121) Lebanon, VA March 3, 2000. Agreeing with the administrative law judge, the Board found that the Respondent violated Section 8(a)(5) of the Act by unilaterally increasing the amounts employees were required to pay for health insurance, without giving the Mine Workers sufficient notice and opportunity to bargain; and violated Section 8(a)(1) by interrogating an employee and asking him to report on the union activities of other employees, by soliciting and implicitly promising to remedy employees' grievances, and by threatening to fire union supporters while expressing disappointment with an employee for wearing a union T-shirt. Unlike the judge who found that the Respondent discharged Lovana Thomas in retaliation for her support of the Union, the Board found that the Respondent demonstrated that it would have discharged Thomas regardless of her union activity, and dismissed the 8(a)(3) allegation. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charge filed by Mine Workers; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing held May 28-29, 1997. Adm. Law Judge Lawrence W. Cullen issued his decision June 30, 1997.

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*Planned Building Services and United Workers of America* (29-CA-19758-2, 29-CB-9911; 330 NLRB No. 116) Lake Grove, NY March 7, 2000. No exceptions were filed to the administrative law judge's findings that Respondent Planned Building Services, Inc. (PBS) violated Section 8(a)(1) and (2) of the Act by having its supervisors solicit union cards on behalf of Respondent United Workers of America (UWA) and recognizing UWA when UWA did not enjoy the uncoerced support of a majority of the unit employees; and violated Section 8(a)(1), (2), and (3) by entering into a collective-bargaining agreement with UWA requiring union membership as a condition of employment. [\[HTML\]](#) [\[PDF\]](#)

Members Fox and Liebman ordered PBS to post the Notice to Employees at all of its facilities, noting that the Board's order in *Planned Bldg. Services (PBS)*, 318 NLRB 1049 (1995), issued only about 4 months before the PBS supervisors engaged in card solicitation again in this case at the Smith Haven Mall, thereby tainting the company's recognition of UWA, the assisted union; and that the repeated violation of Section 8(a)(2) does not appear to be inadvertent. Member Hurtgen found that such broad posting is unwarranted in the absence of a showing that employees at other facilities are aware of the misconduct herein.

The Board affirmed the judge's findings that PBS did not violate Section 8(a)(1) by informing candidates for employment that it would not hire, as a majority of its workforce, former employees of General Growth; and that the General Counsel failed to establish that PBS refused to hire former General Growth employees in order to avoid incurring a bargaining obligation. The judge credited the testimony of PBS Vice President Joanne Stratakos over that of the General Counsel's witnesses. The Board denied the Charging Party Union's motion requesting that the Board discredit Stratakos in this proceeding or remand the proceeding to the judge for new credibility determinations because Stratakos allegedly gave false testimony in a more recent case involving the Respondent.

On other issues, the Board agreed with the judge that PBS did not act unlawfully in announcing and implementing new terms and conditions of employment; that PBS was not obligated to recognize and bargain with Service Employees Local 32B-32J because it did not hire, as a majority of its workforce, former employees of General Growth; and that because of PBS' setting of new terms and conditions of employment was not shown to be unlawful, the former General Growth employees who either turned down offers of employment, or refused to apply for positions, with PBS were not unlawfully denied employment.

(Members Fox, Liebman, and Hurtgen participated.)

Charges filed by Service Employees Local 32B-32J; complaint alleged violation of Section 8(a)(1), (2), and (3). Adm. Law Judge Raymond P. Green issued his supplemental decision June 3, 1997.

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*Kloepfers Floor Covering, Inc., and its alter ego, Dynamic Floor Design* (3-CA-22088; 330 NLRB No. 126) West Seneca, NY March 9, 2000. Chairman Truesdale and Member Fox granted the General Counsel's motion for summary judgment in the absence of good cause being shown for the Respondents' failure to file a timely answer and held that the Respondents violated Section 8(a)(5) and (1) of the Act by refusing to bargain collectively with Carpenters Local #9 and failing to apply the terms of the 1999-2002 collective-bargaining agreement between the Floor Covering Contractors of Buffalo, New York and the Union when they were performing commercial work. The majority found that the December 30, 1999 letter sent to the Region by the Respondents' president stating that "the allegations are untrue" and requesting a jury trial and a court appointed attorney, failed to address any of the factual or legal allegations of the complaint and does not constitute a proper answer under the Board's Rules and Regulations. [\[HTML\]](#) [\[PDF\]](#)

Member Brame, dissenting, found the Respondents' letter is "a sufficient denial of the complaint allegations to put them at issue and require the General Counsel to prove them at a hearing." See his dissent in *Eckert Fire Protection Co.*, 329 NLRB No. 79, slip op. at 4-5 (1999).

(Chairman Truesdale and Members Fox and Brame participated.)

Charge filed by Carpenters Local #9; complaint alleged violation of Section 8(a)(1) and (5). General Counsel filed motion for summary judgment January 12, 2000.

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*Great Lakes Warehouse Corp.* (13-CA-36553; 330 NLRB No. 125) Hammond, IN March 9, 2000. The Board upheld the administrative law judge's findings that the Respondent violated Section 8(a)(3) of the Act by disciplining and discharging Victor Oller for supporting Teamsters Local 142; and violated Section 8(a)(1) by offering a supervisory position to union proponent Gary Anderson. No exceptions were filed to the judge's findings of 8(a)(1) violations regarding the interrogation and a threat of unspecified retaliation for continuing to support the Union. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Hurtgen and Brame participated.)

Charge filed by Teamsters Local 142; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Chicago, July 7-8, 1998. Adm. Law Judge Robert T. Wallace issued his decision May 4, 1999.

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*Prime Equipment* (32-CA-17101; 330 NLRB No. 128) San Mateo, San Francisco, Sacramento, San Jose, and Berkeley, CA March 10, 2000. Agreeing with the administrative law judge, the Board held that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to recognize and bargain with Operating Engineers Local 3 which had represented its predecessor's employees; and by failing to provide the Union with requested information that was relevant and necessary for the performance of its duties as collective-bargaining representative. The judge found that the Respondent assumed and continued, without interruption, the operations of its predecessor (Clementina, Ltd.) on August 28, 1998 and that a majority of its

workforce had been unit employees at Clementina. The Board found it unnecessary to rely on the judge's suggestion that the Respondent was a "perfectly clear" successor within the meaning of *NLRB v. Burns Security Services*, 406 U.S. 272 (1972), because this case does not involve the Respondent's obligation to bargain with the Union about the initial terms and conditions of employment for bargaining unit employees. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charge filed by Operating Engineers Local 3; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Oakland, May 27-28, 1999. Adm. Law Judge Gerald A. Wacknov issued his decision Sept. 24, 1999.

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### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

*United Insurance Company of America* (Food and Commercial Workers International) St. Petersburg and Bradenton, FL March 6, 2000. 12-CA-19979 and 20016; JD(ATL)-13-00, Judge William N. Cates.

*Cora Realty Co., LLC a/k/a 301 Holdings, LLC and Chestnut Holding of New York Inc.* (Service Employees Local 32E) Bronx, NY March 6, 2000. 2-CA-32008; JD-(NY)-23-00, Judge Raymond P. Green.

*Contech Division, SPX Corporation* (an Individual) Grand Rapids, MI March 6, 2000. GR-7-CA-42113; JD-31-00, Judge Jerry M. Hermele.

*Tree of Life, Inc. d/b/a Gourmet Award Foods, Northeast* (Teamsters Local 294) Albany, NY March 9, 2000. 3-CA-21569; JD-30-00, Judge Bruce D. Rosenstein.

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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 has not raised any representation issues that are litigable in the unfair labor practice proceedings. These cases do not present any other issues.)*

*Leisure Chateau Care Center and Communication Workers of America* (4-CA-28807-2; 330 NLRB No. 127) Lakewood, NJ March 13, 2000.

*Lone Star Steakhouse and Saloon of New Jersey, Inc.* (4-CA-28725; 330 NLRB No. 129) Egg Harbor Township, NJ March 13, 2000.