

## 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](#)

May 12, 2000

W-2738

**CASES SUMMARIZED**

SUMMARIES CONTAIN LINKS TO FULL TEXT

[Allied Production Workers Local 12](#), Lansing, IA  
[Allison Corporation](#), Somerville, TN  
[Cyclone Fence](#), Grand Prairie, TX  
[Dock Workers Local 1](#), Gloucester, NJ  
[Midway Hospital Medical Center, Inc.](#), Los Angeles, CA  
[Extencicare Health Facilities, Inc. d/b/a Trevilla of Golden Valley](#), Golden Valley, MN

**OTHER CONTENTS**

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

[List of No Answer to Complaint Cases](#)

[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.

*Trevilla of Golden Valley* (18-RC-16297; 330 NLRB No. 193) Golden Valley, MN April 28, 2000. Contrary to the Regional Director, the Board concluded that the Employer's LPNs are statutory supervisors under Section 2(11) of the Act. In so doing, the Board found that the LPNs exercise independent judgment in completing the annual evaluations of nursing assistants and that the Employer relies on these evaluations to award specific merit increases, citing *Bayou Manor Health Center*, 311 NLRB

955 (1993). Chairman Truesdale and Member Brame granted the Employer's request for review solely on the issue of the LPNs' supervisory status with respect to their roles in the employer's evaluation and disciplinary processes. Dissenting on this point only, Member Hurtgen would grant the request for review in its entirety. In view of the finding that the LPNs are statutory supervisors based on their role in the wage determination process, the Board did not find it necessary to decide whether the LPNs' role in the disciplinary processes also conferred 2(11) status. (The Union involved here is Minnesota Licensed Practical Nurse Assn./Technical Employees Assn. of Minnesota.) [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Hurtgen and Brame participated.)

\* \* \*

*Midway Hospital Medical Center* (31-RD-1399; 330 NLRB No. 199) Los Angeles, CA April 28, 2000. After considering the Employer's objections, the majority of Chairman Truesdale and Member Fox, certified Health Care Employees Local 399 as the exclusive collective-bargaining representative based on election results. Addressing Member Brame's dissent, the majority stated: "As our dissenting colleague suggests, unanswered messages by parties to the election may be construed as objectionable conversations under *Milchem* when those messages are directed at employees waiting to vote. See *Fieldcrest Cannon, Inc.*, 318 NLRB 470, 566-567 (1995). However, [employee Joan] Boucher's polling area complaints were directed to Union Representative Dana Hahn, management officials, and the Board agent in the polling area. Although those complaints were loud enough to be overheard by employees who were *outside that area* and waiting to vote, we disagree with the dissenting opinion that Boucher could reasonably be viewed as attempting to communicate with them. We, therefore, find no *Milchem* violation." [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Fox and Brame participated.)

\* \* \*

*Allison Corp.* (26-CA-16943, et al.; 330 NLRB No. 190) Somerville, TN April 28, 2000. After considering exceptions to two of the administrative law judge's numerous findings of violations of the Act, the Board reversed the judge's conclusion that the Respondent violated Section 8(a)(5) and (1) by subcontracting unit work without providing the Union with prior notice and an opportunity to bargain about the decision to subcontract. Nevertheless, the Board concluded that the Respondent violated Section 8(a)(5) and (1) by failing to give the Union notice and affording it with an opportunity to bargain with respect to the effects of the subcontracting on bargaining unit employees. The Board agreed also with the judge that the Respondent violated the Act by failing and refusing to supply the Union with requested relevant information regarding the effects of such subcontracting. In addition, the Board dismissed the judge's finding that the Respondent violated Section 8(a)(1) by the participation of its supervisors in the circulation of a decertification petition. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charges filed by Electronic Workers [IUE], Furniture Workers Division, Local 282; complaints alleged violations of Section 8(a)(1) and (5). Adm. Law Judge Robert C. Batson issued his decision April 8, 1997.

\* \* \*

*Dock Workers Local 1 (Trans Ocean Maritime Services, Inc.)* (4-CB-8000; 330 NLRB No. 194) Gloucester, NJ April 27, 2000. Affirming the administrative law judge, the Board found that the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act by unlawfully causing the Employer not to employ Charging Party Morgan as a casual employee because he concertedly complained to agents of the Union about the operation of its hiring hall. In addition, the Board agreed with the judge that Morgan's protected activity caused the Union's agent to effectuate the discharge of Morgan, thus causing the Employer to discriminate against Morgan in violation of Section 8(a)(3). [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Hurtgen and Brame participated.)

Charge filed by William J. Morgan, an Individual; complaint alleged violation of Section 8(b)(1)(A) and (2). Hearing at

Philadelphia, PA, Feb. 4-5, 1999. Decision issued by Adm. Law Judge David L. Evans, June 4, 1999.

\* \* \*

*Cyclone Fence* (7-CA-42461; 330 NLRB No. 186) Grand Prairie, TX April 28, 2000. Applying *Nathan Yorke, Trustee*, 259 NLRB 819 (1981), the Board granted the General Counsel's motion for summary judgment, finding that the Respondent's response to a Notice to Show Cause why the motion should not be granted, has admitted or failed to specifically deny the complaint allegations and has not raised any issues warranting a hearing. The complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the Act by ceasing operations, terminating all unit employees, and failing to pay them wages and appropriate fringe benefits, without prior notice to Laborers Local 1191 and without affording the Union an opportunity to bargain about the conduct or its effects. Although properly served copies of the charge and complaint, the Respondent failed to file an answer. In its response to the Notice to Show Cause, the Respondent admitted that it terminated its business and that unit employees have not been paid since September 30, 1999, acknowledged complaint allegations that it failed to bargain over the closing and the failure to pay employees, stated that it filed a petition in bankruptcy under Chapter 11 of the Bankruptcy Code, and requested that the case be stayed pursuant to 11 U.S.C. § 362 of the Bankruptcy Code. [\[HTML\]](#) [\[PDF\]](#)

In *Nathan Yorke*, the Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) by failing to bargain with the Union regarding the effects of its decision to terminate operations where the newly appointed bankruptcy trustee acted immediately upon learning of the Respondent's quickly dwindling assets. The Seventh Circuit enforced the Board's decision, as modified, finding that the emergency situation that confronted the trustee in bankruptcy excused the Respondent's obligation to notify the Union before the plant closure, but did not excuse its failure to bargain after the closing over the effects of the closure because "[o]nce operations had been terminated, the emergency situation ended." 709 F.2d 1138, 1144 (1983).

In this decision, the Board wrote in finding that the allegations in the motion for summary judgment are undisputed and that the Respondent violated Section 8(a)(5) and (1): "As in *Nathan Yorke*, it would appear that the emergency situation that the Respondent was confronted with here might excuse its failure to give prior notice to the Union and afford the Union with an opportunity to bargain about the decision to terminate operations prior to the actual shutdown. However, it also appears that once the 'operations had been terminated, the emergency situation ended,' and the Respondent's failure to bargain about the effects of the closing constitutes a violation of the Act." *Id.* 709 F.2d at 1144.

(Chairman Truesdale and Members Fox and Brame participated.)

Charge filed by Laborers Local 1191; complaint alleged violation of Section 8(a)(1) and (5). General Counsel filed motion for summary judgment Feb. 1, 2000.

\* \* \*

*Allied Production Workers Local 12 (Northern Engraving Corp.)* (18-CB-3913; 331 NLRB No. 2) Lansing, IA April 28, 2000. On a stipulated record, the Board found that the charge was untimely and dismissed the complaint alleging that the Respondent violated Section 8(b)(1)(A) and (2) of the Act by continuing to enforce a checkoff authorization signed by Sherry Prichard and other employees despite their attempted revocation of those authorizations on January 30, 1998. [\[HTML\]](#) [\[PDF\]](#)

Prichard notified Northern Engraving Corp. of her resignation from the Union and attempted to revoke her checkoff authorization on January 30, 1998. By letter dated February 19, 1998, the Union informed Prichard that it intended to continue to enforce the authorization and collect the service fees unless she submitted a "proper" revocation. The Respondent continued to receive service fees withheld from the employees' wages pursuant to their checkoff authorizations. The record does not contain any other correspondence between the employees and the Respondent after February 19. On April 19, 1999, Prichard filed the instant charge on behalf of herself and others alleging that the Union violated Section 8(b)(1)(A) by improperly receiving service fees after the employees resigned their union memberships. Prichard amended her charge on June 21, 1999 to allege that the Respondent violated Section 8(b)(2) by causing Northern Engraving to continue to withhold service fees pursuant to the checkoff authorizations after the employees had resigned from the Union.

The Board found that the dispute was clearly drawn upon Prichard's receipt of the Respondent's February 1998 letter. It noted however that Prichard did not file her original charge until 14 months later, April 19, 1999, well outside the 10(b) limitations period and that there was no other request for revocation of checkoff within the 10(b) period.

(Members Fox, Liebman, and Hurtgen participated.)

Charge filed by Sherry Prichard, an Individual; complaint alleged violation of Section 8(b)(1)(A) and (2). Parties waived their right to a hearing before an administrative law judge.

\* \* \*

### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

*Norton Healthcare, Inc. d/b/a Norton Hospital & d/b/a Norton Audubon Hospital* (AFSCME (United Nurses of America)) Louisville, KY May 5, 2000. 9-CA-36655, et al.; JD-56-00, Judge Leonard M. Wagman.

*Newlonbro, LLC* (Teamsters Local 1040) Hartford, CT May 4, 2000. 34-CA-8913; JD(NY)-37-00, Judge Michael A. Marcionese.

*Ronn English* (Amalgamated Transit Union Division 757) Portland, OR April 26, 2000. 36-CA-8501-2, 8597; JD(SF)-24-00, Judge Thomas Michael Patton.

*Aneco, Inc.* (Electrical Workers IBEW Local 606) Orlando, FL April 28, 2000. 12-CA-15738; JD(ATL)-25-00, Judge Keltner W. Locke.

*The Earthgrains Company* (Bakery Workers Local 343) Johnson City, TN May 1, 2000. 11-CA-18006-1, et al.; JD-51-00, Judge Benjamin Schlesinger.

\* \* \*

### NO ANSWER TO COMPLAINT

*(In the following cases, the Board granted the General Counsel's motion for summary judgment based on the respondent's failure to file an answer to the complaint.)*

*Quality Color Graphics* (Graphic Communications Local One-L) (29-CA-23263, 23301; 330 NLRB No. 195) Bohemia, NY April 28, 2000.

*Koehn Painting Co.* (Painters Local 76) (17-CA-19923, 19998; 330 NLRB No. 192) Newton, KS April 28, 2000 (answer to complaint withdrawn).

\* \* \*

### TEST OF CERTIFICATION

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

*Entergy Gulf States, Inc.* (Electrical Workers [IBEW] Local 2286) (16-CA-20150; 330 NLRB No. 196) Beaumont TX April 28, 2000.