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.

Weekly Summary of NLRB Cases

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June 2, 2000 W-2741

CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

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Covenant Homecare (10-CA-31593; 331 NLRB No. 21) Knoxville, TN May 23, 2000. The Board adopted the administrative law judge's dismissal of complaint allegations that the Respondent violated Section 8(a)(1) by discharging 6 social workers for concerted activity. The judge found, and the Board agreed, that the General Counsel did not prove the fourth *Wright Line*

requirement, i.e. that there was a connection between the protected activity and the adverse employment action. In short, the judge determined that there was no evidence to establish that the Respondent discharged the employees because they attended a meeting at which they complained to each other about a new supervisor. Rather, the Respondent discharged the employees because they falsified their time sheets used to record a meeting at which they engaged in concerted activity, the judge said. Moreover, evidence showed that the Respondent consistently discharged employees for falsifying time sheets and had legitimate reasons for doing so to avoid any possible federal health care fraud investigation. [HTML] [PDF]

(Members Liebman, Hurtgen, and Brame participated.)

Charges filed by Teresa Rector, an Individual; complaint alleged violations of Section 8(a)(1). Hearing at Knoxville, TN, Nov. 18, 1999. Decision issued by Adm. Law Judge Keltner W. Locke, Jan. 14, 2000.

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Noah's Bay Area Bagels (32-CA-16086, 16244; 331 NLRB No. 17) Berkeley, CA May 22, 2000. The Board panel adopted the administrative law judge's dismissal of allegations that Store Manager Love unlawfully warned employee Smith about Smith's distribution of union literature, finding that Smith was distributing the material in a work area, inside the store, and thus, Respondent could properly prohibit such conduct. Members Fox and Liebman, with Member Brame dissenting, affirmed the judge's finding that CEO Mizes' comments to employees during a captive audience speech constituted an unlawful threat that employees would be deprived of existing benefits if they selected the Union to represent them, and found that the Respondent violated Section 8(a)(3) and (1) by failing to restore medical benefits to employees at all of its stores including the Telegraph Avenue store prior to the election at that site. [HTML] [PDF]

(Members Fox, Liebman, and Brame participated.)

Charges filed by Food and Commercial Workers Local 870; complaint alleged violations of Section 8(a)(1) and (3). Hearing at Oakland, CA, Oct. 7-8, 1997. Decision issue by Adm. Law Judge Joan Wieder, Jan. 22, 1998.

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American Showa, Inc. (8-CA-31106; 331 NLRB No. 25) Sundbury, OH May 22, 2000. The Board upheld the administrative law judge's decision, as modified, and found that the Respondent violated Section 8(a)(1) of the Act by coercively interrogating employee Christopher Hankins and informing him that he was discharged because of his union activity and by suspending and thereafter terminating Hankins in violation of Section 8(a)(3) and (1). The Board modified the judge's conclusions of law, recommended Order, and notice to employees to conform to the violations found by him. No exceptions were filed to the judge's recommended dismissal of the allegation that the Respondent unlawfully created the impression that employees' union and protected activities were under surveillance. [HTML] [PDF]

(Chairman Truesdale and Members Liebman and Brame participated.)

Charge filed by Teamsters Local 413; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Delaware, OH, Jan. 27-28, 2000. Adm. Law Judge Bruce D. Rosenstein issued his decision March 17, 2000.

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Wexler Meat Co. (13-CA-37659; 331 NLRB No. 26) Chicago, IL May 24, 2000. Agreeing with the administrative law judge, the Board held that the Respondent violated Section 8(a)(1) of the Act by promulgating, maintaining, and threatening to enforce an overly broad solicitation and distribution rule; but that it did not violate Section 8(a)(4), (3), and (1) by threatening to and issuing a written warning to Francisco Jimenez because he engaged in union and protected concerted activity, filed a UD petition with the Board, and acted as an election observer. This case arose after the Respondent and the incumbent union (Food and Commercial Workers Local 546) negotiated a 3-year contract, ratified by the membership, which resulted in less favorable terms for the Respondent's 35 butchers, including Jimenez, who was the union steward. In protest, Jimenez lead a petition drive against the incumbent union and was successful in obtaining a vote to withdraw union-shop authority. He also

initiated a 1-day walkout. The judge found that following the walkout, the butchers displayed "an apparent lack of effort to do the more time consuming thorough cleaning of the maximum amount of meat off of bones (which affected their ability to get more piecework pay)." He concluded that the Respondent demonstrated that it had legitimate and nondisparate reasons for warning Jimenez about his substandard cleaning of bones and admonishing him to do a better job even in the absence of his union and protected activities. [HTML] [PDF]

(Chairman Truesdale and Members Hurtgen and Brame participated.)

Charge filed by Francisco A. Jimenez, an Individual; complaint alleged violation of Section 8(a)(1), (3), and (4). Hearing at Chicago, Dec. 6-7, 1999. Adm. Law Judge Richard H. Beddow, Jr. issued his decision Feb. 14, 2000.

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Carpenters Local 1307 (J & P Building Maintenance) (13-CD-555; 337 NLRB No. 27) Chicago, IL May 24, 2000. The Board quashed the notice of hearing filed under Section 10(k) of the Act because the case does not involve the assignment of work to one group of employees rather than another within the meaning of Section 8(b)(4)(D), but instead involves the question of which union will represent the employees of J & P Building Maintenance who are currently performing the shingling work at the Dearborn Village Townhomes jobsite in Chicago, Illinois. The Board noted that none of the parties objected to the performance of the shingling work by the Employer's current employees; that the Employer would like to retain its current employees, but prefers that Roofers, Waterproofers and Allied Workers Local 11 represent them; and that Local 11 and Carpenters Local 1307 dispute only which union should represent the employees. [HTML] [PDF]

(Members Fox, Liebman, and Brame participated.)

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Bridgestone/Firestone, Inc. (7-CA-39847; 331 NLRB No. 24) Detroit, MI May 22, 2000. On a stipulated record, Members Hurtgen and Brame dismissed the complaint alleging that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with and withdrawing recognition from Teamsters Local 283. In so doing, the majority disagreed with Member Fox and the General Counsel that the effect of the Union's March 20, 1997 notice to the Respondent that it wished to continue the collective-bargaining agreement, with some modifications, was to automatically renew the agreement, and to prevent the Respondent-under contract-bar principles-from raising a subsequent claim of good-faith doubt of union majority support. [HTML] [PDF]

The parties' most recent collective-bargaining agreement was effective by its terms from June 6, 1994 to June 5, 1997. Article XXI, Section 1 specifies that the agreement will remain in effect (i.e., "roll over") in the absence of a timely "written notice of desire to cancel or terminate the Agreement." Section 2 details the procedures to be followed where a party does not wish to terminate the Agreement but "desires to negotiate changes or revisions." As an initial matter, the majority agreed with the parties that had their 1994-1997 collective-bargaining agreement automatically renewed in its entirety prior to the Respondent's April 29, 1997 notice to the Union of its good-faith doubt of union majority support, that claim would have been foreclosed under the contract-bar principle for the duration of the contract extension. Determining, however, that renewal did not occur, the majority found "relevant" both the applicable contract provisions (article XXI, sections 1 and 2 of the 1994-1997 agreement) and the parties' March 1997 conduct concerning the proposed changes. It concluded that the Union's request to negotiate changes in the 1994-1997 contract had the effect of terminating the agreement, at least as to the provisions for which bargaining was sought. In the absence of an express contractual provision that the contract [or portions thereof] will not terminate if reopened, the "effect of the Union's invocation of the contractual 'changes or revisions' procedure in article XXI was to forestall automatic renewal of the contract provisions for which bargaining was sought," the majority held, adding: "And, because the issues on which the Union sought bargaining ('wage [sic], hours, conditions and fringe benefits') were tantamount to all mandatory subjects of bargaining, we find that, even assuming that the 1994-1997 agreement renewed as to its unopened contract provisions, the residual agreement would have been insufficient under Appalachian Shale principles to constitute a contract bar." *Appalachian Shale Products,* 121 NLRB 1160 (1958). Having found that the 1994-1997 contract did not automatically renew as a result of the Union's March 20 notice to the Respondent, the majority held that the Respondent thereafter lawfully refused to bargain for a successor contract and withdrew recognition from the Union at the contract's

expiration based on a good-faith doubt of the Union's majority status.

In her dissent, Member Fox wrote: "As neither party gave notice to terminate the agreement under section l, and as the Union's section 2 notice did not terminate the agreement, or any provision of the agreement, I would find that the agreement remained in effect, and as a result the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union and unlawfully withdrawing recognition." She concluded that "by the express terms of section 2, the Union's notice permitted the parties to resort to all lawful economic recourse during negotiations, but also indicated the Union's intent to continue the agreement in effect unless and until modifications were agreed on. In the absence of either agreement by the parties on modifications or the sending of a section 1 termination notice on or before April 6, 1997, the agreement was in effect before the contract expiration date by virtue of the automatic renewal provision of section 1."

(Members Fox, Hurtgen, and Brame participated.)

Charge filed by Teamsters Local 283; complaint alleged violation of Section 8(a)(1) and (5). Parties waived their right to a hearing before an administrative law judge.

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U.S. Ecology Corp. (10-CA-30847, 31149; 331 NLRB No. 23) Oak Ridge, TN May 23, 2000. The Board majority of Members Fox and Liebman, with Member Hurtgen dissenting in part, affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(1) by unlawfully surveilling, and creating the impression of surveilling, employees' strike activities; and violated Section 8(a)(5) and (1) by surface bargaining, implementing the terms of its final offer, and making unilateral changes by posting vacancies for "as needed" positions without notice to or consultation with the Union. However, the Board reversed the judge's conclusion that the Respondent engaged in unlawful direct dealing with unit employees. [HTML] [PDF]

Although he acknowledged "that there is some common ground between my colleagues and me on the issue of bad-faith bargaining," Member Hurtgen did not agree that the Respondent bargained in bad faith because he found his colleagues' reliance on certain attenuated testimony insufficient to base such a conclusion. Thus, he disagreed with the majority's findings that no valid impasse existed and that the Respondent further violated Section 8(a)(5) by implementing its final offer, since these conclusions are premised on the finding that the Respondent did not bargain in good faith. Moreover, Member Hurtgen endorsed the Respondent's argument, rejected by the majority, that the issue of posting the "as needed" positions is appropriate for deferral to arbitration under *Collyer Insulated Wire,* 192 NLRB 837 (1971).

(Members Fox, Liebman, and Hurtgen participated.)

Charges filed by Oil, Chemical & Atomic Workers International; complaint alleged violations of Section 8(a)(1) and (5). Hearing at Oak Ridge, TN, Jan. 21-22, 1999. Decision issued by Adm. Law Judge Howard I. Grossman, May 13, 1999.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Champion Home Builders Co. (Carpenters Local 1109) Lindsay, CA May 16, 2000. 32-CA-17185; JD(SF)-22-00, Judge Jay R. Pollack.

Overnite Transportation Company (Teamsters Local 150) West Sacramento, CA May 16, 2000. 20-CA-29183; JD(SF)-27-00, Judge Frederick C. Herzog.

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TEST OF CERTIFICATION

(In the following cases the Board granted the General Counsel's motion for summary judgment on the ground that the respondent has not raised any representation issues that are litigable in the unfair labor practice proceedings.)

PHC-ELKO, Inc., d/b/a Elko General Hospital (Operating Engineers Local 3 [IUOE]) (32-CA-18036-1; 331 NLRB No. 31) Elko, NV May 23, 2000 (Summary judgment granted also with regard to Respondent's refusal to furnish information requested by Union.)

Nathan Katz Realty LLC (Service Employees Local 32B-32J) (29-CA-23280; 331 NLRB No. 22) Elmhurst, NY May 23, 2000.

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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 file an answer to the compliance specification.)

Diversified Bank Installations, Inc. and its Alter Ego Atm Works, Inc. (Iron Workers Local 512) (18-CA-13928; 331 NLRB No. 29) Lake Elmo, MN May 23, 2000.