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 9, 2000 W-2742

CASES SUMMARIZED

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Carpenters Local 13 (First Chicago NBD Corp.) (13-CD-544; 331 NLRB No. 37) Chicago, IL May 30, 2000. The charge in this Section 10(k) proceeding filed by the Employer, First Chicago, alleges that the Respondent, Carpenters Local 13, violated Section 8(b)(4)(D) of the Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than those represented by Teamsters Local 705. After considering all relevant factors outlined in *Columbia Broadcasting*, 364 U.S. 573 (1961), the Board concluded that employees represented by Teamsters Local 705 are entitled to perform the disputed work. This determination is based on the collective-bargaining agreement, employer preference and practice, relative skills and training, and economy and efficiency of operations. [HTML] [PDF]

(Members Fox, Hurtgen, and Brame participated.)

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127 Restaurant Corp. d/b/a Le Madri Restaurant (2-CA-30176, 30729; 331 NLRB No. 32) New York, NY May 26, 2000. The Board affirmed the administrative law judge's findings that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging waiter Luis Jerez because of his union and protected concerted activities in voicing employee complaints, including the allegedly improper deduction of money from tips, and because he was a named plaintiff in a Federal lawsuit brought against Respondent for violations of Federal and state labor law with respect to employee pay and tips. In affirming the judge's findings that the Respondent unlawfully discharged, refused to grant time off to, and reduced the work shifts of waiter Walter Magnuson (a named plaintiff in the lawsuit), the Board relied solely on Section 8(a)(1), and not Section 8(a)(3). The Respondent's asserted reasons for its actions, all rejected by the judge, included customer complaints about both waiters, Magnuson's refusal to work on Mother's Day in 1997, and his cursing the chef. The judge found, with Board approval, that the Respondent violated Section 8(a)(1) by warning its employees that it would be futile for them to engage in union activity. He found that at an employee meeting called a couple days after the Federal lawsuit was filed, Respondent's owner Luongo, in response to Jerez' remark that unionization of the Respondent would have prevented the alleged misallocation of tips and poor working conditions, told the assembled employees that "over my dead body" would the Respondent become a "union house" and that he would close the restaurant before he would let that happen. [HTML] [PDF]

(Members Fox, Liebman, and Brame participated.)

Charges filed by Luis Jerez and Walter Magnuson, Individuals; complaint alleged violation of Section 8(a)(1) and (3). Hearing at New York, Feb. 3, March 5, and April 16, 1999. Adm. Law Judge Steven Davis issued his decision June 23, 1999.

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Controlled Energy Systems (28-CA-13984; 331 NLRB No. 33) Phoenix, AZ May 25, 2000. The administrative law judge found, and the Board agreed, that the Respondent violated Section 8(a)(5), (3), and (1) of the Act by failing to make timely payments into various Union trust funds, failing to remit Union dues deducted from employees' paychecks, withdrawing recognition from Electrical Workers IBEW Local 640, laying off employees Jerry Howe, Jeffrey Rasmussen, and Samuel Gladden because of their support for the Union, unilaterally reducing the pay rate of employee Vidal Sianez Jr., interrogating employees about their sentiments toward the Union, and threatening the jobs of Union supporters. In a reversal of the judge, the Board found that the Respondent terminated five employees because of their participation in an unfair labor practice strike in violation of Section 8(a)(3) and (1). The Board found that the record fully supported the complaint allegation that the Respondent unlawfully "caused the termination" of the five strikers and that the Respondent has not been denied procedural due process by the General Counsel's mischaracterization of the complaint allegations as a "constructive discharge." [HTML] [PDF]

(Members Fox, Liebman, and Hurtgen participated.)

Charge filed by Electrical Workers IBEW Local 640; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Phoenix, June 10-11, 1997. Adm. Law Judge Michael D. Stevenson issued his decision Jan. 23, 1998.

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Transit Management of Southeast Louisiana, Inc. (15-CA-14577; 331 NLRB No. 30) New Orleans, LA May 25, 2000. The Board affirmed the administrative law judge's finding that the Respondent lawfully discharged bus operator Dian Silva for her abusive language directed at both supervisory and other employees in violation of the company's Disciplinary Guide, Rule #3 that prohibits cursing other employees and provides that it can be grounds for termination. The complaint, alleging that the Respondent violated Section 8(a)(1) of the Act by discharging Silva on November 30, 1997 because she made safety complaints at various times including at the Respondent's Board of Commissioners' meetings held on September 30 and October 28, 1997, was dismissed. In her exceptions, Silva contended essentially that the General Counsel failed to introduce evidence establishing that the Respondent's buses were operationally unsafe for driving. She submitted what she claims to be U.S. Department of Transportation documents regarding the Respondent's operation and the safety of its vehicles. The Board ruled that the documents were not properly before it because they were not made part of the record during the hearing. It explained: "Even if

we were to construe the Charging Party's exceptions as a motion to reopen the record, we would deny the motion on the ground that the Charging Party has failed to show that the documents in question are newly discovered and previously unavailable and that they would require a different result. See *Novel Knit Inc.*, 299 NLRB 58 fn. 2 (1990); Sec. 102.48(d)(1) of the Board's Rules and Regulations." [HTML] [PDF]

(Members Liebman, Hurtgen, and Brame participated.)

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Charge filed by Dian Silva, an Individual; complaint alleged violation of Section 8(a)(1). Hearing at New Orleans on June 8, 1999. Adm. Law Judge Bruce D. Rosenstein issued his decision Oct. 22, 1999.

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Laborers Local 294 (Associated General Contractors of California) (32-CB-4457, et al.; 331 NLRB No. 28) Fresno, CA May 26, 2000. The Board disagreed with the administrative law judge's conclusion that the Board should not defer to two arbitration decisions because she found that the Spielberg "fairness" criterion had not been met. Contrary to the judge, the Board, citing the Spielberg/Olin factors, ruled that deferral to the arbitrator's awards was appropriate, finding the proceedings (1) were fair and regular; (2) that all parties agreed to be bound; (3) the arbitral decision was not "clearly repugnant to the Act"; (4) the contractual issue before the arbitrator was factually parallel to the unfair labor practice issue; and (5) the arbitrator was presented generally with the facts relevant to resolve any unfair labor practice. The Board found also that the fairness factor was not violated even though Charging Party Williams was not a party to the arbitration proceeding. The judge found, inter alia, that the Respondent Union did not adhere to its contractual hiring hall provision that persons shall be referred to jobs in the order in which they are registered on the out-of-work list. Thus, the judge concluded that other employees should have been dispatched to the Valley Fence and Fresno Paving jobs and that by bypassing them, the Respondent violated Section 8(b)(1)(A) and (2) of the Act. [HTML] [PDF]

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charges filed by Donnell Williams, an Individual; complaint alleged violations of Section 8(b)(1)(A) and (2). Hearing at Fresno, CA, July 9, 1996. Decision issued by Adm. Law Judge Mary Miller Cracraft, Sept. 10, 1996.

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First FM Joint Ventures, LLC d/b/a Hampton Inn & Suites - Chicago River North (13-RC-20292; 331 NLRB No. 35) Chicago, IL May 23, 2000. In a 3 to 2 decision, Chairman Truesdale and Members Fox and Liebman, with Members Hurtgen and Brame dissenting, let stand the Regional Director's decision to deny the Employer's request to withdraw a Stipulated Election Agreement in the instant case because a newly filed petition in Case 13-RC-20300 seeks an election in a unit of employees alleged by the Employer to share a community of interest among those already included in the stipulated agreement. The majority found that the Union's filing of a second petition for a unit of housekeeping, laundry and hostess attendants on the same day shortly after the Stipulated Election Agreement for a unit of door attendants and bell persons was approved, did not present "unusual circumstances" contemplated by the Board for withdrawal from a Stipulated Election Agreement. In so doing, the majority, citing Highlands Regional Medical Center, 327 NLRB No. 188 (1999), noted the Board's practice of honoring concessions made in the interest of expeditious handling of representation cases, even if the Board may have reached a different result upon litigation. The majority stated that there is no legal precedent requiring a labor organization to identify organizing plans or forfeit a stipulated election agreement, and that Employer's counsel knew or should have known that stipulating to the appropriateness of a unit opened the possibility that the Union could organize and seek to represent its other employees. [HTML] [PDF]

Members Hurtgen and Brame would permit withdrawal of the stipulation or, at least, hold a hearing on certain matters. In their view, the instant case presents "unusual circumstances" because (1) the petitions were [filed] within hours of each other; (2) the Union knew of the imminent petition and the Employer did not; and (3) these matters were material.

(Full Board participated.)

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

New CF & I, Inc. and Oregon Steel Mills, Inc. d/b/a CF & I Steel, L.P. (Steelworkers) Pueblo, CO May 17, 2000. 27-CA-15562, 15750 et al.; JD(SF)-25-00, Judge Albert A. Metz.

Shamrock Foods Company (Teamsters Local 104) Phoenix, AZ May 23, 2000. 28-CA-15477-2; JD(SF)-26-00, Judge William L. Schmidt.

Flat Dog Productions, Inc. (Stage Employees IATSE) Los Angeles, CA May 23, 2000. 31-CA-24062; JD(SF)-28-00, Judge Jay R. Pollack.

Teamsters Local 890 (Basic Vegetable Products, L.P.) King City, CA May 24, 2000. 32-CB-5120-1; JD(SF)-29-00, Judge Mary Miller Cracraft.

Lasher Service Corporation (Machinists Lodge 2182, District Lodge 190) Sacramento, CA May 30, 2000. 20-CA-29138; JD (SF)-30-00, Judge Joan Wieder.

Yale University (Hotel & Restaurant Employees Local 34) New Haven, CT June 1, 2000. 34-CA-8617; JD(NY)-41-00, Judge Raymond P. Green.

Dalton Roofing Service, Inc. (Roofers Local 70) Lansing, MI May 25, 2000. 7-CA-42317; JD-60-00, Judge Richard H. Beddow, Jr.

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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 issues that are litigable in this unfair labor practice proceeding. The case did not present any other issues.)

Shamy Heating & Air Conditioning, Inc. (Sheet Metal Workers Local 33 of Northern Ohio) (8-CA-31152; 331 NLRB No. 34) Toledo, OH May 30, 2000.