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 16, 2000 W-2743

CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

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Adtranz, ABB Daimler-Benz Transportation (32-CA-17172, 32-RM-759, and 32-RC-4540; 331 NLRB No. 40) Pittsburg, CA May 31, 2000. The Board agreed with the administrative law judge that the Respondent, by maintaining overly broad rules restricting solicitation, distribution, and abusive language, violated Section 8(a)(1) of the Act and interfered with an election held on December 9, 1998 in Cases 32-RM-759 and 32-RC-4540 that the Machinists International lost 135 to 79. A second election was directed. The Board modified the judge's recommended Order and required that the Respondent amend its employee handbook by rescinding the unlawful overly broad rules and post an attached Notice to Employees at all its facilities where the rules have been maintained. The Board, citing Raley's, Inc., 311 NLRB 1244 (1993), found the latter remedy is

appropriate, noting that the Respondent has not excepted to the judge's finding that its handbook setting forth the unlawful rules covers all its facilities nationwide. Member Brame would find that the Respondent's rule against abusive language does not violate Section 8(a)(1). See his dissenting position in Flamingo Hilton-Laughlin, 330 NLRB No. 34, slip op. at 2, fn. 3 (1999). [HTML] [PDF]

No exceptions were filed to the judge's dismissal of the complaint allegation that the Respondent maintained an unlawful rule regarding employee use of electronic mail (e-mail). The judge noted that the Respondent permitted e-mails of a personal nature, notwithstanding its rule, but he found no evidence that the Respondent prohibited union discussions on its e-mail system. "The rule was not strictly enforced as to personal discussions and, I find, it would be improper to presume that union discussions would be treated differently," the judge said in finding that the Respondent's e-mail rule is valid and that the General Counsel failed to establish that the rule was discriminatorily applied.

(Chairman Truesdale and Members Liebman and Brame participated.)

Charge filed by Machinists International; complaint alleged violation of Section 8(a)(1). Hearing at Oakland, July 19-20, 1999. Adm. Law Judge Jay R. Pollack issued his decision Jan. 31, 2000.

* * *

The Grand Rapid Press, a Div. of Booth Newspapers, et al. (7-CA-41951; 331 NLRB No. 43) Grand Rapids, MI May 31, 2000. In affirming the administrative law judge's conclusions that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish Detroit Newspaper Local 13N, Graphic Communications with the complete personnel files of the 22 bargaining unit employees and any future memoranda intended for personnel files regarding any bargaining unit member's work performance or alleged misconduct, the Board noted that the memoranda at issue, which Baker, the Respondent's operations director, entered and retained on his computer, were intended to be part of unit employees' personnel files. [HTML] [PDF]

(Members Fox, Liebman, and Brame participated.)

Charge filed by Detroit Newspaper Local 13N, Graphic Communications; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Grand Rapids on Oct. 20, 1999. Adm. Law Judge Eric M. Fine issued his decision March 14, 2000.

* * *

Northwest Community Hospital (13-RC-20142; 331 NLRB No. 45) Arlington Heights, IL May 31, 2000. The Board certified that a majority of the valid ballots cast in a June 25, 1999 election were not cast for Operating Engineers Local 399 and that the Union is not the exclusive representative of the Employer's regular full-time and regular part-time employees. The tally of ballots shows 12 for and 12 against the Union, with 2 challenged ballots (those cast by on-call employees Donald Jarnow and John Colles). Disagreeing with the hearing officer, the Board sustained the challenges to the 2 ballots, concluding that the parties intended and stipulated to exclude hourly on-call employees from the bargaining unit. The Board wrote: [HTML] [PDF]

> In light of evidence of the distinct nature of part-time employment versus hourly on-call employment, where the Petitioner had specific knowledge of this distinction, some significance must be attributed to the Petitioner's agreement to the stipulation to include only "regular full-time and regular part-time employees." In this regard, we note particularly that the Petitioner originally expressly included "on-call . . . employees," but abandoned this unit description in the agreed-upon stipulated unit. Although the stipulation did not exclude "all other employees," we find that the parties intended to include only full-time and part-time employees and to exclude hourly on-call employees from the bargaining unit. The stipulated agreement clearly and unambiguously reflects the intent of the parties. The parties' stipulation does not contravene any provision of the Act or any Board policy. Thus, we shall enforce it and need not consider extrinsic evidence or community-of-interest arguments.

The Board noted that *National Public Radio, Inc.,* 328 NLRB No. 14 (1999), is "particularly apposite," where, as here, the

parties' stipulation includes only regular full-time and regular part-time employees. "The Petitioner's knowledge of the Employer's well-established distinction between part-time and hourly on-call employees vitiates any significance potentially attributable to the omission, from the instant stipulation, of language explicitly excluding all other employees, and underscores the unambiguous nature of the stipulation at issue," the Board wrote.

Member Hurtgen said that he does not necessarily agree that the stipulation, on its face, clearly and unambiguously excludes on-call employees, noting that it does not mention these employees, one way or the other, and it does not exclude "all other employees." He noted also that the original petition expressly included on-call employees, and that the group was later omitted from the stipulation. "Thus, the stipulation, considered in this light, clearly reflects an intention to exclude on-call employees," Member Hurtgen reasoned.

(Chairman Truesdale and Members Hurtgen and Brame participated.)

* * *

Silver Lake Care Center (17-CA-19008; 331 NLRB No. 39) Bartlesville, OK May 31, 2000. Adopting the conclusions of the administrative law judge, the Board held that the Respondent violated Section 8(a)(3) of the Act when it discharged employee Cooper, finding that the "real reason for the timing" of his discharge was not Cooper's alleged insubordination to Nursing Home Administrator Holden, but the Respondent's subsequent discovery of Cooper's and employee Becker's efforts to initiate a union organizing campaign, and violated Section 8(a)(1) when Nursing Director Staton interrogated Becker about her union activities and when Staton threatened Becker with discharge if she were to engage in union organizing activity. [HTML] [PDF]

(Members Fox, Liebman, and Brame participated.)

Charge filed by Teamsters Local 523; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Tulsa, OK, Oct. 29, 1997. Decision issued by Adm. Law Judge James M. Kennedy, June 3, 1998.

* * *

H.Y. Floors & Gameline Painting, Inc. (20-RD-2241; 331 NLRB No. 44) Redwood City, CA May 31, 2000. Chairman Truesdale and Members Hurtgen and Brame found, contrary to the Regional Director, that the Employer and the Union (Carpenters 46 Northern California Counties Conference Board) have a collective-bargaining agreement that constitutes a contract under Section 9(a). However, the 9(a) contract does not bar the decertification petition filed in this proceeding because Moreno, the individual petitioner, is not a party to the 9(a) contract. In so finding, the majority disagreed with the Regional Director's conclusion that the Employer's and the Union's Memorandum of Agreement, signed on September 3, 1996, was an 8(f), not a 9(a), agreement and that's why it did not bar Moreno's decertification petition filed on Oct. 22, 1996. To establish voluntary recognition pursuant to 9(a) in the construction industry, the majority stated that the Board requires evidence that the union unequivocally demanded recognition as the employees' 9(a) representative, and that the employer unequivocally accepted it as such, comparing *Golden West Electric,* 307 NLRB 1494 (1992), with *J&R Tile,* 291 NLRB 1034 (1988). The majority disagreed with the Regional Director, who, citing *J&R Tile,* found that the Union never discussed with the Employer the subject of union support at the time the Employer executed the Agreement; the Union did not produce evidence at the hearing that it had, at any time, presented the Employer with authorization cards from a majority of unit employees; and the language of the Agreement itself was insufficient to overcome these inadequacies. With regard to the requirement that the union make a contemporaneous showing of majority union support at the time 9(a) recognition is granted by the employer, the majority noted that the Board has held that an employer's acknowledgment of such support is sufficient to preclude the employer from challenging majority status, citing *Oklahoma Installation Co.,* 325 NLRB 741 (1998). Here, the majority concluded that the elements of a 9(a) contract are met by the language of the Agreement, which "evinces" the Union's unequivocal demand and the Employer's unequivocal acceptance of a 9(a) relationship, and that the Employer was satisfied that the Union has majority support. Thus, the Employer and the Union had a relationship under 9(a), not 8(f), and had the Employer filed the decertification petition here, the Agreement would have barred the petition. The Employer did not file the petition, however, and the Petitioner here is not estopped from timely challenging the 9(a) Agreement. [HTML] [PDF]

The majority disagreed with the minority's position that it is improper to attack a union's majority status in a representation

proceeding, and that the only avenue available to do so is through a Section 8(a)(2) unfair labor practice charge. Members Fox and Liebman would overrule *Casale Industries,* 311 NLRB 951 (1993), to the extent that it "can be read to hold that notwithstanding *Texas Meat Packers* [130 NLRB 279 (1961)] and its progeny, a construction union's alleged lack of majority status at the time of recognition can be litigated in a representation proceeding...." The majority found no inconsistency between *Casale* and *Texas Meat Packers* because the "gravamen" of the decertification petitioner's contention is not that an unfair labor practice was committed when the Employer initially recognized the Union. "Rather, our inquiry into whether the Union had majority status here is to determine if an election can presently be conducted to ascertain current employee support. We believe that this inquiry, which is akin to the procedural question of standing, is properly before us now," they stated. Consequently, the majority remanded the case to the Regional Director to open the hearing and adduce evidence of the Union's majority status on September 3, and its effect, if any, on the bar quality of the September 3 Memorandum Agreement.

(Full Board participated.)

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Commercial Erectors, Inc. (Iron Workers Local 48) Duncan, OK June 6, 2000. 17-CA-20046; JD(ATL)-31-00, Judge Richard J. Linton.

Dutchess Overhead Doors, Inc. (Carpenters Upstate New York Regional Counsel) Poughkeepsie, NY June 6, 2000. 3-CA-21892; JD(NY)-42-00, Judge Joel P. Biblowitz.

Trus Joist Macmillan (Mineworkers and an Individual) Buckhannon, WV June 6, 2000. 6-CA-29855, et al.; JD-64-00, Judge Arthur J. Amchan.

United Government Security Officers Local 59 (an Individual) St. Louis, MO June 7, 2000. 14-CB-9147; JD-63-00, Judge Richard H. Beddow, Jr.

* * *

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.)

Leisure Chateau Care Center (Communications Workers) (4-CA-29093; 331 NLRB No. 36) Lakewood, NJ May 31, 2000.