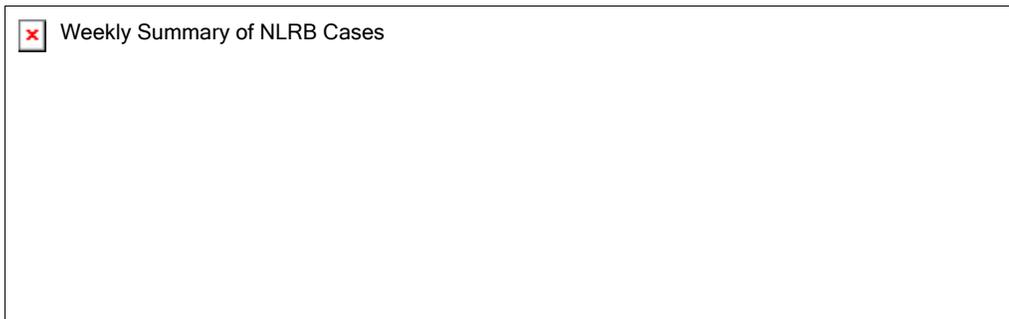


## ABOUT THE WEEKLY SUMMARY

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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July 7, 2000

W-2746

**CASES SUMMARIZED**

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[Auto Workers Delphi/Delco East Local 651](#), Flint, MI  
[Hadco Aluminum & Metal Corp.](#), Jamaica, NY  
[Martech Medical Products, Inc. d/b/a Martech \(MDI\)](#), Harleysville, PA  
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Press Release:

[\(R-2393\) Kathleen McKinney Named NLRB Regional Attorney in New Orleans, LA](#)

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*Medic One, Inc.* (9-CA-36620-1, 9-RC-17204; 331 NLRB No. 56) Cincinnati, OH June 26, 2000. Affirming the administrative law judge's recommendation to set aside the election held in Case 9-RC-17204 on March 12, 1999, the Board noted that even absent Supervisor Neff's statement that he would "kick [employees'] asses" if they voted for the Union, the remaining 8(a)(1)

violations would warrant setting aside the election. The Respondent threatened employees with loss of wages and benefits if they selected the Union and informed them that regularly scheduled wage increases would be postponed until after the union campaign and election and that they would be required to pay for damages to its vehicles arising out of accidents. In the absence of exceptions, the Board adopted pro forma the judge's recommendation to overrule the Excelsior list objections. No exceptions were filed to the judge's dismissal of the 8(a)(3) allegations involving the suspension of an employee and his dismissal of the 8(a)(1) allegations involving Supervisor Neff's interrogation of employees. The Board remanded Case 9-RC-17204 to the Regional Director to conduct a new election. [\[HTML\]](#) [\[PDF\]](#)

(Members Fox, Liebman, and Hurtgen participated.)

Charge filed by EMTs and Paramedics, NAGE-SEIU; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Cincinnati, May 17-18, 1999. Adm. Law Judge Earl E. Shamwell Jr. issued his decision Oct. 26, 1999.

\* \* \*

*Auto Workers Delphi/Delco East Local 651 (General Motors Corp.)* (7-CB-10955, 10964; 331 NLRB No. 59) Flint MI June 26, 2000. The Board, finding that the General Counsel failed to establish that the Respondent failed to file a grievance in bad faith or for discriminatory reasons in breach of its duty of fair representation, reversed the administrative law judge and dismissed the complaint allegation that the Respondent violated Section 8(b)(1)(A) of the Act by failing to file a grievance on behalf of Corretha Montague concerning the Employer's alleged harassment for her dissident union activity. The Board agreed with judge that the Respondent violated Section 8(b)(1)(A) by threatening members with a lawsuit for engaging in activities protected by Section 7 of the Act. [\[HTML\]](#) [\[PDF\]](#)

(Members Fox, Liebman, and Hurtgen participated.)

Charges filed by Corretha Montague and Troy Alexander Jr., individuals; complaint alleged violation of Section 8(b)(1)(A). Hearing at Flint on Dec. 18, 1996. Adm. Law Judge Wallace H. Nations issued his decision March 24, 1997.

\* \* \*

*The Mead Corporation, Fine Paper Division* (9-CA-32901, 33447; 331 NLRB No. 66) Chillicothe, OH June 28, 2000. The Board upheld the administrative law judge's findings that the Respondent violated the Act by maintaining rules that prohibit employees from soliciting for purposes protected by Section 7 of the Act during nonworking time or from distributing literature protected by Section 7 during nonworking time in nonworking areas of its Chillicothe Mill; and by refusing to provide certain information to Paperworkers Local 731. The Board affirmed the judge's dismissal of allegations that the Respondent unlawfully threatened chief union steward Butch Bost with discipline for advising an employee to disobey two management directives and unlawfully disciplined Bost for his behavior during a meeting held on November 29, 1995 by Superintendent Wittkugle with three unit employees and their immediate supervisor Johnson. Bost attended the meeting at Wittkugle's invitation to the Union to provide a representative. [\[HTML\]](#) [\[PDF\]](#)

Like the judge, the Board did not pass on whether the November 29 meeting was within the ambit of *NLRB v. Weingarten*, 410 U.S. 251 (1975), i.e., whether it was an investigatory interview in which employees would reasonably expect that discipline might result. The judge found, and the Board agreed, that even assuming *arguendo* that it was, Bost's conduct was unprotected by the Act. The judge concluded that Wittkugle began the meeting by discussing the deficiencies of the three employees (Atwood, Buskirk, and Francis). Buskirk smiled. Wittkugle took a step toward Buskirk while heatedly saying "what are you laughing at? This isn't a laughing matter." Bost jumped in and told Wittkugle that "an employee has the right to snicker," and that "if anyone had a personality problem, an attitude problem," it was Wittkugle. Bost continued by calling Wittkugle "the dumbest supervisor I've ever worked for in my life." Wittkugle told Bost that he was disrupting the meeting and to leave the shop. Bost refused. Wittkugle again ordered Bost to leave, saying that he would have another union representative join the meeting. Bost refused to leave. Wittkugle then gave Bost "a direct order" to leave. Bost refused.

(Chairman Truesdale and Members Hurtgen and Brame participated.)

Charges filed by Paperworkers Local 731; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Cincinnati on Dec. 5, 1995. Adm. Law Judge Steven J. Gross issued his decision Aug. 8, 1996.

\* \* \*

*Hadco Aluminum & Metal Corp.* (29-CA-22072; 331 NLRB No. 69) Jamaica, NY June 28, 2000. No exceptions were filed to the administrative law judge's findings that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Ronald Wright and Steven Jordan because of their activities for Teamsters Local 707. The Board agreed with the judge's recommendation that backpay for Wright should be tolled as of the date of his threat to employee Persuad. Members Hurtgen and Brame declined to adopt, however, the judge's admittedly arbitrary conclusion that the threat was made on July 6, 1998 and modified paragraph 2(b) of his recommended Order to leave to compliance proceedings determination of the date on which the threat was made. Chairman Truesdale would adopt the judge regarding this issue, noting that no party has excepted to the July 6, 1998 date and that referring the matter to compliance proceedings would unnecessarily prolong the litigation.

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(Chairman Truesdale and Members Hurtgen and Brame participated.)

Charge filed by Teamsters Local 707; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Brooklyn, Oct. 7-8, 1998. Adm. Law Judge Raymond P. Green issued his decision Dec. 11, 1998.

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*Martech Medical Products, Inc. d/b/a Martech MDI* (4-CA-27466; 331 NLRB No. 57) Harleysville, PA June 28, 2000. The Board affirmed the administrative law judge's findings that the Respondent violated Section 8(a)(1) of the Act by telling employees that they had better stop thinking about Teamsters Local 384, threatening them with plant closure and job loss, coercively interrogating employees, creating the impression of surveillance of employees' union activities, and discriminatorily prohibiting "chit chat" about the Union. Members Fox and Liebman found, contrary to their dissenting colleague, that Supervisor Kennedy's statement that she had "heard that there was a list circulating with 80 names," to employees Julia Croissett and Dottie O'Connell, the latter of whom the Respondent knew to be a major union supporter, clearly met the Board's test set forth in *United Charter Service*, 306 NLRB 150 (1992), for determining whether an employer has created an impression of surveillance. Member Brame would dismiss the 8(a)(1) allegations involving the creation of an impression of surveillance of employees' union activities, finding that Kennedy's statement about "a list" indicates that she was commenting on a rumor rather than suggesting a spy operation and surveillance by the Respondent. He agreed that the judge properly found that the Respondent unlawfully interrogated employees Croissett and O'Connell but only for the reasons stated in his partial concurrence and dissent. [\[HTML\]](#) [\[PDF\]](#)

The Board affirmed the judge's dismissal of the 8(a)(3) and (1) allegation that on September 4, 1998, the Respondent engaged in a retaliatory mass layoff. Turning to the judge's findings that the Respondent selected specific employees for the layoff, the Board agreed that the Respondent violated Section 8(a)(3) and (1) by laying off Dottie O'Connell, Kathleen Harper, Ruth Bickings, and Patricia Tracey. It said in reversing the judge and finding that the Respondent also violated Section 8(a)(3) and (1) by laying off Sue McNamara: "Given the Respondent's antiunion animus toward Harper, Tracey, and McNamara's sister, Bickings, the judge's finding that their layoffs were unlawful, the timing of the layoffs, we find that the inclusion of McNamara as a part of a terminated group of longtime, veteran employees who ate lunch together every day in the company lunchroom, supports an inference that the Respondent also had suspicions regarding McNamara's union activity or support." In adopting the 8(a)(3) violation based on Haper's layoff, Member Brame found it unnecessary to rely on the judge's discussion about the cost effectiveness of selecting more or less senior employees for layoff. And, in adopting the judge's findings that the Respondent unlawfully laid off O'Connell, Member Brame relied on the judge's credibility findings on demeanor grounds only. The judge discredited Stu Krompetz' and Scott Nicholas' denials of knowledge of union activities on both demeanor and nondemeanor grounds.

(Members Fox, Liebman, and Brame participated.)

Charge filed by Teamsters Local 384; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Philadelphia, Feb. 16-

18, 1999. Adm. Law Judge Thomas R. Wilks issued his decision Sept. 30, 1999.

\* \* \*

*Willamette Industries* (25-CA-25290; 331 NLRB No. 73) Indianapolis, IN June 29, 2000. The Board agreed with the administrative law judge that on March 3, 1997, the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with Graphic Communications Local 17-M, which had represented the production and maintenance employees at the Respondent's plant since 1979. Since March, the Respondent has refused to meet with the Union to negotiate a renewal contract, and it cancelled the bargaining session that had been scheduled to commence during the week of March 10 before the parties' old contract was due to expire on March 15, 1997. [\[HTML\]](#) [\[PDF\]](#)

The Respondent argued that it had no bargaining obligation because it had a good-faith doubt of the Union's continued majority status based on a 35-35 tally of ballots that issued in a Board decertification election held among the unit employees on February 7, 1997. The Union filed timely objections to the election and a hearing was held on March 14. The hearing officer found that the Respondent had engaged in objectionable conduct on January 7 and 23, 1997 by conditioning the grant of a 401(k) plan benefit to employees on union decertification and recommended that the election be set aside. The Respondent waived its right to appeal the hearing officer's report and signed a written waiver statement and a Stipulated Election Agreement. On April 18, 1997, the Board adopted pro forma the hearing officer's recommendations and set aside the February 7 election.

The Board agreed with the judge that the Respondent failed to show that either the union did not in fact enjoy majority support or that it had a good-faith doubt concerning the union's majority status when it cancelled the March bargaining session and refused to meet with the Union to negotiate a new contract. But, it based its finding of no good-faith doubt concerning the Union's majority status on the following: The sole basis for the Respondent's refusal to bargain is the tie vote tally in the decertification election and the Respondent voluntarily waived its right to appeal the hearing officer's findings and recommendation to set aside the election results based on conduct found to be objectionable. "Given this waiver, the results of the tally of ballots stood tainted by the Respondent's own objectionable conduct in conditioning the grant of an important 401(k) benefit to employees just a few weeks before the election, and thus the election results could not serve as a valid indicator of employee sentiment," the Board said.

(Members Fox, Liebman, and Brame participated.)

Charge filed by Graphic Communications Local 17-M; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Indianapolis, June 30 and July 1, 1997. Adm. Law Judge C. Richard Miserendino issued his decision June 2, 1998.

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### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

*Accurate Tool & Manufacturing Inc. d/b/a Accurate Wire Harness* (an Individual) Springboro, OH June 30, 2000. 9-CA-36910, 37007; JD-76-00, Judge Nancy M. Sherman.

*Brown & Root Industrial Services* (Electrical Workers IBEW Local 995) Gonzales, LA June 28, 2000. 15-CA-14814; JD (ATL)-30-00, Judge Philip P. McLeod.

*Mercy Hospital of Buffalo* (Communications Workers Local 1133) Buffalo, NY June 27, 2000. 3-CA-21600; JD-83-00, Judge Karl H. Buschmann.

*Daimlerchrysler Corporation* (Auto Workers Local 412) Auburn Hills, MI June 30, 2000. 7-CA-41857, et al.; JD-84-00, Judge Bruce D. Rosenstein.

*Bruce Hardwood Floors, A Division of Triangle Pacific Corp.* (Teamsters Local 175) Beverly, WV June 27, 2000. 6-CA-30829, et al.; JD-82-00, Judge Benjamin Schlesinger.

*Bourne Manor Extended Health Care Facility* (Teamsters Local 59 and an Individual) Bourne, MA June 26, 2000. 1-CA-36936, 36993; JD-69-00, Judge Wallace H. Nations.

*Ridgewell's, Inc.* (Hotel & Restaurant Employees Local 25) Washington, DC June 26, 2000. 5-CA-27800; JD-71-00, Judge Jerry M. Hermele.

*Metal & Welding Industries, Inc.* (an Individual) Detroit, MI June 26, 2000. 7-CA-42532; JD-77-00, Judge Jerry M. Hermele.

*More Truck Lines, Inc.* (Teamsters Local 952) Corona, Westminster and Irvine, CA June 19, 2000. 31-CA-23883, 31-RC-7554; JD(SF)-38-00, Frederick C. Herzog.

*Indiana Hospital, Inc., a wholly owned subsidiary of Indiana Health Care Corporation* (Indiana Professional Employees Association/PSEA) Indiana, PA June 27, 2000. 6-CA-30840; JD-80-00, Judge David L. Evans.

*Jenisys Engineered Products, Inc. d/b/a Vicwest* (Sheet Metal Workers Local 44) Wilkes-Barre, PA June 30, 2000. 4-CA-28285; JD-85-00, Judge Arthur J. Amchan.

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### **NO ANSWER TO COMPLAINT**

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

*Hotel Syracuse, Inc.* (Operating Engineers Local 832) (3-CA-22322; 331 NLRB No. 72) Syracuse, NY June 26, 2000.