

## 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](#)

July 14, 2000

W-2747

**CASES SUMMARIZED**

SUMMARIES CONTAIN LINKS TO FULL TEXT

[The Aerospace Corp.](#), El Segundo, CA  
[Eddy Potash, Inc.](#), Carlsbad, NM  
[Electro-Flyte, Inc.](#), Syracuse, NY  
[Masiongale Electrical-Mechanical](#), Muncie, IN  
[Metal Container Corp.](#), New Windsor, NY  
[Overnite Transportation Co.](#), Gaffney, SC  
[Southern Pride Catfish](#), Greensboro, AL  
[The Waldinger Corp.](#), Smyrna, GA

**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.

*Metal Container Corp.* (2-CA-28303, 28917; 331 NLRB No. 76) New Windsor, NY June 30, 2000. The Board held, in agreement with the administrative law judge, that the Respondent discharged Steven Wilson because of his activities for the

Steelworkers in violation of Section 8(a)(3) and (1) of the Act. The Board indicated it was administratively advised that Wilson has reached a settlement with the Respondent regarding his reinstatement and backpay, and has declined an offer of reinstatement. Any issues regarding the settlement and reinstatement offer, the Respondent's reinstatement and backpay obligations in light of the offer, and the Respondent's defenses to any reinstatement obligations, may appropriately be addressed in compliance, the Board noted. The judge dismissed, with Board approval, allegations that the Respondent unlawfully discharged Kurt Bauerle and Peter Murray because of their union activities. The judge found that the General Counsel established a prima facie case. He found also that the Respondent showed that it would have discharged Murray for poor performance, and Bauerle for threatening another employee, his persistence in continuing a confrontation, and his insubordinate conduct. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charges filed by Steven Wilson, Kurt Bauerle, and Peter Murray, individuals; complaint alleged violation of Section 8(a)(1) and (3). Hearing at New York, Dec. 18-19, 1997 and March 9-11, 1998. Adm. Law Judge Steven Davis issued his decision Nov. 12, 1998.

\* \* \*

*The Waldinger Corp.* (10-CA-30575; 331 NLRB No. 70) Smyrna, GA June 30, 2000. Members Fox and Liebman, with Member Hurtgen dissenting, agreed with the administrative law judge that Plumbers Local 72 obtained valid authorization cards from a majority of unit employees, that the cards were not tainted by supervisor Peterson's involvement in a union meeting at which employees signed cards authorizing the Union to represent them, and that the Respondent violated Section 8(a)(5) and (1) by withdrawing recognition 10 days after it voluntarily recognized the Union as its employees' 9(a) bargaining representative and by making unilateral changes. [\[HTML\]](#) [\[PDF\]](#)

(Members Fox, Liebman, and Hurtgen participated.)

Charge filed by Plumbers Local 72; complaint alleged violation of Section 8(a)(1) and (5). Hearing held June 24, 1998. Adm. Law Judge Lawrence W. Cullen issued his decision July 16, 1998.

\* \* \*

*Masiongale Electrical-Mechanical* (25-CA-25119, et al.; 331 NLRB No. 67) Muncie, IN June 30, 2000. The Board upheld the administrative law judge's findings that the Respondent violated Section 8(a)(3) and (1) of the Act by restricting the work activities and work area of Jack Neal Jr. and discharging Jeffrey Jehl and Anthony Bane; and that the Respondent violated Section 8(a)(1) by: interrogating employees, threatening them with violence, engaging in surveillance of employees' union activities, isolating certain employees because they engaged in union activities, requiring applicants to be interviewed by a private investigator, and informing its employees that they were prohibited from discussing the union and distributing union literature. The Board remanded the complaint allegation that the Respondent violated Section 8(a)(3) and (1) by refusing to employ or consider for hire 20 union plumber applicants to the judge in light of its decision in FES (A Division of Thermo Power), 331 NLRB No. 20, setting forth the framework for analysis of refusal-to-hire and refusal-to-consider violations. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charges filed by Plumbers Locals 172 and 661; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Muncie, Aug. 24-26, 1998. Adm. Law Judge Bruce D. Rosenstein issued his decision Jan. 15, 1999.

\* \* \*

*Eddy Potash, Inc.* (28-CA-13207, et al.; 331 NLRB No. 71) Carlsbad, NM June 30, 2000. Affirming the administrative law judge, the Board held that the Respondent violated Section 8(a)(5) and (1) of the Act by: (1) bargaining to impasse over its proposal for 12-hour shifts for underground workers, an unlawful subject of bargaining in the circumstances of this case; (2)

locking out its employees in support of its unlawful bargaining demand; and (3) implementing its final proposal to Electrical Workers (IBEW) Local 611 and Machinists Local 1265, which included the 12-hour shift proposal for underground workers. The Board modified the judge's recommended remedy and required the Respondent to rescind the unlawfully implemented 12-hour shift and to make whole employees for any losses suffered as a result of the unlawful implementation. The Respondent mines potash in Carlsbad pursuant to a mineral lease agreement with the U.S. Department of Interior that provides for "a restriction of the work day not to exceed eight hours in any one day for underground workers except in cases of national emergency." In addition, the Mineral Lands and Mining Act of 1920, 30 U.S.C. §181 et seq. (the 1920 Act), prohibits a 12-hour shift at lands leased from Interior. The judge found that the 1920 Act remains in effect and is not superseded by New Mexico law which allows employees to work up to 16 hours in a day. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Fox and Liebman participated.)

Charges filed by Electrical Workers (IBEW) Local 611 and Machinists Local 1265; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Carlsbad on Jan. 21, 1999. Adm. Law Judge Mary Miller Cracraft issued her decision April 19, 1999.

\* \* \*

*Electro-Flyte, Inc.* (3-CA-21918, 22205; 331 NLRB No. 82) Syracuse, NY June 30, 2000. The Board found that the October 12, 1999 letter filed by the Respondent, acting pro se, adequately denies or sets forth a defense to the complaint allegations that it unduly delayed in providing the information requested in the Union's March 18 and April 1, 1999 letters. It therefore denied the General Counsel's motion for summary judgment as to amended consolidated complaint paragraph 9(e) and paragraph 14 to the extent that it pertains to paragraph 9(e); and remanded the proceeding to the Regional Director to arrange a hearing before an administrative law judge limited to the allegations. [\[HTML\]](#) [\[PDF\]](#)

The Board found however that the Respondent's October 12 letter has not placed into dispute the remaining alleged violations contained in the complaint (paragraphs 9(a), (b), or (d) (as the latter pertains to paragraphs 9(a) and (b)). It granted the General Counsel's motion for summary judgment as to those allegations in the absence of good cause being shown for the Respondent's failure to file a timely answer to the amended complaint, and held that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain in good faith with the Steelworkers.

In addition to requiring the Respondent to bargain with the Union over the effects of its decision to close its Syracuse, New York facility on its employees, the Board ordered limited backpay and that the Respondent make whole the unit employees by making all contractually required contributions to the appropriate employee benefits funds that it failed to make since about May 25, 1999. It ordered the Respondent to supply the Union with the information requested in the October 18 and 21 letters, and to mail a copy of an attached notice to the Union and to the last known addresses of its former employees. The Board declined to include in its order the General Counsel's proposed requirement that the Respondent submit copies of the necessary backpay records at the office designated by the Board or its agents, finding that the issue of whether the change should be made in the Board's standard order language should be addressed after full opportunity for briefing by affected parties and that this is therefore not an appropriate case in which to make that determination.

(Members Fox, Liebman, and Brame participated.)

Charges filed by the Steelworkers; complaint alleged violation of Section 8(a)(1) and (5). General Counsel filed motion for summary judgment Jan. 20, 2000.

\* \* \*

*The Aerospace Corporation* (31-RC-7654; 331 NLRB No. 74) El Segundo, CA June 30, 2000. The Board affirmed the Regional Director's decision and direction of election, finding appropriate the petitioned-for unit of maintenance employees in the Facilities Services Section of the Employer's Facility Department in El Sequendo, California. The Employer operates a research and development (R&D) facility in El Segundo, California, in support of national space programs. Its two main customers are the U.S. Air Force and the National Reconnaissance Office. The Employer employs a total of 2,500 employees at its El Segundo facility. The Auto Workers seeks to represent a unit of 41 maintenance employees in the Facilities Services

Section (FSS) of the Employer's Facility Department. [\[HTML\]](#) [\[PDF\]](#)

The Employer contended that Board precedent mandates facility-wide units in the research and development industry and that the only appropriate unit is a facility-wide unit consisting of 165 shop and service, technical support, and office support (plant clerical) employees. The Board disagreed, noting that the Petitioner here seeks a narrow maintenance unit and that in each of the relevant cases, the union sought a broad production and maintenance (and sometimes technical) unit, and the question before the Board was whether other employees, including some technicals, did similar work under similar terms and conditions of employment, and thus also should be included. "It is Board policy to find separate maintenance department units appropriate when petitioned for in the absence of a more comprehensive bargaining history, where the factors of the case demonstrate that the maintenance employees have the requisite community of interest," the Board said. It found, as did the Regional Director, that, under a traditional community-of-interest analysis, the petitioned-for maintenance employees constitute a clearly identifiable, functionally distinct group and therefore constitute an appropriate unit.

(Members Fox, Liebman, Hurtgen and Brame participated.)

\* \* \*

*Southern Pride Catfish* (10-CA-28960; 331 NLRB No. 81) Greensboro, AL June 30, 2000. The Board agreed with the administrative law judge that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Pamela Witherspoon because of her union activity; and violated Section 8(a)(1) by creating the impression of surveillance of employees' union activities and interrogating Witherspoon. The Board found that the interrogation of Witherspoon by supervisor Doria Lee and Freezer supervisor Greg Crawford occurred against a background of threats to discharge employees for union support, as well as other serious threats to move or close the plant or to reduce wages if employees were to choose Food and Commercial Workers Local 1996; that the threats emanated from an atmosphere of interference and coercion; and that the nature of the information sought from Witherspoon-why she wanted the Union-was particularly coercive in this context. The Board noted that Lee made known that union supporters were going to be discharged on the Monday following the election held on May 28-29, 1996 in Case 10-RC-14631 and, at the Respondent's behest, was writing down the names of employees who, like Witherspoon, wore union T-shirts. The Board added that Crawford, a higher-level supervisor, was the person directly responsible for Lee creating the list of employees who wore union T-shirts. [\[HTML\]](#) [\[PDF\]](#)

The judge found, with Board approval, that the Respondent also violated Section 8(a)(1) by discharging Supervisor Lee because her subordinates continued to wear union T-shirts and because she was, in the Respondent's view, ineffective in persuading her subordinates to reject the Union and to abandon the expression of their Section 7 rights. The Board agreed with the judge that an employee walkout in protest of Lee's discharge constituted protected concerted activity, that the Respondent discharged the employees, and that the discharges violated Section 8(a)(1). The Board noted that even if the Respondent had acted lawfully in discharging Lee, her subordinates' walkout would still constitute protected conduct under the standards of *NLRB v. Oakes Machine Corp.*, 897 F.2d 84 (2d Cir. 1990). Like the judge, the Board found that Steven C. Moore, the pastor of a local church, was acting as an agent of the Respondent by meeting with employees, and that his comments to employees respecting the outcome of the election constituted threats of plant closure in violation of Section 8(a)(1).

(Chairman Truesdale and Members Liebman and Brame participated.)

Charge filed by Food and Commercial Workers Local 1996; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Tuscaloosa on May 28-29, 1996. Adm. Law Judge Howard I. Grossman issued his decision March 10, 1997.

\* \* \*

*Overnite Transportation Co.* (11-RC-6258; 331 NLRB No. 85) Gaffney, SC June 30, 2000. The Board found appropriate a unit of all dockworkers, dock leadmen, jockeys (hostlers), facility maintenance employees, and janitors, excluding drivers, mechanics, mechanic leadmen, and their helpers (check bay attendants, tire changers and parts clerks), working at the Employer's service center in Gaffney, South Carolina. The Board permitted the "OS&D (overage, shortage, and damage)" clerks, the operations clerks, and the shop clerk evidence to vote under challenge because the evidence was insufficient to determine whether they are plant or office clericals. Teamsters Local 28 is the petitioning union. The Regional Director found

that the petitioned-for unit of approximately 159 dockworkers and 22 jockeys was not appropriate and that the unit must also include city drivers, road drivers, check bay attendants, tire changes, maintenence workers, janitorial workers, OS&D clerks, and operations clerks or a service center unit of approximately 351 employees, excluding only mechanics and mechanic leadmen. The Board reversed the Regional Director's decision and vacated his direction of election, concluding that the smallest appropriate unit that includes the petitioned-for dockworkers and jockeys must also include substantially all employees who are unskilled and work exclusively at the service center. [\[HTML\]](#) [\[PDF\]](#)

(Members Fox, Liebman, and Hurtgen participated.)

\* \* \*

### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

*Anheuser-Busch, Inc.* (Teamsters Local 1149) Baldwinsville, NY July 7, 2000. 3-CA-21796, et al.; JD-70-00, Judge Wallace H. Nations.

*Grand Industries, Inc.* (Carpenters) Grand Rapids, MI July 6, 2000. 7-CA-42513, 42680; JD(ATL)-35-00, Judge George Carson II.

*Guess?, Inc.* (UNITE) Los Angeles, CA July 6, 2000. 21-CA-33132; JD(NY)-48-00, Judge Michael A. Marcionese.

*Bridgestone/Firestone, Inc.* (Teamsters Local 926) Pittsburgh, PA July 5, 2000. 6-CA-30899; JD-86-00, Judge Paul Bogas.

*Painters District Councils 8, 16, and 33 Painters Local 4* (Meiswinkel/RFJ, Inc.) (an Individual) San Francisco Bay Area, CA June 15, 2000. 20-CB-9268; JD(SF)-36-00, Judge Clifford H. Anderson.

*Lockheed Martin Astronautics* (Individuals) Littleton, CO June 27, 2000. 27-CA-14557, et al.; JD(SF)-39-00, Judge Albert A. Metz.

*Einstein's/Noah's Bagels, Inc.* (Food & Commercial Workers Local 870) Oregon, CA and Washington States June 22, 2000. 32-CA-16344; JD(SF)-37-00, Judge Clifford H. Anderson.

\* \* \*

### 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.)*

*Hotel Ramada of Nevada d/b/a Tropicana Resort & Casino* (Operating Engineers Local 501) (28-CA-16241-2; 331 NLRB No. 75) Las Vegas, NV June 30, 2000.

\* \* \*

### 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 answer the complaints.)*

*MBV Technologies, Inc.* (Electrical Workers (IBEW) Local 58) (7-CA-42203; 331 NLRB No. 68) Lathrup Village, MI June 30, 2000.

*Stuart Siebert d/b/a Avalanche Location Tenting aka Turbo Tenting* (Individuals) (21-CA-33621, 33622; 331 NLRB No. 65) Los Angeles, CA June 27, 2000.