

## 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 28, 2000

W-2749

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*Electrical Contractors, Inc.* (34-CA-8911; 331 NLRB No. 100) Hartford, CT July 21, 2000. The Board affirmed the administrative law judge's decision that the Respondent violated Section 8(a)(1) of the Act by soliciting its employees to sign letters expressing their opposition to being contacted or represented by the Union, and threatening its employees with unspecified reprisals for failing to sign the letter. Member Hurtgen would modify the judge's proposed remedy and recommended Order to require the Respondent to "Notify the State Labor Commissioner, the State Department of Transportation, the Towns of Hamden and West Hartford and any other entities which the Respondent sent copies of the unlawfully solicited letters that those letters are null and void and *should be given no effect by these parties*," rather than "*to be given no effect by these parties*" as required by the judge. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charge filed by Electrical Workers IBEW Local 90; complaint alleged violation of Section 8(a)(1). Hearing at Hartford on Dec. 15, 1999. Adm. Law Judge Michael A. Marcionese issued his decision April 14, 2000.

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*West Motor Freight of Pennsylvania* (11-CA-18365; 331 NLRB No. 99) Greensboro, NC July 21, 2000. The administrative law judge found, with Board approval, that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Daniel Morehead on May 18, 1999 because he assisted Teamsters Local 391 and engaged in protected, concerted activities; and violated Section 8(a)(1) by coercively interrogating its employees concerning their union activities. [\[HTML\]](#) [\[PDF\]](#)

(Members Fox, Liebman, and Hurtgen participated.)

Charge filed by Teamsters Local 391; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Winston-Salem, Jan. 19-20, 2000. Adm. Law Judge Howard I. Grossman issued his decision April 27, 2000.

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*Wilkes Telephone Membership Corp.* (11-CA-16165, 17122; 331 NLRB No. 98) Millers Creek, NC July 21, 2000. The Board, citing *Hacienda Resort Hotel and Casino*, 331 NLRB No. 89, found that the parties' dues checkoff arrangement expired with their contract as a matter of law, and therefore affirmed the administrative law judge's finding that the Respondent did not violate Section 8(a)(5) and (1) of the Act by unilaterally ceasing to deduct union dues pursuant to the checkoff provision of the parties' collective-bargaining agreement after the contract expired. [\[HTML\]](#) [\[PDF\]](#)

The Board denied the Respondent's request that it reinstate the settlement agreement in Case 11-CA-16165 which is not contained in the record before it. The Regional Director approved the agreement on February 16, 1996, but revoked his approval on September 27, 1996, following the filing of the charge in Case 11-CA-17122. Because it dismissed the complaint, the Board remanded the proceeding to the Regional Director for further consideration with regard to the settlement agreement. Agreeing with the judge that the Respondent did not violate the Act, the Board found it unnecessary to address the Respondent's argument that the judge erred in finding that it is not exempt from the Board's jurisdiction as a political subdivision of the State of North Carolina. And, because it dismissed the complaint on other grounds, the Board found it unnecessary to address the Respondent's contention that there is no record evidence to support the actual complaint allegation.

(Chairman Truesdale and Members Hurtgen and Brame participated.)

Charge filed by Electrical Workers IBEW Local 1537; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Winston-Salem on April 28, 1997. Adm. Law Judge William N. Cates issued his decision June 13, 1997.

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*Jefferson Smurfit Corp.* (12-CA-18685; 331 NLRB No. 80) Fernandina Beach, FL July 21, 2000. Members Hurtgen and Brame found that there was no agreement by the Respondent to recognize Electrical Workers (IBEW) Local 177, and dismissed the complaint alleging that the Respondent violated Section 8(a)(5) and (1) of the Act. Member Fox dissented.

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On March 14, 1997, the Union met with the Respondent and presented a letter stating that the Union had a card majority and requesting recognition for a residual unit. The Respondent's employee relations manager read the letter, examined the cards and made copies of them. He then told the Union that he would have to consult with counsel. Later that day the Respondent refused to recognize the Union.

Disagreeing with the administrative law judge that the Respondent's conduct violated Section 8(a)(5), the majority held that "an employer has no obligation to accept a card count as proof of majority status, absent a clear agreement to do so," citing *Linden Lumber, Division*, 190 NLRB 718 (1971), upheld by the Supreme Court (418 U.S. 301 (1974)). It wrote:

Here, the Respondent did not expressly consent to permit determination of majority status by a means other than a Board election. The General Counsel argues that the necessary assent is to be inferred from the Respondent's conduct in reading the Union's letter and inspecting the cards proffered. Similarly, the dissent finds that the Respondent representative's act of taking in hand and copying the cards proffered by the Union constituted an agreement to forgo an election.

The majority found that Board and Supreme Court decisions do not support these arguments. It noted that the Respondent did not agree to recognize the Union on the basis of cards and said that it wished to consult with counsel. "Further in the absence of an affirmative showing as to what examination of the cards would signify, the evidence is insufficient to establish that the Respondent agreed to forgo an election" the majority held. Members Hurtgen and Brame found that their position is supported by *Nantucket Fish Co.*, 309 NLRB 794 (1992). They disagreed with the dissent's assertion that *Sullivan Electric Co.*, 199 NLRB 809 (1972), enfd. 479 F.2d 1270 (6th Cir. 1973), required a different result and found also that *Gregory Chevrolet*, 258 NLRB 233 (1981), is distinguishable.

Dissenting Member Fox wrote:

As the Board stated in *Linden Lumber, Division*, an employer does not run afoul of the Act solely by '*refus[ing] to accept* evidence of majority status other than the results of a Board election.' 190 NLRB at 721 (emphasis added). Once, however, as here, an employer *has accepted* and examined the cards proffered in support of the Union's recognition demand, it has bound itself to recognize the Union without the necessity of a Board election, if the Union's majority was demonstrated by the offered means. The record shows that the cards did in fact demonstrate the Union's majority status, and I would find that the Respondent violated Section 8(a)(5) and (1) of the Act by subsequently refusing to recognize and bargain with the Union.

(Members Fox, Hurtgen, and Brame participated.)

Charge filed by Electrical Workers (IBEW) Local 177; complaint alleged violation of Section 8(a)(1) and (5). Hearing held in September 1997. Adm. Law Judge William N. Cates issued his decision Oct. 14, 1997.

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*SOS Staffing Services, d/b/a Skill Staff of Colorado* (27-CA-14545; 331 NLRB No. 97) Denver and Colorado Springs, CO July 21, 2000. The Board agreed with the administrative law judge that the Respondents Skill Staff and Cobb were joint employers of Kurt Steenhoek on Cobb's Douglas County High School job, and that they violated Section 8(a)(1) of the Act by threatening not to hire, and to screen out and not refer, union members to Cobb for employment; and that Respondent Cobb violated Section 8(a)(3) and (1) by terminating Steenhoek's employment on February 2, 1996, because he was a union member and union organizer. [\[HTML\]](#) [\[PDF\]](#)

Members Fox and Brame, with Member Hurtgen dissenting, agreed with the judge that under established Board precedent, Respondent Skill Staff violated Section 8(a)(3) and (1) by acquiescing in and adopting Respondent Cobb's termination of Steenhoek's employment. They found that the judge erred by holding Skill Staff jointly liable for all backpay due to Steenhoek from the date that Cobb unlawfully terminated Steenhoek's employment and found Skill Staff jointly liable with Cobb for

losses stemming from the termination, commencing as of February 23, 1996, the date on which it first learned that Cobb terminated Steenhoek for discriminatory reasons. Member Hurtgen agreed that Cobb acted for unlawful reasons. Noting however that there is no evidence that Skill Staff was aware of the unlawful reasons, he held that Skill Staff it is not liable for Cobb's misconduct, citing *Capitol EMI Music*, 311 NLRB 997 (1993).

(Members Fox, Hurtgen, and Brame participated.)

Charge filed by Colorado Pipe Trades Association; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Denver, March 17-18, 1997. Adm. Law Judge Jay R. Pollack issued his decision June 5, 1997.

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*Mercy General Health Partners Amicare Homecare and Mercy Healthcare at Home* (7-RC-21647; 331 NLRB No. 93) Muskegon, MI July 17, 2000. Reversing the Acting Regional Director's supplemental decision, the Board found that Mercy General Health Partners Amicare Homecare (Amicare) and Mercy Healthcare at Home (MHH) are not a single employer, but are separate unintegrated entities; and that the impounded ballots cast in a self-determination election should not be counted. The Regional Director ordered the election to determine whether the 60 home care aides in the extended care group (the petitioned-for employees) wished to be represented by Service Employees Local 586, which already represents 12 licensed practical nurses and home health care aides employed by Amicare. Granting Amicare's request for review and finding that a new election is required, the Board held: [\[HTML\]](#) [\[PDF\]](#)

First, the ballot indicated that employees were employed by MHH and Amicare, as a single employer, which is inaccurate and misidentifies the employing entity. In addition, employees were also erroneously informed that if they voted for the Petitioner, they indicated their desire to be represented by the Petitioner in the unit of employees of Amicare which the Petitioner currently represents. Given our finding that the petitioned-for employees are solely employed by MHH, and that a self-determination election is not warranted, the election cannot stand. If the unit employees vote to be represented by the Petitioner, the unit description would be limited to the employees of MHH; they would not be included in Amicare's unit. As a result, the unit as certified would differ substantially in character and scope from the unit in which the election was conducted, and the question on that ballot would have been different from the one that should have been presented to the employees. Based on the foregoing, we find that the impounded ballots should not be counted and, if the Petitioner desires to represent employees solely as employees of MHH, a second election should be directed.

(Chairman Truesdale and Members Fox and Liebman participated.)

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*Meadow Valley Contractors, Inc.* (28-CA-15527-3, et al.; 331 NLRB No. 96) Phoenix, AZ July 19, 2000. Agreeing with the administrative law judge, the Board dismissed the complaint, based on charges filed by Operating Engineers Local 12, alleging that the Respondent violated Section 8(a)(3) and (1) of the Act by assigning Robert Irvine and Leonard Rollings to lower paying job duties because of their union activities and causing them to resign because of the unlawfully motivated assignments; and violated Section 8(a)(4), (3), and (1) by selecting Michael Riisager for layoff and failing to recall him because of his union activities or because he gave testimony under the Act. [\[HTML\]](#) [\[PDF\]](#)

The judge found that the Respondent rebutted the General Counsel's "weak" prima facie showing that it was motivated by unlawful considerations in reassigning Irvine and Rollins. While the failure to recall Riisager "may appear suspicious," he found there is insufficient evidence to find that the Respondent discriminated against him. The judge noted foreman Simons' admission that he asked Riisager if the Union paid employees to organize, if an employee-applicant was affiliated the Union, if Riisager was in the Union, why the Union had sent Respondent a letter about Riisager and why Riisager had not told Simons before. Citing *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978), the judge found that the Respondent effectively repudiated its conduct in a March 1 memorandum and that it did not violate the Act thereafter.

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charge filed by Operating Engineers Local 12; complaint alleged violation of Section 8(a)(1), (3), and (4). Hearing at Las Vegas, Sept. 30 and Oct. 1, 1999. Adm. Law Judge Jay R. Pollack issued his decision March 8, 2000.

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*Cotter & Company* (8-CA-27692, 28110; 331 NLRB No. 94) Westlake, OH July 19, 2000. The Board held that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to meet and bargain with Teamsters Local 293, by implementing its last offer, including new work rules, in the absence of a valid bargaining impasse, bypassing the Union and dealing directly with a unit employee, and refusing to process employees' grievances. [\[HTML\]](#) [\[PDF\]](#)

Although the Board agreed with the judge that the Respondent further violated Section 8(a)(5) and (1) by disciplining employees pursuant to unlawfully implemented work rules, it specifically found that Alejandro Gonzalez' discharge and Adam Csongedi's suspension were unlawful. Applying *Great Western Product*, 299 NLRB 1004 (1990), the Board concluded that the General Counsel established the Respondent's unlawfully imposed rules were a factor in the disciplinary actions and thus violated Section 8(a)(5). It found that no further litigation is required because the Respondent presented its evidence concerning the remedy at the unfair labor practice hearing and that a status quo remedy is appropriate.

Unlike the judge, the Board dismissed the complaint allegation that the Respondent violated Section 8(a)(5) and (1) by ceasing dues deductions on the unit employees' behalf after the collective-bargaining agreement had expired, finding that an employer's checkoff obligation does not survive expiration of the collective-bargaining agreement. See *Hacienda Resort Hotel & Casino*, 331 NLRB No. 89.

Member Brame, concurring, agreed that the Respondent violated Section 8(a)(5) and (1), rejecting the Respondent's defense of a valid bargaining impasse. "In short, I find no bargaining impasse existed based on the parties' demonstrated flexibility in bargaining and their demonstrated willingness to move off their initial proposals," he said.

Member Fox, dissenting in part, would find, for the reasons expressed in Member Liebman's and her dissent in *Hacienda Resort Hotel & Casino*, that the Respondent violated Section 8(a)(5) when it unilaterally ceased deducting employees' union dues after the parties' collective-bargaining agreement expired.

(Chairman Truesdale and Members Fox and Brame participated.)

Charges filed by Teamsters Local 293; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Cleveland, Sept. 30-Oct. 3, 1996. Adm. Law Judge Steven M. Charno issued his decision April 11, 1997.

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*Graphic Communications Local 508M, O-K-I (Jos. Berning Printing)* (9-CD-485-1; 331 NLRB No. 102) Cincinnati, OH July 21, 2000. Chairman Truesdale and Member Brame found that employees of Jos. Berning Printing represented by the Cincinnati Typographical Local 3/CWA 14519 (CTU) are entitled to perform press preparatory work involving the stripping of material for camera work at the Employer's Cincinnati, Ohio facility. Currently two employees perform the work-Mark Trenn, a stripper for the Employer since 1993 and a member of CTU; and Tom Giaccio, a member of Graphic Communications Local 508M (GCIU). Chairman Truesdale and Member Brame concluded, contrary to dissenting Member Hurtgen, that the instant dispute is jurisdictional in nature rather representational and that since no one is disputing Mark Trenn's right to perform the work, the dispute is solely about Giaccio's unit placement. [\[HTML\]](#) [\[PDF\]](#)

The CTU filed on April 16, 1999 a grievance asserting that the Employer violated the terms of the collective-bargaining agreement by assigning the performance of stripping work to Giaccio. At the grievance meeting, the parties deadlocked and the CTU informed the Employer it intended to proceed to arbitration. On April 23, 1999, the Employer notified the GCIU of the CTU's intent to proceed to arbitration. On May 3, 1999, the GCIU informed the Employer that if arbitration resulted in a change in the status quo, the GCIU would strike.

The majority wrote in finding that the dispute is properly before the Board for determination:

Thus the CTU claimed the right for the employees it represents to perform the work and so requests the Board to legitimize that claim. This is underscored by the fact that no party to the dispute argued that this was representational and that the notice be quashed. All parties to the dispute viewed this as a jurisdictional matter. Contrary to the dissent, this dispute, unlike that in *Dearborn Village*, 331 NLRB No. 27 (2000), is not merely over what union will represent the employee (Giaccio) currently performing the work. Rather, CTU has confirmed that it seeks the work in dispute for an employee it would represent, which may not be Giaccio. Thus, we do not have a representational dispute but clearly a jurisdictional dispute.

Dissenting Member Hurtgen found that the dispute is representational, rather jurisdictional and would quash the notice of 10(k) hearing. Concluding that the parties simply disagree about the unit in which Giaccio is to be placed, he found this case is analogous to *Dearborn Village*, where the Board determined that a dispute over which union would represent particular employee(s) was representational, rather jurisdictional.

(Chairman Truesdale and Members Hurtgen and Brame participated.)

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### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

*Centrale Citrus Juices USA, Inc.* (Teamsters Local 444) Auburndale, FL July 21, 2000. 12-CA-18656-5; JD(ATL)-38-00, Judge Jane Vandeventer.

*Superior Coffee and Foods, Inc.* (Food & Commercial Workers Local 546) Chicago, IL July 21, 2000. 13-CA-38164; JD-94-00, Judge Arthur J. Amchan.

*Chartiers Taxi, Inc.* (Teamsters Local 205) Canonsburg, PA July 20, 2000. 6-CA-30934, et al.; JD-91-00, Judge Benjamin Schlesinger.

*Universidad De Ciencias Medicas San Juan Bautista, Inc., d/b/a San Juan Bautista Medical Center* (Union General De Trabajadores) Caguas, Puerto Rico July 19, 2000. 24-CA-8362; JD-93-00, Judge William G. Kocol.

*Michael's Painting, Inc., and Painting L.A., Inc.* (Southern California Painters District Council No. 36) Van Nuys, CA July 10, 2000. 31-CA-23358; JD(SF)-42-00, Judge Jay R. Pollack.

*Metropolitan Regional Council of Philadelphia and Vicinity of Carpenters* (R.M. Shoemaker Co.) Philadelphia, PA July 18, 2000. 4-CC-2203-2, et al.; JD-92-00, Judge Eric M. Fine.

*American Tissue Corporation* (Service Employees Local 339) Brooklyn, NY July 17, 2000. 29-CA-20226; JD(NY)-52-00, Judge Jesse Kleiman.

*Operating Engineers Local 17* (Hertz Equipment Rental Corp.) Tonwanda, NY July 17, 2000. 3-CB-7607; JD-89-00, Judge George Aleman.

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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.)*

*Grand Court Facilities, Inc., XV, and Knightsbridge Assoc., L.P., d/b/a Grand Court-Adrian Assoc.* (Service Employees Local

79) (7-CA-43004; 331 NLRB No. 95) Adrian, MI July 20, 2000.