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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August 4, 2000 W-2750

CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

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Caval Tool Division (34-CA-8702; 331 NLRB No. 101) Newington, CT July 25, 2000. The Board agreed with the administrative law judge's finding that the Respondent's 1998-99 no-solicitation and distribution rule was unlawful on its face by requiring its employees to obtain company authorization to engage in protected activity in non-work areas on their own time. The Board also found unlawful the retaliatory suspension of employees who, at a company meeting, had spoken out critically about a new work schedule. [HTML] [PDF]

(Members Fox, Liebman, and Hurtgen participated.)

Charge filed by Diane Baldessari, an individual; complaint alleged violation of Section 8(a)(1) of the Act. Hearing at Hartford on Sept. 22 - 23, 1999. Adm. Law Judge Michael A. Marcionese issued his decision on Jan. 21, 2000.

* * *

Lockheed Martin Corp. (31-RD-1396; 331 NLRB No. 104) Palmdale, CA July 24, 2000. The Board, in a 2-1 opinion, overruled the Union's objection to the Petitioner's use of e-mail in a decertification election the Union lost (407 for and 446 against the Union with 4 challenged ballots) and certified the results. The decision is by Members Hurtgen and Brame; Member Liebman dissented. [HTML] [PDF]

The hearing officer found that the mass e-mails sent by the Petitioner and his supporters violated the Employer's policies on solicitation and distribution of literature and personal use of company assets. The Employer did not attempt to clarify its policies or to investigate potential abuses.

In reversing the hearing officer, the Board concluded the Union was not placed at a disadvantage by the Petitioner's greater use of e-mail. It noted that the Employer, authorized the Union to send three e-mails but the Union chose to send only one (apparently due to a preference for traditional forms of communication). The Board stated:

> There is no evidence that the Union wished to communicate with unit employees regarding the election by e-mail during this period of time. While the Union complained about the Petitioner's use of the e-mail system, the Union never requested that the Employer 'clarify' its policies regarding the permissible use of e-mail in the campaign. Under these circumstances, there is no basis for finding that the Employer's failure to sua sponte clarify its rules constituted objectionable conduct.

Dissenting Member Liebman would set aside the election because the Employer "encouraged and took advantage of" an "imbalance in communications, effectively precluding employees from fully hearing from both sides, the Union and the decertification petition."

The Board found it unnecessary to decide whether the Petitioner's repeated use of the Employer's e-mail system to campaign against the Union actually violated work rules on solicitation, distribution, and e-mail usage.

(Members Liebman, Hurtgen, and Brame participated.)

* * *

Family Service Agency (20-RC-17214; 331 NLRB No. 103) San Francisco, CA July 24, 2000. In this 4-1 opinion, the Board overruled *Plant City Welding & Tank Co.,* 119 NLRB 131 (1957), and adopted a new rule prohibiting the use of supervisors as election observers. The majority opinion is by Members Fox, Liebman, Hurtgen and Brame; Chairman Truesdale dissented. [HTML] [PDF]

In Planting City Welding, as in the instant case, the employer objected to the petitioner's use of a statutory supervisor as an election observer. In overruling the objection, the Board concluded the potential for undue influence that exists with an employer's use of a supervisor as an election observer does not arise when the supervisor serves as an observer for a union. The Board noted in its 1957 decision that employees would not reasonably perceive the supervisor's presence as an endorsement of the union by the employer when the employer had clearly stated its opposition to the union. The union had received a majority

of the votes and the Board found no basis for setting aside the election.

In the instant case, the union won the Jan. 24, 1997 election by a vote of 15-10, with 1 challenged ballot--that of supervisor Catherine Lucero. Here, the Board set aside the election, applying its new rule and finding the use of supervisor Lucero as the union's election observer was objectionable conduct. The Board ordered that a second election be held. Explaining its holding, the Board stated:

> While we have no quarrel with the rationale underlying the Board's distinction between a union's use of a supervisor as an observer and an employer's, we have decided that a rule barring supervisors from serving as observers for any party to an election represents the better practice.

The Board added:

> In our opinion, the Board's creation of an exception to these general rules to allow a union to use a supervisor as an observer is not warranted. Thus, to avoid the possibility that voters may perceive the participation of a statutory supervisor in the actual balloting process, even in the limited role of an observer, as calling into question the integrity of the election process, we have decided to eliminate this exception and announce a rule prohibiting the use of supervisors as observers.

In dissent, Chairman Truesdale would certify the Union, finding no basis for changing long standing Board policy:

> The Board has adhered to the approach adopted in Plant City Welding for over four decades, during which the election process has remained fundamentally the same. Moreover, employees participating in elections today, like their counterparts 43 years ago, are typically well aware of their employers' views regarding union representation. Under these circumstances, the presence of a supervisor as a union observer is unlikely to cause employees to believe that the employer supports the union, and to influence their votes in the election.

(Full Board participated.)

* * *

National Metal Processing, Inc. and Amstaff, Inc. (7-CA-34299; 331 NLRB No. 105) Novi, MI July 26, 2000. On a stipulated record, the Board held that Respondent Amstaff, Inc. (Amstaff), was a successor to Branch International Services (Branch) within the meaning of NLRB v. Burns International Security Services, 406 U.S. 272 (1972). Thus, it held Amstaff violated Section 8(a)(5) and (1) of the Act by refusing to bargain with Allied Industrial Workers Local 267 (AIW Local 267) and thereafter with its successor union, Paperworkers Local 7267 (the Union) about the working conditions of the production and maintenance employee unit at National Metal Processing, Inc.'s plant in Detroit, Michigan. [HTML] [PDF]

The Board found that Amstaff's bargaining obligation included the reinstatement of employees unlawfully locked out by Branch on March 5, 1991 because they retained their status as unit employees and Amstaff was obligated as a Burns successor to bargain with AIW Local 267 about their working conditions, including the reinstatement issue.

The Board dismissed the complaint allegations against National, finding that it did not possess sufficient control over Amstaff employees to support a joint employer finding.

National was engaged in the manufacturing process of "pickling" steel for use as automobile bumpers. National ceased directly employing production and maintenance employees in March 1988 and instead used the services of successive personnel leasing firms, including Branch and Amstaff, to supply it with production and maintenance employees.

As Amstaff has cancelled its personnel leasing agreement with National and National has ceased steelpickling operations at the Detroit plant, the Board conditionally ordered Amstaff, should it resume leasing employees to National for its steelpickling operations, to bargain, on request with Paperworkers Local 7267 regarding the terms and conditions of employment of the employees, including the reinstatement of those unlawfully locked out by Branch and to reduce to writing any agreement

reached as a result of such bargaining.

(Chairman Truesdale and Members Fox and Liebman participated.)

Charge filed by Paperworkers Local 7267; complaint alleged violation of Section 8(a)(1) and (3). Parties waived their right to a hearing before an administrative law judge.

* * *

Met Electrical Testing Co., a Subsidiary of Pepco Services (6-RC-11643; 331 NLRB No. 106) Cranberry, PA July 27, 2000. The Board reversed the Regional Director's decision and direction of election finding appropriate the petitioned-for single location unit of field employees at the Employer's Cranberry, Pennsylvania, facility; and dismissed the petition filed by Electrical Workers (IBEW) Local 5. In so doing, the Board concluded, contrary to the Regional Director, that no compelling circumstances exist warranting disturbing the established multilocation bargaining history. It stated: [HTML] [PDF]

> We find no reason to stray from the . . . precedents because one of the incumbent unions, rather than the Employer seeks to disturb the historical, multiplant bargaining unit. *Crown Zellerbach,* 246 NLRB 202 (1979), relied on by the Regional Director, is distinguishable. There, the Board found a single-facility unit appropriate despite history on a multifacility basis where *all* parties to the historical relationship sought to establish a separate unit. Here, the Employer opposes the Petitioner's attempt to change the historical multilocation unit. *Crown Zellerbach,* therefore, does not support disturbing the historical unit.

The Employer is a high voltage electrical equipment testing contractor with its headquarters office in Baltimore, Maryland, and branch offices in Cranberry and Virginia Beach, Virginia. In December 1998, the Employer purchased the assets of Met Electrical Testing Company, Inc. (Met Electrical) and hired all its employees, becoming its successor. The Regional Director found, and the Employer did not dispute, that there has been a long history of collective bargaining between the predecessor employer and the Petitioner and IBEW Local 24 on a multilocation, multi-union basis. Met Electrical recognized Local 24 in the early 1980s and the Petitioner in 1987, by which time all three facilities were in existence. Met Electrical was a party to a series of collective-bargaining agreements, first with Local 24, then with the Petitioner, Local 24, and IBEW Local 712 from 1990-1993, and finally with the Petitioner and Local 24 from 1993-1996 and 1996-1999. The Employer contended that only an employerwide, multilocation unit of field employees employed at Cranberry, Baltimore, and Virginia Beach is appropriate in view of the history of bargaining on a multilocation basis.

(Chairman Truesdale and Members Fox and Brame participated.)

* * *

Detroit Medical Center Corp. (7-RC-21639; 331 NLRB No. 108) Detroit, MI July 27, 2000. The Board certified that a majority of the valid ballots cast in an election held on October 1, 1999, were not for AFSCME Michigan Council 25 and Service Employees Local 79 (the Joint Petitioner) or Hospital Workers Organizing Committee (the Intervenor), and that neither is the exclusive representative of the Employer's employees. [HTML] [PDF]

The Board disagreed with the hearing officer's recommendation that the Intervenor's Objection 1 be sustained, finding that the Employer did not interfere with employees' free choice by granting the Joint Petitioner's request for access to conduct campaign meetings on company premises during worktime while not offering the same access to the Intervenor. Unlike the hearing officer, the Board held that the Employer had no obligation to seek out the Intervenor and timely offer the same arrangement regarding access that it granted to the Joint Petitioner. It wrote: "The Employer simply considered the only access request made to it and did not affirmatively seek out the Intervenor to make the same offer to it. We find that the Employer was not obligated to offer the Intervenor something it had not requested."

The hearing officer also recommended sustaining the Intervenor's Objections 2, 3, and 5 as related to or providing additional support for his findings with regard to Objection l. The Board agreed with the hearing officer that the conduct alleged in Objections 2 and 3 would be isolated and de minimis if considered as separate objections and that the conduct alleged in

Objection 5, standing alone, would not have a reasonable tendency to influence the outcome of the election. It did not find that Objections 2, 3, and 5, viewed cumulatively, warranted setting aside the election.

(Chairman Truesdale and Members Fox and Hurtgen participated.)

* * *

Ryder/Ate, Inc. (21-CA-32146, 32285; 331 NLRB No. 110) Pomona, CA July 31, 2000. The Board agreed with the administrative law judge that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally implementing a new attendance policy without affording Teamsters Local 848 an opportunity to bargain about the change and its effects on bargaining unit employees; and by discharging, suspending, or disciplining employees based on the terms of the unilaterally imposed attendance policy. [HTML] [PDF]

Member Hurtgen, concurring, agreed that the implementation was unlawful, as well as the discipline administered under the changed policy. Unlike his colleagues, he disagreed with the judge's rationale that the management-rights clause in the parties' expired 1996-1997 collective-bargaining agreement did not clearly and unmistakably waive the Union's right to bargain over "reasonable work rules and rules of conduct" and over "amend[ments to] these rules from time to time." Member Hurtgen believes that such contractual language would clearly cover the attendance policy changes in dispute and privilege the changes, noting that it is almost identical to the management-rights language which he has found to privilege attendance policy revisions. See his dissent in *Dorsey Trailers,* 327 NLRB No. 155 (1999). He found however that, because the 1996-1997 contract had expired at the time the policy was implemented, the Respondent cannot rely on the language to privilege the changes in its policy.

(Members Fox, Liebman, and Hurtgen participated.)

Charge filed by Teamsters Local 848; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Los Angeles on June 24, 1998. Adm. Law Judge Mary Miller Cracraft issued her decision Dec. 29, 1998.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Little Rock Electrical Contractors, Inc. (Electrical Workers (IBEW) Local 238) Cherokee, NC July 26, 2000. 11-CA-17399; JD(ATL)-39-00, Judge Lawrence W. Cullen.

Exxon Chemical Americas and Exxon Corp. (Gulf Coast Industrial Workers Union, et al.) Houston, TX July 27, 2000. 16-CA-19712-1, et al.; JD(ATL)-40-00, Judge George Carson II.

Excel Case Ready (Food & Commercial Workers Local 791) Taunton, MA July 28, 2000. 1-CA-37682, 37769; JD-50-00, Judge Marion C. Ladwig.

The American Coal Company (an Individual) Galatia, IL July 26, 2000. 14-CA-25400; JD-95-00, Judge Martin J. Linsky.

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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.)

Newport Meat Co. (Teamsters Local 848) (21-CA-33908; 331 NLRB No. 107) Irvine, CA July 25, 2000.