

## 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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August 25, 2000

W-2753

**CASES SUMMARIZED**

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*Atlantic Limousine, Inc.* (4-RC-18132; 331 NLRB No. 134) Pleasantville, NJ Aug. 14, 2000. In this supplemental decision, the Board adopted a new rule barring election raffles. In so doing, it overruled a line of cases beginning with *Hollywood Plastics, Inc.*, 177 NLRB 678 (1969), which established a "multi-factor approach" it has followed on a case-by-case basis to determine whether an election raffle interferes with the holding of a fair and free election. Chairman Truesdale and Members Fox and Liebman signed the majority opinion; Members Hurtgen and Brame dissented. [\[HTML\]](#) [\[PDF\]](#)

The issue presented in the instant case is whether the Employer engaged in objectionable conduct by holding a raffle on the day of the election which the union lost (29 votes for, 85 against). The Regional Director found that the raffle passed muster under *Sony Corp. of America*, 313 NLRB 420 (1993). The Board majority, however, reversed the Regional Director, adopted a new per se rule banning raffles, and directed that a third election be held. It explained the new rule as follows:

Specifically, our rule prohibits employers and unions from conducting a raffle if (1) eligibility to participate in the raffle or win prizes is in any way tied to voting in the election or being at the election site on election day or (2) the raffle is conducted at any time during a period beginning 24 hours before the scheduled opening of the polls and ending with the closing of the polls. The term "conducting a raffle" includes the following: (1) announcing a raffle; (2) distributing raffle tickets; (3) identifying the raffle winners; and (4) awarding the raffle prizes. If there is a showing that such a raffle has occurred during the proscribed period, we will set aside the election upon the filing of a valid objection. We will also look with disfavor on attempts to circumvent this rule by, for example, announcing a raffle more than 24 hours before the opening of the polls and then completing the raffle immediately after the closing of the polls.

In dissent, Members Hurtgen and Brame stated:

There is no reason to abandon 31 years of the 'relevant circumstances' approach. The Board should apply that approach to raffles just as it does in other areas of Board law.

In addition, the new rule itself is unwise policy. The Sony test shows, that none of the potential harms that the Board has traditionally found may stem from raffles are present here.

(Full Board participated.)

\* \* \*

*Transportation Maintenance Services, L.L.C.* (14-CA-25682; 331 NLRB No. 140) Bridgeton, MO Aug. 17, 2000. Based on a stipulated record, the Board held, in a 4-1 decision, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to bargain collectively with Teamsters Local 618 following issuance of the Board's 1999 order in *Transportation Maintenance Services*, 328 NLRB No. 93, (Transportation Maintenance I). The majority decision was by Chairman Truesdale and Members Fox, Liebman, and Hurtgen. Member Brame dissented. [\[HTML\]](#) [\[PDF\]](#)

Previously, on July 21, 1998, the Board issued an order which (1) granted the Petitioner's request to withdraw the decertification petition in Case 14-RD-1568, and (2) expressly closed the decertification case. In *Transportation Maintenance I*, the Board denied the Respondent's motion for reconsideration of the 1998 order.

The majority found that the Respondent's contention-that the impounded ballots in the election should be opened and counted, and an appropriate certification issued-to be without merit, noting that the contention was raised in the Respondent's motion for reconsideration and was rejected by the Board in *Transportation Maintenance I*. It noted that the Respondent failed to adduce any newly discovered and previously unavailable evidence, or allege any special circumstances that would require the Board to reexamine the decision made in *Transportation Maintenance I*. The Respondent also contended that it had no duty to bargain with the Union because a reasonable time for bargaining had elapsed prior to the decertification petition being filed. The majority found that the issue is moot in view of the Board's approval of the Petitioner's request to withdraw the decertification petition in *Transportation Maintenance I*.

Member Brame dissented from the finding that the Respondent violated Section 8(a)(5) and (1) because he would have granted

the Respondent's motion for reconsideration of the Board's approval of the Petitioner's request to withdraw the decertification petition; rescinded the approval of the withdrawal; ordered that the impounded ballots be opened and counted; and issued an appropriate certification based on the results of the voting.

(Full Board participated.)

Charge filed by Teamsters Local 618; complaint alleged violation of Section 8(a)(1) and (5). Parties waived their right to a hearing before an administrative law judge.

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*JPH Management, Inc. d/b/a Mid-Wilshire Health Care Center* (31-CA-24055; 331 NLRB No. 129) Los Angeles, CA Aug. 15, 2000. Members Fox and Liebman granted in part and denied in part the General Counsel's motion for summary judgment and held that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to bargain collectively with Service Employees Local 399 by bypassing the Union and dealing directly with unit employees about their working conditions. Member Brame, concurring in part and dissenting in part, would deny the General Counsel's motion in toto. [\[HTML\]](#) [\[PDF\]](#)

On December 13, 1999, the Respondent submitted a letter to the Region purporting to answer the allegations of the complaint. The Respondent's September 7, 1999 letter to the Region, incorporated by reference to its December 13 letter, was the Respondent's statement of position submitted to the Region in response to the August 16, 1999 unfair labor practice charge.

Members Fox and Liebman found that the pro se Respondent's effective denial of the allegations in complaint paragraphs 10(a) and (c) raise substantial issues of fact warranting a hearing. Specifically, they noted that with respect to complaint paragraph 10(a), the Respondent has supplied an answer for why it did not sign the allegedly agreed upon collective-bargaining agreement, and with respect to paragraph 10(c), the Respondent stated that it "has not unilaterally altered the terms and conditions of the agreement." Members Fox and Liebman granted the General Counsel's motion with respect to complaint paragraphs 1-9, 10(b), and 11-14, finding that the Respondent did not effectively deny them in its correspondence of December 13 and September 7.

Member Brame found that the Respondent's December 13, 1999 letter is a sufficient denial of all the complaint allegations to put them at issue and require the General Counsel to prove them at a hearing, not just the allegations concerning complaint paragraphs 10(a) and (c).

(Members Fox, Liebman, and Brame participated.)

Charge filed by Service Employees Local 399; complaint alleged violation of Section 8(a)(1) and (5). General Counsel filed motion for summary judgment Jan. 24, 2000.

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*Carpenters Local 558 (Joyce Brothers Storage & Van Co.)* (13-CD-549; 331 NLRB No. 131) Melrose Park, IL Aug. 14, 2000. The Board quashed the amended notice of hearing, concluding that competing claims to the disputed work no longer exist and that there is no reasonable cause to believe that Carpenters Local 558 violated Section 8(b)(4)(D) of the Act. [\[HTML\]](#) [\[PDF\]](#)

The work in dispute is the assembly and disassembly of furniture, including cubicles, owned by Midcon Corporation at its Lombard, Illinois facility. For at least 10 years, employees of Joyce Brothers represented by Teamsters Local 705 have periodically performed the work. On January 14, 1998, the Carpenters' business manager and business representative visited the Midcon jobsite, where they observed four men installing cubicles. They asked for the men's union cards. Two did not have union cards and the other two, one of whom was Charging Party Ira Gleason, were members of Teamsters Local 705. The Carpenters officials went to see facility manager Carol Doerr. According to Doerr, they told her that she needed to "stop having the cubicle furniture put together by Joyce Brothers," as she was "taking food out of their children's mouths. And that they would picket." Doerr stopped construction at Midcon and contacted Joyce Brothers. Thereafter, Joyce Brothers subcontracted with Chicago Installation Company, which provided employees represented by Carpenters Local 508.

Employees represented by Teamsters Local 705 have not performed the cubicle work at Midcon since January 14, 1998.

On February 11, 1998, Gleason, then union steward for Teamsters Local 705, filed the instant charge, alleging that Carpenters Local 558 engaged in proscribed activity with an object of forcing Joyce Brothers to assign the work to employees that it represented rather than to employees represented by Teamsters Local 705. Thereafter, the Teamsters disclaimed the work in a letter from its counsel to counsel for the Carpenters and at the hearing for the limited purpose of taking evidence on the Carpenters' motion to quash the 10(k) hearing. The hearing officer granted the Carpenters' motion to quash, finding that the Teamsters had effectively disclaimed the work. Thereafter, Joyce Brothers requested special permission to appeal the hearing officer's ruling and, on July 28, 1999, the Board granted the request. Prior to the second hearing, counsel for the Teamsters wrote to the Regional Director to reiterate its disclaimer.

The Board found that Teamsters Local 705 has effectively and unequivocally disclaimed the work. It rejected Joyce Brothers' contention that the stated desire of Charging Party Gleason and other bargaining unit employees to continue to do the cubicle work creates a continuing jurisdictional dispute. The Board wrote: "Gleason filed his charge in order to get an answer to his question about who had a right to the cubicle work, not to assert a claim to the work. Consequently, there is no dispute."

(Members Liebman, Hurtgen, and Brame participated.)

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*D & E Electric* (14-CA-25491, 14-RC-12015; 331 NLRB No. 136) Overland, MO Aug. 15, 2000. The Board affirmed the administrative law judge's recommendations to dismiss complaint allegations that the Respondent violated Section 8(a)(1) of the Act by packing the unit; and to overrule the Union's election objections, challenging the ballots of three employees on the basis that the Respondent hired them as a part of a unit packing scheme. It remanded Case 14-RC-12015 to the Regional Director to open and count the ballots of James Lysell, John Strasburger, and Thomas Paluczak, and to issue a revised tally of ballots and the appropriate certification. The election held on March 12, 1999 resulted in 6 votes for and 5 against, Electrical Workers (IBEW) Local 1. [\[HTML\]](#) [\[PDF\]](#)

Chairman Truesdale did not rely on the judge's finding that the remark by Respondent's owner Edward Hagelstein that he "didn't think [the employees] needed the union," is not evidence of union animus because it was protected speech under Section 8(c) of the Act. The Chairman wrote: "The Board has held that an employer's antiunion comments while themselves protected speech, may nevertheless establish animus toward its employees' union activities. See *Ross Stores*, 329 NLRB No. 59 (1999); *Lampi LLC*, 327 NLRB No. 51 (1998)."

Although they acknowledged that the Board has taken a contrary view in the cases cited by the Chairman, Members Hurtgen and Brame did not rely on the remarks protected by Section 8(c) as evidence of animus. See their dissenting positions in *Ross Stores*, supra, slip op. at 8 and 12 and fn. 17, and *Lampi*, supra, slip op. at 4 fn. 7. They said "this difference of position does not affect the adoption of the judge's dismissal of the instant complaint."

(Chairman Truesdale and Members Hurtgen and Brame participated.)

Charge filed by Electrical Workers (IBEW) Local 1; complaint alleged violation of Section 8(a)(1). Hearing at St. Louis, July 8-9, 1999. Adm. Law Judge Jerry M. Hermele issued his decision Sept. 22, 1999.

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*Mike Basil Chevrolet* (3-AC-42; 331 NLRB No. 137) Hamburg, NY Aug. 16, 2000. The Board agreed with the Regional Director that the affiliation proceedings of a small independent labor organization, the Hamburg Employees Union (HEU), and the Petitioner Auto Workers Local 55, a larger labor organization, met the due process requirements of the Board. But, it found, contrary to the Regional Director, that the affiliation resulted in sufficient continuity of representation and amended the certification, as requested. [\[HTML\]](#) [\[PDF\]](#)

The Board in 1979 certified HEU as the exclusive representative of the service employees of Jack Adkins Chevrolet, the

Employer's predecessor. The Employer commenced operations in 1995 and assumed a collective-bargaining agreement between Jack Adkins Chevrolet and HEU, which was effective by its terms from September 1, 1994 to August 31, 1997. The affiliation vote was held on July 24, 1996. A majority of the HEU represented employees voted to approve an affiliation of HEU with the Petitioner. The Petitioner then filed the instant request to amend the certification to designate the Petitioner as the representative of the bargaining unit employees.

Applying *Western Commercial Transport*, 288 NLRB 214 (1988), the Board explained in holding that the significant factor is whether there is an identify change as a result of the affiliation: "As the Board said in *Western Commercial Transport*, the critical question is whether the '[c]hanges are so great that a new organization has come into being . . . .' Affiliations will often make a change in the structure of the representing union but not every change raises a question concerning representation."

The Board held in this decision: "The changes resulting from the affiliation of HEU with the Petitioner present an example of such a situation. The employees voted unanimously to affiliate with a larger organization. Although this will result in some loss of autonomy previously enjoyed by these employees, they will continue to have a voice in the administration of their collective-bargaining representative after affiliation."

In finding that the differences in dues structure between HEU and the Petitioner do not amount to such a significant change as to raise a question concerning representation, the Board wrote: "There is no initiation fee for those transferring from HEU, and we do not consider the increase in dues from approximately 1 hour's pay per month to slightly over 2 hours' pay to be significant. As the Board has indicated in other cases, we believe it is reasonable to assume that employees who vote to affiliate and thereby attain stronger representation and better services expect that it will be more expensive."

(Chairman Truesdale and Members Fox and Liebman participated.)

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#### LIST OF DECISIONS OF ADMINSTRATIVE LAW JUDGES

*Ryder Student Transportation Services, Inc.* (School Service Employees Local 284) Minneapolis, MN Aug. 14, 2000. 18-CA-15176; JD-100-00, Judge C. Richard Miserendino.

*Bell Atlantic Corp., and its wholly-owned subsidiary, New England Telephone and Telegraph Co., and Telesector Resource Group, a wholly-owned subsidiary of New England Telephone and Telegraph Co. and New York Telephone Co.* (Electrical Workers (IBEW) Systems Council T-6) Boston, MA Aug. 17, 2000. 1-CA-37462; JD-101-00, Judge Jerry M. Hermele.

*Grand Valley Health Center, a subsidiary of Spectrum Health, Continuing Care Group* (Operating Engineers Local 547A, B, C, E, H) Grand Rapids, MI Aug. 14, 2000. 7-CA-42686; JD-103-00, Judge Arthur J. Amchan.

*Teletech Holdings, Inc.* (Communications Workers) Niagara Falls, NY Aug. 15, 2000. 3-CA-21862; JD-104-00, Judge Karl H. Buschmann.

*Associated Milk Producers, Inc.* (Teamsters (IBT) Local 238) Arlington, VA Aug. 17, 2000. 18-CA-14945, 18-RC-16204; JD-105-00, Judge Arthur J. Amchan.

*CHS Community Health Systems, Inc. d/b/a MIMBRES Memorial Hospital and Nursing Home* (Steelworkers District 12, Subdistrict 2) Deming, NM Aug. 2, 2000. 28-CA-15948, 16291; JD(SF)-45-00, Judge James L. Rose.

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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.)*

*Pat Salmon & Sons of Florida, Inc.* (Teamsters GA/FL Conference) (12-CA-20857; 331 NLRB No. 132) Jacksonville, FL Aug. 16, 2000.

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**NO ANSWER TO COMPLIANCE SPECIFICATION**

*(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's Withdrawal of its answer to the compliance specification.)*

*Apple Painting Company, Inc.* (Individuals) (7-CA-40902; 331 NLRB No. 133) Livonia, MI Aug. 16, 2000.