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

Index of Back Issues Online

September 8, 2000 W-2755

CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

OTHER CONTENTS

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.

Scepter Ingot Casting (26-CA-17161, 17345, 331 NLRB No. 153) New Johnsonville, TN Aug. 28, 2000. The Board, upholding the administrative law judge, found the Respondent unlawfully withdrew recognition from the Union because it did not have sufficient grounds to support a good-faith doubt that the Union retained the support of a majority of unit employees. The Respondent withdrew recognition of the Union in 1995 after relying on statements by an employee to management that she "felt" the Union had "no standing." The Board also found unlawful the Respondent's unilateral implementation of a pay increase, a change in work rules and its discharge of an employee. Accordingly, it concluded that "an affirmative bargaining order with its temporary decertification bar is necessary to fully remedy the allegations in this case." [HTML] [PDF]

(Chairman Truesdale and Members Fox and Liebman participated.)

Charge filed by Stephen L. Merrell, an individual, complaint alleged violation of Section 8(a)(5). Hearing at Nashville, TN on Nov. 18-19, 1996. Adm. Law Judge Richard J. Linton issued his decision July 16, 1997.

* * *

Local Union No. 3 (IBEW) (34-CB-2179 et al.; 331 NLRB No. 150) White Plains, NY Aug. 28, 2000. Agreeing with the administrative law judge, the Board found that the Respondent Union violated the Act by (1) requiring employees who used its exclusive hiring hall to comply with its constitution and by-laws (including a referral rule the Union rescinded in May 1999, which discriminated on the basis of union membership); and (2) denying out-of-work electrician Michael Conner the opportunity to place his name on a referral list due to his status as a non-member. [HTML] [PDF]

(Members Fox, Liebman, and Hurtgen participated.)

Charges filed by Wayne Hayward, Christopher Kulers, and Michael Conner, individuals; complaint alleged violation of Section 8(b)(1)(A) and (2). Hearing at Hartford, CT, Sept. 28-30, 1999. Adm. Law Judge Michael A. Marcionese issued his decision Jan. 13, 2000.

* * *

Sea Breeze Health Care Center (15-CA-14273, 15-RC-8042; 331 NLRB No. 149) Mobile, AL Aug. 25, 2000. Affirming the administrative law judge, the Board majority of Members Fox and Liebman ordered a second election upon concluding the Respondent had engaged in certain unfair labor practices that had interfered with the first election, including a "group interrogation" and administering a "Union Truth Quiz". The quiz consisted of 17 questions "with an anti-union bias" for employees to answer regarding their knowledge of the Union. The winning prize was $1,427.60 (an amount based on monthly union-dues payments from unit employees if they chose union representation), which the Respondent said would be donated to the winning employee's favorite charity. The majority held that this contest was "coercive" and "tantamount to effectively polling employees about their union sentiments," noting the employer required employees who participated to identify themselves and included a "substantial monetary prize." [HTML] [PDF]

Dissenting Member Brame would dismiss the allegations. He thought the questioning of employees by a supervisor about their knowledge of the union campaign simply was "one brief, nonconfrontational inquiry" and did not rise to a coercive level. He said the quiz was "nothing more than a 'tongue-in-cheek' educational tool" and that it could hardly have influenced the election since only one employee submitted the completed quiz.

(Members Fox, Liebman, and Brame participated.)

Charges filed United Food and Commercial Workers Local 1657, complaint alleged violation of Section 8(a)(1). Hearing at Mobile, Oct. 14-17, 1997. Adm. Law Judge Jerry M. Hermele issued his decision March 24, 1998.

* * *

Novartis Nutrition Corp. (18-CA-15042, 15094; 331 NLRB No. 161) Summit, NJ Aug. 28, 2000. The Board agreed with the administrative law judge's finding that the Respondent violated the Act by linking employee Steve Taray's union activity to his job performance and discharging employee Robert Tresemer for engaging in union activity. [HTML] [PDF]

(Chairman Truesdale and Members Fox and Liebman participated.)

Charge filed by Robert G. Tresemer, an individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing Minneapolis, MN, May 11-12, 1999. Adm. Law Judge Jerry M. Hermele issued his decision Aug. 4, 1999.

* * *

Home Depot USA, Inc. (2-RC-22092; 331 NLRB No. 168) New Rochelle, NY Aug. 25, 2000. Reversing the Acting Regional Director, the Board found that the Employer's drivers (and dispatchers who drive) share a sufficiently distinct community of interest to constitute an appropriate bargaining unit. Unlike the truck drivers in *Levitz Furniture Co.,* 192 NLRB 61 (1971), the Board noted the drivers here are licensed and do not spend a substantial portion of their time working alongside or in close proximity with other employees. [HTML] [PDF]

(Chairman Truesdale and Members Fox and Brame participated.)

* * *

Slay Transportation Co. (16-RC-10044; 331 NLRB No. 170) Houston, TX Aug. 25, 2000. The Board majority of Members Fox and Liebman, contrary to the Regional Director, found that the Employer's owner-operator truckdrivers are employees under the Act and should be included in the petitioned-for bargaining unit. Noting the owner -operators do not operate "independent businesses" and citing *Roadway Package System, Inc.,* 326 NLRB 842 (1998), the majority stated: [HTML] [PDF]

"The owner-operators here transport chemicals solely for *Slay*--a company whose core function is the transportation of such products for its customers. These owner-operators augment the Employer's own driver workforce, performing the same core functions as those drivers."

In dissent, Member Brame would affirm the Regional Director's finding that the drivers were independent contractors. He pointed out, among other things, that the owner-operators used their own tractors, which are licensed and insured by their own name; the owner-operators are free to hire other drivers to operate their tractors and to set the drivers' rate of pay. They also are free to work for other employers and to refuse a job without losing their contract.

(Members Fox, Liebman, and Brame participated.)

* * *

CII Carbon, L.L.C. (15-CA-14487-2, et al; 331 NLRB No. 155) Chalmette, LA Aug. 25, 2000. The Board adopted the administrative law judge's recommended order dismissing the complaint that the Respondent allegedly had violated the Act by locking out employees, unilaterally changing terms and conditions of employment, and refusing to arbitrate grievances. [HTML] [PDF]

(Members Fox, Liebman, and Hurtgen participated.)

Charges filed by United Steelworkers of America; complaint alleged violation of Section 8(a)(3) and (5). Hearing at New Orleans, Oct. 18-21, 1999. Adm. Law Judge George Carson II issued his decision Dec. 22, 1999.

* * *

The News Journal Co. (4-CA-26797; 331 NLRB No. 177) New Castle, DE Aug. 25, 2000. The Board, agreeing with the administrative law judge, dismissed the complaint that in July 1997 the Respondent allegedly had unlawfully discontinued its practice of granting wage increases to employees after successful completion of their 90-day probationary period. The Board noted in a footnote that "the Respondent adduced evidence, which was credited by the judge, that the decision to award post-probationary merit wage increases was highly subjective and depended on numerous criteria, including budget, skill, and area of specialty, and the General Counsel failed to show that executive editors who approved those raises prior to October 1997 applied different criteria than current Executive Editor Jane Amari in determining whether to give merit increases." [HTML] [PDF]

(Members Fox, Liebman, and Brame participated.)

Charges filed by The Newspaper Guild of Greater Philadelphia, Local 10; complaint alleges violation of Section 8(a)(1) and (5). Hearing at Philadelphia, PA, Oct. 27, 1999. Adm. Law Judge Bruce D. Rosenstein issued his decision Feb. 18, 2000.

* * *

Avne Systems, Inc. (2-CA-30949, 2-CB-16899; 331 NLRB No. 180) Bronx, NY Aug. 25, 2000. Rejecting a statute of limitations defense, the Board majority of Chairman Truesdale and Member Hurtgen adopted the administrative law judge's findings that (1) the Respondents unlawfully entered into a collective-bargaining agreement at a time when Charging Party Laborers (LIUNA) Local 445 was the Section 9 representative and its contract with Respondent Avne had not yet expired; and (2) Respondent Avne unlawfully withdrew recognition from the Charging Party during the term of an existing contract. The Board found it appropriate to toll the statute of limitations as to both Respondents. Dissenting in part, Member Brame would not toll the statute as to Respondent Avne. The majority stated: [HTML] [PDF]

> It is undisputed that the conduct alleged as unlawful in the instant case occurred more than 6 months before the charges were filed. Notwithstanding this fact, the judge found that the statute of limitations should be tolled because the Respondents fraudulently concealed from Avne employees a scheme to substitute a new union, Local 445, League of International Federated Employees (LIFE), for Local 445, Laborers' International Union of North America (Local 445, LIUNA), their bargaining representative. The judge found that, by misleading the employees as to the nature of the transactions involved, Respondent Avne, fraudulently concealed the true facts from the affected employees and that, as a consequence, the 10(b) statute of limitations should be tolled. We find merit in the Respondents' exceptions to this finding.

(Chairman Truesdale and Members Hurtgen and Brame participated.)

Charges filed by Laborers' International Union of North America Local 445; complaint alleged violation of Section 2(5). Hearing at New York, July 28-29, and Nov. 4, 1998. Adm. Law Judge Raymond P. Green issued his decision Dec. 28, 1998.

* * *

Priority One Services, Inc. (11-RD-598; 331 NLRB No. 167) Research Triangle Pk., NC Aug. 30, 2000. The Board majority of Chairman Truesdale and Member Liebman denied the Petitioner's request for review of the Regional Director's administrative dismissal of a July 8, 1999 decertification petition. On August 31, 1999, Region 11 issued a complaint based upon unfair labor practice charges filed by the Union alleging unilateral changes by the Employer that predated the filing of the petition. Subsequently, the parties reached agreement on a collective-bargaining agreement which resolved the outstanding unfair labor practice charges. The Regional Director thereafter dismissed the decertification petition on the basis of the parties' negotiation of the collective-bargaining agreement and concomitant settlement of the unfair labor practice charges. The majority stated: [HTML] [PDF]

"Here, the specific unilateral changes - a 9.5-percent increase in employee health insurance premiums and a change in the method of refunding excess employee health and welfare benefits - were serious enough to undercut the union's ability to function as the employees' bargaining representative and interfere with employee free choice in an election."

In dissent, Member Hurtgen would permit a hearing on the factual issue of whether there was a causal nexus between the alleged 8(a)(5) conduct and the employee disaffection from the Union. By not permitting a hearing, he said his colleagues "stifle the Section 7 rights of the decertification petitioner and those employees who wish to have an election."

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

* * *

Mid-State, Inc. (12-CA-18330, et al.; 331 NLRB No. 185) Gainesville, FL Aug. 25, 2000. The Board majority of Members Hurtgen and Brame found, in agreement with the administrative law judge, that certain statements made to employees by two supervisors in April 1997, immediately prior to an election, were not objectionable and did not violate the Act. (One such statement by Supervisor McLeod, referring to Union representative Sykes was: "If he comes onto my property, I'll fill his butt with lead. Florida law says I can defend my property that way.") Chairman Truesdale, dissenting in part, would find the statements unlawful and direct a second election. "Each statement is a threat of physical violence directed at union activity that would have a tendency to interfere with employees' exercise of their Section 7 rights," he stated. [HTML] [PDF]

The Board also affirmed the judge's findings that the Respondent had engaged in certain unfair labor practices, including promulgating a no-solicitation rule that prohibited solicitation during break time, threatening to close the business if employees were represented by the union, and threatening to sue employees in retaliation for their union activities. The judge dismissed all complaint allegations falling within the "critical" election period from March 7, 1997, when the petition was filed, to April 18, 1997, the date the election was held (the vote count was 4 yes, 20 no, and 15 challenged ballots).

(Chairman Truesdale and Members Hurtgen and Brame participated.)

Charge filed by Electrical Workers (IBEW) Local 1205; complaint alleged violation of 8(a)(1) and (3). Hearing at Gainesville, 6-days between Aug. 25 and Oct. 15, 1997. Adm. Law Judge Richard J. Linton issued his decision July 17, 1998.

* * *

Germinsky Electrical Co. (22-CA-21193, et al.; 331 NLRB No. 181) Plainfield, NJ August 25, 2000. The Board adopted the administrative law judge's dismissal of the complaint, finding the Respondent did not unlawfully refuse to consider and hire union applicants. The General Counsel did not present sufficient evidence to establish the requisite antiunion animous to sustain the allegations, the panel concluded. [HTML] [PDF]

(Chairman Truesdale and Members Hurtgen and Brame participated.)

Charges filed by Electrical Workers, et al. (IBEW); complaint alleged violation of Section 8(a)(3). Hearing at Newark, Dec. 2-5, 1996. Adm. Law Judge Raymond P. Green issued his decision March 25, 1997.

* * *

Charles S. Wilson Memorial Hospital (3-CA-20667; 331 NLRB No. 154) Johnson City, NY Aug. 31, 2000. The Board adopted the judge's finding that the Respondent unlawfully threatened to rescind existing benefits pertaining to paid time off if the Union filed unfair labor practice charges; and maintaining a rule requiring employees to refrain from talking to union representatives and requiring them to inform management of any conversations with union representatives. However, the panel reversed the judge's dismissal of allegations that the Respondent violated the Act by refusing to furnish employees' timecards to the Union as requested and further by unilaterally modifying contractual shift differential pay entitlements. [HTML] [PDF]

(Chairman Truesdale and Members Fox and Liebman participated.)

Charges filed Painters Local 1990; complaint alleged violation of Section 8(a)(5) and (1). Hearing at Binghamton, Feb. 23-24, 1998. Adm. Law Judge Raymond P. Green issued his decision June 24, 1998.

* * *

Hinds County Human Resource Agency (18-RC-16579, formerly 15-RC-8239) Jackson, MS Aug. 25, 2000. The Board majority of Members Hurtgen and Brame reversed the Regional Director's November 22, 1999 Decision and Direction of Election in which he found the Employer not to be a political subdivision of the State of Mississippi exempt from the Board's jurisdiction under Section 2(2) of the Act. In holding the Employer to be exempt, the majority stated the issue was whether the Employer was created by the Hinds County Board of Supervisors so as to constitute a department or administrative arm of government. "It is clear from the language of the enabling statute [Mississippi State Code] that it was the legislature's intention that human resource agencies, such as the Employer, be operated under local governmental control, " it said. [HTML] [PDF]

In a separate concurring opinion, chairman Truesdale, while agreeing the petition should be dismissed because the Employer is an exempt political subdivision, stated:

"In my view, however, a majority of the individuals on the Employer's board of directors are public officials or individuals responsible to the general electorate and, therefore, the Employer satisfies the second prong of the test under *NLRB v. Natural Gas Utility of Hawkins County, Tennessee,* 402 U.S. 600 (1971)."

(Chairman Truesdale and Members Hurtgen and Brame participated.)

* * *

Operating Engineers Local 150 (13-CD-582-1; 331 NLRB No. 179) Merrillville, IN Aug. 25, 2000. In this Section 10(k) proceeding, the Board concluded the employees of Diamond Coring Co., Inc., represented by Laborers Local 81, are entitled to perform the saw cutting of concrete work in dispute at a jobsite in Merrillville, IN. It held that Operating Engineers Local 150 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require the Employer to assign the disputed work to employees represented by it. [HTML] [PDF]

(Chairman Truesdale and Members Liebman and Brame participated.)

* * *

DaimlerChrysler Corp. (7-CA-40899, et al.; 331 NLRB No. 174) Auburn Hills, MI Aug. 25, 2000. The Board majority of Members Fox and Liebman adopted the administrative law judge's findings that the Respondent violated the Act by refusing to provide the Union with requested information relevant to its collective-bargaining duties; and by threatening Chief Steward Keith Valentin with discipline for filing information requests which it characterized as "offensive" and attempting to define and limit his rights as a union steward. [HTML] [PDF]

However, the panel reversed the judge's finding that the Respondent did not violate the Act by refusing to provide the Union with requested information listing all Chrysler employees who have been disciplined subsequent to any type of "last chance" agreement since April 23, 1993. On this issue, Member Brame dissented, agreeing with the judge's dismissal of the allegation. He stated:

> As found by the judge, the Union entered into an agreement with the Respondent not to use the treatment of employees pursuant to 'last chance' agreements as precedent with regard to other employees. The effect of the parties' agreement is that the Respondent is not bound to treat the instant grievance in the same manner as it treated any past grievances. Thus, by entering into this agreement, the Union essentially agreed not to assert its right to allege disparate treatment based on 'last chance' agreements.

(Members Fox, Liebman, and Brame participated.)

Charges filed by Auto Workers (UAW) Local 412; complaint alleged violation of Section 8(a)(5) and (1). Hearing at Detroit, on March 1-2, 1999. Adm. Law Judge Arthur J. Amchan issued his decision May 21, 1999.

* * *

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Reading Rock, Inc. (Teamster Local 100) Cincinnati, OH Aug. 30, 2000. 9-CA-34502; JD-108-00, Judge Arthur J. Amchan.

Sheet Metal Workers Local 33 of Northern Ohio (an Individual) Perrysburg, OH Aug. 30, 2000. 8-CB-8858, 9003; JD-110-00, Judge William G. Kocol.

Kentucky General, Inc. d/b/a Norman King Electric (Electrical Workers (IBEW) Local 1701) Owensboro, KY Aug. 30, 2000. 25-CA-25894-1, 25894-2; JD-111-00, Judge Paul Bogas.

Harmony Corp. (Electrical Workers (IBEW) Local 995) Baton Rouge, LA Aug. 28, 2000. 15-CA-13913, 14102; JD(ATL)-43-00, Judge George Carson II.

Progressive Electric, Inc. (Electrical Workers (IBEW) Local 265) Lincoln, NB Aug. 23, 2000. 17-CA-18766; JD(SF)-50-00, Judge Mary Miller Cracraft.

ICH Corp. and Lyon's of California, Inc. (an Individual, Hotel Employees & Restaurant Employees Local 340) San Francisco, CA Aug. 23, 2000. 20-CA-28971, et al.; JD(SF)-43-00, Judge Michael D. Stevenson.