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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September 15, 2000 W-2756

CASES SUMMARIZED

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Press Release:

(R-2404) Olivia Garcia Boullt Named NLRB Resident Officer in San Antonio, TX

Office Employees Local 251 (Sandia National Laboratories) (28-CB-3902, et al.; 331 NLRB No. 193) Albuquerque, NM Aug. 25, 2000. The Board held that it will no longer proscribe intraunion discipline against union members under Section 8(b)(1)(A) of the Act when the matter involves a purely intraunion dispute and the intraunion discipline imposed does not interfere with the employee--employer relationship or contravene a policy of the statute. The majority opinion was by Chairman Truesdale and Members Fox and Liebman. [HTML] [PDF]

The Board found that the dispute at issue essentially was an intraunion factional quarrel over intraunion policies and politics between, among others, the Union's two highest-ranking elected officers, who each filed impeachment petitions against one another. The predominant issue underlying the dispute concerned the disposition of a $58,000 check in settlement of a lawsuit against the Union. As a result of the dispute, internal union sanctions, including removal from union office and suspension or expulsion from union membership, were imposed on members of the losing faction, but no employment sanctions were implemented by any employer.

In dismissing the complaint, the Board overruled several cases in which the Board previously had found violations of the Act even in the absence of any meaningful correlation to the employment relationship or to the policies of the Act, including *Carpenters Local 22 (Graziano Constructions Co.),* 195 NLRB 1 (1972). The Board held:

> [T]he position that we adopt here represents a return to the law as it was before *Graziano Construction* expanded the reach of Section 8(b)(1)(A) and made the Board a forum for vindicating policies that Congress intended to be enforced through the procedures of the Landrum Griffin Act.

While reaffirming the principle that Section 7 encompasses the right of employees to concertedly oppose the policies of their union, the Board rejected the principle that Section 8(b)(1)(A) proscribes "virtually each and every form of intraunion dispute without regard to the employment context or the policies of the Act."

Member Hurtgen, concurring, agreed with the result reached by the majority, but on the basis that, as a matter of comity, efficiency, and economy, the Labor-Management Reporting and Disclosure Act (LMRDA) should be the primary means of enforcement when the underlying dispute is wholly intraunion in character and the discipline imposed by the union is wholly internal and nonmonetary.

Member Brame, in dissent, concluded that the Union violated 8(b)(1)(A) because its discipline of the dissident members falls within a long line of Supreme Court, Court of Appeals, and Board precedent finding violations of that section. In Member Brame's view, the Union's discipline of the dissident members did not reflect a legitimate union interest and impaired national labor policy under both Section 7 and the LMRDA.

(Full Board participated.)

Charge filed by Mary Ann Mitchell-Carr and Mildred G. Smith, individuals; complaint alleged violation of Section 8(b)(1)(A). Hearing at Albuquerque, May 4, 1994. Adm. Law Judge James M. Kennedy issued his decision Aug. 23, 1994.

* * *

Multi-Ad Services, Inc. 33-CA-11945; 331 NLRB No. 160) Peoria, IL Aug. 25, 2000. Affirming the administrative law judge, the Board majority of Members Fox and Liebman held that the Respondent violated the Act by (1) discharging employee Ted Steele because of his union activities; (2) impliedly promising to help improve his employment situation without the need for union representation; and (3) threatening to close the bindery depart merit should its employees become represented by a union. Member Brame concurred with issues No. 1 and 3, but dissented on issue No. 2. [HTML] [PDF]

(Members Fox, Liebman, and Brame participated.)

Charges filed by Graphic Communications Local 68C; complaint alleges violation of Section 8(a)(1) and (3). Hearing at Peoria, IL, May 29, 1997. Adm. Law Judge William J. Pannier III issued his decision Dec. 2, 1997.

* * *

Pirelli Cable Corporation (11-CA-15987 et al.; 331 NLRB No. 158) Abbeville, SC Aug. 31, 2000. In a Supplemental Decision and Order, the Board agreed with administrative law judge's findings that the Respondent had engaged in certain unfair labor practices, including terminating the reinstatement rights of strikers without regard to whether they had obtained substantially equivalent employment. It concluded the Respondent's motive was to rid itself of the strikers and it failed to demonstrate any legitimate business justification for this conduct. [HTML] [PDF]

The Board issued its first decision in this proceeding on June 18, 1997 (223 NLRB No. 1009), holding that the Respondent violated the Act by threatening its employees with loss of their jobs if they went on strike. The Board found it unnecessary to consider the judge's "alternative unfair labor practice findings that are based on the assumption that the [1994] strike was an economic strike." The U.S. Court of Appeals for the Fourth Circuit on March 31, 1998 rejected the Board's finding that the Respondent threatened its employees with job loss, and, therefore, did not agree that the strike was an unfair labor practice strike. Accordingly, the court remanded the case to the Board "for reconsideration of the administrative law judge's numerous alternative holdings based upon the initial conclusion that the strike was an economic strike."

The Board noted, as conceded by the Respondent, that at least 68 job postings subsequent to the strike represented vacancies created by the departure of strike replacements. Citing *MCC PacificValues,* 244 NLRB No. 931 (1979), the Board ruled that in filling these vacancies the Respondent was not entitled to prefer strike replacements then on the payroll to qualified strikers awaiting reinstatement.

(Chairman Truesdale and Members Fox and Liebman participated.)

* * *

FiveCap, Inc. (7-CA-37192 et al., 331 NLRB No. 157) Scottville, MI Aug. 25, 2000. A Board majority of Members Fox and Liebman held the Respondent, a nonprofit community action agency, is not a political subdivision exempt from the Act's jurisdiction. The administrative law judge had reached the same conclusion but for different reasons. The Board applied its analysis in *Enrichment Services Program, Inc.,* 325 NLRB 818 (1998), which issued after the judge's decision, to the facts of this case. The determinative issue, it stated, was whether the one-third of the community action agency's board required to be "representative of the poor" is responsible to the electorate. [HTML] [PDF]

"[S]ince less than a majority of the Respondent's board is composed of public officials or individuals responsible to the general electorate, we find that the Respondent is not an exempt political subdivision and that it is an employer under Section 2(2) of the Act," the majority concluded.

The majority went on to find employee Arthur Burkel's layoff "was the direct result of action that the Respondent clearly took for an unlawful motive" (rather than for lack of work, as the Respondent had maintained), and in violation of the Act. Member Brame concurred that the Respondent is an employer but dissented on the layoff issue, contending it was not unlawful.

(Members Fox, Liebman, and Brame participated.)

Charges filed by Teamsters Local 406; complaint alleged violation of Section 2(2). Hearing at Cadillac and Grand Rapids, MI, Jan. 29--Feb. 2, and Feb. 4--8, 1996. Adm. Law Judge Steven B. Fish issued his decision Jan. 31, 1997.

* * *

North American Dismantling Corp. (7-CA-39923 et al.; 331 NLRB No. 163) Lapeer, MI Aug. 31, 2000. The majority opinion of Members Fox and Liebman affirmed the administrative law judge's finding that employees Powell, Giltrop and Zietz were unlawfully discharged for engaging in protected concerted activity. The Respondent had contended these discriminatees engaged in an economic strike when they walked off the job and that they were not discharged by the Respondent. Member Hurtgen dissented, stating: [HTML] [PDF]

> The issue in this case is whether Respondent discharged the employees for seeking a union wage scale or gave the employees the option of working at a lesser rate or not working for Respondent. In my view, the General Counsel has not established the former proposition.

(Members Fox, Liebman, and Hurtgen participated.)

Charges filed by Jeffrey G. Powell, Robert W. Giltrop, and Jayson Zeitz, individuals; complaint alleged violation of Section 8 (a)(1). Hearing at Flint, MI, March 26-27, 1998. Adm. Law Judge Leonard M. Wagman issued his decision July 10, 1998.

* * *

Flat Dog Productions, Inc. (31-CA-24062; 331 NLRB No. 169) Los Angeles, CA Aug. 31, 2000. The Board agreed with the administrative law judge's finding that the Respondent unlawfully discharged striking employees for engaging in an economic strike. Applying the standard in *Brunswick Hospital Center, Inc.,* 265 NLRB 803 (1982), the Board rejected the Respondent's claim that it did not, in fact discharge the strikers. [HTML] [PDF]

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charges filed by Stage Employees (IATSE) Local 600; complaint alleged violation of Section 8(a)(3) and (1). Hearing at Los Angeles, March 27-28, 2000. Adm. Law Judge Jay R. Pollack issued his decision May 23, 2000.

* * *

Resco Products, Inc. (14-CA-24512-1, 24512-2; 331 NLRB No. 162) Bonne Terre, MO Aug. 31, 2000. Affirming the administrative law judge, the Board held that Respondent Resco violated Section 8(a)(5) of the Act by failing to make contractually required payments of accrued vacation pay to employees, and that Respondent successor VMPC violated Section 8(a)(1) by conditioning offers of employment to Resco employees on their waiving contractually accrued vacation pay and later by threatening employees with termination if they accepted checks in payment for accrued vacation pay. Contrary to the judge, the Board concluded VMPC did not violate Section 8(a)(5), since it was not clear that VMPC would hire Resco's workforce and therefore was entitled to set initial terms and conditions of employment without first bargaining with the Union. [HTML] [PDF]

The Board further found, contrary to the judge, and agreeing with the General Counsel, that VMPC is a *Golden State* successor to Resco and therefore jointly and severally liable to remedy Resco's 8(a)(5) violation.

Member Hurtgen issued a separate concurring opinion, expressing his view that the paradigm *Golden State* situation, where a predecessor has committed a violation prior to the transfer of the business to a purchaser and a purchaser is aware of that violation, was not present here. He noted that predecessor Resco did not commit the violation (i.e. failure to pay), prior to the transfer.

(Members Fox, Liebman and Hurtgen participated.)

Charges filed by United Steelworkers of America; complaint alleged violation of Section 8(a)(1) and (5). Hearing at St. Louis, Oct. 29, 1997. Adm. Law Judge Michael O. Miller issued his decision Feb. 23, 1998.

* * *

NACCO Materials Handling Group, Inc. (9-CA-35318-2; 331 NLRB No. 164) Berea, KY Aug. 25, 2000. In the this case involving a "goose escapade," the Board reversed the administrative law judge's finding that the Respondent violated the Act by suspending and terminating employees Poff and Rowlett during the eighth union organizing campaign at this plant. The Board described the events leading to the discharges as follows: [HTML] [PDF]

> The Respondent has a pond on its property, and in September, there are hundreds of ducks and geese at the pond. Employee Rowlett testified that on September 19, 1997, a goose wandered into his work area and that he 'talked' to it. Rowlett picked up the goose by its feet and told other employees that it 'want[ed] to sign a union card to join the union.' Employee Poff wrote 'Vote Yes' on a small card, attached it to a string about two feet long, and placed the sign over the goose's head while Rowlett held it. Rowlett then proceeded to drive the goose through the plant on a forklift truck. The record shows that a Canada goose weighs approximately 14 pounds and has 5-foot wingspan.

The judge concluded the discharges were motivated by antiunion animus, pointing out that the Respondent's employee handbook expressed the view that a union "could seriously impair the relationship between the Company and the employees, and could retard the growth of the Company and the progress of the employees." The Board, however, said "the judge failed to accord weight to the significant countervailing evidence." For example, no Section 8(a)(1) violations were found by the judge, no antiunion comments were made to the alleged discriminatees, and no unfair labor practices were committed in previous organizing campaigns at the plant. The Board stated in a footnote:

> Parading a live goose through a manufacturing plant obviously does not fall within the activities protected by Sec. 7. Conduct of that kind has been considered to be unprotected horseplay. *See, e.g., Publishers Printing Co.,* 272 NLRB 1027, 1030-1032 (1984). Placing a 'vote yes' sign on a wild animal does not transform otherwise unprotected 'gooseplay' into activity protected by the National Labor Relations Act.

(Chairman Truesdale and Members Hurtgen and Brame participated.)

Charges filed by Teamsters Local 651; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Berea, Aug. 4 and Oct. 8, 1998. Adm. Law Judge John H. West issued his decision on April 30, 1999.

* * *

Charlotte Amphitheater Corporation d/b/a Blockbuster Pavilion (11-CA-14684, et al.; 331 NLRB No. 165) Charlotte, NC Aug. 25, 2000. This case was first decided by the Board on June 27, 1994, 314 NLRB 129 (1994). In the earlier proceeding, the Board found the Respondent had engaged in numerous unfair labor practices during a union organizing campaign and concluded a GissellI bargaining order was appropriate. On April 30, 1996, the U.S. Court of Appeals for the District of Columbia Circuit enforced the Board's unfair labor practice findings but remanded the case to the Board solely for consideration of whether other traditional remedies would be adequate to erase the effects of the unfair labor practices and for consideration of evidence bearing on the propriety of the bargaining order in light of changed circumstances. [HTML] [PDF]

In the instant Supplemental Decision and Order, the Board deleted the bargaining order, noting that the six-year delay may render it unenforceable. An election never was held but a representation petition, filed on Oct. 15, 1991, is pending. The Board, in a majority opinion by Members Fox and Liebman, ordered the following special remedies in place of the bargaining order:

> 1. The Respondent must supply the Union, on its request made within one year, the names and addresses of its current employees.
>
> 2. The Respondent, in addition to posting copies of a notice, is ordered to mail it to all present employees and to all employees on its payroll since Aug. 24, 1991.

3. The Respondent must convene during working time all unit employees and have a "responsible management official" read the notice or permit a Board agent read it.

4. The Respondent is ordered to grant the Union reasonable access to its bulletin boards and "all places where notices to employees are customarily kept." This remedy is to be in effect for two years or until the Regional Director has issued an appropriate certification following an election--whichever comes first.

In dissent, Member Brame agreed the Respondent should be required to mail copies of the notice to present and former employees, but disagreed that additional remedies are needed. He stated:

Consistent with the court's remand instruction to explain why traditional remedies would be inadequate in this case, special remedies are necessary only if it can be demonstrated that the Board's traditional remedies will not adequately eliminate the effects of unfair labor practices and ensure a fair election. There is no such showing here.

(Members Fox, Liebman and Brame participated.)

Charges filed by Stage Employees (IATSE) Local 322; complaint alleged violation of Section 8(a)(1), (3), and (5). Remand hearing at Charlotte, May 15-16, 1997. Adm. Law Judge John H. West issued his supplemental decision Sept. 25, 1997.

* * *

Salem Electric Company, Inc. (11-CA-16141, et. al.; 331 NLRB No. 172) Winston-Salem, NC Aug. 31, 2000. This case primarily involves the General Counsel's allegations that Respondent Salem refused to hire or to consider for hire 66 union members who applied for work as electricians during 1994 and 1995. Additionally, the General Counsel alleged that Salem unlawfully failed to reinstate two former economic strikers to their prestrike jobs or to substantially equivalent ones; that Salem and Respondent Options, as joint employers, unlawfully refused to hire three union members; and that Salem and Options each violated Section 8(a)(1) of the Act in different instances. [HTML] [PDF]

The Board decided to remand the case to the administrative law judge on the following three broad, potentially related grounds:

First, because we reject the judge's Section 10(b) rationale for dismissing the striker-reinstatement allegations, we remand these contentions for the judge to make findings and recommendations on the substantive unfair labor practice question. Second, we reverse the judge's finding that the General Counsel failed to establish that Salem and Options are joint employers, and we remand for the judge's further consideration of this and related issues. Finally, we remand the refusal-to-hire/refusal-to-consider allegations involving the 66 union members for the judge's further consideration in light of our recent decision in *FES (A Division of Thermo Power),* 331 NLRB No. 20 (2000).

(Chairman Truesdale and Members Fox and Liebman participated.)

Charges filed by Electrical Workers (IBEW) Local 342; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Winston-Salem, on various dates between Nov. 12, 1996 through Feb. 12, 1997. Decision issued by Adm. Law Judge Richard J. Linton, Nov. 21, 1997.

* * *

North American Refractories Co. (7-CA-39958, 40626; 331 NLRB No. 182) White Cloud, MI Aug. 31, 2000. The Board adopted the administrative law judge's dismissal of an allegation excepted to by the General Counsel that the Respondent's discharge of employee Douglas Rand independently violated Section 8(a)(1) of the Act. The judge had dismissed allegations that Rand's discharge violated both 8(a)(3) and 8(a)(1), notwithstanding Rand's support of the Union's organizing drive, because of the employee's insubordinate outburst directed at his supervisor. The judge said Rand lost the protection of the Act after this "profane, vulgar attack." [HTML] [PDF]

There were no exceptions to the judge's other findings, including that the Respondent violated 8(a)(1) by maintaining an overly

broad no-solicitation, no distribution rule.

(Members Fox, Liebman, and Hurtgen participated.)

Charges filed by United Steelworkers of America; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Grand Rapids, July 27-29, 1998. Adm. Law Judge Irwin H. Socoloff.

* * *

McDaniel Ford Inc. (29-CA-18811, 18992; 331 NLRB No. 183) Hicksville, NY Aug. 31, 2000. In a Supplemental Decision and Order, the Board ordered the Respondent to pay almost $43,000 in backpay (including pension contributions) to employee Leo Balsam. [HTML] [PDF]

(Chairman Truesdale and Members Fox and Hurgten participated.)

Hearing held at Brooklyn, Nov. 30, 1999. Adm. Law Judge Eleanor McDonald issued her supplemental decision March 30, 2000.

* * *

Kajima Engineering and Construction, Inc. (28-CA-14029, 14076; 331 NLRB No. 175) Las Vegas, NV Aug. 31, 2000. Reversing the administrative law judge, the Board concluded the Respondent unlawfully laid off employee Todd Ewoldt for union activity given the "confluence of circumstances" in this case, including "the fact the Respondent responded to the Union's organizing campaign with demonstrated unlawful threats, promises, and that the Respondent's asserted reasons for Ewoldt's layoff [lack of work] were pretextual." The layoff occurred soon after the Union was certified. [HTML] [PDF]

(Chairman Truesdale and Members Fox and Liebman participated.)

Charges filed by Operating Engineers Local 12; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Las Vegas, April 29-30 and May 1, 1997. Adm. Law Judge Burton Litvack issued his decision Jan. 29, 1998.

* * *

Labor Ready, Inc. (20-CA-28946-1; 331 NLRB No. 187) San Francisco, CA Aug. 31, 2000. The Board affirmed the administrative law judge's finding that the Respondent's "no walk-off " rule, which stated that employees who walked off a job would be discharged, was overbroad in violation of the Act. The Respondent had terminated two employees and threatened employees with discharge pursuant to this rule. In a footnote, the Board asserted: [HTML] [PDF]

> Respondent asserts that the order proposed by the judge would prevent Respondent from terminating an employee who decides to walk off the job 'to go to a tavern for a beer.' We note, however, that the Respondent could promulgate an appropriately narrow rule that would allow it to terminate an employee under these and similar circumstances.

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charge filed by Donald Robinson, an individual; complaint alleged violation of Section 8(a)(1). Hearing on Oct. 6-7, 1999 (closing arguments by telephone). Adm. Law Judge Michael D. Stevenson issued his bench decision Oct. 27, 1999.

* * *

EIS Brake Parts, Div. of Standard Motor Products (34-CA-7107-1 et al.; 331 NLRB No. 195) Berlin, CT Aug. 25, 2000. The Board adopted the judge's findings that the Respondent violated Section 8(a)(5) and (1) of the Act by: (1) unilaterally increasing substantially the amount of subcontracting of work normally performed by unit employees and laying off unit employees as a

result of that subcontracting; (2) implementing its last contract proposals, including its proposal for a group incentive bonus plan, without having reached a lawful impasse in collective-bargaining negotiation; and, (3) refusing to provide the Union access to its facility for a safety and health inspection. However, the Board reversed the judge's unfair labor practice findings regarding the Respondent's unilateral combination of job classifications and creation of a CNC Cell in the wheel cylinder department and combination of job classifications in the subassembly department; provision of Gatorade to employees in working areas; and provision of free pizza to reward employees in the hose assembly area for achieving 100 percent productivity. [HTML] [PDF]

(Chairman Truesdale and Members Hurtgen and Brame participated.)

Charges filed by Auto Workers Local 376; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Hartford, Sept. 9-27, 1996. Adm. Law Judge Jesse Kleiman issued his decision Oct. 31, 1997.

* * *

Citizens Publishing and Printing Co. (6-CA-27215, et al.; 331 NLRB No. 176) Ellwood City and Beaver Fall, PA Aug. 23, 2000. The Board, in a majority opinion by Chairman Truesdale and Member Fox, adopted the administrative law judge's conclusion that the Respondent violated the Act by unilaterally subcontracting the night and weekend (n/w) work of the full-time photographers to stringers. It held: [HTML] [PDF]

> The record establishes, and the judge found, that the Respondent made n/w work part of the regular duties of the full-time photographer position in August 1993. . . . N/W work effectively became bargaining unit work at that time. Therefore, we agree with the judge that when the Respondent hired new stringers to perform the n/w work of the full-time photographer in 1995, without first consulting the Union, it unilaterally subcontracted unit work in violation of Section 8(a)(5).

In dissent, Member Hurtgen would not find a violation because the Respondent's use of stringers "was consisted with its established past practice."

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charges filed by Teamsters Local 261; complaint alleged violation of Section 8(a)(5). Hearing at Pittsburgh, Oct. 15-18 and 21, 1996. Adm. Law Judge C. Richard Miserendino issued his decision June 30, 1997.

* * *

Budrovich Contracting Co. (14-CA-24969; 331 NLRB No. 178) St. Louis, MO Aug. 25, 2000. Affirming the administrative law judge, the Board held that the Respondent violated the Act by laying off employees William Busch and Pat Kammer for concertedly asserting their contract rights and insisting on being paid the rate for field work established in the collective bargaining agreement between the Respondent and the Union. The Board also agreed with the judge that the Respondent unlawfully revoked the mechanics' no-call-in policy for Kammer and Busch, adding: [HTML] [PDF]

> However, because the allegation involves discrimination in terms and conditions of employment in retaliation for engaging in protected concerted activity, we do not agree with the judge's conclusion that 'motivation is not an essential element' of the violation. In fact, motivation is an essential element, and the allegations should have been analyzed under *Wright Line.*

(Chairman Truesdale and Members Liebman and Brame participated.)

Charges filed by Patrick P. Kammer, an individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing at St. Louis, July 15-16, 1998. Adm. Law Judge Earl E. Shamwell Jr. issued his decision April 14, 1999.

* * *

University of Great Falls (19-CA-26031; 331 NLRB No. 188) Great Falls, MO Aug. 31, 2000. By way of background, the Respondent university, founded by a Catholic religious order refused to bargain with the Union following a mail ballot election between March 8--March 29, 1996. The Union was certified on January 8, 1998 to represent the Respondent's faculty members. The primary issues presented to the Board are of first impression: whether the Religious Freedom Restoration Act (RFRA) applies to proceedings under the National Labor Relations Act, and if it does, whether the Board's assertion of jurisdiction over the Respondent would violate RFRA. The Board concluded the RFRA is applicable to Board proceedings and that its jurisdiction does not conflict with that statute. [HTML] [PDF]

The Board asserted that RFRA does not require it to alter its analysis under *Catholic Bishop of Chicago,* 440 U.S. 490 (1979), in determining whether asserting jurisdiction over an employer would involve a serious risk of infringement of First Amendment rights. It stated:

> Inasmuch as RFRA prohibits only those governmental actions that 'substantially burden' the free exercise of religion, it follows that when the Board applies *Catholic Bishop* and finds that the exercise of the Board's jurisdiction over an employer involves no significant risk of infringement of religious rights, RFRA's purposes have been considered and satisfied, as well.

In the underlying representation case, the Respondent admitted to its refusal to bargain but attacked the validity of the certification, asserting that the Board's unit determination was erroneous and that the Board improperly asserted jurisdiction. The Board upheld the Regional Director's finding that the Respondent is not a church-operated institution within the meaning of *Catholic Bishop.* As explained by the Board in the instant case:

> The Regional Director found that neither the Order nor the Catholic Church is involved directly in the day-to-day administration of the University, including such matters as hiring and firing of faculty, modifying the curriculum, and purchasing educational supplies and materials. In this regard, the Respondent's board of trustees, which is overwhelmingly composed of lay persons, possesses the final approval authority on such personnel matters as faculty sabbaticals, tenure, and promotions, as well as on financial, academic, and student affairs issues. Further, the evidence shows that the Respondent is not financially dependent on the Order or the Church.

Most significantly, the Regional Director found that the propagation of a religious faith is not the primary purpose of the Respondent, but rather that the University's purpose and function are primarily secular.

Member Hurtgen, in a concurring opinion, said he disagreed with his colleagues that the Board has no authority to pass on the constitutionality of Congressional enactments.

(Members Fox, Liebman and Hurtgen participated.)

Charges filed by Montana Federation of Teachers (AFT); complaint alleged violation of Section 8(a)(1) and (5).

* * *

Lockheed Martin Tactical Aircraft Systems (16-CA-17464, et al.; 331 NLRB No. 190) Fort Worth, TX Aug. 25, 2000. The Board reversed the administrative law judge's finding that the Respondent Employer violated Section 8(a)(1), (2), and (3) and that the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act by entering into an unlawful agreement to accrete previously unrepresented salaried professional and administrative employees (P&A) in the graphic arts department into the existing bargaining unit at a time when the Union did not represent a majority of these previously unrepresented P&A employees, and by applying the terms of the Respondent's collective-bargaining agreement to them. The Board found merit in the Respondent's exceptions that this case involves only "the lawful return of bargaining unit work which had seeped out over time from the bargaining unit." The majority opinion by Members Fox and Liebman stated: [HTML] [PDF]

> The Respondents in this case were faced with a problem of a growing number of grievances alleging that nonunit employees were performing unit work. They decided through collective bargaining to resolve the problem through a job audit of the departments involved in these grievances, including Department 17-4 [graphic arts]. The audit

> revealed that of the 76 nonunit P&A jobs in Department 17-4, 26 consisted of bargaining unit work. In other words, through the course of time, bargaining unit worked had 'seeped out' of the unit, and the Respondents agreed that the work performed by these 26 nonunit employees should be returned to the bargaining unit. . . . [W]e do not find that the P&A employees who accepted transfers to the bargaining unit constituted an accretion to the bargaining unit.

Dissenting in part, Member Brame would adopt the judge's finding that the Respondents violated the Act by accreting the P&A employees into the bargaining unit. He asserted:

> While my colleagues may desire to check the declining membership of a bargaining unit by absorbing into the unit work that they assert has 'seeped out' from it, they cannot do so by conducting a mopping up operation that effectively wipes out the Section 7 rights of unrepresented employees.

(Members Fox, Liebman and Brame participated.)

Charges filed by Alma Paulette Beveridge, an individual; complaint alleged violation of Section 8(a)(1), (2), and (3) and Section 8(b)(1)(A) and (2). Hearing at Fort Worth, May 28-30, 1996. Adm. Law Judge Albert A. Metz issued his decision on Sept. 23, 1996.

* * *

Pall Biomedical Products Corporation, a Division of Pall Corporation (29-CA-18545, 19565; 331 NLRB No. 192) Brooklyn, NY Aug. 31, 2000. The Board majority of Chairman Truesdale and Members Fox and Liebman reversed the judge and found that the Respondent violated Section 8(a)(5) and (1) of the Act by repudiating a letter of agreement it had with the Union and by refusing to furnish the Union with certain requested information. The Board also dismissed the allegation that the Respondent unlawfully refused further access to its Port Washington facility. [HTML] [PDF]

The letter of agreement provided that the Respondent would recognize the Union at the Port Washington facility if one or more workers there performed unit work. The Board majority, relying on *Kroger Co.,* 219 NLRB 388 (1975) and *Chemical & Alkali Workers Local 1 v. Pittsburgh Plate Glass Co.,* 404 U.S. 157 (1971), held that the letter of agreement was a mandatory bargaining subject and that the Respondent's repudiation of it therefore violated the Act. In so holding, the majority rejected the contention that the Respondent's repudiation was privileged because the Union insisted on applying the letter of agreement to obtain immediate recognition even though it had no showing of majority support at Port Washington. The majority stated that the Respondent could have taken the "reasonable step" of rejecting the Union's interpretation of the letter of assent without taking the "destructive step" of outright repudiation.

The majority further held that the Respondent's refusal to provide requested information relating to the terms and conditions of employment at the Port Washington facility violated the Act even though the employees there were not unit members. The majority found that the request for information was not linked to the Union's improper demand for recognition at Port Washington and that it was reasonably related to the Union's enforcement of its rights under the letter of agreement. The Board further found the Respondent's refusal to grant the Union access to the Port Washington facility did not violate the Act because the requests for access were tied to the Union's demand for immediate recognition.

Member Hurtgen dissented. He would find that the letter of agreement was not a mandatory subject of bargaining because the clause would operate without regard to majority status which would result in a Section 8(a)(2) and 8(b)(1)(A) unfair labor practice. Member Hurtgen stated that the Respondent took the "reasonable step" of simply declining to apply the letter of agreement as requested by the Union. Member Hurtgen also would find that the request for information violated the Act as the information was sought with respect to the letter of agreement, a nonmandatory bargaining subject.

(Chairman Truesdale and Members Fox and Liebman and Hurgten.)

Charges filed by Auto Workers (UAW) Local 365; complaint alleged violations of Section 8(a)(1) and (5). Hearing at Brooklyn, Oct. 22, 1996. Adm. Law Judge Steven Davis issued his decision on Jan. 31, 1997.

* * *

Chelsea Industries, Inc. (7-CA-36846, 37016; 331 NLRB No. 184) Chelsea, MI Aug. 31, 2000. The Board found that the Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union after the certification year expired, based on an antiunion petition obtained during the certification year. [HTML] [PDF]

Chairman Truesdale and Members Fox and Liebman, in clarifying existing precedent, relied on *United Supermarkets,* 287 NLRB 119 (1987), enfd. 862 F.2d 549 (5th Cir. 1989), which held that an employer may not withdraw recognition outside the certification year on the basis of evidence of loss of majority acquired within the certification year. They rejected the administrative law judge's finding that United Supermarkets was undermined by *Rock-Tenn Co.,* 315 NLRB 670 (1994), and other cases.

The Board majority, finding that Rock-Tenn rests on conflicting legal theories, overruled Rock-Tenn "to the extent that it suggests that, based on evidence received during the certification year, an employer may announce that it intends to withdraw recognition from the union at the end of the certification year." The majority found that the "anticipatory withdrawal of recognition" cases, on which Rock-Tenn erroneously relies, involved anticipatory withdrawal of recognition during the term of a collective-bargaining agreement and in the context of an established bargaining relationship, not during a certification year.

In dissent, Member Hurtgen, would dismiss the unfair labor practice allegation, finding that although the employees signed the antiunion petition during the certification year, there was no subsequent evidence that they had changed their sentiment when the Respondent withdrew recognition after the certification year expired.

(Chairman Truesdale and Members Fox, Liebman, and Hurtgen participated.)

Charges filed by Auto Workers (UAW); complaint alleged violation of Section 8(a)(1). and (5). Pursuant to a stipulation that waived a hearing, case was submitted on Aug. 30, 1995. Adm. Law Judge issued his decision Sept. 29, 1995.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Be-lo Stores (Food & Commercial Workers Local 400) Norfolk, VA Sept. 7, 2000. 11-CA-14586 et al.; JD(ATL)-44-00, Judge Jane Vandeventer.

Transportes Hispanos, Inc. (Teamsters Local 142) Chicago, IL Sept. 7, 2000. 13-CA-38073; JD(ATL)-45-00, Judge Keltner W. Locke.

South Coast Refuse Corp. (Package and General Utility Drivers (Teamsters Local 396) Irvine, CA Aug. 29, 2000. 21-CA-33179, et al.; JD(SF)-52-00, Judge William L. Schmidt.

Paramount Parks, Inc. d/b/a Star Trek: The Experience (Local Joint Executive Board of Las Vegas Cullinary Workers Local 226, et al.) Las Vegas, NV Aug. 28, 2000. 28-CA-15464; JD(SF)-53-00, Judge James L. Rose.

The Bakersfield Californian (Bakersfield Newspaper Guild Local 39202) Bakersfield, CA Aug. 30, 2000. 31-CA-24121; JD (SF)-55-00, Judge Thomas Michael Patton.

Electrical Workers Local 357 (an Individual) Las Vegas, NV Sept. 1, 2000. 28-CB-5185; JD(SF)-56-00, Judge Albert A. Metz.

Cook County School Bus, Inc. (Teamsters et al. (IBT) Local 744) Arlington Heights, IL Aug. 31, 2000. 13-CA-38108, 38310; JD-109-00, Judge Martin J. Linsky.

Sun Tech Group, Inc. d/b/a St. Thomas Gas (Steelworkers) St. Thomas, USVI Sept. 7, 2000. 24-CA-8421, et al.; JD-113-00, Judge Earl E. Shamwell, Jr.

* * *

NO ANSWER TO COMPLAINT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to answer the complaints)

Allegro Properties, Inc. d/b/a The Hotel Syracuse/Radission Plaza (Hotel & Restaurant Employees Local 150) (3-CA-22348; 331 NLRB No. 191) Syracuse, NY Aug. 31, 2000.

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.)

Antelope Valley Bus Company, Inc. (Teamsters Local 572) (31-CA-24533; 331 NLRB No. 171) Sylmar, CA Aug. 31, 2000.