

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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September 22, 2000

W-2757

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Operating Engineers Local 12 (21-CD-634; 331 NLRB No. 189) Yucaipa, CA Aug. 31, 2000. In this Section 10(k) proceeding, the Board awarded the disputed work, covering operation of the Employer's crane, to employees represented by the Laborers. It held that Operating Engineers Local 12 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. (7-CA-40946; 331 NLRB No. 7) Oscoda, East Tawas. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Fox and Hurtgen participated.)

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Northside Electrical Contractors, Inc. (25-CA-24492, 24961; 331 NLRB No. 166) Elkhart, IN Aug. 31, 2000. The Board adopted the administrative law judge's findings that the Respondent (1) discriminatorily laid off two employees in 1996, and (2) refused to hire three union applicants for legitimate reasons, consistent with *Thermo Power*, 331 NLRB No. 20 (2000)--which issued after the judge's decision. The Board declined to reexamine *Wireways, Inc.*, 309 NLRB 245 (1992), noting in a footnote that "[n]either the General Counsel nor the Charging Party has argued that the Respondent's policy of not hiring applicants with high current wage histories was itself discriminatorily motivated." The Union had filed an amicus brief arguing that such a policy is inherently destructive of employees' Section 7 rights. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charges filed by Electrical Workers (IBEW) Local 153; complaint alleged violation of Section 8(a)(1) and (3). Hearing at South Bend, June 2-4, 1997. Adm. Law Judge Jerry M. Hermele issued his decision Sept. 19, 1997.

* * *

Boydston Electric, Inc. (28-CA-13447; 331 NLRB No. 194) Albuquerque, NM Aug. 25, 2000. The majority opinion by Members Fox and Liebman affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by threatening an employee, Dan Miano, with termination for soliciting for the Union on nonworking time and by asking another employee, Larry Chavez, whether he had signed a union card and by creating the impression that it was engaged in surveillance of its employees' union other protected activities by asking Chavez whether he was going to follow in Miano's footsteps. Contrary to the judge, the majority also found that the Respondent violated Section 8(a)(1) by interrogating Miano and threatening him with unspecified reprisals for his union activities, and Section 8(a)(3) by discharging him for his union activity. It further found, contrary to the judge, that the employees engaged in an unfair labor practice strike and therefore the Respondent violated Section 8(a)(3) and (1) by failing and refusing to reinstate two former striking employees after their unconditional offer to return to work, and by failing to hire two job applicants because of their union affiliation. [\[HTML\]](#) [\[PDF\]](#)

In dissent, Member Brame would agree with the judge and not find the Respondent's remarks to Miano to be threatening or coercive. He noted that supervisor Jaramillo's comments were made to Miano "in the context of his own personal experience with the Union and expressed his own personal opinion about the practical difficulties for employees seeking union representation where the job was nonunion and had been bid that way."

(Members Fox, Liebman and Brame participated.)

Charge filed by Electrical Workers (IBEW) Local 611; complaint alleged violation of Section 8(a)(1). Hearing at Albuquerque,

Jan. 21-24, May 21-24 and July 21-23, 1997. Adm. Law Judge Mary Miller Cracraft issued her decision April 10, 1998.

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CalMat Co. (21-CA-30573, 31336; 331 NLRB No. 141) Los Angeles, CA Aug. 25, 2000. Reversing the administrative law judge, the Board found that the Respondent did not fail and refuse to provide the Union with requested relevant information in its possession or control, and that the Respondent lawfully implemented changes in its employees' terms and conditions of employment because, prior to these implementations, the bargaining parties had reached impasse on the critical issue of the pension plan in February 1995. The impasse affecting the pension plan led to a complete breakdown in negotiations and an overall impasse between the parties, the panel held. The judge had concluded that the Respondent's alleged failure to supply the Union with the requested information constituted a serious unfair labor practice, which precluded any impasse. The judge therefore did not determine whether an impasse regarding any of the bargaining issues existed. However, he speculated that "lack of impasse would be probable." [\[HTML\]](#) [\[PDF\]](#)

As stated by the Board:

The impasse affecting the pension plan led to a complete breakdown in negotiations and an overall impasse between the parties. Having reached a good-faith impasse with the Union, the Respondent lawfully implemented bargaining proposals contained in its last, best, and final offer. In light of these reversals, we also reverse the judge's conclusions that the strike was an unfair labor practice strike and the striking employees are unfair labor practice strikers.

(Members Liebman, Hurtgen, and Brame participated.)

Charges filed by Operating Engineers Local 12; complaint alleged violations of Section 8(a)(1) and (5). Hearing at Los Angeles, Sept. 25-26, and Oct. 28-31, 1996. Adm. Law Judge Michael D. Stevenson issued his decision May 23, 1997.

* * *

AVW Audio Visual (28-CB-4351; 332 NLRB No. 3) Las Vegas, NV Sept. 12, 2000. The Board reversed the administrative law judge's finding that the Respondent Union violated the Act by breaching its duty of fair representation when it permanently barred Charging Party Steven Lucas from using its exclusive hiring hall system in March 1995. Central to the Board's finding was the fact that Lucas was permanently expelled from the hall in May 1994 for 15 years of misconduct in relation to co-employees, employers, and clients. Dismissing the complaint, the Board agreed with the Union's argument that no breach occurred because the Union was not legally obligated to dispatch Lucas and reconsider his 1994 expulsion from its hiring hall system. [\[HTML\]](#) [\[PDF\]](#)

"The Respondent reasonably determined, in light of Lucas' history of disrupting jobs, that signatory employers would resist the continued use of the hiring hall if it continued to refer him for work," the Board stated.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charges filed by Steven Lucas, an individual; complaint alleged violation of 8(b)(1)(A) and (2). Hearing at Las Vegas Feb. 29, 1996. Adm. Law Judge Michael D. Stevenson issued his decision June 25, 1996.

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Kings Soopers, Inc. (27-CA-14882, et al.; 332 NLRB No. 4) Lakewood, Greely, and Bellevue, CO Sept. 13, 2000. In this proceeding, the Respondent excepted to the administrative law judge's finding that the Union is a labor organization. The Board found no merit in the Respondent's parallel exception in *King Soopers, Inc.*, 332 NLRB No. 5 (2000), and no merit to the exception here. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charges filed by Jenny Tilton, Lucinda Casados, individuals; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Denver beginning April 8, ending Aug. 3, 1999. Adm. Law Judge Jay R. Pollack issued his decision Jan. 14, 2000.

* * *

Kings Soopers, Inc. (27-CA-16091, 16197; 332 NLRB No. 5) Denver, CO Sept. 13, 2000. Affirming the administrative law judge, the Board ruled that the Respondent violated the Act by refusing to recognize the Unions at store #86 after moving the operations from store #8 to store #86 on Dec. 9, 1998; unlawfully notifying employees that the new store #86 would be operated on a non-union basis; and unilaterally changing terms and conditions of employment under bargaining agreements with the Unions. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charges filed by Bakery Workers Local 26; et al.; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Denver on April 7-8, 1999. Adm. Law Judge Jay R. Pollack his decision June 21, 1999.

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Makins Hats, LTD (2-CA-29591; 332 NLRB No. 1) New York, NY Sept. 13, 2000. The Board agreed with the administrative law judge's finding that the complaint against the Respondent, alleging it had violated the Act by withdrawing recognition from the Union and repudiating the Union Association agreement, should be dismissed. It disagreed with the judge's conclusion that the Respondent manifested an intent to be bound by group bargaining after its individual 1980 agreement expired. Instead, the Board relied on the judge's finding that the Respondent had never followed the Association agreements except on a "members only" basis, and that the Union must have been aware of this fact. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charges filed by Millinery Workers Local 24-42H; complaint alleged violation Section 8(a)(1) and (5). Hearing at New York City June 25 - July 21 and 22, 1997. Adm. Law Judge D. Barry Morris issued his decision Dec. 22, 1997.

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Sterling Lebanon Packaging Corporation (6-CA-27846; 331 332 NLRB No. 6) Jeannette, PA Sept. 12, 2000. The Board affirmed the administrative law judge's dismissal of the Union's complaint that the Respondent violated the Act by unilaterally making available to employees a third health benefit plan not contained in the collective bargaining agreement and by bypassing the Union in soliciting employees to enroll in the new plan. As explained by the Board in a footnote: [\[HTML\]](#) [\[PDF\]](#)

In dismissing the complaint, we observe that the General Counsel alleged that the Respondent failed and refused to bargain in good faith with the Union 'within the meaning of Section 8(d) of the Act' by unilaterally introducing a third health benefit plan (which we find, in agreement with the judge, was an HMO) in addition to the Indemnity Plan and the Keystone HMO Plan previously available under the contract. As explained in *Mead Corp.*, 318 NLRB No. 201, 202 (1995), 'Section 8(d) of the Act provides that party which seeks to modify a term or condition of employment 'contained in' a current collective-bargaining agreement must obtain the consent of the other party before implementing the change.' Here, the General Counsel contends that art. 36. sec. 13, of the contract, which provides that '[e]mployees are entitled to enroll in a Health Maintenance Organization (HMO),' limits to one the number of HMOs that the Respondent may offer to its employees at any given time. Contrary to the General Counsel, we find that art. 36. sec. 13, is ambiguous and does not, on its face, preclude the Respondent from introducing employees to more than one HMO plan. In these circumstances, the burden was on the General Counsel to clarify the ambiguity by the introduction of extrinsic evidence. We find that the General Counsel has not met that burden here.

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charges filed by Steelworkers Local 175G; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Pittsburgh, Feb. 28, 1997. Adm. Law Judge Martin J. Linsky issued his decision on July 10, 1997.

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Spring Industries, Inc. (26-CA-17084, et al.; 332 NLRB No. 10) Nashville, TN Sept. 13, 2000. Overruling *Kokomo Tube*, 280 NLRB 357 (1986), the Board ordered an election set aside based on a supervisor's threat of plant closure and adopted a rebuttable presumption that employer threats of plant closure are disseminated among employees. The majority opinion is by Chairman Truesdale and Members Fox and Liebman. Member Hurtgen dissented in part. [\[HTML\]](#) [\[PDF\]](#)

The majority relied on *General Stencils, Inc.*, 195 NLRB 1109 (1972), for the proposition that the "hallmark" threat of plant closure would be presumed to be discussed by widely by employees. It stated:

Here the record establishes that [employee] Bauman discussed the threat of plant closure with 'everybody on break.' Consistent with the principle of *General Stencils*, it is reasonable to presume that this 'hallmark' threat, which would severely and equally affect all employees in the plant, was discussed more widely among employees than just those employees 'on break.' In other words, we presume that those employees in turn told other employees about the threat. Further, the Employer introduced no evidence to rebut this presumption.

Member Hurtgen would not overrule *Kokomo Tube*, stating that he would not presume that threats of plant closure (or other threats) are disseminated. "In my view, the question of whether an election should be set aside requires a fact-specific, case-by-case inquiry that does justice to the particular circumstances involved," he said. Member Hurtgen pointed out that the judge's recommendation to set aside the election was based on three statements made by low-level supervisors and that each statement was made to only one employee. He also noted the Union lost the election by 86 votes, with 8 challenged ballots. 6

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

Charges filed by UNITE Local 2608; complaint alleged violation of Section 8(a)(1), (3) and (5). Hearing at Nashville, July 8-10, 1996. Adm. Law Judge Robert C. Batson issued his decision April 8, 1997.

* * *

Bourne Manor Extended Health Care Facility (1-CA-36936, 36993; 332 NLRB No. 11) Bourne, MA Sept. 15, 2000. The Board adopted the administrative law judge's finding that the Respondent unlawfully suspended and then discharged employee Nancy Bjorkman because of her involvement in two organizing campaigns by the Union at the nursing home. The judge had found the reasons for disciplining her were pretextual (such as allegedly stealing two packages of disposable razors.) [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charges filed by Teamsters Local 59; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Boston, Dec. 6-8, 1999. Adm. Law Judge Wallace H. Nations issued his decision June 26, 2000.

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Burrows Paper Corporation (26-CA-18552; 332 NLRB No. 15) Pickens, MS Sept. 15, 2000. The Board adopted the administrative law judge's finding that the Respondent violated the Act by engaging in surface bargaining during negotiations on a first contract, unlawfully withholding a July 1998 pay increase and blaming the Union for the lack of an increase. The majority opinion was by Chairman Truesdale and Member Fox. [\[HTML\]](#) [\[PDF\]](#)

Dissenting in part, on another issue, Member Hurtgen would not find that the Respondent unlawfully raised the wages of certain employees in its finishing and maintenance departments in January and February 1998 without notifying and bargaining with the Union. As part of the remedy, he would authorize the Regional Director to appoint a mediator, at the

Respondent's expense, "to participate in all bargaining sessions, to attempt to forge an agreement, and-if an agreement is not reached during a period of time decided by the mediator--to render a report to the parties and to the Regional Director."

The judge first ruled on this case in a bench decision on Oct. 30, 1998, finding that the Respondent had not violated Section 8(a)(1) and (5) by unilaterally awarding the wage increases. He reconsidered this ruling in view of the Board's decision in *Rural/Metro Medical Services*, 327 NLRB No. 18 (1998), which issued the same day. The judge stated in his Jan. 13, 1999 decision:

In sum, I conclude that, based on Respondent's past practice, the unit employees had a reasonable expectation that they would receive a raise in July 1998. I further conclude that Respondent's failure to grant this raise in July 1998 constituted a unilateral change in an established term or condition of employment which was a mandatory subject of collective bargaining.

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charges filed by PACE Local 678. Complaint alleged violation of Section 8(a)(1) and (5). Hearing at Memphis, TN, Sept. 23, and Oct. 26-29, 1998. Adm. Law Judge Keltner W. Locke issued his decision Jan. 13, 1999.

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Wilmington Fabricators, Inc. (1-CA-30434, et al.; 332 NLRB No. 2) Wilmington, MA Sept. 15, 2000. The Board found no merit in the Respondent's exception to the administrative law judge's finding that the Respondent violated the Act when it discharged employee Danilo Guzman in August 1993, as evidenced by acts of union animus during an organizing campaign. The Board also rejected the Respondent's contention that allegations concerning the Respondent's failure to recall from layoff six Hispanic employees in September 1993 because of their support for the Union, were time-barred under Section 10(b). The Respondent amended the original charge in April 1996. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Fox and Liebman participated.)

Charges filed by Teamster (IBT) Local 829, and Rodney Valladares, an individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Boston, Oct. 3, 1994, and Sept. 30, and Oct. 1-2, 1996. Adm. Law Judge Richard H. Beddow Jr. issued his decision March 7, 1997.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Holling Press, Inc. and Boncraft-Holling Printing Group (an individual) Buffalo, NY Sept. 13, 2000. 3-CA-20229; JD-115-00, Judge David L. Evans.

D & A Plumbing, Inc. and Miller Plumbing, Alter Egos (Plumbers Local 107) Clarksville, TN Sept. 13, 2000. 9-CA-37398-1, 2; JD-117-00, Judge Irwin H. Socoloff.

Saia Motor Freight, Inc. (Teamsters, 886) Oklahoma City, OK Sept. 11, 2000. 17-CA-20294; JD(ATL)-46-00, Judge William N. Cates.

Chugach Management Services, Inc. (Electrical Workers (IBEW) Local 558) Huntsville, AL Sept. 13, 2000. 10-CA-32024; JD(ATL)-48-00, Judge Keltner W. Locke.

Gleaton Construction, Inc. (Steelworkers) Attapulgus, GA Sept. 13, 2000. 12-CA-20508; JD(ATL)-49-00, Judge Keltner W. Locke.

Shaw's Supermarkets, Inc. (Food & Commercial Workers Local 791) Wells, ME Sept. 13, 2000. 1-CA-37507; JD(NY)-60-00,

Judge Raymond P. Green.

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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 complaint.)

Dong-A Daily North America, Inc. (Korean Immigrant Workers Advocates) (31-CA-24127; 332 NLRB No. 8) Schererville, IN
Sept. 12, 2000.