

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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October 27, 2000

W-2762

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N.K. Parker Transport, Inc. and M.K. Parker Transport, Inc. (7-CA-38717, et al.; 332 NLRB No. 54) Dearborn, MI Sept. 29,

2000. The Board agreed with the administrative law judge that M.K. Parker Transport, Inc. (MK) and N.K. Parker Transport, Inc. (NK) are joint employers of the drivers that NK leases to MK and that MK is the successor to NK's tank truck transportation business and is obligated to bargain with the Union. It also agreed that MK violated Section 8(a)(5) and (1) of the Act by dealing directly with unit employees and promising them improved benefits and working conditions if they would "switch" from NK to MK; unilaterally implementing different wages and benefits for newly-hired employees, and refusing to bargain with Teamsters Local 283 about Steven Horsch's return to work since on or about March 18, 1997. Although the Board agreed with the judge that the MK violated Section 8(a)(5), it did not adopt his entire rationale. [\[HTML\]](#) [\[PDF\]](#)

The Board did not affirm the judge's finding that the Respondent violated Section 8(a)(3) by entering into an employee leasing agreement in order for MK to avoid hiring a majority of NK's employees and to evade recognition of the Union, and that MK further violated Section 8(a)(3) by dealing directly with employees, setting terms and conditions of employment for newly-hired employees which differed from those established by the collective-bargaining agreement between NK and the Union, and refusing to return Steven Horsch to work.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charges filed by Teamsters Local 283 and Steven Horsch, an individual; complaint alleged violation of Section 8(a)(1), (3), and (5). Adm. Law Judge John H. West issued his decision Nov. 28, 1997.

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Bridgestone/Firestone, Inc. (21-CA-31471, 31592; 332 NLRB No. 56) San Diego, CA Sept. 29, 2000. Chairman Truesdale and Member Fox agreed with the administrative law judge that the decertification petitions relied on by the Respondent in withdrawing recognition from Teamsters Local 481 in two separate bargaining units were tainted by the Respondent's unfair labor practices, rejecting the position of the Respondent and their dissenting colleague that certain of the alleged unfair labor practices found by the judge are time-barred by Section 10(b). Citing *Ross Stores*, 329 NLRB No. 59, slip op. at 1-3 (1999), they explained: "[A]s all of the conduct alleged in the amended complaint occurred within a period of several months and was essentially alleged to be part of an overall plan for the Respondent to rid itself of the Union, the conduct satisfies the tests of relatedness with respect to legal theory, factual circumstances, and the Respondent's defenses." [\[HTML\]](#) [\[PDF\]](#)

The majority, citing *Caterair International*, 322 NLRB 64 (1996), agreed with the judge that an affirmative bargaining order with its temporary decertification bar is appropriate. It found that a bargaining order vindicates the Section 7 rights of employees who were denied the benefits of collective bargaining by the Employer's withdrawal of recognition without unduly prejudicing the rights of employees who oppose continued representation because the duration of the order is no longer than is reasonably necessary to remedy the ill effects of the election. The majority noted that in addition to withdrawing recognition, the Respondent also failed to furnish information requested by the Union; promised better benefits to employees if they rejected the Union; dealt directly with employees by requiring them to sign forms to release their home addresses to the Union; and solicited employees to initiate and sign decertification petitions. The affirmative bargaining order serves the policies of the Act, the majority said. It noted that a cease-and-desist order, without a temporary decertification bar, would be inadequate.

Member Hurtgen, dissenting in part, concluded that the Respondent engaged in 8(a)(1) and 8(a)(5) violations that allegedly tainted the decertification petitions, but he found that the allegations are not properly a part of this case. The complaint does not allege the violations and even if it were deemed to do so they are not supported by a timely charge, he reasoned. Member Hurtgen therefore found that the Respondent had a good-faith doubt as to the Union's majority status and he would dismiss the allegations that the Respondent unlawfully withdrew recognition from the Union.

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charges filed by Teamsters Local 481; complaint alleged violation of Section 8(a)(1) and (5). Hearing at San Diego, June 12-13, 1997. Adm. Law Judge Gerald A. Wacknov issued his decision Sept. 19, 1997.

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Parts Depot, Inc. (12-CA-16449, *et al.*; 332 NLRB No. 64) Miami, FL Sept. 29, 2000. Affirming the administrative law judge, the Board found that a Gissel bargaining order is appropriate to remedy the coercive effects of the Respondent's severe unfair labor practices as exacerbated by the involvement of high-ranking officials. The misconduct included interrogating employees concerning their union support, granting a general pay increase to employees in July 1994, laying off employees, issuing disciplinary warnings and an unfavorable evaluation to prominent union supporter Vivian Fortin, and promising to terminate Warehouse Manager Bill Beaman if that would stop the union effort. The Board rejected the Respondent's claim that a bargaining order is inappropriate because of turnover in the bargaining unit since the 1995 election and because management officials Bassett and Jenkins, who committed many of the 8(a)(1) violations, have left the Respondent's employ. The Respondent presented an offer of proof at the hearing that, of the 101 employees in the unit at the time of the election, less than 50 were employed at the time of the hearing. The Board wrote: [\[HTML\]](#) [\[PDF\]](#)

[E]ven accepting, arguendo, the facts asserted by the Respondent concerning employee turnover, we find that the effects of the unlawful conduct are unlikely to be sufficiently dissipated by turnover to ensure a free second election. Although a significant number of the employees who were employed at the time of the unlawful conduct surrounding the election may have left the facility for reasons related or unrelated to the Respondent's unfair labor practices, others who remain would recall these events. Moreover, . . . the lingering effects of an across-the-board wage increase and the merit increases are particularly difficult to dispel.

(Chairman Truesdale and Members Fox and Liebman participated.)

Charges filed by UNITE; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Miami for 24 days between April 22 and May 7, 1996. Adm. Law Judge Richard J. Linton issued his decision June 30, 1997.

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Parts Depot, Inc. (12-CA-18478; 332 NLRB No. 65) Miami and Ft. Lauderdale, FL Sept. 29, 2000. The Board upheld the administrative law judge's findings that the Respondent violated Section 8(a)(4), (3), and (1) of the Act by discouraging membership in UNITE, imposing onerous working conditions on employees because they engaged in union or other protected concerted activities or because they testified in a Board proceeding, and impliedly threatening employees with discharge because they testified against the Respondent in a Board proceeding. The Board found, contrary to judge, that the Respondent violated the Act when warehouse manager, Leo Belaunzaran, impliedly threatened employees with discharge in order to discourage them from engaging in union activities and to discourage them from giving testimony in a Board proceeding. The Board agreed that the violations in this case provide further basis for issuing a bargaining order as recommended by the judge and affirmed in *Parts Depot, Inc.*, 332 NLRB No. 64. It deleted the bargaining order in this proceeding however, as it is redundant. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Fox and Liebman participated.)

Charge filed by Jose Castro, an individual; complaint alleged violation of Section 8(a)(1), (3), and (4). Hearing at Miami for 5 days between Jan. 22 and April 3, 1998. Adm. Law Judge Richard J. Linton issued his decision June 22, 1998.

* * *

Allstate Insurance Company (10-CA-29184; 332 NLRB No. 66) Alpharetta, GA Sept. 29, 2000. Members Fox and Liebman found, as did the administrative law judge, that Carolyn Penzo, who worked for Respondent as a "Neighborhood Office Agent" (NOA), selling the Respondent's insurance policies from a storefront office in Alpharetta, Georgia was an employee within the meaning of Act, rather than a manager or supervisor at the time of the alleged unfair labor practice; and that the Respondent's issuance of a "job-in-jeopardy" disciplinary warning to her on October 19, 1995, violated Section 8(a)(1) of the Act. Member Hurtgen, dissenting, found that Penzo has supervisory authority that she exercises in the interest of the Respondent and is thus a statutory supervisor. [\[HTML\]](#) [\[PDF\]](#)

According to Penzo, she contributed \$200,000 of her own money to the business between 1989 and 1995, with virtually nothing but debts to show for it. She was critical of the terms and conditions of her employment. Her criticisms became public

knowledge after she and other of the Respondent's employees were interviewed and an article reporting her views of the NOA program appeared in Fortune magazine on October 2, 1995. In response to her role in the article, the Respondent issued the disciplinary warning to Penzo, stating that her job was at risk because of her unauthorized contact with the news media.

Although Members Fox and Liebman agreed with the judge that the Respondent violated the Act, they relied on a different analysis in finding that Penzo was neither a statutory supervisor nor a managerial employee. They explained "the decisive question is: given the characteristics of both supervisory and managerial status inherent in her job, *in whose interest* did Penzo act in running her office?" Member Fox and Liebman wrote:

The Respondent's NOA program is an essentially commission-based employment scheme that leaves to Penzo's self-interested entrepreneurial decisionmaking--and financial risk--certain basic choices concerning how her office is to be run. Having chosen to minimize its own involvement and to be guided by the self-interested risk of Penzo--who bears the immediately financial consequences of her misjudgments in these matters--the Respondent cannot persuasively maintain that Penzo is acting on its behalf and expressing or making operative its decisions when she exercised her own discretion in renting, furnishing, staffing, and otherwise running her office.

(Members Fox, Liebman, and Hurtgen participated.)

Charge filed by Carolyn Penzo, an individual; complaint alleged violation of Section 8(a)(1). Hearing at Atlanta in March 1997. Adm. Law Judge William N. Cates issued his decision March 25, 1997.

* * *

Pacific FM, Inc. d/b/a KOFY, Operator of KOFY TV-20 (20-CA-27232, et al.; 332 NLRB No. 67) San Francisco, CA Sept. 29, 2000. The Board agreed with the administrative law judge that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Helen Perry on April 26, 1996; and violated Section 8(a)(1) by various acts including: prior to an election, soliciting grievances from employees with the express or implied promise of remedying them and announcing a new employee break policy for master control operators (MCOs), blaming the union organizing campaign for delayed pay raises, coercively interrogating employees about union activities or other protected concerted activities, threatening to move production to another area, and telling employees that it would be futile to support the Union as Respondent would never sign a union contract. Member Hurtgen, dissenting in part, would dismiss the allegations that the Respondent unlawfully discharged Perry and announced a new break policy for MCOs. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charges filed by Helen Perry, Frank Pappas III, and Brian Shimetz; complaint alleged violation of Section 8(a)(1) and (3). Hearing at San Francisco, March 17, 18, 20, 26-28, 1997. Adm. Law Judge Michael D. Stevenson issued his decision Nov. 18, 1997.

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Forsyth Electrical Co. (11-CA-16631, 16805; 332 NLRB No. 68) Winston-Salem, NC Sept. 29, 2000. The Board reversed the administrative law judge's finding that the Respondent unlawfully failed to consider three union-affiliated applicants for employment and found, in agreement with the Respondent, that the General Counsel failed to establish the requisite antiunion animus. See *FES (A Division of Thermo Power)*, 331 NLRB No. 20. The Board upheld the judge's finding that the Respondent unlawfully refused to grant preferential reinstatement rights to economic strikers David Jones, John Kimball, and Douglas Hill upon their unconditional offers to return to work. The judge rejected, with Board approval, the Respondent's argument that it was justified in denying reinstatement because the employees were lazy, unproductive, and ineffective workers. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charges filed by Electrical Workers Local IBEW Local 342; complaint alleged violation of Section 8(a)(1) and (3). Hearing at

Winston-Salem, May 28-29, 1997. Adm. Law Judge Keltner W. Locke issued his decision Dec. 3, 1997.

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Carpenters Local 1006 (J.P. Patti Co.) (22-CD-685; 332 NLRB No. 69) Saddle Brook, NJ Oct. 13, 2000. The Board decided that Newmet's employees represented by Carpenters Local 1006 rather than those represented by Sheet Metal Workers Local 27 are entitled to perform the construction and installation of metal roofing work at a school being built in Monmouth Junction, New Jersey, for the South Brunswick, New Jersey Board of Education. In making the award, the Board relied on the relevant collective-bargaining agreements, and Newmet Corporation's preference and past practice. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

K & M Machine-Fabricating, Inc. (Auto Workers) Cassopolis, MI October 18, 2000. 7-CA-42607; JD-137-00, Judge Karl H. Buschmann.

Gormac Custom Manufacturing, Inc. (Steelworkers) Cleveland, OH October 18, 2000. 8-CA-29599; JD-138-00, Judge Eric M. Fine.