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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CASES SUMMARIZED

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Teamsters Local 247 (Rymco, Inc.) (7-CC-1715; 332 NLRB No. 114) Detroit, MI Nov. 8, 2000. The Board affirmed the administrative law judge's finding that the Respondent Union unlawfully threatened Rymco, Inc., a nonunion employer, with the shutdown of operations of a John Carlo, Inc. jobsite it was working on. The Union claimed it never threatened Rymco.

[HTML] [PDF]

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charge filed by Rymco, Inc.; complaint alleged violation of Section 8(b)(4)(ii)(B). Hearing at Detroit, Sept. 28, 1999. Adm. Law Judge Jerry M. Hermele issued his decision Dec. 13, 1999.

* * *

Teamsters Local 295 (Emery Worldwide) (29-CD-509; 332 NLRB No. 105) Springfield Gardens, NY Oct. 31, 2000. In this Section 10(k) proceeding, the Board ordered the notice of hearing quashed upon determining Teamsters Local 295 and Teamsters Local 478 no longer had competing claims for the same work. [HTML] [PDF]

(Members Fox, Liebman, and Hurtgen participated.)

* * *

The Permanente Medical Group, Inc. (32-CA-15032, 15084; 332 NLRB No. 106) Oakland, CA Oct. 31, 2000. Affirming the administrative law judge, the majority of Chairman Truesdale and Member Hurtgen concluded the Respondents did not deal directly with unit employees concerning mandatory subjects of bargaining during the design phase and subsequent phases of a "member focused care" (MFC) project in violation of the Act. MFC, which the Respondent developed with a consulting firm, sought to increase patient and family involvement in health care and to reorganize care management. The unions expressed concerns to the Respondent that they believed the real purpose of MFC was to assign nurses' duties to other nonlicensed personnel, thereby transferring work out of the unit. In dismissing the complaint, the majority stated: [HTML] [PDF]

> Although the Respondent communicated with its employees, that discussion was not for the purpose of establishing or changing terms and conditions of employment or undercutting any Union efforts to negotiate. The record emphatically demonstrates that throughout the process of developing and refining its MFC model, the Respondent never excluded the Unions. To the contrary the Respondent kept the Unions informed before and during the design phase. And, most importantly, Respondent made it clear that the design phase would ultimately yield only a *proposal* to be presented to the Unions for bargaining. With respect to this last aspect the Respondent reiterated its commitment to bargain.

In dissent, Member Fox would have found a violation of "direct dealing" in the design phase of MFC. She stated:

> As the employer in *Du Pont* did with the ongoing fitness and safety committees, Respondents effectively, though perhaps more subtly, used the design teams as an alternative employee representative to pitch MFC to employees, monitor and influence those employees' feelings about MFC, and, ultimately, to work out the basic structure of an MFC program with those employees prior to any bargaining with the Unions.

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charges filed by Engineers and Scientists Local 20, (IFPTE) and California Nurses Association; complaint alleged violation of Section 8(a)(1) and (5). Hearing held June 11-12, 1996. Adm. Law Judge Mary Miller Cracraft issued her decision Dec. 19, 1996.

* * *

SEIU Local 254 (Brandeis University) (1-CB-8835; 332 NLRB No. 103) Boston, MA Oct. 31, 2000. Reversing the administrative law judge, the Board majority of Chairman Truesdale and Member Fox concluded Respondent Union did not violate the Act when it removed Jorge Luis Santana from his union representative position on the contractually created labor-management committee. In dissent, Member Hurtgen contended that the Union had no "legitimate interest" in removing Santana from his elected position: The judge dismissed a similar allegation involving the Union's removal of Santana from his

shop stewart position. The majority stated the removals were lawful because "the Union's legitimate interest in ensuring the undivided loyalty of union representatives who deal with the Employer about working conditions outweighs Santana's Section 7 rights and thus the removals do not constitute an unlawful restraint on those rights." [HTML] [PDF]

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charge filed by Jorge Luis Santana, an individual; complaint alleged violation of Section 8(b)(1)(A). Hearing at Boston, May 27, 1997. Adm. Law Judge Martin J. Linsky issued his decision Aug. 29, 1997.

* * *

Steelworkers Local 1870 (Newport Steel Corp.) (9-CB-9743; 332 NLRB No. 92) Newport, KY Oct. 31, 2000. The Board found merit in the Respondent Union's exception to the administrative law judge's order that the Union make the Charging Party Jerry Davidson whole for the 8 hours of pay he lost as a result of his suspension imposed by the Employer and the Union's failure to process Davidson's grievance. The Board said the judge had failed to follow the criteria set forth in *Iron Workers Local 377 (California Iron Workers Employers Council),* 326 NLRB 375, (1998), for the imposition of a make-whole remedy on a union in cases involving the unlawful failure to process a grievance. [HTML] [PDF]

(Members Fox, Liebman, and Hurtgen participated.)

Charge filed by Jerry Davidson, an individual; complaint alleged violation of Section 8(b)(1)(A). Hearing at Cincinnati, OH, Aug. 3, 1998. Adm. Law Judge John H. West issued his decision Sept. 23, 1998.

* * *

Dupont Dow Elastomers L.L.C. (9-CA-34028, 33536; 332 NLRB No. 98) Deepwater, NJ Oct. 31, 2000. The Board, disagreeing with the administrative law judge, found that Respondent DDE was a "perfectly clear" successor under Burns as interpreted in *Spruce Up Corp.,* 209 NLRB 194 (1994), and that it unlawfully failed to bargain prior to setting unit employees' initial terms and conditions of employment. However, the Board affirmed the judge's finding that there is insufficient evidence of common ownership and control or that DDE was formed to aid DuPont in evading its obligations under the Act to conclude that DDE and DuPont are alter egos. The complaint alleged that Respondents DuPont and joint venture DDE are alter ego companies. [HTML] [PDF]

(Chairman Truesdale and Members Fox and Liebman participated.)

Charges filed by International Brotherhood of Dupont Workers and Neoprene Craftsmen Local 788; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Louisville, Jan. 7-9, 1997, and Wilmington, DE, Jan. 27-30, 1997. Adm. Law Judge Irwin H. Socoloff issued his decision Dec. 17, 1997.

* * *

Tradesmen International, Inc. (8-CA-29079; 332 NLRB No. 107) Lorain, OH Oct. 31, 2000. Reversing the administrative law judge's dismissal of the complaint, Chairman Truesdale and Members Fox and Liebman held that the Respondent violated Section 8(a)(3) and (1) of the Act by refusing to hire Matthew Oakes on and after May 30, 1997, because of his protected concerted activity in testifying before the Lorain Board of Building Standards (the Lorain Board). Member Hurtgen, dissenting, found that Oakes' activities were unprotected because they were not related to terms and conditions of employment and that the Respondent's failure to employ him for that activity was not unlawful. He found Oakes' efforts were an attempt to cause economic harm to an employer because its employees had not chosen to unionize. [HTML] [PDF]

In early 1997, Oakes, a union organizer, learned that the Respondent's employees were working on a hospital project in Lorain, Ohio for Bay Mechanical and Electrical, Inc. (Bay), a nonunion construction company in Lorain. He began soliciting the employees to sign union authorization cards and he completed an employment application in which he disclosed his full-time position as an organizer of nonunion companies. In May 1997, Oakes provided Jack Murphy, the city of Lorain's chief

building inspector, with a list of three subcontractors, including the Respondent, whom Oakes believed were not in compliance with the city's bonding ordinance. Murphy ordered all the Respondent's employees off the Lorain hospital site. The Lorain Board of Building Standards and Appeals stayed the order and held a hearing regarding whether the Respondent was a subcontractor within the meaning of the city's bonding ordinance. At the hearing, Oakes presented the reasons why the Union believed that the Respondent was a subcontractor on the Lorain hospital project and, therefore, was required to post a bond in accordance with the city ordinance.

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

Charge filed by Sheet Metal Workers Local 33; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Cleveland on Oct. 20, 1998. Adm. Law Judge Jerry M. Hermele issued his decision March 11, 1999.

* * *

Computer Associates International, Inc. (29-CA-17315; 332 NLRB No. 108) Islandia, NY Oct. 31, 2000. Affirming the administrative law judge's finding that the Respondent is a joint employer of the building engineers supplied by Cushman & Wakefield of Long Island, Inc. to work at its Islandia, New York facility, the Board relied particularly on the Respondent's substantial role in the selection of applicants for hire and the ongoing, close and substantial supervision of those employees by the Respondent's managers. It modified the judge's supplemental decision to "make clear" that it is the responsibility of *Computer Associates* to remedy the unfair labor practices, and that the right of the displaced employees to remedy is not dependent on any particular action of Cushman & Wakefield. Member Hurtgen noted that the underlying unfair labor practice allegations in this proceeding are res judicata. *See Computer Associates International,* 324 NLRB 285 (1997). [HTML] [PDF]

In the prior decision, the Board affirmed the judge's findings that Respondent *Computer Associates* violated Section 8(a)(1) of the Act through various interrogations, promises, threats, and warnings related to the union membership of union-represented operating engineers working at its facility. It reversed the judge's finding that the Respondent violated Section 8(a)(3) and (1) by terminating its contract with Cushman & Wakefield because of Operating Engineers Local 30's attempt to organize Computer Associates' employees, resulting in the discharge of nine union-represented employees. Citing *Esmark,* 315 NLRB 763 (1994), the judge found it appropriate to hold *Computer Associates* alone liable under the Act irrespective of its joint employer status. The Board found Esmark is not applicable and remanded to the judge. It noted that if *Computer Associates* was a joint-employer with Cushman & Wakefield of the Cushman-furnished employees, then liability under Section 8(a)(3) might be established.

(Members Fox, Liebman, and Hurtgen participated.)

Adm. Law Judge Howard Edelman issued his supplemental decision June 4, 1998.

* * *

H.B. Zachry Co. (26-CA-16466; 332 NLRB No. 110) Vicksburg, MS Oct. 31, 2000. Chairman Truesdale and Member Fox affirmed the administrative law judge's findings that the Respondent violated Section 8(a)(1) of the Act by various statements made by certain of its supervisors; and violated Section 8(a)(3) and (1) by failing and refusing to hire union supporters Gary Greer, James Hill, and Mike Mapp and laying off Joe Holloway, Robert Bolin, Tommy Dearing and three other crew members. Citing *FES* (A Division of *Thermo Power*), 331 NLRB No. 20, Chairman Truesdale and Member Fox addressed at further length the refusal-to-hire allegations involving Greer, Hill, and Mapp, and the allegation that the Respondent's layoffs were discriminatory. They remanded to the judge issues relating to the Respondent's alleged discriminatory failure to hire union supporters Thomas Butler, William Reynolds, and paid union organizer Sammy Yelverton because the record is unclear as to whether the General Counsel established whether they had the necessary training and/or experience to meet the announced or generally known requirements of the job openings. [HTML] [PDF]

Member Hurtgen, concurring, wrote separately to explain more fully why he concluded that the partial remand is necessary.

The Board in 1996 remanded the proceeding to the judge for further consideration. The judge issued a supplemental decision

in 1997. On June 14, 2000, the Board invited the parties to file supplemental briefs addressing the FES framework as it applies to this case.

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Adm. Law Judge Lawrence Cullen issued his supplemental decision Nov. 12, 1997.

* * *

Electrical Workers (IBEW) Local 494 and the Electrical Workers International, Sixth District (*Gerald Nell, Inc.*) (30-CB-4127, 4128; 332 NLRB No. 112) Waukesha, WI Oct. 31, 2000. Members Fox and Liebman affirmed the administrative law judge's finding that Joseph Podewils' efforts to resign his union membership were insufficient to constitute an effective resignation and dismissed the 8(b)(1)(A) allegations that the Respondents disciplined Podewils when he was no longer a union member. They found, contrary to the judge, that Respondent Local 494 did not violate Section 8(b)(1)(B) by restraining and coercing Gerald Nell, Inc. (Nell), a nonunion electrical contractor, in the selection of its representatives for the purposes of collective-bargaining and grievance adjustment by processing union disciplinary charges against, disciplining, and fining Podewils. The evidence is insufficient to establish that Local 494 was actively seeking a bargaining relationship with Nell within the meaning of *NLRB v. Electrical Workers IBEW Local 340* (Royal Electric), 481 U.S. 573, 591 (1987), Members Fox and Liebman held. [HTML] [PDF]

Member Hurtgen, dissenting in part, would affirm the judge's conclusion that Local 494 violated Section 8(b)(1)(B). He agreed with the judge that the Respondent (1) was seeking to organize Nell's employees (i.e., seeking to establish a collective-bargaining relationship; (2) was seeking to use Podewils as its organizer; and (3) disciplined Podewils because he refused to do so. "Accordingly, the requirement of *Royal Electric* (a union has, or is seeking, a bargaining relationship) thus is satisfied," Member Hurtgen said.

In October 1997, Nell hired Podewils as its electrical division manager. Although Nell informed Podewils that he would have to resign his union membership in Local 494, Podewils failed to take adequate steps to effectuate his resignation. On December 1, 1997, Local 494 business representative Burzynski appeared at the offices of Nell after receiving a tip that Podewils was employed by a nonunion contractor. During a brief conversation with Podewils, he asked "what would be the opportunity of [Podewils] working to organize the company." Podewils replied, "that wouldn't happen here . . . that wouldn't be an option." Burzynski then gave Podewils his business card. Local 494 made no effects to circulate authorization cards to any employees of Nell; it did not engage in any picketing or handbillling of Nell; nor did it make any efforts to establish a collective-bargaining relationship with Nell. On December 15, 1997, Local 494 filed intraunion disciplinary charges against Podewils alleging that he was working for a nonunion company in violation of the union's constitution. The Union later found Podewils guilty and fined him $100,000. On appeal, the International Union sustained the violations found, but it reduced the fine to $10,000.

(Members Fox, Liebman, and Hurtgen participated.)

Charges filed by Jospeh Podewils and Gerald Nell, Inc.; complaint alleged violation of Section 8(b)(1)(A) and (B). Hearing at Milwaukee on April 22, 1999. Adm. Law Judge Benjamin Schlesinger issued his decision July 30, 1999.

* * *

Beth Abraham Health Services (2-CA-31830; 332 NLRB No. 113) Bronx, NY Nov. 8, 2000. The Board, agreeing with the administrative law judge that the Union satisfied its burden of establishing the relevance of the information it requested from the Respondent, found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the information. 1199 National Health and Human Services Employees, in seeking a contract for a unit of employees at Schnumacher Nursing Home, contacted Beth Israel Medical Center (BIMC), in the belief that it owned Schnumacher. BIMC referred the Union to the Respondent, stating that the Respondent wholly manages Schnumacher and that BIMC had transferred ownership of Schnumacher to Bethco Corporation, an affiliate of the Respondent. The Union thereafter commissioned research into the transfer, leading it to doubt whether a bona fide transfer had occurred, and making it unsure which entity in fact owned

Schnurmacher. By letter dated October 2, 1998. The Union requested information from the Respondent regarding the terms of the transfer to determine Schmurmacher's ownership. [HTML] [PDF]

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charge filed by 1199 National Health and Human Services Employees; complaint alleged violation of Section 8(a)(1) and (5). Hearing at New York on Oct. 19, 1999. Adm. Law Judge Steven Davis issued his decision Jan. 18, 2000.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

TEC Electric, Inc. (Electrical Workers (IBEW) Local 275) Owosso, MI Nov. 7, 2000. 7-CA-37522, et al.; JD-141-00, Judge David L. Evans.

FES (A Division of Thermo Power) (Plumbers Local 520) York, PA Nov. 8, 2000. 5-CA-26276; JD-145-00, Judge Arthur J. Amchan.

Avondale Industries, Inc. (New Orleans Metal Trades Council) New Orleans, LA Nov. 7, 2000. 15-CA-14551, et al.; JD (ATL)-76-00, Judge George Carson II.

Alltek Energy Systems Inc. (Sheet Metal Workers Local 83) Waterford, NY Nov. 8, 2000. JD(NY)-71-00, Judge Raymond P. Green.

Just Jenn, Inc., d/b/a Jordan Electric Company (Electrical Workers (IBEW) Local 113) Denver, CO Oct. 25, 2000. 27-CA-16410, 16687; JD(SF)-69-00, Judge Thomas Michael Patton.

Grinnell Fire Protection Systems Company (Road Sprinkler Fitters Local 669) Tulsa, OK Oct. 26, 2000. 17-CA-19409; JD (SF)-71-00, Judge Albert A. Metz.

Boghosian Raisin Packing Company, Inc. (Teamsters Local 616) Fowler, CA Oct. 31, 2000. 32-CA-17721-1 et al.; JD(SF)-72-00, Judge James L. Rose.

Kirby Canyon Recycling and Disposal Facility, a division of Waste Management of California, Inc. (Operating Engineers Local 3) Morgan Hill, CA Nov. 3, 2000. 32-CA-17543, 32-RC-4621; JD(SF)-75-00, Judge Michael D. Stevenson.