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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December 15, 2000 W-2769

CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

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Overnite Transportation Co., Inc. (12-CA-19417, 19636; 332 NLRB No. 138) Ocoee, FL Nov. 30, 2000. The Board held that the Respondent violated Section 8(a)(1) of the Act by promulgating, maintaining, and enforcing a lunchbreak rule which prohibits driver employees from taking their lunchbreaks at the Respondent's service center after the sixth hour of work, or

which requires driver employees to take lunchbreaks between their fourth and sixth hour of work, in order to limit opportunities for them to engage in union activities; and by impliedly threatening an employee with discharge because of his union sympathies. In agreeing with the judge that the Respondent must repudiate its illegally promulgated lunchbreak rule, the Board relied on *Youville Health Care Center,* 326 NLRB 495 (1998), rather than *Passavant Memorial Area Hospital,* 237 NLRB 138 (1978), cited by the judge. [HTML] [PDF]

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charges filed by Teamsters Local 385; complaint alleged violation of Section 8(a)(1). Hearing at Orlando on March 12, 1999. Adm. Law Judge Richard H. Beddow, Jr. issued his decision June 4, 1999.

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Longshoremen ILA Local 1575 (Navieras, NPR, Inc.) (24-CB-1892; 332 NLRB No. 139) Puerto Nuevo, PR Nov. 30, 2000. The Board dismissed the complaint in its entirety, disagreeing with the administrative law judge's finding that the Respondent breached its duty of fair representation and thereby violated Section 8(b)(1)(A) of the Act by using its members' expression of disapproval as a basis for declaring that the members had ratified a new collective-bargaining agreement. No exceptions were filed to the judge's dismissal of complaint allegations that the Respondent violated the Act by curtailing discussion of a new contractual provision and failing to allow its members to vote on the provision separately from a vote on the entire collective-bargaining agreement. [HTML] [PDF]

The Respondent and the Employer in 1997 negotiated a new collective-bargaining agreement to succeed their previous contract. At a union meeting to obtain ratification of the new contract, approximately 80 percent of the attending membership expressed dissatisfaction with a new contractual provision by standing up from their seats in protest. When that occurred, the Union president announced that all those in favor of ratifying the new contract should stand up. He then announced that the contract had been ratified on the basis of the members who had, in fact, been standing in protest. The Union and the Employer subsequently executed the agreement.

The Board wrote in finding that there was no violation of the duty of fair representation in the Union's method of counting votes for and against ratification:

> There is no contention here that the Union and the Employer agreed that employee ratification was a condition precedent to forming the collective-bargaining agreement. Therefore, a vote of the membership was not necessary to the formation of a collective-bargaining agreement between the Employer and the Union. Although the manner in which the Union conducted the ratification vote does not garner our sympathy, nonetheless as a matter of law that conduct, being purely an internal union affair, does not come within the duty of fair representation. Rather, the decision as to whether ratification occurred was within the Union's exclusive domain and control, and therefore the ratification process was purely advisory.

(Chairman Truesdale and Members Fox and Liebman participated.)

Charge filed by William De Jesus Ferrer, an individual; complaint alleged violation of Section 8(b)(1)(A). Hearing at San Juan on Nov. 18, 1998. Adm. Law Judge Arthur J. Amchan issued his decision Feb. 3, 1999.

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Carpenters Metropolitan Regional Council of Philadelphia and Vicinity (R.M. Shoemaker Co.) (4-CC-2203-2, et al.; 332 NLRB No. 140) Philadelphia, PA Dec. 5, 2000. Chairman Truesdale and Member Liebman denied Charging Party R.M. Shoemaker Co.'s Motion to Consider as Timely its Answering Brief to the General Counsel's Exceptions to the Decision of the Administrative Law Judge. Relying on the "excusable neglect" provision of Section 102.111(c) of the Board's Rules and Regulations, the Charging Party requested that the Board accept its answering brief, which was deposited with a delivery service on the day it was due, and did not arrive until the next day. [HTML] [PDF]

Member Hurtgen, dissenting, would apply the "excusable neglect" Rule and grant the Charging Party's request for a 1-day extension of the due date for the receipt of its answer brief, noting that no party opposed the request for an extension. He assumed arguendo that the Charging Party's failure to give the brief to the delivery service before the due date was "neglectful," but he concluded that the neglect was "excusable" because the brief would have been received on time but for the failure of others.

Any answering brief to the General Counsel's cross-exceptions was due October 17, 2000. The Charging Party's counsel delivered the answering brief to the U.S. Airways PDQ service at Philadelphia National Airport at approximately 11:45 a.m. on October 17 for placement on a 12:49 p.m. flight to Washington, D.C., pickup by a ground delivery service upon the flight's scheduled 2 p.m. arrival, and delivery to the Board's offices by close of business the same day. The document however arrived on another flight at 5:05 p.m. after the close of the Board's offices, and was not delivered until 9:20 a.m. the next day, October 18, 2000.

The majority, in refusing to accept the answering brief as a timely filed document, noted that it was neither received by close of business on the due date nor deposited with a delivery service at least one day prior to that due date. It explained: "The Board's so- called postmark rule expressly sanctions the filing of documents by delivery service, even if they do not arrive on the due date, *provided* that the documents are deposited with the delivery service no later than the day before the due date." The Charging Party's interpretation of "excusable neglect" undermines the "postmark rule" as it applies to filing by delivery service, the majority concluded. It wrote:

> In this case, the Charging Party's answering brief was not placed on the intended flight, and thus did not arrive as scheduled. Certainly, that 'neglect' was not the Charging Party's fault, and thus was 'excusable' in that sense. But, the *Charging Party did* neglect to deliver the answering brief to a delivery service at least a day before it was due. The Charging Party has not argued, or offered any reason to conclude, that its failure to deposit the answering brief with the delivery service on the day before the due date was based on excusable neglect. The Charging Party, which is charged with knowledge of all of our Rules, therefore acted at its peril and assumed the risk that the 'same-day' delivery service would not deliver the answering brief by close of business on the due date.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Tree of Life, Inc. d/b/a Gourmet Award Foods, Northeast (Teamsters Local 294) (IBT) Albany, NY December 1, 2000. 3-CA-21569; JD-155-00, Judge Bruce D. Rosenstein.

Auto Workers Local 1069 (Boeing Helicopters) (Individual) Eddystone, PA December 6, 2000. 4-CB-7929; JD-161-00, Judge Earl E. Shamwell Jr.

Reynolds, Inc. (Individual) Orleans, IN December 6, 2000. 25-CA-26869; JD-162-00, Judge Karl H. Buschmann.

Ken Maddox Heating & Air Conditioning, Inc. (Sheet Metal Workers Local 20) Indianapolis, IN December 8, 2000. 25-CA-24297, et al.; JD-163-00, Judge Richard H. Beddow, Jr.

Yellow Freight System, Inc. (Individual) Memphis, TN December 5, 2000. 26-CA-19502; JD(ATL)-60-00, Judge Keltner W. Locke.

Simon DeBartelo Group (Service Employees Local 32B-32J) Brooklyn, NY December 1, 2000. 29-CA-23218-1; JD(NY)-73-00, Judge Howard Edelman.

Episcopal Health Services, Inc., d/b/a St. John's Episcopal Hospital (Special and Superior Officers Benevolent Association) Brooklyn, NY December 1, 2000. 29-CA-23045; JD(NY)-74-00, Judge Howard Edelman.

Raley's and United Wholesalers & Retailers Union (Food and Commercial Workers Local 588, Independent Drug Clerks Association, and Individuals) Northern CA November 29, 2000. 20-CA-24973, et al.; 20-CB-9623, et al.; JD(SF)-77-00, Judge Timothy D. Nelson.

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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 withdrawal of its answers to the complaint and amended complaint.)

Budget Heating & Cooling, Inc. (Sheet Metal Workers Local 20) (13-CA-37925; 332 NLRB No. 132) Lake Station, IN Nov. 30, 2000.

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TEST OF CERTIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgment on the ground that the Respondent has not raised any representation issues that are litigable in the unfair labor practice proceeding.)

Richmond Health Care d/b/a Sunrise Health and Rehabilitation Center (Service Employees 1115 Florida Div. Of 1199) (12-CA-20900; 332 NLRB No. 133) Sunrise, FL Nov. 30, 2000.