

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.



[Index of Back Issues Online](#)

January 12, 2001

W-2773

CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

[Associated Rubber Co.](#), Tallapoosa, GA
[Bell Atlantic Corp.](#), Boston, MA
[CKS Tool & Engineering, Inc. of Bad Axe](#), Bad Axe, MI
[Electrical Workers Local 48 \(Kingston Constructors\)](#), Portland, OR
[Farm Fresh, Inc., t/a Nicks'](#), Norfolk, VA
[Grass Valley Grocery Outlet](#), Berkeley, CA
[Michigan Masonic Home](#), Alma, MI
[Newlonbro, LLC \(Connecticut's Own\)](#), Milford, CT
[Nichols House Nursing Home](#), Fairhaven, MA
[Robert F. Kennedy Medical Center](#), Hawthorne, CA
[Stamford Taxi, Inc.](#), Stamford and Greenwich, CT
[St. Mary's Duluth Clinic Health System](#), Duluth, MN
[Training School at Vineland](#), Vineland, NJ

OTHER CONTENTS

[List of Decisions of Administrative Law Judges](#)

Operations-Management Memoranda:

[\(OM 00-24\) Construction Industry Election Agreements](#)

[\(OM 00-25\) MOU between USPS and APWU - Memorandum OM 97-52](#)

The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information and is available on a paid subscription basis. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board. The case summaries constitute no part of the opinions of the Board. The Division of Information has prepared them for the convenience of subscribers.

If you desire the full text of decisions summarized in the Weekly Summary, you can access them on the NLRB's Web site (www.nlr.gov). Persons who do not have an Internet connection can request a limited number of copies of decisions by writing the Information Division, 1099 14th Street NW, Suite 9400, Washington, DC 20570 or fax your request to 202/273-1789. Administrative Law Judge decisions, which are not on the Web site, also can be requested by contacting the Information Division.

All inquiries regarding subscriptions to this publication should be directed to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, 202/512-1800. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

Farm Fresh, Inc., t/a Nicks' (5-CA-21155, et al.; 322 NLRB No. 156) Norfolk, VA Dec. 15, 2000. This supplemental decision follows a remand by the U.S. Court of Appeals for the District of Columbia of the Board's August 27, 1998 decision in *Farm Fresh*, 326 NLRB 997. The court reversed the majority opinion (Members Hurtgen and Brame with Chairman Gould concurring) in the original decision, which dismissed allegations that the Respondent had violated Section 8(a)(1) of the Act by ejecting two organizers from the snack bar at one of its stores. The majority, applying *Lechmere* and overruling *Montgomery Ward Co.*, 228 NLRB 126 (1988), determined the Respondent's action was not unlawful because the Respondent had relied on a non-solicitation rule prohibiting all solicitations within 50 feet of store entrances. [\[HTML\]](#) [\[PDF\]](#)

The court, agreeing with the separate concurring opinion of Members Fox and Liebman, found "no evidence at all" that the organizers were ejected from the snack bar pursuant to the Respondent's no-solicitation rule. Rather, the court said the organizers were excluded because of trespass warrants pending against them the Respondent had obtained.

In the instant case, the Board adopted the analysis previously set forth in the concurring opinion and concluded the Respondent was entitled to eject the organizers from its premises based solely on the outstanding trespass warrants.

A second issue for Board consideration on remand concerns the exclusionary actions by the Respondent to prevent nonemployee union organizers from soliciting on sidewalks within 50 feet of the entrances to four of its leased store properties. The General Counsel contended the Respondent's actions violated Section 8(a)(1). In its original decision, the Board dismissed 8(a)(1) allegations that the Respondent had unlawfully directed nonemployee organizers to move off the sidewalk and by threatening them with arrest. The court, however, held the Board had misinterpreted Virginia law in finding that the maintenance provisions in the Respondent's store leases gave it the right to exclude the organizers. Accordingly, the Board reversed its prior decision on this issue and found a violation since the Respondent had failed to prove it possessed a sufficient property interest to exclude the organizers.

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

* * *

Canned Foods, Inc., d/b/a Grass Valley Grocery Outlet (20-CA-26685, et al., 332 NLRB No. 160) Berkeley, CA Dec. 15, 2000. The Board majority of Chairman Truesdale and Member Fox agreed (but on different grounds) with the administrative law judge's conclusion that the Respondent unlawfully sent a message to employees prior to a June 12, 1995 election (6 votes for the union, 6 against, 13 determinative challenged ballots) leading employees to believe a planned wage increase was being cancelled -- rather than postponed -- because of the election. The Board pointed out that, contrary to the judge, the Respondent did not blame the Union for the failure to give the raises at the originally planned time. Rather, the Respondent failed to communicate the planned wage increases were merely being postponed until after the election when their implementation could no longer be view as a bribe. It stated: [\[HTML\]](#) [\[PDF\]](#)

The *cancellation* of a planned wage increase because of a representation election is clearly unlawful and distinguishes this case from those like *Uarco*, on which the Respondent relies, where the planned wage increase was merely *postponed*.

Dissenting in part, Member Hurtgen agreed with the majority that the announcement was unlawful but not the failure to grant the wage increase itself. He said "the action that was taken was in fact a postponement (the wage increases were given after the election). Thus, it does not follow the illegality of the announcement leads inexorably to illegality of the action."

The Board reversed the judge's finding that the Respondents were a single employer given the scant evidence of central control of labor relations.

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charges filed by Food & Commercial Workers Local 588; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearings at San Francisco and Sacramento, April 7, September 23, November 3 through 6, 12 and 13, and 17 through 19, and December 1, 2, 9, and 10, 1997. Adm. Law Burton Litvack issued his decision December 31, 1998.

* * *

Newlonbro, LLC (Connecticut's Own) (34-CA-8913; 332 NLRB No. 146) Milford, CT Dec. 29, 2000. The Board affirmed the administrative law judge's findings that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Howard Sachs because of his activities for Teamsters Local 13; and violated Section 8(a)(1) by interrogating employees regarding their union sympathies, creating the impression that their union activities were under surveillance, and threatening employees with more onerous working conditions if they selected the Union as their bargaining representative. [\[HTML\]](#) [\[PDF\]](#)

On another alleged violation, the Board affirmed the judge's dismissal of the complaint allegation that the Respondent violated Section 8(a)(3) and (1) by discharging Michael Frank. The judge found that the General Counsel made a strong prima facie case that Frank's union activities were a motivating factor in the Respondent's decision to discharge him. He found however that the Respondent showed that it would have discharged Frank even in the absence of his union activity because of his adamant and persistent refusal to comply with the Respondent's request that he sell new cars after it merged the new and used car departments. Member Hurtgen disagreed with the judge's finding that the General Counsel made out a prima facie case with respect to Frank.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charge filed by Teamsters Local 140; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Hartford, Jan. 18-19, 2000. Adm. Law Judge Michael A. Marcionese issued his decision May 4, 2000.

* * *

Robert F. Kennedy Medical Center, a subsidiary of Catholic Healthcare West (21-CA-33110, 33152; 332 NLRB No. 153) Hawthorne, CA Dec. 20, 2000. The Board agreed with the administrative law judge's finding that the Respondent discharged employees Laurie Neira, Raymona Harvey, and Tonia Babbit for engaging in a concerted protest relating to their employment. When the Respondent decided to outsource the transcription department, the employees wrote a letter on Company stationery seeking assistance from staff physicians in preventing their layoff. [\[HTML\]](#) [\[PDF\]](#)

Chairman Truesdale and Member Hurtgen agreed that the General Counsel carried his *Wright Line* burden by establishing prima facie that the real reason for the three employees' discharge was their concerted protest about a matter relating to their employment. Finding that the Respondent failed to show that it would have discharged the employees in any event for unprotected activity, they did not pass on the issue of whether the employees' use of Company stationery to set forth their protest was beyond the bounds of Section 7. Assuming that it was, the Chairman and Member Hurtgen found that the Respondent has not shown that it would have fired the employees for that reason even if the letter had not contained the protest. Although the Respondent's handbook forbids use of Company stationery for nonofficial purposes, they noted there was no showing that employees could be discharged for such conduct or that any recipients of the letter reasonably believed that its contents reflected the views of the Respondent.

Member Liebman, agreeing with the result, would not analyze this case under *Wright Line*, noting that the Respondent conceded that the appeal to the staff physicians was protected concerted activity and that the only issue is whether the use of the Respondent's stationery removed the activity from the Act's protection. She agreed with the judge that using the Respondent's stationery was not so egregious as to deprive them of the Act's protection, citing *Felix Industries*, 331 NLRB No. 12 (2000).

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charges filed by Service Employees Local 399; complaint alleged violation of Section 8(a)(1). Hearing at Los Angeles, Sept. 27-28, 1999. Adm. Law Judge Mary Miller Cracraft issued her decision Dec. 7, 1999.

* * *

Nichols House Nursing Home (1-RC-21085, 21086; 332 NLRB No. 157) Fairhaven, MA Dec. 15, 2000. A Board majority of Chairman Truesdale and Member Hurtgen, reversing a hearing officer, found that two nurses were eligible voters in a October 26, 1999 election and that their challenged ballots should be opened and counted -- notwithstanding they had been hired for supervisory positions and presented to employees as future supervisors prior to the election. They were to assume their new jobs two weeks after the election. Member Fox, in dissent, agreed with the hearing officer that the challenges to these two ballots should be sustained. She said "the facts demonstrate that these individuals *at the time of the election* had *already* become closely aligned with management and therefore lacked a sufficient community of interest with unit employees to be considered eligible voters." [\[HTML\]](#) [\[PDF\]](#)

The majority, however, said the fact that the two nurses were going to assume supervisory positions after the election and that this was announced to unit employees on several occasions during the critical period before the election "should have no bearing on their voting eligibility even if they would no longer possess a community of interest with the unit employees after the critical period."

(Chairman Truesdale and Members Fox and Hurgten participated.)

* * *

Michigan Masonic Home (7-RC-21662; 332 NLRB No. 150) Alma, MI Dec. 15, 2000. Members Fox and Liebman agreed with the Regional Director's finding that the Employer's licensed practical nurses (LPNs) are not supervisors within the meaning of Section 2(11) of the Act, applying the term "supervisor" defined in Section 2(11) as: [\[HTML\]](#) [\[PDF\]](#)

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In this regard, Members Fox and Liebman found that the Employer has not met its burden of establishing that the LPNs perform a supervisory function in disciplining employees.

Member Hurtgen dissented, finding that LPNs can and do make effective recommendations regarding disciplinary action that nurse managers rely on and follow, and that the LPNs have the authority to send employees home from work particularly for performance-based reasons. In his view, the Employer's LPNs' disciplinary authority over the Employer's certified equivalency nursing assistants (CENAs) renders them supervisors under Section 2(11) of the Act.

(Members Fox, Liebman, and Hurtgen participated.)

* * *

Training School at Vineland (4-RC-19575; 332 NLRB No. 152) Vineland, NJ Dec. 15, 2000. The Board affirmed the Regional Director's finding that the Employer's group home managers (GHMs) are not supervisors within the meaning of Section 2(11) of the Act because there is no evidence that GHMs transfer, lay off, recall, promote, or reward the Employer's direct care workers or any other employees. The Employer argues that GHMs are supervisors because they assign, direct, effectively recommend hiring, effectively recommend discipline, evaluate the direct care workers and redress employee grievances. In agreeing with the Regional Director's conclusion that GHMs are not supervisors, the Board determined that the Employer has not met its burden of establishing that GHMs possess any of the claimed statutory supervisory authority. [\[HTML\]](#) [\[PDF\]](#)

The Employer provides residential care and educational programs to developmentally disabled individuals (clients) in group home settings and assigns a GHMs, who is the highest ranking employee on site, to each of its 44 facilities. The Petitioner (Communications Workers of America) seeks to represent a unit consisting of the 44 GHMs.

(Chairman Truesdale and Members Fox and Liebman participated.)

* * *

Stamford Taxi, Inc. (34-CA-7532; 332 NLRB No. 149) Stamford and Greenwich, CT Dec. 15, 2000. Agreeing with the administrative law judge, the Board held that the Respondent's taxicab drivers are employees within the meaning of Section 2 (3) of the Act; and that the Respondent unlawfully withdrew recognition from Auto Workers Local 376 as the exclusive collective-bargaining representative of the drivers, refused to hire three drivers upon their individual offers to return to work, and refused to consider for employment other drivers on whose behalf the Union made an unconditional offer to return to work. The drivers had been terminated for refusing to pay the daily train station fee required by their lease agreements.

[\[HTML\]](#) [\[PDF\]](#)

In exceptions, the Respondent reiterated its affirmative defense, rejected by the judge, that its duty to bargain was suspended, because the Union condoned the withholding of the fees. The Board, noting that the Respondent did not merely suspend bargaining for the duration of the unprotected conduct, wrote: "Rather, the judge correctly found, that the Respondent 'seized' on the drivers' withholding of fees to withdraw recognition entirely from the Union and engage in direct dealing with its employees." Citing *Phelps Dodge Copper Products*, 101 NLRB 360 (1952), it explained that the Union's majority status remained unaffected during the course of the unprotected conduct, which did not negate the Respondent's bargaining obligation. The Board affirmed the judge's findings with respect to the refusal-to-hire and refusal-to-consider violations for the reasons set forth by him and because his findings comport with *FES*, 331 NLRB No. 20 (2000).

(Chairman Truesdale and Members Fox and Liebman participated.)

Charge filed by Auto Workers Local 376; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Hartford, Jan. 12-14, Feb. 25-27, and March 17, 1998. Adm. Law Judge Robert T. Snyder issued his decision May 20, 1999.

* * *

St. Mary's Duluth Clinic Health System (18-RC-16399; 332 NLRB No. 154) Duluth, MN Dec. 15, 2000. The Board, in a 3-1 opinion (with Chairman Truesdale and Members Fox and Liebman in the majority and Member Hurtgen dissenting), held that a petition by a nonincumbent union for a residual unit of employees in the healthcare industry may be appropriate pursuant to the Board's Health Care Rule, 29 CFR § 103.30; 284 NLRB 1580-1597 (1987). Thus, at an acute-care hospital where there is a nonconforming bargaining unit consisting of some, but not all, of the employees who would otherwise constitute an appropriate unit under the Board's Health Care Rule, a different union may petition for a separate residual unit of the remaining nonrepresented employees, provided that the petitioned-for unit is an appropriate residual unit. [\[HTML\]](#) [\[PDF\]](#)

At the time the Board promulgated its Health Care Rule, it specifically deferred resolution of questions with regard to the representation of units that are residual to nonconforming units to adjudication of particular cases presenting the issues. The first opportunity was presented in *St. John's Hospital*, 307 NLRB 767 (1992), in which a union representing an existing nonconforming unit of plumbers and refrigeration employees at an acute-care hospital filed a petition seeking to represent a separate unit of some, but not all, of the remaining skilled maintenance workers at the facility. The Board did not address the question presented here, i.e., whether it will process a petition for a separate residual unit filed by a union other than the union representing the unit to which it is residual.

In the instant decision, although the majority decided that a petition by a nonincumbent union for a residual unit of employees in the healthcare industry is appropriate, it adopted a limited exception:

In cases such as this one where a nonincumbent union petitions for a residual unit, the incumbent union representing the existing nonconforming unit will be entitled, as a matter of course, to place on the election ballot, without having to formally request intervention or demonstrate a showing of interest in the petitioned-for unit, if it so desires. The incumbent union's participation shall be limited to a place on the ballot. If the incumbent union chooses to be included on the ballot, the employees in the unit will have the opportunity to choose (1) to be represented by the petitioning union in a separate unit, (2) to be represented by the incumbent union as part of its

unit, or (3) not to be represented. In our view, this limited exception to the Board's intervention rules strikes a proper balance between the policies of stability of existing collective-bargaining relationships and avoidance of undue proliferation of bargaining units in the healthcare industry, by encouraging, but not requiring, the incumbent union to seek to add the residual employees to its existing unit.

The majority overruled the pre-Rule decision in *Levine Hospital of Hayward, Inc.*, 219 NLRB 327 (1975), which held that a nonincumbent union could not appropriately represent a residual unit of employees at an acute-care hospital.

Turning to the facts of this case, the majority concluded, in agreement with the Regional Director, that consistent with *St. John's Hospital*, the residual unit petitioned-for by the Steelworkers of all unrepresented technical employees at St. Mary's Duluth Clinic Health System is an appropriate residual unit since it includes all of the unrepresented technical employees who are residual to the existing unit (licensed practical nurses (LPNs) represented by the incumbent union, Minnesota Licensed Practical Nurses Association (MLPNA)). Contrary to the Regional Director who denied MLPNA's motion to intervene, the majority concluded that the MLPNA is entitled to participate as an intervenor in the election if it so desires and remanded the case to the Regional Director for further action.

Dissenting Member Hurtgen said that the unit found appropriate by his colleagues is "contrary to Section 103.30(c) of the Board's Rules, inconsistent with Board precedent, and at odds with the congressional admonition against an 'undue proliferation of units' in the health care industry."

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

* * *

Electrical Workers IBEW Local 48 (Kingston Constructors) (36-CB-2052; 332 NLRB No. 161) Portland, OR Dec. 15, 2000. Unlike the administrative law judge who recommended the complaint's dismissal in its entirety, the Board found that the Respondent violated Section 8(b)(1)(A) of the Act by threatening employees with discharge for failing to pay dues under the Union's "market recovery program" (MRP) owing from their employment on Davis-Bacon projects, and that the Respondent did not violate the Act by attempting to collect MRP dues that were based on earnings derived from employment on projects that were not covered by the Davis-Bacon Act. [\[HTML\]](#) [\[PDF\]](#)

The Union established the MRP to subsidize the wage rates paid by union contractors on selected projects so that they would be able to bid jobs on the basis of wage rates lower than the union scale but still be able to pay employees the union rate. The Union would make up the difference out of MRP funds.

The Board agreed with the judge's findings that the framework set forth in *Detroit Mailers Local 40*, 192 NLRB 951 (1971), is appropriate for determining the lawfulness of MRP dues and that requiring the payment of MRP dues on non-Davis-Bacon projects was not unlawful. The judge found that the Respondent had attempted to collect from employees, including charging party Patrick Mulcahy, MRP dues that were owing from their employment on Davis-Bacon jobs. But, he found that the issue of the lawfulness of requiring the payment of MRP dues on Davis-Bacon projects was not presented in this case and that the General Counsel failed to establish a basis for asserting jurisdiction over any contractor identified in the record whose operations may have been affected by the Union's attempts to collect MRP dues on Davis-Bacon projects. The Board disagreed with the judge on the jurisdiction question, finding that the Davis-Bacon issue is properly before it. On the merits, it found that the Union's attempts to require the payment of MRP dues on Davis-Bacon projects were unlawful under *Detroit Mailers*.

The Board agreed with the General Counsel that, in light of the decisions of the Department of Labor's Wage Appeals Board and two circuit court decisions, all of which held that the collection of dues for job targeting programs like the Respondent's MRP violated the Davis-Bacon Act, is inimical to public policy under *Detroit Mailers*. (*In the Matter of Building and Construction Trades Unions Job Targeting Programs*, WAB Case No. 90-02 (June 13, 1991) WL 494718 (WAB), and *Building & Construction Trades Department v. Reich*, 40 F.3d 1275 (D.C. Cir. 1994), and *Electrical Workers Local 537 v. Brock*, 68 F.3d 1194 (9th Cir. 1995)). The Board rejected the contention of the Union and amici that those decisions conflict with, and therefore are preempted by, the NLRA. It held that under *Detroit Mailers*, payments to support job targeting programs are not "periodic dues" for purposes of Section 8(a)(3) and 8(b)(2) if those payments are based on employment on

Davis-Bacon projects, because their forced exaction is "inimical to public policy," and that the Respondent violated Section 8(b)(1)(A) by threatening to have employees discharged if they did not pay MRP dues owing from their employment on Davis-Bacon projects.

The Board found it unnecessary to decide whether Beck objectors can be required to pay MRP dues, noting that the General Counsel has not alleged that Beck issues are involved in this case in any way. *Communications Workers v. Beck*, 487 U.S. 735 (1988). The Board wrote: "In a proper case, we may be called on to decide whether payments that support job targeting programs, such as the MRP, can be required of Beck objectors. In this case, however, there is no evidence that any employees whom the Union sought to obligate to pay MRP dues under the union-security clause was a Beck objector."

(Chairman Truesdale and Members Fox and Hurtgen participated.)

Charge filed by Patrick Mulcahy; complaint alleged violation of Section 8(b)(1)(A) and 8(b)(2). Hearing at Portland, Oct. 21-22, 1997. Adm. Law Judge Timothy D. Nelson issued his decision March 19, 1998.

* * *

CKS Tool & Engineering, Inc. of Bad Axe (7-CA-40332; 332 NLRB No. 162) Bad Axe, MI Dec. 29, 2000. The Respondent violated Section 8(a)(1) of the Act by discharging Randy Wierzbicki, the Board held in agreement with the administrative law judge. The judge found that Wierzbicki's protected activity in raising group concerns at a group meeting called by the Respondent to discuss productivity and efficiency was the sole motivation for his discharge and that the Respondent's proffered reasons of subordination were pretextuous. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charge filed by Randy Wierzbicki, an individual; complaint alleged violation of Section 8(a)(1). Hearing at Bad Axe on July 14, 1997. Adm. Law Judge Thomas R. Wilks issued his decision Nov. 17, 1998.

* * *

Bell Atlantic Corp. (1-CA-37462; 332 NLRB No. 168) Boston, MA Dec. 29, 2000. Agreeing with the administrative law judge, the Board held that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing since June 22, 1999 to bargain with Electrical Workers IBEW Systems Council T-6 by unilaterally implementing a surcharge for the garnishment of employees' wages without first providing the Union with notice and an opportunity to bargain about it. The Board modified the judge's recommended Order to include specific cease-and-desist provisions for the Respondent's unlawful conduct. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

* * *

Associated Rubber Co. (10-RC-15051; 332 NLRB No. 165) Tallapoosa, GA Dec. 29, 2000. Affirming the hearing officer's report, Chairman Truesdale and Member Liebman overruled the Employer's objections to an election held July 23, 1999, and certified the Steelworkers as the exclusive representative of all production and maintenance employees, truckdrivers, and mechanics employed at the Employer's Plant 1, Plant 2, and Plant 3 locations in Tallapoosa, Georgia. Member Hurtgen, dissenting in part, would sustain the objection relating to the conduct of employee Ron Brown and direct a second election. The election resulted in 53 for and 50 against the Union, with one challenged ballot, an insufficient number to affect the results. [\[HTML\]](#) [\[PDF\]](#)

Employee Tim Spears, who did not testify at the hearing, asserted in his affidavit that as he walked by union officials who were handling out union literature outside the plant on July 12, 1999, they tried to give him some literature, but he refused to take any. At that point, according to Spears, employee Brown drove up in his car and told Spears that "you had better take the paper or you're going to pay for it tomorrow." Spears, who was the mill operator, asserted that on the next day Brown ran the

Banbury machine, a mixer used to custom-mix rubber compounds, at a faster rate in retaliation for Spears' refusal of union literature the day before.

Chairman Truesdale and Member Liebman agreed with the hearing officer that Brown was not an agent of the Union and that an evaluation of whether his conduct was objectionable must be in accordance with the standard that applies to third party conduct. Applying that standard, they found that the Employer failed to show that Brown's acceleration of the Banbury machine's cycle time was so egregious as to create an atmosphere of fear and reprisal rendering a free election impossible.

Member Hurtgen noted that the Banbury machine's shortened cycle time increased the risk of Spears' injury, that word of the incident was disseminated among other members of the bargaining unit, and that employee Howard testified that he had heard as many as five or six employees, among them Brown, laughing at how Brown had "gotten" Spears. Member Hurtgen wrote: "As the hearing officer correctly found, Brown's conduct was 'more serious than a harmless prank.' Further, it was in retaliation for employee Tim Spears' refusal to accept union literature. It subjected Spears to adverse working conditions and to humiliation before his peers." In view of the fact that the election was decided by only three votes and the incident became a joke within the unit, he found that there was sufficient dissemination to affect the results of the election.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charge filed by Electrical Workers IBEW Systems Council T-6; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Boston on June 5, 2000. Adm. Law Judge Jerry M. Hermele issued his decision Aug. 17, 2000.

* * *

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Caribe Ford (Union Nacional De Trabajadores De Puerto Rico) San Juan, PR December 29, 2000. 24-CA-8291, et al.; JD-153-00, Judge George Aleman.

Pearson Education, Inc. (UNITE Midwest Region) Lebanon, IN December 29, 2000. 25-CA-26182; JD-173-00, Judge Martin J. Linsky.

McAllister Towing & Transportation Company, Inc. and its wholly owned subsidiary, McAllister Brothers, Inc. (Longshoremen Local 333) New York, NY December 29, 2000. 2-CA-30974, 31457; JD-175-00, Judge Margaret M. Kern.

Clark Distribution Systems, Inc. (Individuals) Matteson, IL December 29, 2000. 13-CA-38348-1-2; JD-177-00, Judge William G. Kocol.

Hobart Crane Rental, Inc. and Hobart Welding and Fabrication, Inc., a single employer (Operating Engineers Local 150) Hobart, IN January 4, 2001. 13-CA-37664, 37715; JD-178-00, Judge Marion C. Ladwig.

Consolidated Freightways (An Individual) Greenwood, LA December 28, 2000. 15-CA-15540; JD(ATL)-63-00, Judge Keltner W. Locke.

1849 Sedgwick Realty LLC and R & S Management a/k/a Arandess Management Company Bronx, NY December 29, 2000. 2-CA-30569, 31011; JD(NY)-75-00, Judge Steven Davis.

Crown Bolt, Inc. (Teamsters Local 848) Cerritos, CA December 29, 2000. 21-CA-33846, et al.; JD(SF)-83-00, Judge Lana H. Parke.

UCSF Stanford Health Care (Service Employees) Palo Alto, CA December 26, 2000. 32-CA-16965, 17092; JD(SF)-84-00, Judge Joan Wieder.

Apria Healthcare Group, Inc. (Teamsters Local 853) Union City, CA December 18, 2000. 32-CA-16939; JD(SF)-85-00, Judge

Jay R. Pollack.

Catholic Health Care West-Southern California d/b/a Northridge Hospital Medical Center (American Federation of Nurses Local 535, Service Employees) Northridge, CA December 22, 2000. 31-CA-24084, et al.; JD(SF)-86-00, Judge Gerald A. Wacknov.

Washington Fruit and Produce Company (Teamsters) Yakima and Union Gap, WA December 29, 2000. 19-CA-25404, et al.; JD(SF)-87-00, Judge James M. Kennedy.

Golub Corporation (Food & Commercial Workers Local One) Rotterdam, NY January 2, 2001. 3-CA-22379-4, et al.; JD-01-01, Judge Bruce D. Rosentstein.

Champion International Corporation (PACE Local 45 & 56 and SEIU Local 349) Syracuse, NY January 5, 2001. 3-CA-21954, 21958; JD-04-01, Judge Eric M. Fine.