

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

[Index of Back Issues Online](#)

January 19, 2001

W-2774

CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

[Allied Mechanical Service](#), Kalamazoo, MI
[Aroostock County Regional Ophthalmology Center](#), Presque Isle, ME
[Scott Brothers Dairy](#), Chino, CA

OTHER CONTENTS

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

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.

Stan Scott d/b/a Scott Brothers Dairy, a Sole Proprietorship (31-CA-23438, et al.; 332 NLRB No. 163) Chino, CA Dec. 26, 2000. The Board held that the Respondent unlawfully withdrew recognition from Teamsters Local 63, that the Respondent's withdrawal of recognition was tainted by its serious unremedied unfair labor practices which had a tendency to undermine the unit employees' support for the Union, and that a bargaining order with its temporary decertification bar is necessary as a remedy. [\[HTML\]](#) [\[PDF\]](#)

The Respondent's misconduct included prohibiting the Union's representatives from gaining access to its premises as provided in the expired collective-bargaining agreement, refusing the Union's request for information, unilaterally changing employees' terms and conditions of employment in the absence of a bargaining impasse, polling employees concerning their own and other employees' union activities, soliciting employees to sign an antiunion petition, threatening employees that it would not sign another union contract, and impliedly threatening employees with job loss if they persisted with contract demands and with the futility of bargaining if they continued to support the Union.

"Thus, in this context, the Respondent could not justify its withdrawal of recognition and thereby lawfully sever its bargaining relationship by presenting evidence of employee dissatisfaction with the Union," the Board held. And, even assuming that the decertification petition was not tainted by any unfair labor practices, it was insufficient to establish that the Respondent lawfully withdrew recognition based on a good-faith doubt as to the Union's continuing majority status. Member Hurtgen agreed that the employee disaffection from the Union was tainted by the Respondent's antecedent unfair labor practices. He did not reach the issue of whether, absent such unfair labor practices, the disaffection would have been sufficient to privilege a withdrawal of recognition.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charges filed by Teamsters Local 63; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Los Angeles, Jan. 19 and May 18, 1999. Adm. Law Judge Frederick C. Herzog issued his decision June 7, 1999.

* * *

Allied Mechanical Services (7-CA-38022, et al.; 332 NLRB No. 171) Kalamazoo, MI Jan. 5, 2001. The Board held, in agreement with the administrative law judge, that the Respondent violated Section 8(a)(5), (3) and (1) of the Act in various respects, including: failing to bargain in good faith by engaging in overall conduct during negotiations and away from the bargaining table, including statements that it had no intention of ever executing a contract with Plumbers Local 337; failing to provide the Union with requested information regarding COBRA insurance coverage for two employees, which was necessary and relevant in the performance of its duties; bypassing the Union and dealing directly with employees with regard to a new health insurance plan; unilaterally making changes in terms and conditions of employment after voluntarily recognizing Plumbers Local 337 as the exclusive representative of certain employees without notice to or bargaining with the Union; and terminating Todd Hayes, Jeff Kiss, Mark Lemmer, Ron Parlin, Jeff Warren, and Kirk Wood because they engaged in an unfair labor practice strike. [\[HTML\]](#) [\[PDF\]](#)

The Board modified the judge's recommended Order to delete the requirement that the Respondent furnish copies of evaluations for Hayes, Kiss, Lemmer, Parlin, Warren, and Wood, noting the judge's finding that the record failed to show any independent violation of the Act based on the Respondent's failure to prepare their evaluations. It found merit in a Respondent exception arguing that there is no factual basis for the judge's conclusion - that it failed to respond to the Union's request for a copy of its emergency action plans - and corresponding remedy - that the Respondent be ordered to furnish the Union with a copy of its emergency action plan. The requirement was deleted from the judge's recommended Order. Member Hurtgen would include the "mediation" remedy he advocated in *Altorfer Machinery Co.*, 332 NLRB No. 12 (2000), and *Burrows Paper Corp.*, 332 NLRB No. 15 (2000). He would also add to paragraph 2(f) of the Order, which permits the Union to choose between retaining a given unilateral change or rejecting it, the option of having the change apply to some employees (e.g., extant employees), but not apply to others (new employees).

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charges filed by Plumbers Local 337; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Grand Rapids, Feb. 11-14 and Sept. 15-16, 1997. Adm. Law Judge Richard H. Beddow, Jr. issued his decision Feb. 9, 1998.

* * *

Aroostock County Regional Ophthalmology Center (1-CA-29433, 29434; 332 NLRB No. 164) Presque Isle, ME Jan. 8, 2001. The Board granted the General Counsel's motion to strike certain portions of the Respondent's amended answer to the compliance specification, including the denial that the Respondent discriminated against Jacquelyn Shepard and Sheila Belle-Isle, the assertions that backpay to Shepard and Belle-Isle is barred by Section 10(c), and the assertions that the formula in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), used to calculate backpay is inappropriate. It granted the General Counsel's motion for partial summary judgment with respect to, among other things, the definitions of gross earnings with the exception of the cash value of the Hawaii trip (pars. 1 and 2), the allegation that Shepard and Belle-Isle were entitled to an annual Christmas bonus in the amounts and years as alleged in paragraph 5, and the allegation that the Respondent maintained medical and profit-sharing plans. Member Hurtgen, finding that the matter raised factual issues, would not grant summary judgment as to the issue of whether there is a financial need to amortize the payment of the cash value of the Hawaii trips. [\[HTML\]](#) [\[PDF\]](#)

The Board incorporated, into the answer, the Respondent's arguments and tables setting forth its asserted gross backpay and interim earnings for Shepard and Belle-Isle. It denied the Respondent's request that the Board order Region 1 to amend the specification, noting that the Respondent may litigate the matters at the compliance hearing. The proceeding was remanded to the Regional Director to arrange a hearing before an administrative law judge limited to those paragraphs of the compliance specification as to which summary judgment was not granted.

In the prior proceeding, the Board ordered the Respondent to make whole Shepard and Belle-Isle for any loss of earnings that they may have suffered as a result of the Respondent's unfair labor practices against them in violation of Section 8(a)(1) of the Act. 317 NLRB 218 (1995). On April 12, 1996, the U.S. Court of Appeals for the District of Columbia enforced the Board's order in relevant part. 81 F.3d 209 (D.C. Cir. 1996).

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

General Counsel's motion to strike portions of Respondent's answer to compliance specification and for partial summary judgment filed Feb. 28, 2000.

* * *

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Villa Maria Nursing and Rehabilitation Center, Inc. and The Service Master Company (UNITE) North Miami, FL January 5, 2001. 12-CA-18137, 12-RC-7957; JD-02-01, Judge Benjamin Schlesinger.

Hamilton Sundstrand Corporation a wholly owned subsidiary of United Technologies Corporation (Machinists Lodge 91) Windsor Locks, CT January 5, 2001. 34-CA-9047; JD(NY)-01-01, Judge Michael A. Mariconese.