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

February 16, 2001 W-2778

CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

OTHER CONTENTS

IBM Corp. (3-CA-22062; 333 NLRB No. 26) Poughkeepsie and East Fishkill, NY Jan. 31, 2001. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by maintaining a rule barring large signs in parking lots and telling employees it prohibited them from displaying prounion signs on their vehicles in company parking lots. Citing *Comcast Cablevision,* 313 NLRB 220 fn. 3 (1993), the judge said he would find a violation even if there had been no explicit or implicit threat of disciplinary action--as there was in the instant case. The Board found no merit in the Charging Party's argument in cross- exceptions that the circumstances of this case warrant companywide posting of the remedial notice. [HTML] [PDF]

(Chairman Truesdale and Members Hurtgen and Walsh participated.)

Charge filed by Communications Workers Local 1120; complaint alleged violation of Section 8(a)(1). Hearing at Poughkeepsie, March 7-9, 2000. Adm. Law Judge Raymond P. Green issued his decision May 12, 2000.

* * *

Judge & Dolph, Ltd. (33-CA-11482; 333 NLRB No. 19) Rockford, IL Jan. 31, 2001. The Board affirmed the administrative law judge's finding that the Respondent unlawfully accreted, in violation of Section 8(a)(1) and (2) of the Act, newly hired warehouse employees at Rockford, IL to a bargaining unit of warehouse employees employed at other northern Illinois facilities "by compelling employees, as a condition of employment, to withdraw membership from their union and to join another union that represented an existing unit of the Respondent's employees, and by thereafter applying to these employees the terms of an existing collective-bargaining contract between the Respondent and incumbent union." [HTML] [PDF]

(Chairman Truesdale and Members Hurtgen and Walsh participated.)

Charge filed by Teamsters Local 325; complaint alleged violation of Section 8(a)(1) and (2). Hearing at Rockford, Nov. 14, 1996. Adm. Law Judge William J. Pannier III issued his decision May 6, 1997.

* * *

HVAC Mechanical Services, Inc. (16-CA-18730; 333 NLRB No. 24) Houston, TX Jan. 31, 2001. Upon review of this salting case in light of *FES,* 331 NLRB No. 20 (2000), the Board agreed with the administrative law judge's finding that the Respondent violated Section 8(a)(3) and (1) of the Act by failing to consider two applicants for employment on March 5, 1997, after they said they intended to picket and organize the Respondent, if hired. The Board remanded the case to the judge on the issue of whether the applicants would have been hired absent the discriminatory refusal to consider. The judge's recommended remedy had reserved this issue for the compliance stage of this proceeding. [HTML] [PDF]

(Chairman Truesdale and Members Hurtgen and Walsh participated.)

Charge filed by Sheet Metal Workers Local 53; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Houston, March 23, 1998. Adm. Law Judge George Carson II issued his bench decision April 14, 1998.

* * *

Hoffman Manor (29-CA-23168; 333 NLRB No. 25) Long Beach, NY Jan. 31, 2001. Affirming the administrative law judge, the Board held that the Respondent violated Section 8(a)(1) and (3) of the Act by discharging employee Linda Orellana because of her efforts to join Long Island Service Employees Local 1115. Although Member Hurtgen agreed with the judge's conclusion that the discharge of Orellana was unlawful, he did not agree with the judge's rationale. The judge relied "particularly" on a finding that the Respondent's stated reasons for the discharge were incredible: she had 18 absences during the brief time she was employed, she was often late for work, and she was out from work without calling in. Member Hurtgen relied more heavily on the fact that Respondent decided to discharge Orellana when it learned she was visiting the Union's office. [HTML] [PDF]

(Chairman Truesdale and Members Hurtgen and Walsh participated.)

Charge filed by Long Island Service Employees Local 1115. Hearing at Brooklyn, NY on May 24, 2000. Adm. Law Judge Raymond P. Green issued his decision Aug. 11, 2000.

* * *

South Coast Hospice, Inc. (36-RC-6015; 333 NLRB No. 21) Coos Bay, OR Jan. 31, 2001. The Board, in reversing the hearing officer's recommendation that the Petitioner's challenge to the ballot of Dr. Dallas Carter be sustained, reiterated an earlier finding in *Laidlaw Transit, Inc.,* 322 NLRB 895 (1997), where the Board explained: [HTML] [PDF]

> It is well-settled Board policy that a Stipulated Election Agreement is a binding contract to which the parties will be held, and that if the unit description of that agreement is expressed in clear and unambiguous terms, the Board will not examine extrinsic evidence to determine the parties' intent regarding bargaining unit composition.

Carter has the title "medical director" and the Employer argued that Carter must be included in the bargaining unit because the Stipulated Election Agreement includes the classification of "medical director" in Unit A of the bargaining unit description. Holding that the unit stipulation is clear and unambiguous on its face because it explicity includes the classification of medical director, the Board overruled the challenge to Carter's ballot and directed that his ballot along with 4 other challenged ballots be opened and counted.

(Chairman Truesdale and Members Liebman and Walsh participated.)

* * *

Titan Wheel Corporation of Illinois (14-CA-25610(1-2); 333 NLRB No. 20) Quincy, IL Jan. 31, 2001. The administrative law judge found, and the Board agreed, that the Respondent violated Section 8(a) (1) of the Act by videotaping and photographing union organizers and employees who were engaged in handbilling at the Respondent's gates. There were no exceptions taken to the judge's finding that the Respondent did not violate the Act when it instructed an employee he could not talk about the Union during work time or to the photographing of employees who were engaged in lawful handbilling at the Respondent's facility on June 2, 1999. [HTML] [PDF]

The Respondent's 700 production and maintenance employees at the Quincy location are not represented by a labor organization. The plant covers 6 large contiguous blocks and there are surveillance video cameras located on buildings or tall poles at various points throughout the complex, including points near nine gates to the property. Union organizer John Puskar testified that the Union conducted the organizational handbilling at four or five of the gates from December 1998 until April 2000. The video cameras are normally pointed in the direction of the parked automobiles but during the handbilling, Puskar and another witness testified, the cameras would turn to the handbilling activity.

The judge noted that the Board has long held, absent proper justification, the photographing of employees engaged in union or protected concerted activities violates the Act because it has a tendency to intimidate them. *Waco, Inc.,* 273 NLRB 746 (1984). And, in *Frontier Hotel & Casino,* 323 NLRB 815 (1997), the Board found an employer's turning of parking lot video cameras to watch handbilling, without justification, constituted unlawful surveillance.

(Chairman Truesdale and Members Hurtgen and Walsh participated.)

Charge filed by the Steelworkers; complaint alleged violation of Section 8(a)(1). Hearing at St. Louis, MO on Apr. 6, 2000. Adm. Law Judge David L. Evans issued his decision July 31, 2000.

* * *

Mueller Energy Services, Inc. (3-CA-20542-1, -2; 333 NLRB No. 32) West Seneca, NY Feb. 6, 2001. The administrative law judge found, and the Board agreed, that the Respondent violated Section 8(a) (1) of the Act by the issuance of two letters that threatened employees that they would lose their jobs and waive their rights under the existing collective-bargaining agreement between the Respondent and Oil Workers Local 8-215 if they joined Operating Engineers Local 17, conditioned continued

employment upon reporting persons engaged in concerted activities to supervisors, created an impression among employees that their union activities were under surveillance, and solicited employees to resign their membership in Local 17. [HTML] [PDF]

In its exceptions to the judge's finding that it violated Section 8(a)(1) by soliciting employees (in its second letter dated February 27, 1997) to resign from Local 17, the Respondent argued that an employer may lawfully inform employees of their right to revoke their authorization cards (including supplying information and forms) even if they have not solicited such information, if the employer does not attempt to learn whether employees exercised the right, or offers any assistance or otherwise creates a situation in which employees would tend to feel peril in refraining from revocation. The Board noted that the Respondent's first letter to employees, also dated February 27, 1997, contained an unlawful threat of job loss for those employees who signed with Local 17. It held: "Thus, the Respondent created a situation in which the employees would tend to feel peril in refraining from revoking their cards. In these circumstances, the Respondent could not lawfully inform its employees of the right to revoke their authorization cards."

(Chairman Truesdale and Members Liebman and Walsh participated.)

Charges filed by Operating Engineers Local 17; complaint alleged violation of Section 8(a)(1). Hearing at Buffalo on Oct. 14, 1997. Adm. Law Judge Eleanor MacDonald issued her decision May 4, 1998.

* * *

Kamtech, Inc. (25-CA-25047-1, -2; 333 NLRB No. 33) Woodstock, NY Jan. 31, 2001. The Board affirmed the administrative law judge's findings that the Respondent violated Section 8(a)(3) and (1) of the Act by, among other things, refusing to consider Michael Cornell for employment as a welder at its Hawesville facility and discharging Mark Roundtree because of their union support, interrogating applicants for employment about their union background, placing employees' union activities under surveillance, and informing or indicating to them or job applicants that applications for employment will not be considered because of applicants' union support. [HTML] [PDF]

The Board agreed with the judge that the Respondent failed to give former Kamtech welder Cornell an opportunity to take a welding test to determine his qualifications for a welding job. It did not affirm his finding that the Respondent unlawfully refused to hire Cornell because it is unclear whether he would have passed the welding test. Citing *FES,* 331 NLRB No. 20 (2000), the Board modified the judge's recommended order by requiring the Respondent, upon Cornell's request, to administer the welding test to determine if he was qualified to perform welding work at the Hawesville facility from July through August 1996. The Respondent will be required to offer Cornell employment and make-whole relief based on the outcome of the test, as determined in the compliance stage pursuant to *Dean General Contractors,* 285 NLRB 573 (1987). The Board remanded the allegations that the Respondent violated Section 8(a)(3) and (1) by refusing to hire Mitch Dotson and Robert Young to the judge for further consideration under the FES framework.

For the reasons set forth in his dissents in *Ferguson Electric Co.,* 330 NLRB No. 75 (2000) and *Tualitin Electric,* 331 NLRB No. 6 (2000), Member Hurtgen disagrees with Dean, at least as applied to "salt" situations and believes it is appropriate instead to place on the union the burden of producing evidence that the "salt" would have gone on to subsequent jobs if he had not been discharged.

(Members Liebman, Hurtgen, and Walsh participated.)

Charges filed by the Boilermakers International; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Owensboro, May 5-7, 1998 and June 23-25, 1998. Adm. Law Judge Karl H. Buschmann issued his decision July 23, 1999.

* * *

L & BF, Inc. (9-CA-35052; 333 NLRB No. 36) Hanging Rock, OH Feb. 8, 2001. Affirming the administrative law judge's finding that the Respondent lawfully discharged seven employees who refused its request to undergo mandatory respirator fitness testing, the Board dismissed the complaint alleging that the Respondent violated Section 8(a)(1) of the Act by

discharging the employees because they engaged in protected concerted activity, i.e., concertedly refusing to work around dangerous chemicals unless they received proper training and physical examinations. [HTML] [PDF]

The Respondent provides maintenance and construction services to Dow Chemical. Its contract with Dow requires that all employees participate in the respirator fitness testing, a prerequisite for future work assignments. The judge found that the record did not establish any actual failure to perform work around dangerous chemicals, thus, there is no Section 502 issue. He found *Union Boiler Co.,* 213 NLRB 818 (1974), and *Sargent Electric Co.,* 237 NLRB 1545 (1978), cited by the General Counsel, to be inapposite because in those cases the employees refused to perform work due to what they perceived, at the time of refusal, to be unsafe working conditions. In this case, the employees had not been assigned any work to which they objected and were not contending that they should not receive respirator fitness testing nor that such testing was unnecessary, the judge noted. Rather, they refused the testing in an effort to compel Respondent to agree to their demand for more extensive testing and training. The Respondent refused their demand. The judge held:

"In arguing that this violated the Act, the General Counsel is effectively arguing that Respondent was obligated either to accede to the demand of the employees for more extensive testing and training or cease demanding that the employees comply with its requirement that they take the respirator test. I find no case authority for this proposition."

(Members Liebman, Hurtgen, and Walsh participated.)

Charge filed by Charles Murnahan, an individual; complaint alleged violation of Section 8(a)(1). Hearing at Ironton, April 29-30 and May 1, 1998. Adm. Law Judge George Carson II issued his decision July 2, 1998.

* * *

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Uniloy Milacron, Inc. (Individual) Manchester, MI February 7, 2001. 7-CA-42985; JD-16-01, Judge David L. Evans.

Teco Stevedoring Services, Inc. (Electrical Workers (IBEW) Local 108) Tampa, FL February 5, 2001. 12-CA-20056; JD (ATL)-05-01, Judge Pargen Robertson.

Jesco, Inc. (Electrical Workers (IBEW) Local 480) Tupelo, MS February 6, 2001. 26-CA-17283, et al; JD-(ATL)-4-01, Judge Howard I. Grossman.

Wal-Mart Stores, Inc. (Food & Commercial Workers International) Lubbock, TX February 7, 2001. 16- CA-20578; JD(ATL)-7-01, Judge William N. Cates.

Mining Specialists, Inc. (Mine Workers District 17) Belle, WV February 9, 2001. 9-CA-30680; JD-15-01, Judge John H. West.

United States Postal Service (Postal Workers Local 1097) Fairfield, CT February 9, 2001. 34- CA-9191(P); JD(NY)-04-01, Judge Michael A. Marcionese.

Hillman Rollers (Teamsters Local 469) Marlboro, NJ February 9, 2001. 22-CA-23899; JD(NY)-05-01, Judge Steven Fish.

* * *

NO ANSWER TO COMPLIANCE SPECIFICATION

(In the following cases, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the compliance specification.)

Koehn Painting Company (Painters Local 76) (17-CA-19923, 19998; 333 NLRB No. 22) Newton KS January 31, 2001.

D.A. Fiori Construction Company (Operating Engineers Local 66, 66A, B, C, D, O, & R) (6-CA-30331; 333 NLRB No. 27) Pittsburgh, PA January 31, 2001.

Less Express Courier Systems (Industrial Services, Transport and Health Employees District 6) (2- CA-31600; 333 NLRB No. 28) New York, NY January 31, 2001.

* * *

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.)

Jackson Hospital Corporation (Steelworkers) (9-CA-37909; 333 NLRB No. 29) Jacksonville, KY January 31, 2001.

* * *

ADMISSION OF ALL MATERIAL FACTUAL ALLEGATIONS

(In the following case, the Board granted the General Counsel's motion for summary judgment on the ground that the Respondents filed answers in which they admitted all material factual allegations in the complaint.)

McLaren Health Care Corp. and AFSCME Michigan Council 25 (7-CA-42127, 7-CB-12104(1); 333 NLRB No. 31) Flint, MI Feb. 6, 2001.