

## 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](#)

February 23, 2001

W-2779

**CASES SUMMARIZED**

SUMMARIES CONTAIN LINKS TO FULL TEXT

[Auto Workers and its Local 1853](#), Nashville, TN  
[Budget Heating & Air Conditioning, Inc.](#), Tampa, FL  
[Grand Valley Health Center](#), Grand Rapids, MI  
[Intercon I \(Zercom\)](#), Aitkin, MN  
[RCN Corp.](#), Northampton, PA  
[Tidewater Group, Inc.](#), Clinton, MD

**OTHER CONTENTS**

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

[List of Test of Certification Cases](#)

[List of No Answer to Complaint Cases](#)

Operations-Management Memorandums:

[\(OM 01-08\) Reporting Representation and Unit Clarification Cases Raising Issues Under \*M.B. Sturgis\*, 331 NLRB No. 173](#)

[\(OM 01-31\) Participation of Supplier Employer in \*M.B. Sturgis\* Representation Cases](#)

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](http://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.

*Intercon I (Zercom)* (18-CA-14533; 333 NLRB No. 30) Aitkin, MN Jan. 31, 2001. A Board majority of Chairman Truesdale and Member Liebman, while agreeing with the administrative law judge's finding that the Respondent had unlawfully threatened employees with retaliation and plant closure during a union organizing campaign, disagreed with the judge that employee Suzanne Witha's resignation did not constitute a constructive discharge under either the traditional constructive discharge theory or the "Hobson's Choice" doctrine. The fact that Witha was not immediately terminated does not mitigate the Respondent's "clear message" that she faced termination if she did not abandon her prounion attitude within four days, the Board stated. The majority also took exception to the judge's view that the Hobson's Choice doctrine is only applicable where an employer curtails the Section 7 rights of already represented employees, and is not applicable in cases where the employees currently are unrepresented. [\[HTML\]](#) [\[PDF\]](#)

Member Hurtgen dissented on the constructive discharge issue, asserting that "it was not 'clear and unequivocal' that Witha was faced with the choice of (1) foregoing Section 7 activity and (2) discharge. Accordingly, her resignation was not constructive discharge." He cited *Com General Corp.*, 251 NLRB 653, 657-658 (1980).

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charge filed by Electrical Workers (IBEW); complaint alleged violation of Section 8(a)(1) and (3). Hearing at Aitkin, Feb. 4, 1998. Adm. Law Judge William J. Pannier III issued his decision Oct. 6, 1998.

\* \* \*

*Budget Heating & Air Conditioning* (12-CA-20312; 333 NLRB No. 23) Tampa, FL Jan. 31, 2001. The Board upheld the administrative law judge's findings that the Respondent violated Section 8(a)(1) and (3) of the Act by threatening employees with unspecified reprisals, informing employees it would be futile to select the Union, threatening employees with discharge, and discharging four employees because of their union activities. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Liebman and Walsh participated.)

Charge filed by Sheet Metal Workers Local 15; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Tampa, Aug. 31, 2000. Adm. Law Judge Pargen Robertson issued his decision Aug. 31, 2000.

\* \* \*

*The Tidewater Group, Inc.* (5-CA-28098; 333 NLRB No. 34) Clinton, MD Feb. 9, 2001. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union and unilaterally ceasing payments for group health insurance for bargaining unit employees. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charge filed by Laborers Local 571; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Washington, DC on March 2-4, 1999. Adm. Law Judge James L. Rose issued his decision April 21, 1999.

\* \* \*

*Auto Workers and its Local 1853 (Saturn Corporation)* (26-CB-3508; 333 NLRB No. 43) Nashville, TN Feb. 13, 2001. The Board, finding no violation of Section 8(b)(1)(A) of the Act, denied the General Counsel's motion for summary judgment, granted the Respondents' cross-motion for summary judgment, and dismissed the complaint. [\[HTML\]](#) [\[PDF\]](#)

At issue is whether the Respondents violated Section 8(b)(1)(A) of the Act by promulgating a policy requiring employees who had "withdrawn dishonorably" from the Union, i.e., resigned from the Union while remaining in bargaining unit positions in which they continued to be represented by the Union, to pay a fee equivalent to the dues for the period of nonmembership if they should seek to rejoin the Union, while allowing employees who had "honorably withdrawn," i.e., resigned from the Union because they had taken a position outside the bargaining unit, to rejoin without having to pay such a fee.

The Board found that the Union's policy is not coercive or discriminatory and constitutes a legitimate exercise of the Union's right under the proviso to Section 8(b)(1)(A) "to prescribe its own rules with respect to the acquisition or retention of membership therein(.)"

It rejected the General Counsel's contention that those cases-which pertain to union fees imposed in connection with the enforcement, or potential enforcement, of a union-security provision as a condition of continued employment-extend to the facts of this case. The Board found instead that the absence of a compulsory union security clause is determinative in analyzing the legality of the Union's policy, because employees face no employment sanctions for any decision related to union membership. "In the circumstances here, we find that, in the absence of an employment-related sanction, the union policy at issue here reflects a legitimate distinction between bargaining unit employees and nonbargaining unit employees, and is not discriminatory as applied to former members who have remained in the unit and who voluntarily elect to rejoin the Union," the Board held.

(Chairman Truesdale and Members Liebman and Walsh participated.)

Charge filed by Earl Lee, an Individual; complaint alleged violation of Section 8(b)(1)(A). General Counsel filed motion for summary judgment and Respondents filed joint cross-motion for summary judgment on June 4, 1997.

\* \* \*

*Grand Valley Health Center* (7-CA-42686; 333 NLRB No. 35) Grand Rapids, MI Feb. 9, 2001. The Board affirmed the administrative law judge's findings that the Respondent, by its director of building services, Ronald Klump, violated Section 8(a)(1) of the Act by coercively interrogating Charles Barber about his union activities, seeking information from him about the union activities of other employees, and threatening him with discharge because of his union activities. [\[HTML\]](#) [\[PDF\]](#)

The Board also agreed with the judge that the Respondent's acceptance of Barber's resignation on December 20, 1999 was not in retaliation against Barber's union activities and that the Respondent did not violate Section 8(a)(3) when it accelerated its acceptance of Barber's resignation and barred him from its premises. It found no merit in the General Counsel's cross-exceptions, contending that the Respondent relied on an existing and allegedly invalid written no-solicitation rule. There was no evidence that the Respondent relied on the rule, the Board noted. It said the General Counsel's cross-exceptions "are based on a limited theory that incorrectly relies on the Respondent's enforcement of an existing and alleged invalid written rule. Apart from this rule, the General Counsel does not challenge the Respondent's justification for restricting Barber's solicitation of nurses working in immediate patient care areas."

In agreeing with his colleagues and the judge that the 8(a)(1) allegations in the complaint are closely related to the timely filed 8(a)(3) allegations, Member Hurtgen notes that a defense to the 8(a)(3) allegations (viz lack of animus) would include the defense that the 8(a)(1) allegations lack merit.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charge filed by Operating Engineers Local 547A, B, C. E. H; complaint alleged violations of Section 8(a)(1) and (3). Hearing at Grand Rapids, June 6, 2000. Adm. Law Judge Arthur J. Amchan issued his decision Aug. 14, 2000.

\* \* \*

*RCN Corp.* (4-CA-28091, 28157; 333 NLRB No. 45) Northampton, PA Feb. 13, 2001. The Board affirmed the administrative law judge's findings that the Respondent violated Section 8(a)(5) and (1) of the Act in response to the affiliation of RCN Employee Union (RCNEU), which had a collective-bargaining agreement with the Respondent, with the Communications Workers of America. The merged union is Communications Workers Local 13000 (CWA Local 13000). Specifically, the Respondent refused to recognize and bargain with CWA Local 13000; denied off-duty employees access to the exterior and other nonworking areas of its Northampton facility; requested employees to inform management if they were harassed or intimidated by their fellow employees who solicited them to sign union authorization cards and encouraged employees to identify union supporters; maintained and enforced a rule prohibiting employees from soliciting or distributing protected

material on company time or premises; promulgated, maintained, and enforced rules requiring them to wear company issued uniforms and hats; prohibited employees from placing items on the dash-boards of company vehicles and wearing union insignia at work; and unilaterally eliminated the union bulletin board at its Northampton facility. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Liebman and Walsh participated.)

Charges filed by Communication Workers Local 13000; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Philadelphia, Sept. 1-3, 1999. Adm. Law Judge Benjamin Schlesinger issued his decision Dec. 30, 1999.

\* \* \*

### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

*Wright Electric, Inc.* (Electrical Workers (IBEW) Local 292) Minneapolis, MN February 14, 2001. 18- CA-12820, et al.; JD-18-01, Judge Jerry M. Hermele.

*Fantasia Fresh Juice Company* (Manufacturing, Production & Service Workers Local 24) Rosemont, IL February 13, 2001. 13-CA-38526, 13-RC-20319; JD-20-01, Judge Benjamin Schlesinger.

\* \* \*

### NO ANSWER TO COMPLAINT

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

*Ponce Construction, Inc.* (Carpenters Local 839) (13-CA-38643, 333 NLRB No. 40) Chicago, IL February 9, 2001.

\* \* \*

### TEST OF CERTIFICATION

*(In the following cases, 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.)*

*National Cargo Bureau, Inc.* (Marine Clerks Association Local 63, Longshore and Warehouse Union) (21-CA-34287, 333 NLRB No. 39) San Pedro, CA February 13, 2001.

*Seattle Opera Association* (Musical Artists Guild) (19-CA-27288; 333 NLRB No. 37) Seattle, WA February 8, 2001.