

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.



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March 9, 2001

W-2781

CASES SUMMARIZED

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Florida Wire & Cable, Inc. (12-CA-19534, et al.; 333 NLRB No. 52) Jacksonville, FL Feb. 26, 2001. The Board agreed with the administrative law judge that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employees because they ceased work concertedly and engaged in a strike, and by failing to timely reinstate and delaying the timely reinstatement of economic strikers to their former or substantially equivalent positions upon their unconditional applications for reinstatement; and violated Section 8(a)(1) by telling employees that they had to resign from Steelworkers Local 9292 in order to work past the expiration date of a current collective-bargaining agreement, soliciting employees to resign from the Union,

telling employees that they will never be reinstated to their former or substantially equivalent positions, threatening to discharge striking employees unless they accepted reinstatement to jobs that were not their former jobs or substantially equivalent positions, and confiscating picket signs from strikers and destroying them in the presence of employees. [\[HTML\]](#) [\[PDF\]](#)

In affirming the judge's findings, Member Hurtgen rejected any implication that departmental seniority is always the preferred standard to apply in recalling strikers. See his partial dissent in *Alaska Pulp Corp.*, 326 NLRB 522 (1998), enf. denied, 231 F.3d 1156 (9th Cir. 2000).

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charges filed by Steelworkers Local 9292; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Jacksonville, Jan. 24-25, 2000. Adm. Law Judge Howard I. Grossman issued his decision Sept. 20, 2000.

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Safway Steel Products (29-CA-22769; 333 NLRB No. 55) Brooklyn, NY Feb. 26, 2001. The Board upheld the administrative law judge's decision, as modified, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to implement the terms of the memorandum of agreement reached with Carpenters Local 2819 in May 1999 entitled "Addendum Article J#1, Benefit Funds" covering payments to the Union's Trust fund for bargaining unit employees. The judge found there was a meeting of the minds and the parties reached an agreement that the welfare fund contribution would be increased by 25 cents on January 1, 1999, and by an additional 25 cents on July 1, 1999. He rejected the Respondent's affirmative defenses that the complaint is barred by Section 10(b) of the Act and that the Union waived its right to bargain about an increase in welfare contributions by waiting until December 1998 in reopening negotiations when it had a contractual right to do so on July 1, 1998. [\[HTML\]](#) [\[PDF\]](#)

Finding merit in the General Counsel's limited exceptions, the Board amended the judge's Conclusions of Law, Remedy, Order and Notice to include a consistent provision that the Respondent implement the May 1999 agreement reached by the parties and make payments to the Union's trust fund retroactively to January 1999.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charge filed by Carpenters Local 2819; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Brooklyn on Jan. 19, 2000. Adm. Law Judge Steven Davis issued his decision March 14, 2000.

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Lois Development Corp. d/b/a Wallace Theaters (37-CA-4579, et al.; 333 NLRB No. 58) Honolulu, HI Feb. 27, 2001. Agreeing with the administrative law judge, the Board held that the Respondent did not engage in bad-faith bargaining in violation of Section 8(a)(5) and (1) of the Act and dismissed the complaint in its entirety. [\[HTML\]](#) [\[PDF\]](#)

The judge found that the Respondent and Hotel Employees and Restaurant Employees Local 5 had 21 sessions of good faith bargaining between January 5, 1996 and January 28, 1997 even though the Union suspended bargaining after two sessions and engaged in informational picketing at the Respondent's movie theaters. When the parties resumed negotiations 4 months later, progress was made and accelerated when the Respondent submitted its written counterproposal on October 10, 1996, the judge said. He rejected the General Counsel's arguments that the Respondent was unreasonable in limiting negotiating sessions to 2 to 3 hours, and that bargaining was hampered by the Respondent's 10-month delay in providing its written counterproposal and failure to make a representative available at reasonable times from November 1996 through March 1997.

The Board found it unnecessary to pass on the judge's conclusion that the parties "clearly [had] reached in impasse" when bargaining ended on January 28, 1997. And, it did not adopt or rely on his opinion that the contract proposed by the Respondent "stinks."

(Chairman Truesdale and Members Hurtgen and Walsh participated.)

Charges filed by Hotel Employees and Restaurant Employees Local 5; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Honolulu, April 15, 16, 19 and 20, 1999. Adm. Law Judge Gerald A. Wacknov issued his decision July 29, 1999.

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Flour Daniel, Inc. (15-CA-12544, et al.; 333 NLRB No. 57) Wintersburg, AZ and Baton Rouge, LA March 2, 2001. The Board concluded, based on discriminatory corporate policies and field practices implementing them, that the Respondent unlawfully applied its system of hiring preferences, policies and procedures in order to refuse to consider and hire 120 voluntary union organizers who applied to work at its Palo Verde Nuclear Generating project near Phoenix, Arizona and its Exxon refinery site at Baton Rouge, Louisiana; and that the Respondent engaged in associated threats, coercive statements, and retaliatory conduct. Although the Board agreed with the judge that there is insufficient evidence to establish that the Respondent unlawfully refused to hire five union activist applicants for rebar helper positions at the Louisiana site, it found that the Respondent violated Section 8(a)(3) and (1) by refusing to consider them for hire. [\[HTML\]](#) [\[PDF\]](#)

The Board entered a nationwide remedy and ordered national posting and mailing to all Respondent employees and applicants, relying on its conclusion that the Respondent's hiring criteria, as applied, unlawfully discriminated against union activists in Arizona and Louisiana, and its earlier decisions making similar findings with respect to other Respondent jobsites in other parts of the country.

This is the third of four cases alleging that the Respondent's hiring practices have unlawfully discriminated against applicants for employment who showed an interest in exercising rights protected by the Act. One complaint, currently pending trial, involves 130 job applicants at two Respondent projects in Louisiana. In two earlier cases, the Board found that the Respondent engaged in the discrimination alleged and "offered no credible reasons" for treating applicants disparately. A factor underlying the Board's finding in one case was that the Respondent disparately enforced a rule limiting the effective period of employment applications to exclude union activists on the ground that their applications had expired.

The Respondent has asserted the same "inactive application rationale" as a defense in the instant case, as well as its rule against accepting applications unless there were present openings. The General Counsel alleged the Respondent systematically applied its hiring preferences and policies to screen out union activists from consideration and to hide their exclusion under the pretense of legitimacy, and that it discriminated against voluntary union organizer applicants by treating them less favorably than all other applicants-not only nonactivist, nonpreferred applicants, but also preferred former employees.

Examining the Respondent's entire hiring system as applied at the two jobsites, the Board noted two evidentiary factors that were not available in the two prior cases: an emerging pattern of discrimination, and subsequent documents and testimony evidencing discriminatory intent at the corporate level. Citing *FES*, 331 NLRB No. 20 (2000), it found the General Counsel established his prima facie case that the Respondent both harbored animus and acted upon it, and that the Respondent failed to rebut it, finding its defenses are pretextual: The Board wrote:

As determined by the judge, whose findings we adopt, the Respondent was hiring throughout the period when discriminatee applicants applied or unsuccessfully sought to apply for employment at the Exxon and Palo Verde sites. Next, those discriminatees were well qualified and experienced applicants for the positions they sought. Indeed, in the case of Palo Verde, the discriminatees were experienced at that very nuclear facility. Finally, . . . the record is replete with evidence that antiunion animus factored heavily in the Respondent's decision not to hire the discriminatees, or, as to the applicants who unsuccessfully sought to apply at Palo Verde . . . contributed to the Respondent's decision not to consider them for hire or hire them.

Considerable evidence in this case supports the inference of unlawful motive. As set forth in the judge's decision, and expanded upon here, the Respondent committed prior unfair labor practices of the same type, harbored corporate level animus, made project level hiring decisions implementing its animus, and engaged in threatening and coercive conduct. Based on this evidence, we find that the Respondent engaged in a pattern of systematic discrimination intended to screen out union activists from consideration for employment. The practical effect of

this was to allow the Respondent selectively to choose a nonunion workforce by precluding employment of union activists.

(Chairman Truesdale and Members Hurtgen and Walsh participated.)

Charges filed by Boilermakers Local 995 and Plumbers Local 198; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Phoenix and Baton Rouge for 51 days between Aug. 1, 1995 and Dec. 12, 1996. Adm. Law Judge Martin J. Linsky issued his decision Feb. 6, 1998.

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TeleTech Holdings, Inc. (3-CA-21862; 333 NLRB No. 56) Niagara Falls, NY Feb. 27, 2001. Contrary to the administrative law judge, the Board found that the Respondent's maintenance of its no-distribution rule and no-access rule in its orientation handbook violated Section 8(a)(1) of the Act. The judge, in his decision, asserted that these rules did not have any coercive impact on the employees' Section 7 rights. The Board held that rules prohibiting distribution of literature on employees' own time in nonworking areas and prohibiting off-duty employees seeking access to the plant for any purpose are unlawful and violate the Act. [\[HTML\]](#) [\[PDF\]](#)

The Board upheld the judge's dismissal of the Section 8(a)(1) and (3) allegation that employee Frank Butry was discharged because of his activities on behalf of the Union. It agreed that the General Counsel did not establish that the Respondent was aware of Butry's union activities.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charge filed by Communications Workers; complaint alleged violations of Section 8(a)(1) and (3). Hearing at Niagara Falls, NY, Oct. 28 and 29, 1999 and April 24, 2000. Adm. Law Judge Karl H. Buschmann issued his decision Aug. 15, 2000.

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West Michigan Plumbing and Heating (7-CA-42086; 333 NLRB No. 61) Richland, MI Feb. 28, 2001. The Board agreed with the administrative law judge that the Respondent violated Section 8(a)(1) and (3) of the Act by reassigning, isolating and discharging employee Mikkell Wagner because of his union activities and by maintaining a rule in its handbook to encourage employees to report to Respondent employees who solicit other employees to join the union. [\[HTML\]](#) [\[PDF\]](#)

The Board noted that no exceptions were taken to the judge's dismissal of the 8(a)(1) interrogation of Wagner and to the judge's finding that foreman Greg Goole was not a supervisor within the meaning of Section 2(11) of the Act.

(Chairman Truesdale and Members Hurtgen and Walsh participated.)

Charge filed by Plumbers Local 357; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Grand Rapids, Oct. 27, 1999. Adm. Law Judge C. Richard Miserendino issued his decision May 11, 2000.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

LBT, Inc. (Paper, Allied-Industrial, Chemical and Energy Workers Local 5-0699) Omaha, NE February 23, 2001. 17-CA-20235, et al.; JD(ATL)-15-01, Judge George Carson II.

King Soopers, Inc., (Paper, Allied-Industrial, Chemical and Energy Workers Local 5-920) Denver, CO February 22, 2001. 27-CA-16965; JD(SF)-13-01, Judge Albert A. Metz.

Desert Pines Golf Club (Laborers Local 872) Las Vegas, NV February 15, 2001. 28-CA-16347; JD(SF)-08-01, Judge Thomas Michael Patton.

C.S. TeleCom, Inc. (Electrical Workers (IBEW) Local 98) Philadelphia, PA February 27, 2001. 4-CA-28871; JD(NY)-07-01, Judge Joel P. Biblowitz.

American River Transportation Co. (Masters, Mates and Pilots International) Decatur, IL March 1, 2001. 14-CA-25753; JD-27-01, Judge Paul Bogas.

Multicraft Limited Partnership (Auto Workers (UAW)) Cottdale, AL March 2, 2001. 10-CA-32202-1, et al.; JD(ATL)-14-01, Judge William N. Cates.

United States Postal Service (Individual) Grant, AL March 2, 2001. 10-CA-31678-P; JD(ATL)-17-01, Judge Keltner W. Locke.

S Brent & Brothers and Samuel Bent LLC, its Successor (Electronic Workers (IUE) Local 154) Gardner, MA March 2, 2001. 1-CA-37851, et al.; JD-25-01, Judge Bruce D. Rosenstein.

Simpson Industries, Inc. (Individual) Litchfield, MI February 28, 2001. 7-CA-43143; JD-26-01, Judge David L. Evans.

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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 failure to file an answer to the complaint.)

Bo-Ty Plus, Inc. and Stage Employees Local 929 (an Individual) (11-CA-18574, 11-CB-3052, 333 NLRB No. 54) Greenville, SC February 22, 2001.