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

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March 23, 2001 W-2783

CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

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Best Driver Resources (12-CA-20556; 333 NLRB No. 72) Hialeah, FL March 13, 2001. The Board found merit in the General Counsel's exception to the administrative law judge's failure to include a provision in the recommended Order requiring that the Respondent expunge from the personnel files of the named discriminatees any reference to the Respondent's unlawful denial of work to them. The General Counsel asserted that an expunction requirement was necessary to protect the discriminatees, who were employees on strike against their employer, from further discrimination by the Respondent, a supplier of temporary labor, or by other employers from whom the discriminatees are likely to seek employment. [HTML] [PDF]

The judge, affirmed by the Board, determined the Respondent had denied work to five employees because they assisted and supported the Union and engaged in concerted activities, and to discourage its employees from engaging in these activities.

(Members Liebman, Hurtgen, and Walsh participated.)

Charge filed by Samuel L. Collins, an individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Miami on Sept. 19, 2000. Adm. Law Judge William N. Cates issued his decision Sept. 29, 2000.

* * *

AP Automotive Systems (9-RC-17421; 333 NLRB No. 68) Troy, OH March 13, 2001. A Board majority of Chairman Truesdale and Member Liebman found that an election held on Aug. 2, 2000, in which 90 votes were for the Union, 100 against, with 8 challenges, must be set aside and a new election conducted. The majority found that the Employer's captive audience speech to employees two days before the election contained an objectionable threat of plant closure and a prediction of the futility of union representation. The statement at issue, read by the Employer's vice president, was that [HTML] [PDF]

> [t]he union may give you a lot of promises but they have to come to Faurecia [the Employer's parent] to deliver them to you. However, Faurecia will not agree to anything that will hurt Troy plant's competitive position. We would rather see the plant closed by a strike now than slowly die because we agree to something that will eventually put this plant in financial trouble. Faurecia won't do it with a union and it won't do it without a union.

In dissent, Member Hurtgen disagreed that the Employer's statement constituted a threat to close the plant or a prediction that bargaining would be futile. He said "the Employer was simply saying that it would not agree to anything that will hurt the Troy plant's competitive position."

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

* * *

Wilkie Metal Products, Inc. (7-CA-40357, et al.; 333 NLRB No. 73) Muskegon, MI March 15, 2001. The Board affirmed the administrative law judge's finding that the Respondent had engaged in certain unfair labor practices interfering with protected strike activity by its employees, including threatening comments by the owner, J.R. Boos. For example, by making the comment that if the employees went on strike, the situation "will be pretty ugly," the Board held that Boos was not merely expressing his opinion on strikes, but rather was unlawfully threatening unspecified retaliation if the employees exercised their statutory right to strike. (In a footnote, Member Hurtgen said he did not find the comment threatening or retaliatory.) [HTML] [PDF]

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charges filed by Machinists Local 670, Lodge 67; complaint alleged violation of Section 8(a)(1),(3),(4), and (5). Hearing at Grand Rapids, Nov. 18-20 and 23-25, 1998. Adm. Law Judge Marion C. Ladwig issued his decision April 21, 1999.

* * *

Cleveland Indians Baseball Company (8-UD-287; 333 NLRB No. 70) Cleveland, OH March 12, 2001. Contrary to the

Regional Director's recommendation to sustain the individual Petitioner's objections alleging that employees did not have sufficient notice of the election, the Board overruled the objections and certified that a majority of the employees eligible to vote did not vote to withdraw the authority of Ticket Takers, Ushers and Police Union Local 85, SEIU to require, under its agreement with the Employer, that employees make lawful payments to that labor organization in order to retain their jobs in conformity with Section 8(a)(3) of the Act, as amended. [HTML] [PDF]

The Employer posted Notices of Election on August 8, 2000 in the employee breakroom near the time clock where unit employees (ticket takers and ushers at Jacobs Field in Cleveland, Ohio) check-in before each shift. The employees were not scheduled to work from August 10 to August 17, 2000 while the Cleveland Indians were on an extended road trip and the deauthorization election was held August 18, 2000.

The Regional Director found the Employer failed to comply with Section 102.30 of the Board's Rules and Regulations, which requires that Notices of Election must be posted for at least 3-full working days before the election. Section 103.20(b) provides that "working day" means an entire 24-hour period excluding Saturdays, Sundays, and holidays. The Regional Director concluded the days encompassed by the road trip did not constitute "working days" since unit employees were not scheduled to work during that period.

The Board wrote in disagreeing with the Regional Director and finding that the Employer complied with its rule for notifying the employees of the election because the notice was posted for 10 days, including 7 working days prior to the election: "The Board does not define 'working day' depending on the individual circumstances of a particular employer or industry or on the working schedules of individual employees, but rather consistently adheres to the precise and literal definition in the Board's Rules and Regulations."

The Board also found that the Petitioner's claim of notice deficiency is undermined by the fact that he signed a stipulation agreeing to the date and other terms and conditions of the election and raised no objection based on employees' work schedules. "Here, the election was held pursuant to the stipulated agreement and there is no evidence on the record before us that unit employees were prevented from voting," it said. Member Hurtgen did not rely on this portion of the decision, noting that the parties did not agree as to when posting would begin, that the stipulation was signed on August 2, and that the posting could have begun on August 3, and if so, would have been completed before the road trip began on August 10.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

* * *

Avondale Industries, Inc. (15-CA-14551, et al.; 333 NLRB No. 74) Avondale, LA March 15, 2001. The Board held, in agreement with the administrative law judge, that the Respondent violated Section 8(a)(3) and (1) of the Act by warning, suspending, and discharging employees because of their union activities; and violated Section 8(a)(1) by restricting employees from attending a public event because of their union activities and coercively interrogating an employee concerning the union activities of his fellow employees. [HTML] [PDF]

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charges filed by New Orleans Metal Trades Council; complaint alleged violation of Section 8(a)(1) and (3). Hearing at New Orleans, May 22-25 and June 19-22, 2000. Adm. Law Judge George Carson II issued his decision Nov. 7, 2000.

* * *

Madison Square Garden (34-RC-1812; 333 NLRB No. 77) New York, NY March 15, 2001. The Board denied the Employer's request for review of the Regional Director's decision that 12 of the Employer's 13 disputed employees are guards within the meaning of Section 9(b)(3) of the Act, agreeing that their functions designed to enhance security are sufficient to establish that they are statutory guards. Neither party sought review of the Regional Director's finding that Juan Ortiz is a statutory supervisor and the Board found it unnecessary to reach Ortiz' guard status since he is a statutory supervisor. Member Liebman dissented in part. Contrary to his colleagues, Member Hurtgen would grant review on the supervisory issue, but limited solely

to the disputed supervisors' authority to impose discipline. [HTML] [PDF]

The Board previously granted review of the Regional Director's finding that the 13 employees should be excluded from the petitioned-for unit because 11 of them were statutory guards and 2 employees, Juan Ortiz and Skip Ward, were statutory supervisors; and remanded the proceeding to him to determine the supervisory status of all 13 employees.

Member Liebman found that the "supervisors" are not statutory guards, but instead that they are like the receptionists in *Wolverine Dispatch, Inc.,* 321 NLRB 796 (1996), and the doorpersons and elevator operators in *55 Liberty Owners Corp.,* 318 NLRB 308 (1995)-all of whom the Board found not to be statutory guards. She noted that the "supervisors" are not armed and do not wear traditional guard uniforms, that there was no evidence that they receive any special training in security matters, and that the "supervisor" requests the assistance of a police officer if an issue with a patron escalates to the point that the "supervisor" deems it necessary to reject or arrest a patron. Member Liebman said the Board "should reexamine its law with respect to statutory guards and acknowledge that it has erroneously expanded its interpretation of Section 9(b)(3). I decline to compound this error by expanding the definition further in this case."

Chairman Truesdale and Member Hurtgen wrote in response:

> Our dissenting colleague concedes that to adopt her position would require reversing longstanding Board precedent. . . . We do not agree that these cases 'unjustifiably expanded' the definition of a guard under Section 9 (b)(3), and we thus see no need to 'reexamine' Board law in this area. Because of this, and because of values inherent in the doctrine of stare decisis, we would not reverse precedent. Finally, we do not believe that precedent is being expanded in this case.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

* * *

DLC Corp. d/b/a FleetBoston Pavilion (1-RC-21210; 333 NLRB No. 79) Boston, MA March 16, 2001. The Board certified the Theatrical Stage Employees International, winner by a 29-0 vote, as the exclusive collective-bargaining representative of all on-call stage hands, stage electricians, stage carpenters, dimmer board persons, stage riggers, property persons, loaders, and unloaders, spotlight operators, cue persons, and sound persons employed by the Employer at its FleetBoston Pavilion (Pavilion) in Boston, Massachusetts. [HTML] [PDF]

The Board affirmed the hearing officer's recommendations to overrule Employer's Objection 1 contending that it was objectionable for the Petitioner to promise during its campaign, to negotiate a collective-bargaining agreement that would base entitlement to work on the amount of time the employee had worked for the Employer at the Pavilion; and Employer's Objection 3 alleging that the Petitioner's election observer (Local 11 President Robert Volosevich) was objectionable because he was (1) not an employee of the Employer and (2) responsible for referring eligible voters for work at the Pavilion and other venues where Local 11 supplies employees. The Employer and Petitioner's Local 11 are parties to a collective-bargaining agreement covering half the stagehands working at any given time at the Pavilion.

In overruling Objection 1, the Board agreed with the hearing officer that the Employer's reliance on *Alyeska Pipeline Service Co.,* 261 NLRB 125 (1982), is misplaced, but it disagreed with his distinguishing of Alyeska from this case on the basis that Alyeska involved "intra-unit discrimination." It noted that here, unlike Alyeska, the Union does not maintain exclusive control of staffing and referrals and instead hiring procedures for the Pavilion would be subject to the collective-bargaining process. Also, the Union's promise was made to all employees without reference to union membership or support.

The Board reversed the hearing officer's finding, in agreement with the Regional Director in her Decision and Direction of Election, that the Employer's contract with Local 11 was an unlawful members-only agreement and his recommendation that the election be set aside on that basis. It noted that the Employer did not object to the election based on its hiring hall relationship with Local 11 and, thus, the issue was not before the hearing officer. See *Precision Products Group,* 319 NLRB 640 (1995), and *Iowa Lamb Corp.,* 275 NLRB 185 (1985).

(Chairman Truesdale and Members Liebman and Walsh participated.)

* * *

Cook County School Bus, Inc. (13-CA-38108, 38310; 333 NLRB No. 75) Arlington Heights, IL March 16, 2001. The Board affirmed the administrative law judge's conclusions that the Respondent violated Section 8(a)(5) and (1) of the Act by terminating its collective-bargaining agreement with Teamsters Local 744, failing to comply with the terms and conditions of the contract, withdrawing recognition from the Union, and unilaterally promising or implementing its dedicated driver drawing lottery program without giving prior notice and opportunity to bargain to the Union. The Board modified the judge's recommended Order to conform to his finding that the Respondent committed an independent violation of Section 8(a)(1) by promising employees benefits in the form of a lottery bonus program, and to provide for the traditional make-whole relief as requested by the General Counsel. [HTML] [PDF]

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charge filed by Teamsters Local 744; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Chicago, April 12-13, 2000. Adm. Law Judge Martin J. Linsky issued his decision Aug. 31, 2000.

* * *

Anderson Cupertino d/b/a Anderson Chevrolet-Chrysler/Plymouth (32-CA-17034; 333 NLRB No. 69) Cupertino, CA March 13, 2001. The Board, on the recommendation of the administrative law judge, dismissed the complaint allegations that the Respondent violated Section 8(a)(1) and (5) of the Act by withdrawing its recognition from Teamsters Local 665. The Board agreed with the judge that there is insufficient credible evidence to establish that the Respondent had recognized Local 665 as the representative of its lot employees. *Trevose Family Shoe Stores,* 235 NLRB 1229 (1978). Under the test of *Nantucket Fish,* 309 NLRB 794 (1992), (requiring clear, express and unequivocal evidence of recognition), the Board found there is insufficient evidence of recognition and majority status. [HTML] [PDF]

(Chairman Truesdale and Members Hurtgen and Walsh participated.)

Charge filed by Teamsters Local 665; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Oakland, CA on June 9, 1999. Adm. Law Judge James M. Kennedy issued his decision Aug. 3, 1999.

* * *

SAE Young Westmont-Chicago, LLC (13-CA-38410, 38740; 333 NLRB No. 59) Chicago, IL March 9, 2001. Finding that the Respondent failed to comply with the terms of the settlement agreement and failed to (1) offer reinstatements to the discriminatees; (2) make backpay installment payments; (3) reinstate the health insurance; and (4) post notices, the Board granted the General Counsel's motion for summary judgment. The Board held that the Respondent violated Section 8(a)(1), (3), and (5) of the Act by interrogating employees about their union activities and sympathies and the union activities of other employees; threatening employees with stricter enforcement of work rules and possible job loss if they chose to be represented by Teamsters Local 743; and promising benefits to employees if they chose not to be represented by the Union. [HTML] [PDF]

On November 7, 2000, the Regional Director approved a settlement agreement entered into by the Respondent on October 27, 2000. The settlement agreement states in relevant part ". . . that after 15 days notice from the Regional Director . . . of such non-compliance without remedy by Respondent, the Regional Director shall reissue the complaints previously filed in the instant cases. Thereafter, the General Counsel may file a motion for summary judgment with the Board on the allegations of the just issued complaint concerning the violations alleged therein." The Respondent, on various dates beginning December 1, 2000, was requested to comply with the terms of the settlement agreement and, having failed to do so, the Acting General Counsel reissued the complaint and, subsequently, filed a motion for summary judgment.

(Chairman Truesdale and Members Hurtgen and Walsh participated.)

Charges filed by Teamsters Local 743; complaint alleged violation of Section 8(a)(1), (3) and (5). General Counsel filed motion for summary judgment Jan. 16, 2001.

* * *

Salem Hospital (1-RC-21224; 333 NLRB No. 71) Salem, MA March 9, 2001. The Board reversed the Acting Regional Director's finding that the case managers who have an RN (registered nurse) license may be included in the existing RN unit. Since the case managers are not required to be RNs, the Board held that the inclusion in the existing RN unit of only those case managers who have an RN license was erroneous. The Board stated: [HTML] [PDF]

> Contrary to the Acting Regional Director's finding, the Board's Healthcare Rulemaking does not warrant dividing the Employer's case managers, who perform or will be performing the same work, into separate bargaining units based on whether they are holders of an RN license. . . . In the instant case, we find that the absence of a requirement for RN licensure for the Employer's case manager position demonstrates that case managers, some of whom hold an RN license, do not share a community of interest with the existing RN unit.

The Employer operates an acute care hospital and employs 11 case managers, 7 are RNs and 4 are licensed social workers. The Petitioner sought to include the case managers who are RNs in the existing RN unit. The Employer contended that case manager RNs should be excluded from the RN unit because RN licensing is not required for the position, the position is not staffed solely by RNs, and that there are distinctions in community of interest between case manager RNs and the other RNs.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

* * *

Merit Contracting, Inc. (6-CA-28848, et al.; 333 NLRB No. 64) Monongahela, PA March 12, 2001. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(1) and (3) of the Act by terminating two employees who were union members and violated Section 8(a)(1) by unlawful interrogation and surveillance. The judge's dismissal of the discrimination allegations of four applicants was also affirmed by the Board. Finding merit in a General Counsel exception, the Board upheld an 8(a)(1) allegation involving an incident on March 17, 1997, between alleged discriminatee Jerald Rodgers and Charles Rush, the Respondent's vice president and superintendent. [HTML] [PDF]

Applying *FES* (A Division of Thermo Power), 331 NLRB No. 20, (2000), which set forth the framework for analysis of refusal-to-hire and refusal-to-consider violations, the Board remanded to the judge for further consideration, including, if necessary, reopening of the record, to obtain evidence concerning the question whether the Respondent discriminatorily refused to hire alleged discriminatees Michael Eutsey, John Hay, Patrick Rice, Ronald Schade, Ken Sisley, Glen Stevenson, Nathaniel Turner, Henry Whipkey, and Thomas Wrather because of their union membership.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charges filed by Operating Engineers Local 66; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Pittsburgh, Nov. 17-21 and Dec. 8, 1997. Adm. Law Judge Richard H. Beddow Jr. issued his decision April 24, 1998.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

The Opera Company of Philadelphia (Musical Artists Guild) Philadelphia, PA March 12, 2001. 4-CA-29573; JD-31-01, Judge Leonard M. Wagman.

Asphalt Specialties Construction Company (Teamsters Local 13) Henderson, CO March 9, 2001. 27-CA-16569-1; JD(SF)-15-01, Judge James M. Kennedy.

Cable Car Advertisers, Inc., d/b/a Cable Car Charters (Teamsters Local 856 and an individual) San Francisco, CA March 7, 2001. 20-CA-25377, 25789; JD(SF)-14-01, Judge Jay R. Pollack.

Terry's Excavating, Inc. (Operating Engineers Local 139) Milwaukee, WI March 13, 2001. 30-CA-14543, 14930; JD-28-01, Judge Jerry M. Hermele.

Carpenters Central Pennsylvania Regional Council (Novinger's Inc.) Harrisburg, PA March 15, 2001. 4-CE-118; JD-30-01, Judge Earl E. Shamwell Jr.

Pinnacle Metal Products Company (Machinists Local Lodge 670, District Lodge 97) Muskegon, MI March 15, 2001. 7-CA-42524; JD-32-01, Judge Irwin H. Socoloff.

Bridgestone/Firestone, Inc. (Machinists Local Lodge 1363, District Lodge 54) Mentor, OH March 16, 2001. 8-CA-31197; JD-33-01, Judge Arthur J. Amchan.

P.C. Sacchi, Inc. (an Individual) Arcata, CA March 12, 2001. 20-CA-29595-1; JD(SF)-16-01, Judge Jay R. Pollack.

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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 issue that is litigable in this unfair labor practice proceeding. The case did not present any other issues.)

River City Elevator Co., Inc. (Elevator Constructors International) (25-CA-27125-1; 333 NLRB No. 67) Evansville, IN March 12, 2000.