

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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April 27, 2001

W-2788

CASES SUMMARIZED

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Orland Park Motor Cars, Inc., d/b/a Mercedes Benz of Orland Park (13-CA-38061, 38185; 333 NLRB No. 127) Orland Park,

IL April 20, 2001. Agreeing with the administrative law judge, the Board found that a Gissel bargaining order in this category II case (less pervasive misconduct which nonetheless still has the tendency to undermine majority strength and impede the election processes) is necessary to remedy the Respondent's unfair labor practices. *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). The Board examined the extensiveness of the Respondent's misconduct to determine the possibility of erasing its coercive effect and ensuring a fair election by the use of traditional remedies. The employees' wishes as expressed by a card majority would, on balance, be better protected by a bargaining order, it decided. [\[HTML\]](#) [\[PDF\]](#)

The Respondent's unfair labor practices included "hallmark" violations that began within days of the Union's distribution of authorization cards to employees and involved high-ranking officials. The Respondent threatened to discharge employees who started the Union's organizing campaign, subsequently discharged the leading union advocate, and discharged another employee for returning to the employee strike against the Respondent after previously deciding to cross the picket line. Its other serious and pervasive unfair labor practices included announcing that its consideration of improvements to the employees' benefits plan had ceased because of the Union's organizing campaign, threatening employees that they would be discharged for engaging in a strike, and refusing to allow unfair labor practice strikers to return to work upon their unconditional offers to return to work.

The Board found that the concerns of some courts in denying enforcement of *Gissel* bargaining orders are not present here, i.e., the passage of time between the *Gissel* order and the unfair labor practices or an intervening turnover of employees and management.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charges filed by Teamsters Local 731; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Chicago, Jan. 3-7, 2000. Adm. Law Judge William J. Pannier III issued his decision May 12, 2000.

* * *

Con-Way Central Express, a Division of Con-Way Transportation Services (17-CA-18478; 333 NLRB No. 128) Kansas City, MO April 20, 2001. Chairman Truesdale and Member Walsh, with Member Hurtgen dissenting, affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by disparately enforcing its policy concerning the use of company bulletin boards but, they found, contrary to the judge, that the Respondent further violated Section 8(a)(1) when Respondent's general manager, Jeff Vukovich, interrogated employee Jim Affolter regarding his union activities. [\[HTML\]](#) [\[PDF\]](#)

In March 1996, Affolter posted an announcement about a union meeting on a company bulletin board. Vukovich, after being informed of the notice by another employee, removed it. He then approached Affolter and asked who had posted the notice. When Affolter responded that he had posted it, Vukovich stated that the board was for company notices only. Vukovich testified that, on at least one other occasion, he had seen a notice about the sale of personal items by an employee posted a bulletin board and that he should have removed it, but he had not done so.

The judge found no evidence that Vukovich's questioning of Affolter was coercive or that Affolter was intimidated. The majority noted however that the absence of specific evidence that Affolter was personally intimidated by the questioning does not preclude the finding of a violation. The issue is whether, under all the circumstances, the conduct reasonably tends to restrain, coerce, or interfere with employees' rights guaranteed under the Act, it noted, finding that Vukovich's questioning of Affolter would tend to have a coercive effect. Unlike the judge, the majority concluded that the interrogation is inseparable from Vukovich's unlawful disparate enforcement of the company bulletin board policy.

Dissenting Member Hurtgen wrote: "Even assuming *arguendo* that the notice of sale and the notice of a union meeting are comparable, I would not conclude that a single instance of nonenforcement means that the Respondent has effectively, and everlastingly, lost control of its own bulletin boards. Thus, I would permit Respondent to continue to enforce its lawful rule." As he did not agree that there is a bulletin board violation, he did not agree that there is an interrogation violation.

(Chairman Truesdale and Members Hurtgen and Walsh participated.)

Charge filed by Teamsters Local 41; complaint alleged violation of Section 8(a)(1). Hearing at Overland Park, Oct. 27-30, 1998. Adm. Law Judge Steven M. Charno issued his decision Nov. 12, 1998.

* * *

WLVI-TV, Inc. (1-CA-37457; 333 NLRB No. 131) Boston, MA April 20, 2001. The Board affirmed the administrative law judge's decision that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish Electrical Workers IBEW Local 1228 in a timely manner the following information requested by the Union: the names of the bargaining unit employees who have received safety training to operate vehicles with retractable microwave antennas used to transmit video signals back to the television station (ENG or SNG vehicles); the dates when such training took place; the names and qualification, if any, of the people who did the training; and any written or other materials used by the trainers for such training and/or any materials handed out to the employees. [\[HTML\]](#) [\[PDF\]](#)

The Board modified the judge's recommended Order to require the Respondent to provide the Union with the requested information without the necessity of making a new request. See *I&F Corp.*, 322 NLRB 1037 fn. 1 (1997).

(Chairman Truesdale and Members Liebman and Walsh participated.)

Charge filed by Electrical Workers IBEW Local 1228; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Boston on May 2, 2000. Adm. Law Judge Raymond P. Green issued his decision July 12, 2000.

* * *

GPS Terminal Services (4-CA-24834; 333 NLRB No. 121) Harrisburg, PA April 16, 2001. In agreement with the administrative law judge, the Board found that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employees Glenn Hess and Mark Mallin for refusing to cross a picket line established and maintained by Teamsters Local 776 from April 12 to 15, 1996, in protest against the Respondent's refusal to recognize the Union after taking over freight handling operations at Conrail's Harrisburg rail yard from Pacific Rail and for its refusal to reinstate them. The Board also found that the Respondent was not in violation of the Act by its failure to hire former Pacific Rail employees Frank H. Stemler IV, Barry Mutzabaugh, and Jerry Evans. [\[HTML\]](#) [\[PDF\]](#)

The Board held meritorious the General Counsel's exception to the judge's decision to "sua sponte" amend the complaint. In agreement with the General Counsel's assertion that "the judge erred in amending the complaint," the Board said:

Section 3(d) of the Act provides that the General Counsel "shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under Section 10, and in respect of the prosecution of such complaints before the Board." The General Counsel's authority under Section 3(d) includes the unreviewable discretion to determine whether to dismiss an unfair labor practice charge, to issue a complaint, or to enter into a prehearing informal settlement agreement. . . . Once the hearing has commenced, and until the case has been transferred to the Board, the complaint may only be amended "upon motion, by the administrative law judge designated to conduct the hearing." . . . "[t]he authority of the Administrative Law Judge to amend the complaint . . . is clearly limited to those instances where the amendment is sought or consented to by the General Counsel, or where evidence has been received into the record without objection."

Member Walsh, while agreeing that the Respondent did not violate the Act when it discharged employee Floyd Wertz, disagreed with the judge's finding that the General Counsel failed to establish the elements of animus and knowledge. In his view, these elements were established by, in part, Supervisor Dale Baucum's angry comment to Wertz the night before Wertz' discharge that the Respondent was not going to go union, the subsequent discharge of Hess and Mallin, and the timing of the discharge shortly after Baucum's outburst. Member Walsh said that the General Counsel has met his burden of establishing that Wertz' union activities were a motivating factor in the Respondent's decision to discharge him but in light of the judge's decision to "credit [assistant manager] Severini's reasons for discharging" Wertz, he found that the Respondent has shown that it would have discharged Wertz even in the absence of union activity.

(Chairman Truesdale and Members Hurtgen and Walsh participated.)

Charge filed by Teamsters Local 776; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Philadelphia, June 9 and 10, 1998. Adm. Law Judge Earl E. Shamwell Jr. issued his decision Jan. 7, 1999.

* * *

Alley Drywall, Inc. (13-RC-20531; 333 NLRB No. 132) Oswego, IL April 17, 2001. Agreeing with the Regional Director that the petitioned-for unit of all plasterers was appropriate, the Board denied the request for review filed by the Intervenors, International Union of Bricklayers & Allied Craftworkers, Locals 56 and 74. The Regional Director, in his decision and direction of election, determined that the unit sought by the Petitioner (Operative Plasterers and Cement Masons Local 5) was not limited to that previously covered under its 8(f) agreement with the Employer and that the unit may appropriately include plasterers working in DuPage County, Illinois. [\[HTML\]](#) [\[PDF\]](#)

The Petitioner contended that the unit it sought to represent is an appropriate single employer unit in which the employees share a sufficient community of interests. The Intervenors contended that the unit was inappropriate because it was broader than that which the Petitioner has historically represented through its 8(f) agreements with the Employer and that the history of collective bargaining under Section 8(f) of the Act is controlling as to the scope of the unit under Board precedent. Based on the language in *John Deklewa & Sons*, 282 NLRB 1373, 1377 (1987), the Intervenors asserted that the scope of the petitioned-for unit must be the same as that in the 8(f) agreement between the Petitioner and the Employer:

[S]uch agreements [8f] will not bar the processing of valid petitions filed pursuant to Section 9(c) and Section 9 (e) . . . in processing such petitions, the appropriate unit normally will be the single employer's employees covered by the agreement. . . .

The Employer has had collective-bargaining relationships with the Petitioner and the Intervenors based on their separate geographical jurisdictions. Due to agreements between the International Unions of the Petitioner and the Intervenors establishing certain geographical limitations on each other where there was overlapping coverage of job classifications, the 8(f) collective-bargaining agreements between the Petitioner and the Employer were not applicable to plastering work performed by the Employer in DuPage County. The work in DuPage County was performed by Employer's employees under the jurisdiction of the Intervenors.

(Chairman Truesdale and Members Hurtgen and Walsh participated.)

* * *

Teamsters Local 251 (Ryder Student Transportation) (1-CB-9273, et al.; 333 NLRB No. 129) Providence, RI April 18, 2001. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(b)(1)(A) of the Act by attempting to collect union dues from employees Francisco Santana, Alicia Ramos, and Ann Greenwood pursuant to a contractual union-security clause without notifying them of their rights under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), to be dues-paying nonmembers and of the rights of nonmembers under *Communications Workers v. Beck*, 487 U.S. 735 (1988) to object to the expenditure of their dues on nonrepresentational activities and to obtain a commensurate reduction in dues and fees. The Board also upheld the judge in finding that the Respondent violated Section 8(b)(1)(A) and 8(b)(2) by asking the Employer to discharge those employees, and by causing it to discharge Santana and to suspend Ramos and Greenwood, for failing to pay dues pursuant to the union-security clause. [\[HTML\]](#) [\[PDF\]](#)

Contrary to the judge, the Board held that the Respondent violated Section 8(b)(1)(A) and 8(b)(2) by pursuing to arbitration a grievance concerning the Employer's failure to discharge Ramos and Greenwood as it had requested.

(Chairman Truesdale and Members Hurtgen and Walsh participated.)

Charges filed by Ann Greenwood, Ann Ramos and Francisco Santana, Individuals; complaint alleged violations of Section 8(a)(1) and (3). Hearing at Boston, MA, Feb. 11 and 12, 1999. Adm. Law Judge Arthur J. Amchan issued his decision April 28,

1999.

* * *

Thomas H. Roberts, d/b/a AC Electric and its alter ego Boyce Enterprises, Inc. and its successor ECM Enterprises, Inc., d/b/a Ace Electric (3-CA-18504; 333 NLRB No. 120) Plattsburg, NY April 17, 2001. The Board, in this backpay proceeding, ordered that the Respondents, Thomas H. Roberts, d/b/a AC Electric and its alter ego Boyce Enterprises, with their successor, Respondent ECM Enterprises d/b/a Ace Electric, make whole discriminatees Randy Bashaw and Raymond Rothamel for any loss of pay and benefits suffered by them for the period November 4, 1993 to May 1, 1996. The Board also ordered that backpay and loss of benefits shall continue to accrue for, and on behalf of Bashaw and Rothamel until such time as Respondent ECM makes a valid offer of reinstatement to them. [\[HTML\]](#) [\[PDF\]](#)

The Board agreed with the administrative law judge's analysis of the interrelationships among the three Respondents but disagreed with his division of their liability for unfair labor practices committed by one of them. The Board also agreed that Respondents Boyce Enterprises, Inc. was AC's alter ego and/or AC's successor within the meaning of *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973), because Boyce took over and continued AC's operations with knowledge of AC's unfair labor practices.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Adm. Law Judge Robert T. Snyder issued his supplemental decision March 30, 1998.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Republic National Bank of New York (An individual) New York, NY April 17, 2001. 2-CA-32195; JD(NY)-14-01, Judge Raymond P. Green.

ILD Corporation (Workers Have Rights Too) Sioux, City, IA April 18, 2001. 18-CA-15641; JD-54-01, Judge William J. Pannier III.

Iris U.S.A., Inc. (Machinists Lodge 2182) Stockton, CA April 5, 2001. 32-CA-17763-1, 32-RC-4669; JD(SF)-24-01, Judge Mary Miller Cracraft.

Teamsters Locals 3,28,37,42 (Lanier Brugh Corporation) Portland, OR April 10, 2001. 27-CB-4092-001; JD(SF)-27-01, Judge Gerald A. Wacknov.

JPH Management, Inc., (Service Employees Local 399) Los Angeles, CA April 9, 2001. 31-CA-24055; JD(SF)-28-01, Judge Lana H. Parke.

Nest Featherings, Inc. (Carpenters) Las Vegas, NV April 11, 2001. 28-CA-15136, et al.; JD(SF)-26-01, Judge Burton Litvack.

American Golf Corporation (Laborers Local 139) Rohnert Park, CA April 13, 2001. 20-CA-26942, et al.; JD(SF)-29-01, Judge William L. Schmidt.

* * *

NO ANSWER TO COMPLIANCE SPECIFICATION

(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 compliance specification.)

W.J. Grinder Roofing Co., Inc., et al. (Roofers Local 22) (3-CA-21175-1, -2; 333 NLRB No. 126) Rochester, New York April 16, 2001.

* * *

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 answer the complaint.)

D & E Roofing, L.L.C (Roofers Local 135) (28-CA-16879; 333 NLRB No. 124) Phoenix, AZ April 17, 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 issue that is litigable in this unfair labor practice proceeding. The case did not present any other issues.)

Virginia Mason Medical Center (Food & Commercial Workers Local 141) 19-CA-27401; 333 NLRB No. 125) Winslow, WA April 18, 2001.