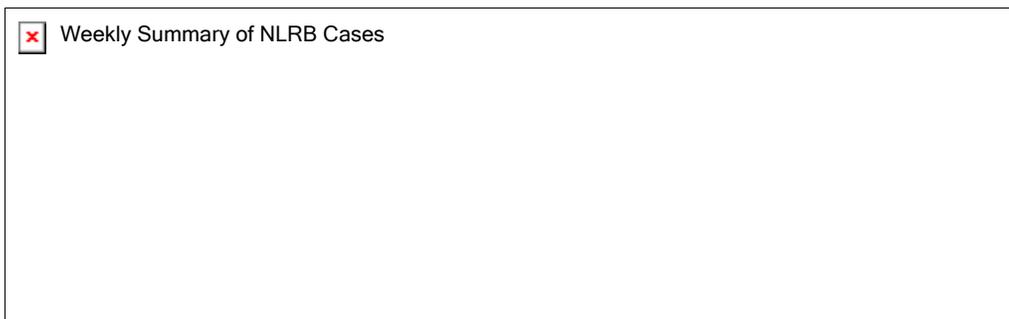


ABOUT THE WEEKLY SUMMARY

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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May 4, 2001

W-2789

CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

[America Piles, Inc.](#), Brooklyn and Yonkers, NY and Fairfield, NJ
[American Federation of Musicians Local 148-162](#), Atlanta, GA
[Electrical Workers IUE Local 221](#), Agawan, MA
[Lincoln Park Subacute & Rehab Center Inc.](#), Lincoln Park, NJ
[MCAR Inc.](#), Hermitage, PA
[Marian Manor for the Aged & Infirm, Inc.](#), South Boston, MA
[Micrometl Corporation](#), Indianapolis, IN
[Teamsters Local 166](#), Ft. Irwin, CA

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CORRECTION: In the April 27, 2001 issue (W-2778), the last sentence in the first paragraph of the summary of *GPS Terminal Services*, 333 NLRB No. 121, on page 3 should read: 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 VI, Barry Mutzabaugh, and Jerry Evans.

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Marian Manor for the Aged & Infirm, Inc. (1-RC-21240, 21241; 333 NLRB No. 133) South Boston, MA April 24, 2001. The Board denied the Employer's request for review of the Regional Director's Decision and Direction of Election and amended the

decision to permit an admissions coordinator and bookkeeper to vote subject to challenge. [\[HTML\]](#) [\[PDF\]](#)

A majority of Chairman Truesdale and Member Liebman found the hearing officer did not err by refusing to require the production of responses sought by the Employer to the Petitioner's survey of the nursing staff as to their supervisory authority. The majority said the Employer failed to show that it was unable to obtain by other means the substantial equivalent of the information contained in the survey responses. In dissent, Member Hurtgen would have granted the Employer's subpoena seeking the nurses' responses, remanded the case for further hearing, and then decided the supervisory issue. "The R-case hearing is a search for truth, and the subpoenaed documents are relevant to that search," he said.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

* * *

American Federation of Musicians Local 148-162 (333 NLRB No. 139) Atlanta, GA April 24, 2001. The Board upheld the administrative law judge's dismissal of a complaint in which the Charging Party, a cellist with the Atlanta Symphony Orchestra, claimed the Union had refused to process his grievance that he was not seated in the "first stand" as promised upon being hired. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charge filed by Daniel O. Laufer, an individual; complaint alleged violation of Section 8(b)(1)(A). Hearing at Atlanta, Jan. 5-7, 24, 25 and 31, 2000. Adm. Law Judge Jane Vandeventer issued her decision May 16, 2000.

* * *

MCAR, Inc. (6-CA-30300; 333 NLRB No. 134) Hermitage, PA April 24, 2001. Agreeing with the administrative law judge, the Board held that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain in good faith with AFSCME District Council 85 as the exclusive bargaining representative of the employees in the bargaining unit, as clarified by the Board in an earlier proceeding, Case 6-UC-397, to include the position of production technician. The judge concluded that the Board's holding in Case 6-UC-397 was res judicata to the Board's jurisdiction over the Respondent. In the unit clarification proceeding, Member Hurtgen dissented from the Board's denial of review of the Regional Director's holding that the Board should assert jurisdiction. He agreed, however, that nothing new has been presented in this case and accordingly, for institutional reasons, he joined in the assertion of jurisdiction. [\[HTML\]](#) [\[PDF\]](#)

(Members Liebman, Hurtgen, and Walsh participated.)

Charge filed by AFSCME District Council 85; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Youngstown on Dec. 7, 1999. Adm. Law Judge Martin J. Linsky issued his decision Jan. 13, 2000.

* * *

Electrical Workers IUE Local 221 (Kidder, Inc.) (1-CB-9338; 333 NLRB No. 138) Agawam, MA April 27, 2001. The administrative law judge found, with Board approval, that the Respondent violated Section 8(b)(1)(A) and (2) of the Act by demanding that the Employer interpret the parties' contractual superseniority clause to accord the Respondent Union officials superseniority for terms and conditions of employment that are not limited to layoff and recall and are not otherwise required to further the effective administration of the collective-bargaining agreement; and that the Respondent further violated the Act by demanding arbitration of the matter. The Board denied the Employer's cross-exceptions to the judge's failure to order the Respondent to reimburse it for costs and fees it incurred as a result of the Respondent's arbitration demand. [\[HTML\]](#) [\[PDF\]](#)

(Members Liebman, Hurtgen, and Walsh participated.)

Charge filed by Kidder, Inc.; complaint alleged violation of Section 8(b)(1)(A) and (2). Hearing at Springfield on Aug. 3, 1999. Adm. Law Judge Richard H. Beddow, Jr. issued his decision Sept. 30, 1999.

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America Piles, Inc., Agostino Quality Carpentry, Inc., Kenney Drapery Associates Inc., Stone Systems Inc. d/b/a Century Wood Floors and Van Tag Corp. (2-CA-31033, et al.; 333 NLRB No. 123) Brooklyn and Yonkers, NY and Fairfield, NJ April 25, 2001. The Board adopted the administrative law judge's findings that Respondents American Piles, Stone Systems, and Van Tag violated Section 8(a)(5) and (1) of the Act by refusing to execute and abide by collective-bargaining agreements reached by the Carpenters and the Respondents. [\[HTML\]](#) [\[PDF\]](#)

Respondent Agostino signed a full and complete interim compliance agreement with the Union on April 11, 1996, and Respondent Kenney signed a full and complete "Compliance Agreement for Newly Organized Employer" on September 9, 1996. Contrary to the judge, the Board held that Agostino and Kenney violated the Act by refusing to abide by and execute the 1996-2001 collective-bargaining agreements with the Union and reversed the judge's dismissal of the Section 8(a)(5) and (1) allegations against them. The Board noted that "[b]oth [compliance] agreements clearly and unequivocally bound these two Respondents to the terms and conditions of the new 1996-2001 collective-bargaining agreements and obligated them to execute the agreements on request." *City Electric*, 288 NLRB 443, 444 (1988). Agostino and Kenney asserted that they did not intend to sign anything more than one-job, project-only agreements and believed that they had in fact signed such limited agreements.

(Chairman Truesdale and Members Liebman and Walsh participated.)

Charges filed by Carpenters District Council of New York City and Vicinity; complaint alleged violation of Section 8(a)(1) and (5). Hearing at New York, Nov. 16 and 17, 1998. Adm. Law Judge Steven Fish issued his decision July 26, 1999.

* * *

Lincoln Park Subacute and Rehab Center, Inc., One, and Lincoln Park Subacute and Rehab Center, Inc., Two (22-CA-22284, et al.; 333 NLRB No. 136) Lincoln Park, NJ April 26, 2001. The Board affirmed the administrative law judge's conclusion that the Respondent's interrogation of employee David Aldorando was unlawful and in violation of the Act. It remanded to the judge for further consideration, the issue of whether the Respondent violated Section 8(a)(3) and (1) of the Act when it warned and discharged Aldorando and when it discharged employee Dorothy Baines. The Board also remanded Case 22-RC-11416 because the judge, in sustaining the Union's election objections and setting aside the election results, relied on the unfair labor practice findings that are subject to the remand. The Board noted that no exceptions were taken to the judge's dismissal of several Section 8(a)(1) allegations and to the discharge of Christine Monroy. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charges filed by AFSCME District 1199J; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Newark, March 22, 23 and May 5, 1999. Adm. Law Judge Raymond P. Green issued his decision July 30, 1999.

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Micrometl Corporation (25-CA-24885, et al.; 333 NLRB No. 135) Indianapolis, IN April 26, 2001. On the recommendation of the administrative law judge, the Board dismissed the complaint allegations that the Respondent violated Section 8(a)(1) and (3) of the Act when it informed an employee it would not hire applicants who engaged in union activity, when it refused to hire or consider for hire 42 applicants for employment because of their union affiliation, when it discharged employee Ryan O. Witham, and when it granted each of its employees a bonus of \$10. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Truesdale and Members Hurtgen and Walsh participated.)

Charges filed by Sheet Metal Workers Local 20; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Indianapolis, March 18-20, 1998. Adm. Law Judge Martin J. Linsky issued his decision June 19, 1998.

* * *

Teamsters Local 166 (Dyncorp Support Services Operations) (31-CB-8333, et al.; 333 NLRB No. 141) Ft. Irwin, CA April 26, 2001. The Board, in the earlier proceeding, 327 NLRB 950 (1999), found that the Respondent violated Section 8(b)(1)(A) of the Act by failing to inform Charging Party John Burnham of his rights under *Communications Workers v. Beck*, 487 U.S. 735 (1988), before seeking dues and fees from him under the union-security clause, by failing to provide the notice to the objecting Charging Parties required under *California Saw & Knife Works*, 320 NLRB 224 (1995), while continuing to collect dues and fees from them, and by failing to provide Nadine Penrod a copy of the 1991 statement of expenses. The Board did not find unlawful the Respondent's failure to inform Burnham of the percentage of union funds that were spent on nonrepresentational activities during the previous year, and thus, the percentage by which dues and fees would be reduced for objectors. It also found that the information belatedly given Charging Parties Clement Wierzbeck and Robert Penrod was adequate. [\[HTML\]](#) [\[PDF\]](#)

On February 22, 2000, the U.S. Court of Appeals for the District of Columbia Circuit granted the Charging Parties' petition for review and held, contrary to the Board, that the Respondent was required to inform new employees and "financial core" payors such as Burnham, of the percentage reduction in dues and fees for Beck objectors. The court also held that Respondent was required to inform the Charging Parties of the identities of its affiliates and how the affiliates used the funds paid to them. The case was remanded to the Board for proceedings consistent with the court's opinion.

In addition to the violations already found, the Board determined that the Respondent violated Section 8(b)(1)(A) of the Act by failing to provide John Penrod, Nadine Penrod, and Wierzbicki with adequate information concerning its expenditures and those of its affiliates with which it shared money from dues and fees, and by failing to inform Burnham in a timely fashion of the percentage reduction in dues and fees for Beck objectors.

(Members Liebman, Hurtgen and Walsh participated.)

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Integrated Health Services, Inc. (Service Employees District 1199) Cleveland, OH April 23, 2001. 8-CA-31566, et al.; JD-56-01, Judge Margaret M. Kern.

Bo-Ty Plus, Inc. (an Individual) Greenville, SC April 23, 2001. 11-CA-18574; JD(ATL)-24-01, Judge George Carson II.

Hoffman Enclosures, Inc. (an Individual) Winchester, KY April 25, 2001. 9-CA-37782; JD-53-01, Judge Robert A. Pulcini.

Hialeah Hospital (Carpenters Local 1554) Hialeah, FL April 25, 2001. 12-CA-20339, et al.; JD(ATL)-23-01, Judge Jane Vandeventer.

The Palnut Company (Auto Workers) Newark, NJ April 25, 2001. 22-CA-23853; JD(NY)-15-01, Judge Howard Edelman.

Miramar Sheraton Hotel (Hotel & Restaurant Employees Local 814) Santa Monica, CA April 6, 2001. 31-CA-22971, 23902; JD(SF)-25-01, Judge Timothy D. Nelson.

Engelhard Corporation (Electrical Workers [IBEW] Local 1430) Peekskill, NY April 27, 2001. 2-CA-32909, 33080; JD(NY)-13-01, Judge Steven Davis.

Newspaper and Mail Deliverers of New York and Vicinity (an Individual) Albany, NY April 27, 2001. 3-CB-7687; JD-59-01, Judge Bruce D. Rosenstein.