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

Index of Back Issues Online

May 11, 2001 W-2790

C A S E S S U M M A R I Z E D

SUMMARIES CONTAIN LINKS TO FULL TEXT

O T H E R C O N T E N T S

Adelphia Communications Corp. (21-RD-2677; 333 NLRB No. 145) City of Industry, CA April 27, 2001. The Board concluded that the successor bar doctrine does not preclude the processing of the decertification petition filed by Teamsters Local 986 before Adelphia Communications became a successor employer and adopted its predecessor's collective-bargaining agreement with the Union. It reversed the Regional Director's decision and order dismissing the petition pursuant to the successor bar doctrine enunciated in *St. Elizabeth Manor, Inc.,* 329 NLRB No. 36 (1999), and remanded to her for processing of the petition, holding: [HTML] [PDF]

> In contrast to *St. Elizabeth,* in which an RM petition was filed by a successor employer nearly 5 months after it had assumed operations and 3 months after it had granted recognition to the incumbent union, the decertification petition here was filed at a time when the Union was still in a bargaining relationship with the Employer's predecessor. Indeed, the petition was filed during the window period of the predecessor's contract, and, had the predecessor employer continued in existence, an election would have been held after the unfair labor practice charges filed by the Union were ultimately dismissed or withdrawn.
>
> Under these circumstances, the underlying purpose of the successor bar doctrine-to permit the union, as a party to a newly established relationship, to bargain for a reasonable period of time free from challenges to its majority status-would not be served.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

* * *

Titan Tire Corp. (18-CA-14863; 333 NLRB No. 140) Des Moines, IA April 30, 2001. The Board agreed with the administrative law judge that the Respondent violated Section 8(a)(5), (3), and (1) of the Act by threatening to and discontinuing group insurance benefits for 24 employees who were on approved leaves of absence at the initiation of an employee strike; threatening to and moving equipment and bargaining unit jobs from its Des Moines facility to Brownsville, Texas; failing to furnish information to or bargain with Steelworkers Local 164L over mandatory subjects; threatening employees that it would hire permanent replacement workers when they were engaged then in an unfair labor practice strike; failing to furnish the Union with a list of replacement workers; and threatening to and unilaterally implementing its final offer in the absence of a lawful, good-faith impasse. [HTML] [PDF]

This case arose out of the parties' bargaining for a successor agreement and an ensuing strike. The Board agreed with the judge's resolution of the issues, but it discussed further these two issues: (1) the conversion of the employees' strike from an economic strike to an unfair labor practice strike; and (2) the Respondent's unilateral implementation of its final offer in the absence of a lawful impasse.

(Chairman Truesdale and Members Liebman and Walsh participated.)

Charge filed by Steelworkers Local 164L; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Des Moines, Oct. 13-14, 1998. Adm. Law Judge Jerry M. Hermele issued his decision Feb. 11, 1999.

* * *

Pioneer Electric of Monroe, Inc. and Pioneer Electrical and Mechanical Contractor, Inc., a single employer and/or alter ego (15-CA-15190, et al.; 333 NLRB No. 143) Monroe, LA April 30, 2001. The Board affirmed the administrative law judge's

finding that Pioneer Electric of Monroe, Inc. (Pioneer 1) and Pioneer Electrical and Mechanical Contractor, Inc. (Pioneer 2) constitute both a single employer and alter egos; and that the Respondent violated Section 8(a)(5), (3), and (1) of the Act. Specifically, the Respondent failed and refused to provide Electrical Workers IBEW Local 446 with information it requested reflecting electrical jobs and projects, employees who worked on the jobs, and the hours they worked; dealt directly with unit employees regarding their terms and conditions of employment; ceased to operate Pioneer 1; terminated unit employees of Pioneer 1; and failed to apply the collective-bargaining agreement to unit employees of Pioneer 2 without notice to or bargaining with the Union and in order to avoid the contractual obligations. [HTML] [PDF]

The Respondent excepted only to the judge's recommended remedy of reinstatement and backpay for six employees who were unlawfully laid off when Pioneer 1 closed on January 14, 2000, arguing that the employees rejected offers of employment with Pioneer 2 on that date so it should not be required again to extend offers of employment or to give them backpay. The Board wrote in finding that the traditional backpay and reinstatement remedy ordered by the judge was proper: "Absent exceptions, it is now undisputed that the Respondent did not offer the discriminatees employment under the same contractual terms and conditions and with the continued collective-bargaining representation by the Union that they had while employed by Pioneer 1. The offers of employment were therefore part and parcel of the Respondent's unfair labor practices and cannot serve to toll the Respondent's remedial obligations."

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charges filed by Electrical Workers IBEW Local 446; complaint alleged violation of Section 8(a)(1), (3), and 5). Hearing at Monroe, July 17-18, 2000. Adm. Law Judge Richard J. Linton issued his decision Feb. 23, 2001.

* * *

United Parcel Service (27-CA-16064, et al.; 333 NLRB No. 146) Commerce City, CO April 30, 2001. The Respondent violated Section 8(a)(1), (3), and (4) of the Act by discharging Andre Kazanjian on March 22, 1999, the Board held in agreement with the administrative law judge. Member Hurtgen found it unnecessary to pass on the 8(a)(4) allegation because the 8(a)(3) remedy effectively cures the discharge. [HTML] [PDF]

(Members Liebman, Hurtgen, and Walsh participated.)

Charges filed by Andre Kazanjian, an individual; complaint alleged violation of Section 8(a)(1), (3), and (4). Hearing at Denver, Feb. 9-11 and 14, 2000. Adm. Law Judge Albert A. Metz issued his decision Aug. 11, 2000.

* * *

Wayne Erecting, Inc. (30-CA-13915; 333 NLRB No. 149) Big Bend, WI April 30, 2001. The Board affirmed the administrative law judge's findings that the Respondent violated Section 8(a)(3) of the Act by refusing to consider Brent Emons for employment and that it did not violate Section 8(a)(3) by refusing to hire 20 applicants for employment. Citing *FES (A Division of Thermo Power),* 331 NLRB No. 20 (2000), the Board did not adopt the judge's finding that the Respondent did not unlawfully refuse to hire Emons for employment, but instead remanded the issue to him for further consideration. The Board issued a final order only with respect to the dismissal of the 20 refusal-to-hire allegations because the refusal to consider Emons would be subsumed within the remedy for a refusal-to-hire violation. [HTML] [PDF]

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charge filed by Iron Workers Local 8; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Milwaukee on June 8, 1998. Adm. Law Judge Robert A. Giannasi issued his decision Sept. 23, 1998.

* * *

Cobb Mechanical Contractors, Inc. (16-CA-16483; 333 NLRB No. 142) Amarillo, TX April 30, 2001. The Board found, in agreement with the administrative law judge, that the backpay formula is acceptable and that it approximates what the

discriminatees would have earned had there been no discrimination, and ordered that the Respondent make whole 22 discriminatees by paying them amounts totaling $672,890. It agreed with the judge that Don Green did not make reasonable efforts to mitigate damages. The Board in 1995 adopted a different administrative law judge's decision that the Respondent violated Section 8(a)(3) and (1) of the Act by refusing to consider the 23 individuals for employment at jobsites in Amarillo and Dalhart, Texas because of their membership in Plumbers Local 196. [HTML] [PDF]

In this supplemental proceeding, the Respondent excepted to the judge's finding that a premise implicit in the backpay formula used by the General Counsel is that the Respondent would have hired the discriminatees who applied as journeyman plumbers to fill plumber's helper positions. The Respondent argued that with minor exceptions, the discriminatees are entitled to no backpay. Finding that the backpay formula is not unreasonable or arbitrary, the Board pointed to the credited testimony of the compliance officer that the discriminatees informed her they would have accepted jobs as plumber's helpers, if they had been offered the positions. The Board held it is reasonable to approximate what the discriminatees would have earned absent any discrimination, that any uncertainty should be resolved in favor of the wronged party rather than the wrongdoer, and that it is axiomatic that the finding of an unfair labor practice is presumptive proof that some backpay is owed.

(Chairman Truesdale and Members Liebman and Walsh participated.)

Adm. Law Judge Keltner W. Locke issued his supplemental decision May 13, 1998.

* * *

Liquor Industry Bargaining Group, et al. (22-CA-19915, et al.; 333 NLRB No. 137) Kearney, Trenton, and Milburn, NJ May 2, 2001. Chairman Truesdale and Member Liebman agreed with the administrative law judge that the totality of Respondent Liquor Industry Bargaining Group's conduct during negotiations with Food and Commercial Workers Local 19d for a successor agreement, evidenced an intent to frustrate agreement on a collective-bargaining contract with the Union, and that such conduct constituted bad-faith bargaining in violation of Section 8(a)(5) of the Act. Member Hurtgen dissented. [HTML] [PDF]

The Union represents sales representatives employed by the employer-members of Liquor Industry Bargaining Group (the Group), a multiemployer group of wholesale liquor distributors. The Group made a final contract proposal to the Union on March 24, 1994 following months of bargaining. By letter dated May 13, 1994, the Group announced that it planned to implement its final contract proposal on June 1, 1994, which included a modification to the unit members' compensation plan and changes to other significant contract provisions as well.

The majority found these factors establish that the Group entered into bargaining with no real intent to reach a collective-bargaining agreement. The Group's final offer, which would have granted its employer-members broad discretionary authority over wages, was extreme in nature; was made without any corresponding incentives to secure the Union's assent; has the effect of granting its members exclusive and unilateral control over wages; permits further dissipation of unit work and employee earnings by allowing supervisors to perform unit work and by allowing employers to remove sales accounts without replacing lost accounts similarly valued ones; and strikes at the core of the sales representatives' most significant interest--wages and volume of accounts--and severely diminishes any role played by the Union with respect to those interests. The majority noted also that throughout negotiations, despite repeated pleas from the Union, the Group adamantly refused to engage in reasoned discussion of its demands.

Dissenting Member Hurtgen said his colleagues relied "principally on their dislike" of the Respondent's proposals and "do not cite any evidence of footdragging, dilatoriness, closed-mindedness, lack of information, etc." Regarding their criticism of the absence of information and explanation, Member Hurtgen noted that there is no allegation or finding that Respondent withheld relevant requested information and that the Respondent explained that it desired flexibility with respect to wages. "My colleagues simply do not like the explanation."

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charges filed by Food and Commercial Workers Local 19d; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Newark, May 9-10, 15-16, June 20-21, July 17, and Aug. 15, 1996. Adm. Law Judge Robert T. Snyder issued his decision April 15, 1997.

* * *

Madelaine Chocolate Novelties, Inc. (29-RC-9553, 333 NLRB No. 153) Rocaway, NY May 4, 2001. Contrary to the Regional Director, the majority of Chairman Truesdale and Member Walsh found that a 2000-2004 collective-bargaining agreement was "nothing more than an agreement to begin negotiations in the near future" and therefore did not operate as a bar to the Petitioner's petition filed on October 19, 2000. The majority, citing *Appalachian Shale Products Co.,* 121 NLRB 1160 (1958), pointed out that in order to act as a bar to a petition, one rule is that "a collective bargaining agreement must contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship." Here the contract did not satisfy this rule, the majority said. [HTML] [PDF]

In dissent, Member Hurtgen agreed with the Regional Director that the contract was a bar at the time the petition was filed since it set forth the full terms and conditions of employment for the one-year period April 1, 2000 to March 31, 2001. He said there was no evidence to support majority's view that the parties did not engage in "substantive negotiations."

(Chairman Truesdale and Members Hurtgen and Walsh participated.)

* * *

CMT, Inc. (16-RC-10242; 333 NLRB No. 151) Dallas, TX May 4, 2001. The Board affirmed the Acting Regional Director's conclusion in his Decision and Direction of Election that the Petitioner is not disqualified from representing the Employer's drivers in the Dallas/Ft. Worth area because of an alleged conflict of interest. The Employer had contended the Petitioner should be disqualified because the Employer's inner-city drivers compete for the same work performed by the U.S. Postal Service drivers who are represented by the Petitioner. [HTML] [PDF]

During 1995 to 1997, the Petitioner filed several related grievances pertaining to work contracted out by USPS in the area. In an arbitration award on July 22, 2000, the arbitrator found that USPS violated the national agreement when it contracted out work in an improper manner. The arbitrator remanded the grievances to the parties to attempt to reach an agreement but they were unsuccessful. Relying on the arbitration award, the Employer contended the Petitioner had a disabling conflict of interest. In finding no merit to the Employer's contention, the Board stated:

> Should the Petitioner become the certified representative of the Employer's employees, it will no longer be faced with the possibility of USPS' subcontracting work to the Employer as a nonunion company. Thus, the Petitioner's interest in seeking to remove the subcontracted work may well cease to exist, and the Petitioner may well, after certification, drop its proposal under the arbitration award to return the work subcontracted to the Employer to USPS. Under these circumstances, we find that the Petitioner's proposal does not present an 'overt act' showing a 'clear and present danger' of interfering with the bargaining process.

(Chairman Truesdale and Members Liebman and Walsh participated.)

* * *

The West Company (17-CA-19914, et al.; 333 NLRB No. 155) Kearney, NE May 4, 2001. Reversing the administrative law judge, the Board held that the Respondent violated Section 8(a)(1) and (5) of the Act by refusing to execute a written collective-bargaining agreement reached by the parties on October 21, 1998. The principal issue presented was whether the Respondent's final offer had lapsed between the time the offer was made and the time the Union accepted the offer--five months later. [HTML] [PDF]

The Board concluded "the Union accepted the final offer at a time when it was still on the table and susceptible to acceptance," and pointed out that the Respondent did not explicitly withdraw its final offer.

(Chairman Truesdale and Members Hurtgen and Walsh participated.)

Charge filed by Steelworkers Local 815; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Omaha on July 15,

1999. Adm. Law Judge Thomas M. Patton issued his decision Oct. 25, 1999.

* * *

Kelly Construction of Indiana, Inc. (25-CA-24005, et al., 25-RC-9751; 333 NLRB No. 148) Lafayette, IN May 2, 2001. Affirming the administrative law judge, Chairman Truesdale and Member Hurtgen concluded that the General Counsel met the initial burden of proving discriminatory motivation for the Respondent's refusal to hire 27 union applicants, but that the Respondent proved that it would not have hired them, for legitimate reasons, even in the absence of their union affiliation. Finding that the judge's analysis of the refusal-to-hire allegations is consistent with the Board's decision in *FES,* 331 NLRB No. 20 (2000), the majority held, contrary to dissenting Member Liebman, that no useful purpose would be served by remanding the allegations to the judge and, thus, dismissed them. [HTML] [PDF]

Chairman Truesdale and Member Hurtgen agreed with the judge that the Respondent made its hiring decisions based on the neutral application of legitimate and nondiscriminatory policies, one of which was a preference for hiring applicants who were accustomed to earning wages within the range the Respondent would pay; and that the Respondent would have made the same hiring decisions regardless of the salts' union affiliation because they did not satisfy its lawful hiring criteria, at least with respect to the wage the applicants were accustomed to earning.

Member Liebman, in dissent, would remand to the judge "to analyze the refusal-to-hire allegations under the *FES* framework, to decide whether the Respondent's hiring policies were truly neutral and uniform, and to address the evidence relied on by the General Counsel that undermines the Respondent's affirmative defense." She found that the judge failed to specifically address whether the Respondent met its burden with respect to its affirmative defense by showing that its hiring policies were not merely an ad hoc response to the union campaign but were: (1) in existence before the organizational effort; (2) openly promulgated; and (3) widely disseminated among the personnel involved in the hiring process. "Further, while Chairman Truesdale is correct that the General Counsel is not contending that the Respondent's hiring policies are per se unlawful, the General Counsel does argue that those polices were not uniformly applied," she said.

On other issues, the Board affirmed the judge's findings that the Respondent violated Section 8(a)(3) and (1) of the Act by issuing written disciplines to Stephen Crabb, Sr., discharging David Brown, and laying off Crabb, Jay Struthers, and Chad Emmons because of their union activities; and violated Section 8(a)(1) and interfered with the election held in Case 25-RC-9751 on April 16, 1998 by certain conduct, including keeping employees' union activities under surveillance, coercively interrogating employees about their union activities, and threatening employees with discharge and other reprisals if they engaged in union activities. The Board set aside the election and remanded the case to the Regional Director to conduct a new election.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charges filed by Sheet Metal Workers Local 20; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Lafayette, Feb. 3-5, March 9-12, and April 27-30, 1998. Adm. Law Judge Irvin H. Socoloff issued his decision May 11, 1999.

* * *

Rapera, Inc. (2-RM-2085; 333 NLRB No. 150) New York, NY May 2, 2001. Chairman Truesdale and Member Hurtgen would reverse the Regional Director's administrative dismissal of the Employer's petition for an election based on his finding that Restaurant Employees and Hotel Employees Local 100 had not exhibited a present demand for recognition, and reinstate the petition. Members Liebman and Walsh would affirm the Regional Director's administrative dismissal, noting, "there is no evidence to indicate that the Union at any time conveyed to the Employer any claim, written or oral, that it represented its employees or that it was seeking immediate recognition." Since the Board is equally divided, and there is no majority to reverse the Regional Director's action, the administrative dismissal was affirmed. [HTML] [PDF]

The Employer operates the employee cafeteria, restaurants, and other food and beverage facilities at the Metropolitan Opera House at Lincoln Center, New York City. There are approximately 95 hourly food and beverage workers in the petitioned-for bargaining unit. Since March 1999, the Union has attempted to organize the employees at the Employer's facility. It has requested, through picketing, demonstrations, and letters to third parties, that the Employer sign a neutrality/card check agreement under which the Employer would agree to recognize and bargain with the Union upon a showing of majority support

through signed authorization cards. The Union claimed, in a union agent's affidavit submitted to the U.S. District Court in a case involving a related matter, that it has in fact achieved majority support through signed authorization cards. Based on these actions, the Employer filed the instant RM petition.

Chairman Truesdale and Member Hurtgen found that the Union's insistence that the Employer sign a neutrality/card check agreement, combined with its sworn statement to the court that it had obtained authorization cards from 80 percent of the 95 unit workers, is tantamount to a request for immediate recognition. That finding, they noted, is not inconsistent with *New Otani Hotel,* 331 NLRB No. 159, where the Board held that picketing aimed at pressuring an employer to sign a neutrality/card check agreement is not, by itself, the equivalent of recognitional picketing or a present demand for recognition. Unlike New Otani, the Union's demands for a neutrality/card check agreement in this case were accompanied by a statement in a court affidavit that the union had already obtained a majority of signed authorization cards, the Chairman and Member Hurtgen explained.

Member Hurtgen adheres to his dissent in New Otani, but for purposes of resolving this case, he accepted that the majority decision in New Otani represents current Board law. He agreed that this case is distinguishable and that New Otani does not control here.

Members Liebman and Walsh found that the Union's request that the Employer sign a neutrality/card check agreement and its statements to third parties that it had obtained a majority of signed authorization cards do not constitute a demand for recognition. Regarding the statement of majority status made in a sworn affidavit, they noted that the Employer was not a party to the lawsuit, which did not involve the issue in this case-the Employer's right under Section 9(c)(1)(B) to file a representation petition. The statute specifically provides that the demand for recognition must be made directly to the employer, Members Liebman and Walsh said. The Employer failed to present any evidence of a direct communication by the Union.

(Chairman Truesdale and Members Liebman, Hurtgen, and Walsh participated.)

* * *

Teamsters Local 710 (United Parcel Service) (25-CB-8150, et al.; 333 NLRB No. 159) Elkhart, IN May 3, 2001. Affirming the administrative law judge's decision, the Board dismissed the complaint allegations that the Respondent violated Section 8(b)(1)(A) of the Act by bringing internal union charges, conducting trials, and reprimanding, and assessing fines against 27 named union members, which included the Charging Parties, in contravention of a negotiated no-retaliation agreement. The General Counsel alleged that the settlement memorandum prohibited the Respondent and Employer from disciplining employees for any conduct that occurred during an economic strike against the Employer called by the Teamsters International. The judge found however that the agreement prohibited only the Employer from imposing any "penalty or discipline" in employment against employees. [HTML] [PDF]

Member Hurtgen disavowed the judge's observations that the General Counsel's interpretation of the agreement is "strained" or "tortured." He found that the language of the agreement is ambiguous and that the agreement, as clarified by parol evidence, does not support the General Counsel's case.

The International and other local unions represent the Employer's employees throughout the United States. The Respondent has a separate contract for approximately 6000 of the Employer's employees working at various locations in Illinois, Iowa, and Indiana. It began and completed negotiations with the Employer during the International's strike without calling a strike in the unit covered by its collective-bargaining agreement. Many of its members however supported the International's strike by refusing to cross picket lines at other terminals and facilities and refusing to handle "struck work" at their own facilities.

(Chairman Truesdale and Members Hurtgen and Walsh participated.)

Charges filed by Bradley Pletcher, Donald Hinkle, Jr., Bill Loomis, Brent Butler, and Timothy Williams, individuals; complaint alleged violation of Section 8(b)(1)(A). Hearing at Goshen on Sept. 23, 1999. Adm. Law Judge Jane Vandeventer issued her decision Dec. 9, 1999.

* * *

Frito-Lay, Inc. (26-CA-18235, 18682; 333 NLRB No. 154) Jackson, MS May 3, 2001. A Board majority of Chairman Truesdale and Member Liebman affirmed the administrative law judge's finding that by failing to provide Bakery Workers Local 149 information reflecting the average wage rate and racial makeup of the workforces at the Respondent's other facilities, i.e., those other than the unit facility in Jackson, the Respondent violated Section 8(a)(5) and (1) of the Act. [HTML] [PDF]

Citing *Public Service Electric & Gas Co.,* 323 NLRB 1182, 1186 (1997), enfd. 157 F.3d 222 (3d Cir. 1998), the majority said: "[i]t is well established that when a union seeks information concerning matters outside the bargaining unit, the union is required to make a showing of relevancy and necessity." In this context, Chairman Truesdale and Member Liebman found the Union satisfied its burden of showing "probability that the desired information is relevant?and would be of use to the union in carrying out its statutory duties and responsibilities."

Chairman Truesdale and Member Hurtgen agreed with the judge's conclusion that the Respondent did not violate the Act when it ceased to deduct union dues after it lawfully cancelled the contract. *Hacienda Resort Hotel & Casino,* 331 NLRB No. 89 (2000). For the reasons set forth in the Hacienda dissent, Member Liebman would find the Respondent violated Section 8(a)(5) and (1) of the Act.

Concurring in part and dissenting in part, Member Hurtgen argued the Respondent should only have to provide the Union with the requested information if the Union can show how the information would "aid the bargaining process." He said the mere fact that a party wishes to make a certain contention in bargaining does not necessarily mean that the party is entitled to nonunion information to support the contention.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charges filed by Bakery, Confectionery and Tobacco Workers Local 149; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Jackson, June 3 and 4, 1998. Adm. Law Judge George Carson II issued his decision July 29, 1998.

* * *

Signature Flight Support (12-CA-19431; 333 NLRB No. 144) Orlando, FL May 2, 2001. Adopting the administrative law judge's recommendations, the Board held that the Respondent violated Section 8(a)(1) of the Act by discharging employees Blanca Cintron, Judith Fumero, and Carmen Reyes. In the context of a Wright Line analysis, the Board found that the General Counsel made a showing sufficient to support the inference that the Respondent's belief that Cintron, Fumero, and Reyes engaged in protected concerted activities was a motivating factor in its decision to discharge them. The Respondent has not met its burden under Wright Line of demonstrating that it would have taken the same action even in the absence of the employees' protected concerted activity, the Board said. [HTML] [PDF]

(Chairman Truesdale and Members Liebman and Walsh participated.)

Charge filed by Judith Fumero, an individual; complaint alleged violation of Section 8(a)(1). Hearing at Orlando, June 21-23, 1999. Adm. Law Judge Keltner W. Locke issued his decision Oct. 6, 1999.

* * *

Teamsters Local 170 (Leaseway Motor Car Transport Company) (1-CB-9082; 333 NLRB No. 152) Framingham, MA May 3, 2001. A Board majority of Chairman Truesdale and Member Liebman reversed the administrative law judge's finding that the Respondent violated Section 8(b)(1)(A) of the Act by imposing intraunion discipline against Charging Party James Fiori and union member Julio Fontecchio and by removing Fiori from elected union office as vice president of Local 170. In dismissing the complaint, the majority said: [HTML] [PDF]

After the judge's decision in this case issued, the Board issued its decision in *Office Employees Local 251 (Sandia National Laboratories),* 331 NLRB No. 193 (2000). The Board held in that case that it will "no longer proscribe intraunion discipline under Section 8(b)(1)(A) which involves a purely intraunion dispute, and does not interfere with the employee-employer relationship, or contravene a policy of the National Labor Relations Act." . . . In so doing, the Board overruled the precedent on

which the judge relied in finding the discipline of Fiori and Fontecchio unlawful.

Member Hurtgen, in dissent, agreed with the judge's conclusion that the Respondent's action against Fiori was a monetary penalty for his Section 7 activity. He found the removal of Fiori from his elected office and its action against Fontecchio violated Section 8(b)(1)(A). As set forth in his dissenting opinion in *Service Employees Local 254 (Brandeis University),* 332 NLRB No. 103 (2000), Member Hurtgen distinguished, in this context, between appointed positions and elected positions.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charge filed by James R. Fiori, an individual; complaint alleged violation of Section 8(b)(1)(A). Hearing at Boston, May 18-20, 1998. Adm. Law Judge James L. Rose issued his decision Aug. 13, 1998.

* * *

Tidewater Construction Corporation (5-CA-25463; 333 NLRB No. 147) Virginia Beach, VA May 2, 2001. Chairman Truesdale and Member Hurtgen affirmed the administrative law judge's dismissal of the complaint alleging that the Respondent violated Section 8(a)(3) and (1) of the Act by refusing to consider hiring certain former employees as temporary replacements during a lockout. Contrary to dissenting Member Liebman, they found that the lockout did not become unlawful because the Respondent expanded the lockout beyond current employees who had participated in the strike and refused to consider for hire six job applicants who, by virtue of their prior history of employment in the bargaining unit, were eligible to vote in a Board election held 9 months prior to the start of the lockout. The majority said ". . . an employer does not violate the Act by locking out is bargaining unit employees temporarily for the sole purpose of pressuring them to accept its bargaining proposals." *American Ship Building Co. v. NLRB,* 380 U.S. 300 (1965). [HTML] [PDF]

Member Liebman, in partial dissent, agreed with the judge's finding that Section 10(b) of the Act bars the complaint allegation that the lockout was unlawful from its inception. However, she would reverse the judge and find that the Respondent violated Section 8(a)(3) and (1) by expanding the lockout beyond its current employees and refusing to consider for employment six job applicants whom it knew or suspected were union members or supporters.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charge filed by Operating Engineers Local 147; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Virginia Beach, Nov. 5-7, 1997. Adm. Law Judge Benjamin Schlesinger issued his decision Aug. 11, 1998.

* * *

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Klink Trucking, Inc. (an Individual) South Bend, IN April 30, 2001. 25-CA-27137; JD-55-01, Judge John T. Clark.

Overnight Transportation Company (Teamsters Local 600) St. Louis, MO April 30, 2001. 14-CA-25643, et al.; JD-60-01, Judge Robert A. Pulcini.

LTD Ceramics, Inc. (Machinists Local 190, Local Lodge 1584) Newark, CA April 24, 2001. 32-CA-17605-1; JD(SF)-32-01, Judge Frederick C. Herzog.

United Parcel Service (Teamsters Local 70) Oakland, CA April 25, 2001. 32-CA-17468; JD(SF)-33-01, Judge Frederick C. Herzog.

Laborers Local 334 (an Individual) Washington, PA May 1, 2001. 7-CB-12525,12667; JD-58-01, Judge William G. Kocol.

Federal Security, Inc. (an Individual) Chicago, IL May 1, 2001. 13-CA-38669; JD-63-01, Judge Robert A. Giannasi.

Keller Ford, Inc. (an Individual) Grand Rapids, MI May 2, 2001. 7-CA-43269; JD-61-01, Judge Benjamin Schlesinger.

Kentucky Fried Chicken (Virgin Island Workers) St. Croix, U.S.V.I. May 4, 2001. 24-CA-8475, 8584; JD-57-01, Judge C. Richard Miserendino.

Hotel Employees & Restaurant Employees Local 26 (an Individual) Boston, MA May 4, 2001. 1-CA-37883; JD(NY)-16-01, Judge Raymond P. Green.

Tracker Marine, L.L.C. (an Individual) Lebanon, MO May 4, 2001. 17-CA-20699-1, -2; JD(ATL)-27-01, Judge Keltner W. Locke.

Tri-State Health Service, Inc. (Service Employees Local 100) Shreveport, LA May 4, 2001. 15-CA-15903; JD(ATL)-28-01, Judge Keltner W. Locke.

Lithia Salmir, Inc. (Machinists District 190, Local 801) Sparks, NV April 27, 2001. 32-CA-18043-1; JD(SF)-35-01, Judge John J. McCarrick.

Phoenix Transit System (Amalgamated Transit Local 1433) Phoenix, AZ April 27, 2001. 28-CA-15177; JD(SF)-34-01, Judge Frederick C. Herzog.

* * *

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.)

H.P. Hood, Inc. (Food & Commercial Workers Local 371) (34-CA-9599; 333 NLRB No. 158) Suffield, CT May 3, 2001.