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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May 18, 2001 W-2791

CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

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Tomatek, Inc. (32-CA-16779, 16876; 333 NLRB No. 156) Firebaugh, CA May 8, 2001. The Board adopted the administrative law judge's decision dismissing the complaint that alleged the Respondent had early knowledge of an organizing effort by the Charging Party Union and discriminated against employees Jose Lopez and David Rivera for their involvement in protected activities. The organizing drive began in late February 1998. The Board found no credited record evidence that the Respondent

was aware of it or the two employees' involvement until May 26, 1998, when it received notice of unfair labor practice charges alleging that Lopez' discharge and Rivera's discipline were unlawful. [HTML] [PDF]

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charges filed by Graphic Communications District Council 2, Local 388M; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Fresno and Clovis, Feb. 9-11, 1999. Administrative Law Judge Timothy D. Nelson issued his decision July 20, 1999.

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Grouse Mountain Lodge (19-CA-24764, 24765; 333 NLRB No. 157) Whitefish, MT May 7, 2001. The Board majority of Chairman Truesdale and Member Walsh adopted the administrative law judge's finding that a statement by the Respondent's hotel manager, William Caron, to employee Terry Widdifield that "this Union movement thing wasn't happening" and that he could "get these things for [her]" constituted an unlawful promise of unspecified benefits to dissuade employees from supporting the Union. Dissenting on this issue, Member Hurtgen thought the manager's comment "either as intended or understood" was unclear. He pointed out that "an employer is free to speak about a union campaign." [HTML] [PDF]

The Board disagreed with the judge that the Respondent created the impression that it was engaging in surveillance of its employees' union activities. At issue was a memorandum to employees issued on August 15, 1996 by the Respondent's controller, Kayla Elkins, in which she stated that the Respondent had "recently concluded those organizing activities had failed from lack of employee interest and support." The majority, however, citing *Atlantic Forest Products,* 282 NLRB 855 (1987), agreed with the judge that the Respondent violated Section 8(a)(1) by a separate statement in the memo that the Respondent's delay in implementing the two new benefits was caused by the Union's organizing campaign. Dissenting on this point, Member Hurtgen said the Respondent blamed the law, not the Union. "The Respondent simply explained that the Union could not take credit for the ultimate grant of the benefits," he stated.

(Chairman Truesdale and Members Hurtgen and Walsh participated.)

Charges filed by Hotel Employees & Restaurant Employees Local 427; complaint alleged violation of Section 8(a)(1) and (2). Hearing at Kalispell, Sept. 16 and 17, 1997. Administrative Law Judge Burton Litvack issued his decision July 16, 1998.

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W.R. Mollohan, Inc. (9-CA-36048-1, et al.; 333 NLRB No. 162) Charleston, WV May 7, 2001. The Board agreed with the administrative law judge's finding that the Respondent unlawfully refused to abide by a collective-bargaining agreement effective June 1, 1998 through May 31, 2001. The contract was negotiated on the Respondent's behalf by a contractors' association. The Respondent's vice president of operations, Joe Beam, also was president of the Association and a member of the Association's negotiating committee. He attended one negotiating session (the first on April 7, 1998), but resigned from the negotiating committee on April 17. The parties reached an agreement at the second session on April 28 contingent upon union membership ratification. On May 8, Beam wrote a letter to the Association stating that the Respondent withdrew authorization from the Association to bind it in collective bargaining. On these facts the Board concluded: [HTML] [PDF]

> The record does not firmly establish that the employers in the Association were in a multiemployer unit. Beam and Bowen, however, told the Union on April 7 that the Association represented specific individual employers including the Respondent. Thus, the Association had apparent authority to act as the agent for each of the named employers. The fact that Beam resigned from the Association's *negotiating committee* on April 17 did not take away the principal-agent relationship between the Respondent and the Association. Thus, when the Association and the Union reached an agreement on April 28, that agreement was binding on the Respondent. Accordingly, the Respondent's subsequent attempt to withdraw bargaining authority from the Association on May 8, was untimely.

(Members Liebman, Hurtgen, and Walsh participated.)

Charges filed by Painters Locals 970 and 1144; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Charleston, June 29-30, 1999. Adm. Law Judge William N. Cates issued his bench decision July 28, 1999.

* * *

Premcor, Inc. (13-UC-354; 333 NLRB No. 164) Blue Island, IL May 8, 2001. The Board, while agreeing with the Acting Regional Director that the bargaining unit should be clarified to include PCCs (process control coordinators), disagreed with his application of an accretion analysis and his finding that the PCCs are an "accretion" to the unit. The Board found it was appropriate to clarify the existing unit to include the newly-created classification of PCCs because they perform the same basic functions historically performed by the members of the bargaining unit. It said that the PCCs are appropriately members of the production and maintenance unit. *Brockton Taunton Gas Co.,* 174 NLRB 969, 971 (1969). [HTML] [PDF]

The Employer maintained that the PCCs are not an accretion to the existing bargaining unit because they do not share a sufficient community of interest with members of that unit and are technical employees and/or statutory supervisors.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

* * *

Brockton Hospital (1-CA-35136, 35875; 333 NLRB No. 165) Brockton, MA May 11, 2001. The Board held, in agreement with the administrative law judge, that the Respondent violated Section 8(a)(1) of the Act by prohibiting the distribution of union literature in the vestibule adjacent to its front lobby. After considering the General Counsel's exception to the judge's failure to address a separate complaint allegation that the Respondent prohibited such distributions anywhere on its premises, the Board dismissed the allegation in the absence of any credited testimony that the Respondent banned all distribution of the disputed literature on its premises. In this regard, it found that the judge implicitly credited the testimony of the Respondent's witnesses over that of the General Counsel's witnesses on the issue. [HTML] [PDF]

The judge concluded that the Respondent also violated Section 8(a)(1) by maintaining an overly broad no-solicitation/no-distribution policy in its 1994 Associate Handbook. Chairman Truesdale and Member Walsh disagreed with the judge's finding that the language of the first two paragraphs of the policy was overly broad because it does not specifically exclude breaktimes from the definition of working time and, in agreement with the General Counsel's exceptions, found that the third paragraph of the policy is overly broad insofar as it prohibits any solicitation or distribution of literature in "halls and corridors used by patients." They agreed with the judge that substantially identical language, in the Respondent's Administrative Policy Manual, violated Section 8(a)(1) because its blanket prohibition extends beyond immediate patient care areas; and they found the similar prohibition, in the Associate Handbook, against solicitation or distribution of literature in "halls and corridors used by patients" likewise violated Section 8(a)(1). The Chairman and Member Walsh adhered to established Board precedent that a hospital's prohibition of solicitation or distribution of literature in immediate patient care areas, even during employees' nonworking time, is presumptively lawful, and that restrictions on solicitation, during nonworking time, or distribution of literature, during nonworking time and in nonworking areas are presumptively unlawful even with respect to areas that may be accessible to patients.

Member Hurtgen, dissenting in part, would revise the Board's current principles to allow prohibitions of solicitation and distribution in areas where patients, their families, and visitors spend a substantial amount of time, finding the principles "are premised on an overly narrow concept of how hospitals provide treatment and care to their patients." He would find presumptively unlawful however a prohibition of solicitation and distribution in the vestibule, which is essentially a place where people pass through from one place to another, and in the hospital cafeteria, which is ordinarily used on a transient basis and generally is open to the general public. Member Hurtgen stressed that his position does not unreasonably restrict Section 7 communications among employees, noting "there are myriad opportunities for such communications" (employee break areas, cafeterias, and vestibules) and that employees can converse away from the hospital and in parking areas as they come to and from work. The Respondent's revised Administrative Policy Manual that bars solicitation and distribution in "areas used by patients, families or visitors," would be presumptively unlawful to the extent it covers the cafeteria and vestibule, Member Hurtgen explained.

(Chairman Truesdale and Members Hurtgen and Walsh participated.)

Charge filed by the Massachusetts Nurses Association; complaint alleged violation of Section 8(a)(1) and (3). Hearing over 8 days between Nov. 2 and 20, 1998. Adm. Law Judge Martin J. Linsky issued his decision March 25, 1999.

* * *

O-J Transport Co. and Gratiot Driver Leasing, Inc. (7-CA-41105; 333 NLRB No. 168) Detroit, MI May 11, 2001. Affirming the administrative law judge's findings, the Board held that Respondent O-J Transport Company (O-J) violated Section 8(a)(2) and (1) of the Act by recognizing National Federation of Public and Private Employees, Federation of Private Employees Division (FOPE) as the bargaining representative of a unit of its truck drivers at a time when O-J did not employ a substantial and representative complement of employees in the unit; and that O-J violated Section 8(a)(3) and (1) by entering into and enforcing a collective-bargaining agreement with FOPE containing a union-security clause. Although the judge found that user employer O-J and supplier employer Gratiot Driver Leasing, Inc. (GDL) are joint employers of drivers on GDL's payroll, he found that GDL had dissolved and that its dissolution took place at the same time that O-J was committing unfair labor practices; that GDL was not a party to the contract with FOPE, and thus need not be directed to remedy the violations arising from that agreement; and that there was no reason to believe that O-J could not provide the appropriate monetary remedy imposed. [HTML] [PDF]

Addressing the General Counsel's argument that the judge should not have excused GDL from all remedial obligations and agreeing with the judge that no remedy is warranted, the Board explained:

> FOPE sought recognition only from O-J (not from GDL), and it is clear that only O-J unlawfully recognized and entered into a contract with FOPE. Thus, even if the Respondents were joint employers of some drivers at the time O-J extended recognition, there is no basis for finding liability on the part of GDL. We therefore need not decide whether O-J and GDL were joint employers because the determination of that issue would not affect the outcome of this case.

(Chairman Truesdale and Members Liebman and Hurtgen participated.)

Charge filed by the Autoworkers (UAW); complaint alleged violation of Section 8(a)(1), (2), and (3). Hearing at Detroit, April 21-22, 1999. Adm. Law Judge Philip P. McLeod issued his decision Sept. 23, 1999.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Barrows Paper Corporation (Industrial Workers Local 678) Pickens, MS May 8, 2001. 26-CA-19384, 19385; JD(ATL)-26-01, Judge Lawrence W. Cullen.

Tri-County Manufacturing and Assembly, Inc. (Steelworkers) Williamsburg, KY May 7, 2001. 9-CA-37528, et al.; JD-64-01, Judge Paul Bogas.

Steelworkers Local 7912 (U.S. Tsubaki, Inc.) Auburn, MA May 9, 2001. 1-CB-9680; JD(NY)-17-01, Judge Raymond P. Green.

Brown & Root Power and Manufacturing, Inc. (Boilermakers and Plumbers Local 229) Panama City, FL May 10, 2001. 15-CA-12752, 12875; JD(ATL)-29-01, Judge Pargen Robertson.

West Penn Power Company (Utility Workers Local 102) Pittsburgh, PA May 10, 2001. 6-CA-31003, et al.; JD-65-01, Judge Jerry M. Hermele.

Awrey Bakeries, Incorporated and Distributive Workers Council 30 (Individual) Livonia, MI May 11, 2001. 7-CA-43042(2),

7-CB-12585(2); JD(ATL)-25-01, Judge Jane Vandeventer.

Fluor Daniel, Inc. (Boilermakers) Greenville, SC May 11, 2001. 26-CA-13842; JD-66-01, Judge Martin J. Linsky.

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NO ANSWER TO COMPLAINT

(In the following cases, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to answer the complaint.)

Fairfield Truck Body Co. (Teamsters Local 418) (22-CA-24244; 333 NLRB No. 160) Belleville, NJ May 8, 2001.

Sooner Process and Investigation Inc. (Government Security Officers Local 203) (16-CA-20883; 333 NLRB No. 161) Tulsa, OK May 7, 2001.

Infiniti Electric, Inc. (Electrical Workers [IBEW] Local 611) (28-CA-16678; 333 NLRB No. 167) Carlsbad, NM May 11, 2001.

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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.)

Associated Rubber Company (Steelworkers) (10-CA-32902; 333 NLRB No. 163) Tallapoosa, GA May 8, 2001.