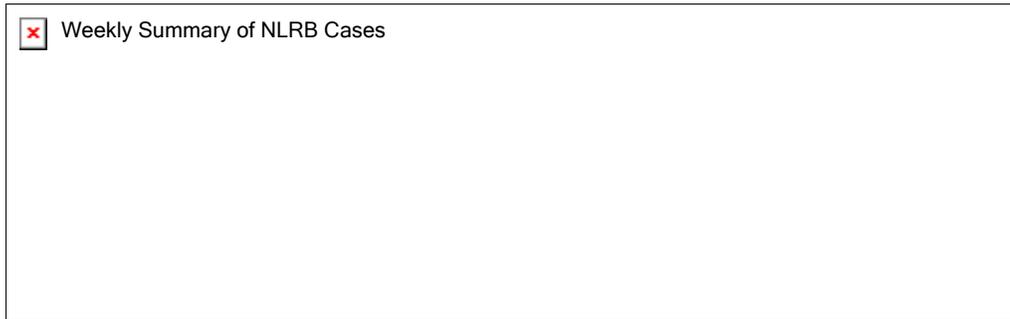


ABOUT THE WEEKLY SUMMARY

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 25, 2001

W-2792

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Overnite Transportation Co. (18-RD-2302, 7-RD-3213, et al.; 333 NLRB No. 166) Blaine, MN and Grand Rapids, MI May 15, 2001. Chairman Truesdale and Member Walsh, with Member Hurtgen dissenting, affirmed the Regional Directors' administrative dismissal of petitions filed by unit employees seeking elections to decertify Teamsters Local 120 and 406 as the representative of employees at the Employer's Blaine and Grand Rapids facilities. Applying *Master Slack Corp.*, 271 NLRB 78 (1984), the majority concluded that the Employer's nationwide campaign of unfair labor practices, which directly affected the employees at its Blaine and Grand Rapids facilities, tainted the decertification petitions filed for those locations. [\[HTML\]](#) [\[PDF\]](#)

The majority said its *Master Slack* analysis "is based solely on the unfair labor practices litigated and found by the Board and the Fourth Circuit." See *Overnite Transportation Co.*, 329 NLRB No. 91, enforced by the Fourth Circuit, 240 F.3d 325 (4th Cir. 2001), petition for rehearing and rehearing en banc denied (April 17, 2001). There, the Board found that the Employer engaged in a nationwide campaign of extensive and egregious unfair labor practices, including "hallmark" violations of the Act, at all of its facilities.

In this decision, the majority found that because the Board in 1999 examined factors similar to those in the *Master Slack* analysis to determine whether the Employer's national unfair labor practices warranted the imposition of a Gissel bargaining order at four facilities where the Local Unions had lost representation elections, those conclusions support a finding of a causal connection between the Employer's unlawful conduct and the employees' subsequent disaffection with the Local Unions. Regarding the passage of time from the commission of the unfair labor practices to the filing of the decertification petitions, the majority said "serious unfair labor practices remain unremedied, and thus the passage of time, in and of itself, is not likely to dissipate their coercive effect."

Member Hurtgen found his colleagues' argument that the *Gissel* analysis in 329 NLRB No. 91 is "similar to" a *Master Slack* analysis is not correct. A *Gissel* analysis focuses on whether a fair election can be held and a *Master Slack* analysis focuses on whether unlawful conduct has a causal nexus (and thereby taints) a decertification petition, he explained. Applying the "causal nexus" test and assuming arguendo that the conduct of 1995 and 1996 is cognizable here and is unlawful, he found there was no showing that it caused the employees to file the decertification petition in 1999. Member Hurtgen noted these factors. More than 3 years elapsed in that time interval and, during that time, the conduct of 1995 was remedied by the formal settlement of that year. The only unremedied conduct was the "unsettled" conduct litigated in 329 NLRB No. 91, which with one exception, did not occur at Blaine and Grand Rapids. And, all of the conduct occurred in 1995 and 1996. He wrote:

We are asked to believe that this conduct lingered in the minds of the employees for many years, and caused them to seek decertification. There is no substantive evidence to support this belief. In these circumstances, I would not deprive these employees of their statutory right to vote on the issue of union representation. The wrongs of the parent should not be visited on the children, and the violations of Overnite should not be visited on the employees.

(Chairman Truesdale and Members Hurtgen and Walsh participated.)

* * *

Smithfield Packing Co. (11-CA-18316, et al., 11-RC-6338; 334 NLRB No. 5) Smithfield, VA and Wilson, NC May 18, 2001. Members Liebman and Truesdale granted the Acting General Counsel's request for special permission to appeal the administrative law judge's ruling and reversed the judge's order that required a production of completed questionnaires that the Acting General Counsel had secured (during an investigation of whether the evidence would support a Gissel bargaining order against the Respondent) from employees who had signed union authorization cards but did not testify the hearing. Member Hurtgen concurred in the result, but he did so "with great reluctance." The judge explained that the questionnaires related "to any matter" in question under Section 102.31(b) of the Board's Rules and production would be in "the interest of due process and fair hearing." Members Liebman and Truesdale wrote: [\[HTML\]](#) [\[PDF\]](#)

Section 102.118(a) of the Board's Rules prohibits disclosure of documents in the possession of the General Counsel, whether in response to a subpoena or otherwise, without the General Counsel's written consent. A limited exception to this rule is set forth in Section 102.118(b)(1), which requires the production of statements by the General Counsel or Charging Party witnesses after they have testified. However, no party contends that the

questionnaires at issue here are producible under the Section 102.118(b)(1) exception. The employee card signers were not called to testify by the Acting General Counsel or Charging Party. At the trial, the Acting General Counsel sought to authenticate the cards through the testimony of a handwriting expert rather than that of the employee card signers themselves.

Further, we do not agree with the judge that the production of the questionnaires would be in "the interest of due process and fair hearing." As the cards are in evidence, the Respondent knows the identity of the card signers and could therefore secure their testimony to obtain the information in the questionnaires. While, as the judge noted, production of the questionnaires might serve to speed the resolution of the hearing by providing a less time consuming and burdensome means of obtaining such information, ease and celerity do not necessarily implicate due process or a fair hearing. Nor is mere convenience to a party sufficient reason to compel the discovery of questionnaires that are privileged from disclosure under Section 102.118.

Chairman Hurtgen, in concurrence, noted his "misgivings" that Section 102.118 "permits a litigant (the General Counsel) to withhold relevant documents from the opposing party, and there is no comparable privilege for the opposing party." Finding the application of Section 102.118 "particularly troublesome" in this case, he said:

The documents are unquestionably relevant. In addition, any confidentiality has been lost-the card signers have been identified at trial. Further, there is no claim of attorney work product. Finally, although the Respondent could perhaps call the 154 witnesses, that would be time consuming and burdensome to these proceedings. At the very least, the documents could confine the inquiry to those employees whose responses raise questions.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

* * *

Excel Case Ready (1-CA-37682, 37769; 334 NLRB No. 2) Taunton, MA May 18, 2001. The administrative law judge found, and the Board agreed, that the Respondent committed serious and pervasive unfair labor practices in a successful effort to "nip in the bud" the organizational campaign of Food and Commercial Workers Local 791; and that the additional notice and access remedies ordered by the Board in *Audubon Regional Medical Center*, 331 NLRB No. 42 slip op. at 6-8 (2000), were "necessary to dissipate fully the coercive effects of the discharges and other unfair labor practices." In light of the nature and extent of the Respondent's violations, the Board substituted a broad cease-and-desist order for the narrow one recommended by the judge. [\[HTML\]](#) [\[PDF\]](#)

Member Truesdale agreed that a broad order and special remedy requiring the Respondent to supply the Union with unit employee names and addresses are warranted, but he, unlike the majority, would not impose the additional special remedies requiring reading of the notice and reasonable access to bulletin boards.

The judge found that the Respondent coercively interrogated employees about their union activities and threatened them with loss of their 401(k) plan and other reprisals if they selected the Union, including a threat "to make your lives a living hell." The Respondent engaged in surveillance of union activities by searching employees' lockers and confiscating union materials. Threats were also executed. After telling employees that it was "going to take care of the troublemakers," i.e., "weed[] out people" for "wanting to be in the Union," and then "they won't have a problem no more," the Respondent discharged employee union organizers Keith Fiola, Tamila Fiola, and Michael Paiva in violation of Section 8(a)(3) and (1). The judge found that the Respondent discharged the employees after it learned that the Union had obtained authorization cards from 21 of its 32 employees "to undercut the Union's majority" and the Respondent's discharges of the Fiolas and Paiva "frustrated the hopes of the majority to obtain union representation[.]"

The Respondent unlawfully discharged employees Jan Pacheo and Ernest Watson, although they were not prounion, because it believed that such action was necessary to conceal its unlawful motive in discharging employee organizer Paiva.

(Members Liebman, Truesdale, and Walsh participated.)

Charges filed by Food and Commercial Workers Local 791; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Boston, Jan. 12-16, 2000. Adm. Law Judge Marion C. Ladwig issued his decision July 28, 2000.

* * *

Healthcare Employees Local 399, SEIU (City of Hope National Medical Center) (21-CB-12840; 333 NLRB No. 170) Duarte, CA May 15, 2001. The Board affirmed the administrative law judge's finding that by threatening the Employer's employees that it would bargain with the Employer to have the work of the rehabilitation department contracted out or "outsourced," Respondent violated Section 8(b)(1)(A) of the Act. [\[HTML\]](#) [\[PDF\]](#)

The individual Charging Parties sought to decertify the union in the rehabilitation department by circulating a union decertification petition before commencement of contract negotiations between the Respondent and the Employer. At a union meeting prior to the negotiations, Jorge Rodriguez, secretary-treasurer of Respondent, was asked how the rehabilitation department employees could get out of the Union and he replied: "Well, if you want out of the union when we get to the bargaining table, we'll get your department outsourced." The judge found, and the Board agreed, that Rodriguez' statement threatened interference with employees' employment relationship with the Employer and constituted a threat of loss of employment.

(Chairman Truesdale and Members Hurtgen and Walsh participated.)

Charge filed by Jennifer Brown, Barry Shafer, Ron Vandenbrink, Alice Knol, and Carla Dunham, individuals; complaint alleged violation of Section 8(b)(1)(A). Hearing at Los Angeles, CA, Dec. 18, 2000. Adm. Law Judge Lana H. Parke issued her decision Feb. 16, 2001.

* * *

Aluminum Casting & Engineering Co., Inc. (30-CA-12855, et al.; 334 NLRB No. 3) Milwaukee, WI May 16, 2001. In its decision of April 9, 1999, (328 NLRB No. 2), the Board adopted, with certain modifications, the administrative law judge's findings that the Respondent had engaged in unfair labor practices during the organizing campaign conducted by the Electrical (UE) Workers. [\[HTML\]](#) [\[PDF\]](#)

On October 13, 2000, the U.S. Court of Appeals for the Seventh Circuit issued a decision enforcing the Board's findings that the Respondent violated Section 8(a)(1) and (3) of the Act by (1) indicating to its employees that it would be futile for them to engage in union activity; (2) discontinuing the Company's practice of conducting annual wage surveys, and based thereon, granting annual wage increases, because employees voted to select the Union as their collective-bargaining representative; (3) failing to announce a wage increase, telling employees that there will not be an annual wage increase, all because employees voted to select the Union as their collective-bargaining representative; (4) maintaining a rule restricting employee solicitation that does not clearly indicate that employees are permitted to engage in solicitation during nonworking times; (5) soliciting reports of employees who "pressure" employees into supporting the Union; and (6) paying for damage to vehicles for those employees who claim that the damage was caused by union supporters.

Contrary to the Board, the court found that the Respondent did not violate Section 8(a)(1) by including in its employee handbook the statement that it was the Respondent's "intention to do everything possible to maintain our company's union-free status for the benefit of both our employees and [the Company]." It remanded this matter to the Board and in accordance with the court's opinion, the Board substituted a new Order and notice for those which previously issued.

(Members Liebman, Hurtgen, and Walsh participated.)

* * *

Everman Electric Company, Inc. (15-CA-14261; 334 NLRB No. 6) Gulfport, MS May 16, 2001. The Board granted the General Counsel's motion for summary judgment as to the allegations in paragraphs 1, 2(b)(f), 3(a), 4(a), 5, 7(a), 12(a), 13(a), and paragraph 15 as it pertained to Frank J. Shrader and David L. Wozencraft of the compliance specification. It denied

summary judgment on the issues of interim earnings and expenses of discriminatees Wallace Barnes, Ricky Chuter, Larry Herring, Earl E. Johnson, Porter A. Lee, Roger Maxson, Andy Scara, Joseph Versiga, and John D. Welch and issues of backpay cutoff date for Barnes, Herring, Lee, Johnson, Maxson, and Welch, and remanded these issues for hearing. [\[HTML\]](#) [\[PDF\]](#)

A controversy having arisen over the amount of backpay due the discriminatees under the terms of the Board's October 1, 1999 Order, the Acting Regional Director issued a compliance specification and notice of hearing alleging the amount of backpay due and notifying the Respondent that it must file an answer complying with Section 102.56 of the Board's Rules and Regulations. On June 28, 2000, Respondent filed its response but was notified by the General Counsel that the response did not constitute an appropriate answer. Thereafter, the General Counsel filed for summary judgment. The Respondent argued that its response was a sufficient answer and appended a supplemental answer to its response in the event the Board determined otherwise.

The Board accepted and considered the supplemental answer and citing *Standard Materials, Inc.*, 252 NLRB 679 (1980), held that even in the absence of an amended backpay specification, a respondent may amend its answer prior to a hearing in the compliance proceeding.

(Members Liebman, Hurtgen, and Walsh participated.)

General Counsel filed a motion for summary judgment on September 12, 2000.

* * *

Ridgewell's, Inc. (5-CA-27800; 334 NLRB No. 9) Washington, DC May 18, 2001. The Board, in agreement with the administrative law judge, concluded that the Respondent is a successor employer, subject to the duty to bargain with Hotel & Restaurant Employees Local 25. *NLRB v. Burns Security Services*, 406 U.S. 272, 294-295 (1972). In refusing to bargain with the Union and unilaterally making changes to the terms and conditions of employment of the wait staff, the Board held that the Respondent violated Section 8(a)(5) and (1) of the Act. [\[HTML\]](#) [\[PDF\]](#)

The Board agreed with the judge that the Respondent did not violate the Act when it discontinued fringe benefit contributions for employees after it took over the afternoon and evening catering functions at the United States House of Representatives in January 1998. The Respondent claimed its announcement of an intent to employ the predecessor's employees as independent contractors was both timely and substantive, putting the Union on notice that a new set of employment conditions would be in effect. The Board agreed. That the employees continued to work for the Respondent as statutory employees, rather than as independent contractors, does not alter that the Respondent's announcement portended employment under different terms and conditions, it held.

Since the Respondent announced its clear intention before any hiring, it is not a "perfectly clear" successor under *Burns* and *Spruce Up Corp.*, 209 NLRB 194 (1974), *enfd. per curiam* 529 F.2d 516 (4th Cir. 1975), and it did not violate the Act by establishing initial terms and conditions of employment without first bargaining with the Union.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charge filed by Hotel & Restaurant Employees Union, Local 25; complaint alleged violations of Section 8(a)(1) and (5). Hearing at Washington, DC on April 6, 2000. Adm. Law Judge Jerry M. Hermele issued his Decision June 26, 2000.

* * *

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Painters District Council 9 and Local 18 (an Individual) New York, NY May 11, 2001. 2-CB-17886, 17887; JD(NY)-19-01, Judge D. Barry Morris.

Liberty Apparel Company, Inc. (UNITE Local 10) New York, NY May 11, 2001. 29-CA-23827, 24041; JD(NY)-18-01, Judge Howard Edelman.

Buchanan Hardwood Flooring, L.L.C. (an Individual) Tuscaloosa, AL May 15, 2001. 10-CA-32595; JD(ATL)-32-01, Judge Keltner W. Locke.

Niblock Excavating, Inc. (Operating Engineers Local 150) Bristol, IN May 15, 2001. 25-CA-26323, et al.; JD-67-01, Judge Arthur J. Amchan.

Lovings Heating & Cooling (Sheet Metal Workers Local 20) Portage, IN May 16, 2001. 25-CA-27128-1; JD-68-01, Judge Earl E. Shamwell Jr.

Midwest Television, Inc., d/b/a KFMB Stations (an Individual) San Diego, CA May 4, 2001. 21-CA-32858; JD(SF)-38-01, Judge Lana H. Parke.

Ready Mixed Concrete Company (Teamsters Local 554) Omaha, NE May 4, 2001. 17-CA-20734, et al.; JD(SF)-36-01, Judge James L. Rose.

HEPC LAX, Inc., d/b/a Wyndham Hotel LAX (Hotel and Restaurant Employees Local 814, d/b/a Wyndham Hotel LAX) Los Angeles, CA May 9, 2001. 31-CA-24197, 24395; JD(SF)-39-01, Judge Burton Litvack.

A.T. Electric Construction Corp. (Electrical Workers [IBEW] Local 3) New York, NY May 16, 2001. 2-CA-32967; JD(NY)-20-01, Judge Joel P. Biblowitz.

Ishikawa Gasket America, Inc. (an Individual and Machinists Lodge 57) Bowling Green, OH May 18, 2001. 8-CA-31264, 31292; JD-72-01, Judge Richard H. Beddow Jr.

Postal Workers Local 5959 (Individuals) Metairie & LaPlace, LA May 18, 2001. 15-CB-4572, 4574; JD-71-01, Judge Bruce D. Rosenstein.

Sprint Corporation (an Individual) Charlottesville, VA May 17, 2001. 5-CA-29136; JD-69-01, Judge Benjamin Schlesinger.

California Pacific Medical Center (Healthcare Workers Local 250, SEIU) San Francisco, CA May 15, 2001. 20-CA-28916; JD(SF)-42-01, Judge Gerald A. Wacknov.

* * *

TEST OF CERTIFICATION

(In the following cases, 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 the unfair labor practice proceeding. The cases did not present any other issues.)

King Curb, a Division of Span Construction and Engineering (Sheet Metal Workers Local 162) (32-CA-18729; 334 NLRB No. 8) Madera, CA May 18, 2001.

Dole Fresh Vegetables, Inc. (Operating Engineers Local 20) (9-CA-38306; 333 NLRB No. 169) Springfield, OH May 11, 2001.

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