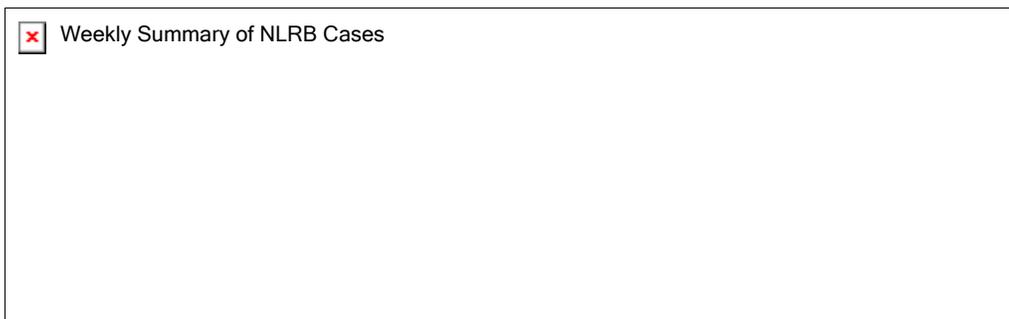


ABOUT THE WEEKLY SUMMARY

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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June 1, 2001

W-2793

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Butera Finer Foods (13-RD-2301; 334 NLRB No. 11) Elgin, IL May 21, 2001. Overturning the hearing officer's report, the Board majority of Chairman Hurtgen and Member Truesdale ruled that service by a nonemployee business agent of an incumbent union as an observer in a decertification (RD) election was objectionable conduct warranting setting aside the election. The majority agreed with the Employer's contention that even though the business agent had engaged in no misconduct and his presence as an observer had not prejudiced the other parties, that an RD election is significantly different from a representation (RC) case because it involves the participation of an incumbent union and therefore warrants a different result. The majority stated: [\[HTML\]](#) [\[PDF\]](#)

After careful consideration, we conclude that the neutrality of the election process in a decertification context is best for fostered by a bright-line rule prohibiting incumbent labor organizations from using their nonemployee agents as election observers. A key factor in our holding is that in a decertification election employees have accumulated experience with their union's operations and can be expected to view both it and the employer as established collective-bargaining forces. As a result, employees may be unduly influenced by the actual physical presence of nonemployee agents of the incumbent union at the polling site.

In dissent, Member Walsh maintained the majority had erred in promulgating "an unjustified and overbroad per se rule," pointing out that there was no evidence of any misconduct by the union agent and that his mere presence as an observer, without more, did not warrant setting aside the election.

(Chairman Hurtgen and Members Truesdale and Walsh participated.)

* * *

3D Enterprises Contracting Corp. (6-CA-29051; 334 NLRB No. 10) Weston, WV May 23, 2001. The Board remanded to the administrative law judge this salting case pursuant to *FES*, 331 NLRB No. 20, after affirming his finding that the Respondent unlawfully refused to hire union laborer applicants Ted Mick and Jerry Elder through manipulation of its "Not Taking Applications" sign, to resolve the issue of whether they were refused hire for any openings that occurred prior to the unfair labor practice hearing. On a separate point, Chairman Hurtgen dissenting from the view of Members Liebman and Truesdale, contended the Board should require the General Counsel to establish at compliance how long union "salts" Steven Montoney and Donald Huff would have worked for the Respondent at its Weston jobsite, or at other sites, had the Respondent not unlawfully denied them reinstatement on June 5, 1997. The majority disagreed for the reasons set forth in *Ferguson Electric Co.*, 330 NLRB No. 75 (2000). [\[HTML\]](#) [\[PDF\]](#)

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charges filed by Construction Trades Council; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Clarksburg, April 28 - May 1, 1998. Adm. Law Judge David L. Evans issued his decision October 16, 1998.

* * *

Mercy General Hospital (20-RC-17563, 17564; 334 NLRB No. 13) Rancho Cordova, CA May 24, 2001. Contrary to the hearing officer, the Board concluded that two elections for a service unit and technical unit at five hospitals of the Respondent, which the Union lost, should be set aside due to objectionable conduct by six Respondent agents. Accordingly, the Board directed second elections be held. The tallies of ballots showed 598 for, 701 against the Union, 89 challenges; and 193 for, 305 against, with 25 challenges. The objectionable conduct, which the hearing officer did not think rose to the level of warranting second elections, included threatening employees with loss of benefits; surveillance with a security camera during the critical period; interrogation of an employee concerning his union activities; and restrictions by the Employer on union activities. Among other factors, the Board was persuaded by the significant number of instances of objectionable conduct and the potentially large number of employees directly affected by the objectionable. [\[HTML\]](#) [\[PDF\]](#)

(Members Liebman, Truesdale, and Walsh participated.)

* * *

Met West Agribusiness, Inc. (32-CA-16313, et al.; 334 NLRB No. 14) Del Ray, CA May 23, 2001. The Board majority of Members Liebman and Truesdale agreed with the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by telling an employee that a previously promised wage increase could not be granted because the Union had filed a petition for an election. Dissenting Chairman Hurtgen would have reversed the judge since in his view, "the Respondent correctly explained that it could not grant the benefit because of the petition." [\[HTML\]](#) [\[PDF\]](#)

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charges filed by Food & Commercial Workers Local 45D; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Fresno, March 24 - 25, 1998. Adm. Law Judge Jay R. Pollack issued his decision July 7, 1998.

* * *

The Hays Corporation (10-CA-30759, et al.; 334 NLRB No. 4) Decatur, AL May 22, 2001. The administrative law judge in his bench decision found, under the framework of *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981) cert. denied 445 U.S. 989 (1982), and the Board agreed, that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employees Jeff Wesley and Billy Ray Spencley because of their union and protected concerted activity. It also agreed with the judge that the Respondent violated Section 8(a)(1) by threatening Wesley with discharge at a January 8, 1998 safety meeting; by threatening Spencley with discharge on or about January 17, 1998; by creating the impression of surveillance; by telling employees that it would be futile to select a bargaining representative; by telling employees that discussing the Union would violate a company rule; and by telling employees at a January 12, 1998 safety meeting that the company was nonunion and didn't want "to hear any Union bulls---" on the job. The judge's finding that the Respondent violated Section 8(a)(3) by issuing a verbal warning and a first written warning to Spencley on January 16, 1998, and by issuing a second written warning to Spencley on January 20, 1998 was also affirmed by the Board. [\[HTML\]](#) [\[PDF\]](#)

The judge rejected the Respondent's assertion that Wesley and Spencley were discharged because of their poor attendance and work records and their failure to adhere to company policies, and not because of their protected or union activities.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charges filed by Jeff Wesley and Billy Ray Spencley, individuals; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Birmingham, AL, June 8, 1998. Keltner W. Locke issued his decision July 22, 1998.

* * *

Kasa Associates d/b/a Oak Tree Mazda (32-CA-16835; 334 NLRB No. 17) San Jose, CA May 23, 2001. Affirming the administrative law judge's recommendation, the Board dismissed the complaint allegations that the Respondent violated Section 8(a)(1), (3), and (5) of the Act by refusing to hire Gilbert "Wayne" Daugherty and Kevin Ferguson. Contrary to the General Counsel's contention that Daugherty and Ferguson were not hired because of their activities on behalf of Machinists Local 1101 and because each had served as a union steward in the past, the judge found that they were not considered for hire because the Respondent desired all-around mechanics and not specialists (Ferguson only wanted to do "driveability" work and Daugherty did not want to do heavy-duty work). There was no evidence of union animus, the judge said. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Hurtgen and Members Truesdale and Walsh participated.)

Charge filed by Machinists Local 1101; complaint alleged violation of Section 8(a)(1), (3) and (5). Hearing on Dec. 2, 1998 and Jan. 7, 1999 in Oakland and on Aug. 10, 1999 in Birmingham, AL. Adm. Law Judge Jay R. Pollack issued his decision Sept. 28, 1999.

* * *

Technology Service Solutions (27-CA-13971, 13971-3; 334 NLRB No. 18) Englewood, CO May 24, 2001. The Board granted in part and denied in part, the General Counsel's and Electrical Workers Local 111's motions for reconsideration of the underlying Supplemental Decision and Order, 332 NLRB No. 100 (2000). The Board modified its order to require that the Respondent mail a copy of the notice to employees to all CSRs (customer service representatives) in the south-central region and to post the notice at all its parts locations in the south-central region. It denied the General Counsel's request that the notices be sent to employees via their personal terminals, finding that the mailing of the notices to the CSRs, coupled with posting them at the Respondent's parts locations, was sufficient. [\[HTML\]](#) [\[PDF\]](#)

In the decision, the Board ordered the Respondent to post a notice at its Englewood, CO facility informing employees that it would cease and desist from engaging in certain unfair labor practices. The Union argued that the Order requiring the Respondent to post the notice at its Englewood facility will not effectuate the Board's objective of informing affected employees about the outcome of this proceeding and the nature of their rights under the Act, because none of the CSRs employed in the south-central region report to Englewood. The General Counsel similarly argued that few, if any, CSRs will see the notice if it was posted only at the Englewood facility. The General Counsel noted that contact between CSRs and the Respondent's management is generally accomplished through use of personal terminals and requested that Respondent be required to disseminate the notice to all south-central region CSRs by transmitting it via their personal terminals and by mailing it to them.

(Chairman Hurtgen and Members Truesdale and Walsh participated.)

* * *

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Amber Foods, Inc. (Farm Workers) Dinuba, CA April 23, 2001. 32-CA-18139-1, et al.; JD(SF)-30-01, Judge James L. Rose.

Pinnacle Metal Products Company (Machinists Local 670 and District 97) Muskegon, MI May 21, 2001. 7-CA-43236; JD-73-01, Judge Irwin H. Socoloff.

Mid-Mountain Foods, Inc. (Food & Commercial Workers Local 400) Abingdon, VA May 22, 2001. 11-CA-17684; JD(ATL)-33-01, Judge Keltner W. Locke.

Roofers Local 70 (an Individual) Howell, MI May 23, 2001. 7-CA-43467; JD-74-01, Judge C. Richard Miserendino.

* * *

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.)

MK Electric, et al.; (Electrical Workers [IBEW] Local 413) (31-CA-22956; 334 NLRB No. 26) Toluca Lake, CA May 24, 2001.

* * *

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.)

Werthan Packaging Inc. (Allied-Industrial Chemical and Energy Workers) (26-CA-20117-1; 334 NLRB No. 7) Nashville, TN,

May 17, 2001.

Sliman Sales & Service, Inc. (Machinists Lodge 57-LL-1849) (8-CA-32256; 334 NLRB No. 15) Amherst, OH May 24, 2001.