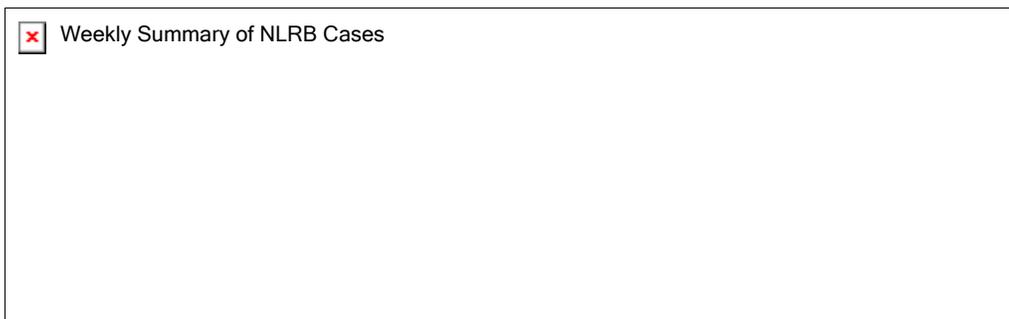


## ABOUT THE WEEKLY SUMMARY

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 8, 2001

W-2794

**CASES SUMMARIZED**

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*Hampton Lumber Mills-Washington, Inc.* (19-CA-26789; 334 NLRB No. 30) Randle, WA May 31, 2001. The Board agreed

with the administrative law judge's finding that the Respondent was a successor employer and violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union as of November 30, 1999. As a remedy, the Board found that an affirmative bargaining order was warranted. [\[HTML\]](#) [\[PDF\]](#)

The Respondent had argued that it was not required to bargain with the Union in light of a December 8, 1999 petition signed by 90 of the 116 unit employees that they did not want to be represented by the Union. On December 9, the Respondent filed an RM petition with the Board requesting an election, and on December 16 the Union filed the unfair labor practice charge that gave rise to this case and blocked the RM petition.

The Board majority of Members Liebman and Walsh, citing *Lee Lumber*, 332 NLRB 175 (1996), 117 F.3d 1454 (D.C. Cir. 1997), held "the Respondent's unlawful November 30 refusal to recognize the Union presumptively tainted the December 8 employee petition." In finding the Respondent's refusal to recognize the Union -- on the basis of the December 8 petition -- violated Section 8(a)(5), the Board also cited the rationale of *St. Elizabeth Manor, Inc.*, 329 NLRB No. 36 (1999), stating: "[O]nce the Respondent's obligation to recognize and bargain with the Union attached on November 30, the Union was entitled to a reasonable period of bargaining without challenge to its majority status."

In a concurring opinion, Member Truesdale said he would rely only on the rationale of *St. Elizabeth's Manor* in finding the violation.

(Members Liebman, Truesdale, and Walsh participated.)

Charge filed by Lumber and Sawmill Workers Local 2767 [UBC]; complaint alleged violation of Section 8(a)(5) and (1). Hearing in Seattle, June 13, 2000. Adm. Law Judge Clifford H. Anderson issued his decision August 3, 2000.

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*Huck Store Fixtures Co.* (14-CA-2448; 334 NLRB No. 20) Quincy, IL May 29, 2001. The Board agreed with the administrative law judge that the Respondent's decision in late February 1997 to reduce its work force by 20 percent, and its resulting layoffs and discharges of 33 employees in early March, were motivated by the union organizing activities of its employees and that the layoffs and discharges violated Section 8(a)(3) and (1) of the Act. The Board further adopted the judge's finding that the Respondent's granting of wage increases violated Section 8(a)(3) and (1). Employees' dissatisfaction with wages was a principal issue in the union organizing effort. However, the Board overruled the judge's failure to find that the Respondent's adoption of a new attendance policy and its preparation of employee evaluations in late February and early March independently violated the Act. The Respondent used the evaluations which identified subjective criteria, such as "attitude," for layoff or discharge, the Board held. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charge filed by Carpenters; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Quincy, June 17 - 20 and July 7 - 8, 1997. Adm. Law Judge Karl H. Buschmann issued his decision March 19, 1998.

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*Valeo Sylvania, L.L.C.* (25-CA-26769-2, -3; 334 NLRB No. 22) Seymour, IN May 29, 2001. Affirming the administrative law judge, the Board found the Respondent had engaged in a number of unfair labor practices during the Union's organizing campaign, including the suspension and discharge on Sunday, Sept. 19, 1999, of Ronald Roy, an employee active in the campaign, for distributing union literature. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charges filed by Steelworkers; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Indianapolis, May 11 - 12, 2000. Adm. Law Judge C. Richard Miserendino issued his decision Jan. 31, 2001.

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*Armored Transport, Inc.* (31-CA-23504, et al.; 334 NLRB No. 24) Los Angeles, CA May 29, 2001. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Currency and Security Handlers Association (CASHA) and later Plant Guard Workers Local 100, the bargaining agent designated by five independent labor organizations representing unit employees at five California facilities. The independent unions designated CASHA as its bargaining agent in May 1998; CASHA subsequently affiliated with Local 100. The Respondent unlawfully dealt directly with some bargaining unit employees, bypassing Local 100. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charges filed by Plant Guards Local 100; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Los Angeles, Aug. 23 - 25, 1999. Adm. Law Judge Clifford H. Anderson issued his decision March 7, 2000.

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*Norman King Electric* (25-CA-25894-1, -2; 334 NLRB No. 12) Owensboro, KY May 30, 2001. Affirming the administrative law judge in this "salting" case pursuant to *FES*, 331 NLRB No. 20 (2000), the Board concluded the Respondent had unlawfully refused to consider for employment and refused to hire four job applicants because of their union and concerted activities. The Respondent also violated the Act by maintaining a "no applications accepted" policy for the purpose of discouraging union activities. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charges filed by Electrical Workers Local 1701 (IBEW); complaint alleged violation of Section 8(a)(1) and (3). Hearing at Owensboro, May 22, 2000. Adm. Law Judge Paul Bogas issued his decision Aug. 30, 2000.

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*C. Factotum, Inc.* (7-CA-42352(1), (2); 334 NLRB No. 23) Detroit, MI May 30, 2001. The Board adopted the administrative law judge's recommended dismissal of the complaint alleging that the Respondent violated Section 8(a)(1) and (3) of the Act by threatening employees with loss of employment if they did not stop complaining about wages and benefits; by threatening employees with loss of employment if they questioned the Respondent or complained to the media about their concerns regarding wages and benefits; by orally promulgating an overly broad no-talking rule restricting employees from discussing the Union, or their wages and benefits, while allowing them to discuss other subjects; by enforcing the oral no-talking rule; and by discharging Charging Parties David Kulczycki and Ronald Carter. [\[HTML\]](#) [\[PDF\]](#)

Member Liebman adopted the judge's dismissal of the allegations of Section 8(a)(1) and (3) violations by the discharge of employee Kulczycki but relied solely on the credited evidence that Kulczycki was insubordinate, confrontational, and abusive to Supervisor Larry Moss in front of other employees. She did not pass on the judge's finding that the General Counsel failed in carrying his initial evidentiary burden under *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982).

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charges filed by David Kulczycki and Ronald Carter, individuals; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Detroit, April 4, 2000. Adm. Law Judge C. Richard Miserendino issued his decision Sept. 20, 2000.

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*Flambeau Airmold Corp.* (11-CA-17172; 334 NLRB No. 16) Weldon, NC May 30, 2001. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by dealing directly with unit employees regarding their hours and working conditions; by making numerous unilateral changes in employees' terms and

conditions of employment; by discharging, suspending, or warning employees pursuant to its enforcement of the unlawful unilaterally changed rules or processes; and by failing to notify and bargain with the Union regarding the effect on employees of its institution of a continuous shift operation. Contrary to the judge, the Board held that the Respondent violated Section 8(a)(5) by unilaterally changing the notice requirements for employees' approval of sick leave and vacation leave. [\[HTML\]](#) [\[PDF\]](#)

While agreeing with the judge's finding that the Respondent's discharge of employee Thomas Ellis was unlawful, the Board clarified the judge's rationale. Applying *Great Western Produce*, 299 NLRB 1004, 1005 (1990), it held that the new work requirement that the Respondent imposed on its machine operators was a factor in Ellis' discharge - not, as Respondent argued, for "allow[ing his] machine to be shut down during shift change" and/or for failing to restart his machine in a timely manner.

(Chairman Hurtgen Members Liebman and Truesdale participated.)

Charge filed by Needletrades Employees; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Jackson, Dec. 15-18, 1997. Adm. Law Judge George Carson II issued his decision March 23, 1998.

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*Snyder's of Hanover, Inc.* (5-CA-28033; 334 NLRB No. 21) Hanover, PA May 30, 2001. The Board held, in agreement with the administrative law judge, that the Respondent violated Section 8(a)(1) of the Act by: (1) prohibiting union representatives from distributing pronoun literature in the public right-of-way adjacent to the Respondent's facility; (2) attempting to remove the union representatives from the public right-of-way; and (3) engaging in surveillance of its employees receiving union literature from union organizers. [\[HTML\]](#) [\[PDF\]](#)

The Respondent argued that under Pennsylvania law "an owner whose property abuts a public street or road owns to the center of the road . . . subject only to a public easement of passage, or right-of-way, for transit only." It contended under State law a property owner may "preclude activities upon a right-of-way that exceed the intended purpose of the right-of-way" and that as property owner it had the right to prevent the Union's impermissible use of the public easement. The Respondent maintained that the Union's leafleting was not consistent with the purpose of the right-of-way for two reasons: (1) "the leafleting was purely for a private benefit (to garner interest in the Union and gain new members), not a public benefit"; and (2) "the actions of the leafleters caused substantial interference in ingress and egress from [the Respondent's] property."

Applying *Indio Grocery Outlet*, 323 NLRB 1138, 1141 (1997), the Board asserted that the Respondent must show that it had a property interest in the area where the handbilling occurred (in this case a public right-of-way), and that the handbilling was outside the scope of the public easement, such that the Respondent was entitled to exercise its property interest and expel the handbillers. Respondent has not met its threshold burden under *Indio Grocery*, the Board stated, "of establishing that it had, at the time it attempted to expel the union representatives, an interest in the property which entitled it to exclude the handbillers from the property."

(Members Liebman, Truesdale, and Walsh participated.)

Charge filed by Food & Commercial Workers Local 1776; complaint alleged violation of Section 8(a)(1). Hearing at Hanover, October 26, 1999. Adm. Law Judge Leonard M. Wagman issued his decision Aug. 4, 2000.

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### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

*American Postal Workers* (an Individual) Madison, WI May 25, 2001. 30-CB-4355; JD(ATL)-30-01, Judge William N. Cates.

*Gallup, Inc.* (Steelworkers) Houston, TX May 25, 2001. 16-CA-19898, et al.; JD(ATL)-34-01, Judge Richard J. Linton.

*Oden Mechanical Contractors, Inc.* (Plumbers Local 165) Fort Riley, KS May 25, 2001. 17-CA-20933; JD(ATL)-31-01, Judge

Jane Vandeventer.

*Albertson's, Inc.* (an Individual) Mesa, AZ May 25, 2001. 28-CA-16466; JD(SF)-43-01, Judge Jay R. Pollack.

\* \* \*

**NO ANSWER TO COMPLAINT**

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

*The Lassen Companies, Inc.* (Glass & Pottery Workers) (9-CA-37505, et al.; 334 NLRB No. 27) Irvine, CA May 31, 2001.