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

June 15, 2001 W-2795

CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

B & C Contracting Co., Kissimmee, FL
Beta Steel Corp., Portage, IN
Desert Pines Gulf Club, Las Vegas, NV
Globe Aviation Services, Boston, MA
In House Health, Inc., Virginia Beach and Suffolk, VA
Kanawha Stone Company, Inc., Nitro, WV
Outokumpu Copper Franklin, Inc., Franklin, KY
Stage Employees St. Louis Local 6, St. Louis, MO
Star Trek: The Experience, Las Vegas, NY
Wolgast Corporation, Saginaw, MI

OTHER CONTENTS

List of Decisions of Administrative Law Judges

List of No Answer to Complaint Case

List of Test of Certification Cases

Press Release:
(R-2425) NLRB Allows FOIA Requests Sent Online Using Web Site

B & C Contracting Co. (8-CA-29634, 29914; 334 NLRB No. 25) Kissimmee, FL June 6, 2001. Affirming the administrative law judge in this "salting" case, the Board concluded the Respondent did not violate Section 8(a)(3) and (1) of the Act by failing to accept applications from, and consider for employment, a group of 11 union applicants on January 7, 1998, and seven more union members on the next day. The applicants filled out and submitted applications to supervisor Dave Whitson at the Respondent's onsite trailer at its Leipsic, Ohio project. The judge had found Whitson did not hire the applicants because they were carpenters, millwrights, and they were unwilling to travel. [HTML] [PDF]

The Board further adopted the judge's finding that the Respondent did not violate the Act by failing to accept applications from another group of applicants whose resumes the Union faxed on February 2 and 3, 1998, to the Leipsic site. The judge credited Whitson's testimony that he never physically received the faxed resumes even though the faxed applications had been received by the Respondent's fax machine. The Board declined to adopt the "rigid rule" proposed by the General Counsel, namely that "knowledge of a fax transmission received by an employer's fax machine during regular business hours should be imputed to the employer, regardless of whether the person to whom the fax was addressed actually received the fax." It distinguished the facts in this case from *Clow Water Systems Co.,* 317 NLRB 126 (1995), enf. denied 92 F.3d 441 (6th Cir. 1996).

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charges filed by Carpenters Northwest Ohio District Council; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Toledo, OH Nov. 2 - 4, 1998. Adm. Law Judge Earl E. Shamwell Jr. issued his decision June 4, 1999.

* * *

Desert Pines Gulf Club (28-CA-16347; 334 NLRB No. 36) Las Vegas, NV June 7, 2001. The Board adopted the administrative law judge's finding that the Respondent did not unlawfully discharge Sergio De La Cruz for unsatisfactory job performance. The General Counsel had claimed the discharge was motivated by anti-union considerations related to a union organizing campaign. There were no exceptions to the judge's conclusions that the Respondent violated Sec. 8(a)(3) and (1) of the Act by issuing warnings to employees Ricardo Madrigal, Pedro Herrera, Roberto Padilla, and De La Cruz; Sec. 8(a)(1) by impermissibly restricting the right of employees to solicit for the Union; and Sec. 8(a)(1) by creating the impression of surveillance of employees' union activities. [HTML] [PDF]

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charges filed by Laborers Local 872; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Las Vegas, Sept. 26, 2000. Adm. Law Judge Thomas Michael Patton issued his decision Feb. 15, 2001.

* * *

Outokumpu Copper Franklin, Inc. (26-RC-8236; 334 NLRB No. 39) Franklin, KY June 6, 2001. The Board reversed the Regional Director's finding that a petitioned-for-unit of production and maintenance employees - - excluding temporary employees--was appropriate. The Board concluded that "the temporary employees supplied by the staffing agencies share such a strong community of interest with the employees in the unit found appropriate that their inclusion is required." [HTML] [PDF]

In his analysis, governed by *M.B. Sturgis,* 331 NLRB No. 173 (2000), the Regional Director acknowledged that the regular and temporary workers share common working conditions, but concluded that the dissimilar terms and conditions support excluding the temporaries from the unit. In this regard, he relied on the fact that the suppliers hire the temporaries and pay their workers' compensation, the temporaries receive lower hourly wage rates, they are ineligible for certain employer benefits and seniority, and they have a different attendance policy. The Board, however, concluded:

> We find that these dissimilar terms and conditions of employment are substantially outweighed by the many and

common terms and conditions of employment shared by the regular and temporary employees. The temporaries work side-by-side with the regular production employees. Temporaries and regular employees perform the same work functions and are supervised by the same supervisors. The Employer has four shifts, and the temporaries, like the regular employees, are assigned to all four. The regular and temporary employees work in the same plant areas and are part of the same production operations.

Finally, the Board held the Regional Director did not err in finding it unnecessary to address the joint employer issue because the Employer is a statutory employer of the temporaries and the Union named only the Employer in the petition.

(Members Liebman, Truesdale, and Walsh participated.)

* * *

Globe Aviation Services (1-RC-21189; 334 NLRB No. 34) Boston, MA June 8, 2001. In deciding the matter of jurisdiction, the Board held that Globe Aviation Services (Globe) is engaged in interstate common carriage so as to bring it within the jurisdiction of the National Mediation Board (NMB) under Section 201 of Title II of the Railway Labor Act (RLA). The Board affirmed the Regional Director's dismissal of the petition filed by Service Employees Local 254, relying on the NMB's opinion that the work in question is traditionally done by carriers and that the carriers exercise "substantial control over Globe and its employees," and in its view, Globe is a carrier subject to the RLA. [HTML] [PDF]

Local 254 sought to represent all cleaners employed by Globe at Logan International Airport in Boston, MA. Globe asserted that it is subject to the RLA because its employees perform traditional airline work, that the work is controlled by air carriers, and that the Board lacks jurisdiction under Section 2(2) of the National Labor Relations Act.

Concurring, Member Liebman joined her colleagues in deferring to the opinion of the NMB that Globe and its employees are subject to the RLA. However, she set forth two queries regarding the NMB's opinion in the instant matter: a) Whether cleaning airline terminals is work that is traditionally performed by employees in the airline industry and b) Whether the air carriers exercise substantial control over the work performed by Globe's employees.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

* * *

Paramount Parks, Inc. d/b/a Star Trek: The Experience (28-CA-15464, et al.; 334 NLRB No. 29) Las Vegas, NV June 6, 2001. The Board held, in agreement with the administrative law judge, that during the course of the Union's organizational campaign, the Respondent committed various violations of Section 8(a)(1), (3), (4), and (5) of the Act. The violations included, among others, disparaging employees for engaging in concerted activities, inviting employees to quit because they engaged in union and protected activities, promising employees wage increases and improved benefits if they rejected the Teamsters Local 995, refusing to allow employee Tania Lonkouski to rescind her resignation on September 30, 1998, rescinding accommodation for Tracy Jordan's reporting time, and suspending and discharging Jordan for filing an unfair labor practice charge with the Board. Citing *Epilepsy Foundation of Northeast Ohio,* 331 NLRB No. 92 (2000) (decided following the close of the hearing), the Board, in agreement with the judge, also found that the Respondent violated the Act by denying an employee's request for a witness during an investigatory interview. [HTML] [PDF]

The Board reversed the judge's dismissal of the complaint allegation that the Respondent violated Section 8(a)(1) when it confiscated a cake displaying a prounion message. It found that the Respondent's past practice was to permit employees to bring cakes to work to share with their colleagues and by treating this particular cake differently because it displayed a prounion message, the Respondent acted in a disparate manner, violating Section 8(a)(1).

On January 11, 2001, the Board granted the General Counsel's motion to sever the representation case and two of the unfair labor practice cases from the instant proceeding and, remanded the cases to the Regional Director for approval of a settlement agreement reached by the Respondent and Teamsters Local 995.

(Members Liebman, Truesdale, and Walsh participated.)

Charges filed by Culinary Workers Local 226, Hotel & Restaurant Employees Local 165, and Cynthia Veto, Roger Guinn, and John Stepp, individuals; complaint alleged violations of Section 8(a)(1), (3), (4), and (5). Hearing at Las Vegas on various dates between Feb. 1 and Mar. 16, 2000. Adm. Law Judge James L. Rose issued his decision Aug. 28, 2000.

* * *

Wolgast Corporation (7-CA-42474; 334 NLRB No. 31) Saginaw, MI June 5, 2001. The Board agreed with the administrative law judge that the Respondent violated Section 8(a)(1) of the Act by interfering with a Carpenters Local 706 official's access to the jobsite pursuant to the access provision in the Union's collective-bargaining agreement with Acoustical Arts, one of ten subcontractors working for the Respondent on the Cinema Hollywood jobsite in Birch Run, Michigan. The contract between Acoustical Arts and Carpenters Local 706 contains a union access clause stating that

> [b]usiness representatives shall have access to all jobs at all times where possible. A Representative of the Michigan Regional Council of Carpenters shall have the right to visit the job during working hours to interview the Employer, Steward, or men at work but shall not hinder the progress of work. [HTML] [PDF]

In agreement with the judge, the Board found that the holding in *CDK Contracting Co.,* 308 NLRB 1117 (1992), is controlling in this case. It found no merit to the Respondent's contention that the Union was not entitled to access because there were no Acoustical Arts carpenter employees on the jobsite on October 14, 1999. The access provision of the contract does not restrict the Union's visitation right to days when employees it represents are present at the jobsite. In this matter, the purpose of Union Official Leon Turnwald's visit was to investigate a safety complaint lodged by a union member who worked on the jobsite the day before.

(Members Liebman, Truesdale, and Walsh participated.)

Charge filed by Carpenters Local 706; complaint alleged violation of Section 8(a)(1). Hearing at Saginaw, March 30 and 31 and June 13, 2000. Adm. Law Judge Martin J. Linsky issued his decision Oct. 25, 2000.

* * *

In Home Health, Inc. (5-CA-29110; 334 NLRB No. 37) Virginia Beach and Suffolk, VA June 8, 2001. The Board affirmed the administrative law judge's finding that by announcing and implementing a wage increase for its employees subsequent to receiving a petition for an NLRB-conducted election and by threatening its employees with loss of jobs if the Union won, the Respondent violated Section 8(a)(1) of the Act. The judge held that the wage increase was linked to the employees' union activities and the Respondent's desire to remain nonunion. [HTML] [PDF]

(Chairman Hurtgen and Members Truesdale and Walsh participated.)

Charge filed by Longshoremen's International; complaint alleged violation of Section 8(a)(1). Hearing at Virginia Beach on Feb. 22, 2001. Adm. Law Judge Benjamin Schlesinger issued his decision April 2, 2001.

* * *

Kanawha Stone Company, Inc. (9-CA-35738; 334 NLRB No. 28) Nitro, WV June 6, 2001. A Board majority of Members Liebman and Truesdale held that they need not rely on the administrative law judge's finding of animus in adopting the judge's finding that the Respondent violated Section 8(a)(1) by granting employees the benefit of show-up pay during the organizing campaign. *American Freightways Co.,* 124 NLRB 146, 147 (1959). They said "[a]bsent a legitimate business reason, it is sufficient to show that the benefit was granted during an organizing campaign." *Mariposa Press,* 273 NLRB 528 (1984). [HTML] [PDF]

Members Liebman and Truesdale adopted the judge's dismissal of the complaint allegations that Respondent violated Section 8

(a)(3) and (1) by refusing to consider and hire union affiliated applicants because they were union members and that the Respondent's hiring policy is inherently destructive of employee rights. Citing *FES (A Division of Thermo Power),* 331 NLRB No. 20 (2000), the majority determined that the General Counsel failed to meet his threshold burden of showing that the Respondent was hiring or had concrete plans to hire when the applications were submitted. The Respondent claimed that it uses three criteria when hiring for a job: (1) employees on temporary lay off, (2) former employees, or (3) referrals from existing employees. The Respondent contended persons who do not fall into one of these three categories are not considered for hire and that even absent their union activity, none of the applicants met any of its three hiring criteria.

The majority also held that the Respondent unlawfully discharged employee Philip Selman in violation of Section 8(a)(3) and adopted the judge's rationale, including his reliance, in finding animus, on conduct that did not independently violate Section 8 (a)(1). Chairman Hurtgen, concurring and dissenting in part, determined that Selman was a supervisor from September through mid-November 1997 and, therefore, the Respondent did not violate Section 8(a)(1) by allegedly interrogating him on November 7 and 10, 1997 because his union activity during that period was not protected. He agreed that Selman was unlawfully discharged but relied on the timing of his January 20, 1998 layoff, i.e. one day after management witnessed his handbilling on the jobsite. Chairman Hurtgen also relied on the fact that the Respondent acted contrary to its established practice when it subsequently informed Selman that his layoff was permanent.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charge filed by Operating Engineers Local 132; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Charleston, WV on Feb. 2-5, 1999. Adm. Law Judge Karl H. Buschmann issued his decision Sept. 23, 1999.

* * *

Stage Employees St. Louis Local 6 (Kiel Center Partners, L.P. d/b/a Savvis Center) (14-CD-1011; 334 NLRB No. 1) St. Louis, MO June 6, 2001. The Board decided that Kiel Center Partners' employees represented by Stage Employees Local 6 rather than those represented by Electrical Workers (IBEW) Local 1 are entitled to perform the operation of the moving theatrical lights during events at Savvis Center, 1401 Clark Avenue, St. Louis, MO. In determining its award, the Board relied on the factors of employer preference and assignment, employer past practice, area practice, relative skills and training, and economy and efficiency of operations. [HTML] [PDF]

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

* * *

Beta Steel Corp. (25-CA-25139; 334 NLRB No. 32) Portgage, IN June 6, 2001. The Board found that the Respondent's general denials to the allegations in paragraphs 2, 6 and the summary paragraph of the compliance specification are inadequate under the specificity requirements of Section 102.56(b) and (c) of the Board's Rules and Regulations; and granted the General Counsel's motion for summary judgment as to paragraph 2 (which pertains to the backpay period) and paragraph 6 and the summary paragraph (which pertain to the amount of backpay due the Charging Party). The proceeding was remanded to the Regional Director to arrange a hearing limited to interim earnings and expenses, vacation benefits, medical benefits, 401(k) benefits, and the Respondent's affirmative defenses. In a prior decision, the Board had ordered the Respondent to make whole Dennis Holland for any loss of earnings and other benefits as a result of his unlawful discharge. 326 NLRB 1267 (1998). On March 14, 2000, the Seventh Circuit enforced the Board's order. Beta Steel Corp. v. NLRB, 210 F.3d 374 (7th Cir. 2000). [HTML] [PDF]

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

General Counsel filed motion for partial summary judgment Nov. 20, 2000.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

King Soopers, Inc. (an Individual and Food & Commercial Workers Local 7) Westminster, CO May 18, 2001. 27-CA-16270, et al; JD(SF)-37-01, Judge Thomas M. Patton.

King Soopers, Inc. (Food & Commercial Workers Local 7) Denver, CO May 22, 2001. 27-CA-16902-1, et al.; JD(SF)-40-01, Judge James L. Rose.

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

Michigan College of Beauty, National Staff Management, Inc. (an Individual) Troy, MI June 1, 2001. 7-CA-43150; JD(NY)-21-01, Judge Steven Fish.

MSGi Direct (Longshoremen ILWU Local 6) Berkeley, CA May 31, 2001. 32-CA-17506, et al.; JD(SF)-46-01, Judge Timothy D. Nelson.

Titan Tire Corporation (Steelworkers Local 164L) Des Moines, IA June 5, 2001. 18-CA-15369, et al.; JD-70-01, Judge Benjamin Schlesinger.

A. G. Mazzocchi, Inc. (Teamsters Local 560) East Hanover, NJ June 5, 2001. 22-CA-24212; JD(NY)-22-01, Judge D. Barry Morris.

Waste Management of New York, LLC (Laborers Local 108) Brooklyn, NY June 8, 2001. 29-CA-24070, 24126; JD(NY)-23-01, Judge Steven Fish.

Gimrock Construction, Inc. (Operating Engineers Local 487) Miami, FL June 8, 2001. 20-CA-20173, 20527; JD(ATL)-35-01, Judge Pargen Robertson.

Res Care, Inc. d/b/a South Bronx Job Corps Center (AFSCME District Council 1707) Bronx, NY June 8, 2001. 2-CA-32700; JD(NY)-24-01, Judge Eleanor MacDonald.

O'Neal Steel, Inc. (Steelworkers) Birmingham, AL June 8, 2001. 10-CA-32688; JD(ATL)-36-01, Judge William N. Cates.

* * *

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.)

Marquis-Stevens, Inc. (Carpenters Local 19) (34-CA-9410; 334 NLRB No. 35) Larksville, PA June 7, 2001.

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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.)

Kentucky Tennessee Clay Company (Boilermakers) (11-CA-18941, 18951; 334 NLRB No. 33) Langley, SC June 5, 2001

Dillon Companies, Inc. d/b/a King Soopers (Allied-Industrial, Chemical and Energy Workers Local 5-920) (27-CA-17309; 334 NLRB No. 38) Denver, CO June 8, 2001.