

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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July 13, 2001

W-2799

CASES SUMMARIZED

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CORRECTION: In the summary of *Regal Cinemas, Inc.*, 334 NLRB No. 41, that appeared in the *Weekly Summary* of June 29, 2001, the first sentence of the second paragraph should have read: "In a reversal of the judge, Chairman Hurtgen and Members Liebman and Truesdale found that the Respondent did not violate Section 8(a)(5) and (1) by conditioning severance pay for employees represented by Stage Employees IATSE Local 125 on their willingness to sign a release because the evidence failed to establish that the Respondent insisted to impasse in bargaining that severance pay for the employees was conditioned on their agreement to sign a general release."

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Carpenters Local 275 (Lymco Construction Co.) (1-CD-1011; 334 NLRB No. 67) Manchester, NH July 3, 2001. The Board quashed the notice of hearing, after concluding that the dispute "is representational in nature, and is not the type of dispute Section 10(k) was designed to address," citing *Glass & Pottery Workers Local 421 (A-CMI Michigan Casting Center)*, 324 NLRB 670, 674 (1997). Charging Party Lymco Construction Co. asserted that in late spring and early summer of 1999, assignment of its metal siding work on the Astra project in Waltham, Massachusetts was being disputed by competing demands of Sheet Metal Workers Local 17 and Carpenters Local 275. Following its assignment of the work to a composite crew of employees, some of whom were represented by the Carpenters and others by Local 17, the latter filed a grievance against Lymco alleging that it violated the contract's no-subcontracting clause. Lymco argued that Local 17's grievance filing and the Carpenters' threat to strike if Lymco changed the assignment constitute Section 8(b)(4)(D) violations and require the Board to enter a Section 10(k) award. The Board disagreed, finding that the dispute is not over the assignment of the work to one group of employees instead of a different group, but concerned which of two local unions should represent the employees currently performing the work. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

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Lee Lumber and Building Material Corp. (13-CA-29377, et al.; 334 NLRB No. 62) Chicago, IL June 28, 2001. The Board reaffirmed that when an employer has unlawfully refused to recognize or bargain with an incumbent union, any employee disaffection arising during the course of the unlawful conduct will be presumed to be caused by that conduct. Absent unusual circumstances, the presumption can be rebutted only if the employer can show that the disaffection arose after it resumed recognizing the union and bargained for a reasonable period of time without committing other unfair labor practices that would adversely affect the bargaining. The Board modified the "reasonable period of time" standard, however. It held that, in such circumstances, a "reasonable period of time" before the union's status as the employees' bargaining representative can be challenged will be no less than 6 months and no more than 1 year. [\[HTML\]](#) [\[PDF\]](#)

Whether a "reasonable period of time" is only 6 months, or some longer period up to 1 year, will depend on a multifactor analysis. Under that analysis, the Board will consider whether the parties are bargaining for an initial contract, the complexity of the issues being negotiated and the parties' bargaining procedures, the total amount of time elapsed since the bargaining commenced and the number of bargaining sessions, the amount of progress made in negotiations and how near the parties are to agreement, and whether the parties have bargained to impasse. The factors tending to establish that a reasonable period of time has elapsed are: bargaining for a renewal, as opposed to an initial agreement, the absence of unusually complex issues or bargaining processes, the passage of a relatively long time after the 6-month insulated period, a relatively large number of bargaining sessions, the parties' failure to come close to reaching agreement, and the existence of a bargaining impasse. The factors tending to establish that a reasonable period of time has not elapsed are: bargaining for an initial agreement, the existence of unusually complex issues or bargaining processes, relatively little passage of time after the 6-month period, a relatively small number of bargaining sessions, a strong likelihood of reaching agreement in the near future, and the absence of impasse.

(Chairman Hurtgen and Members Liebman, Truesdale, and Walsh participated.)

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The Buschman Co. (9-CA-36311; 334 NLRB No. 63) Cincinnati, OH July 5, 2001. Members Liebman and Truesdale, with Chairman Hurtgen dissenting, agreed with the administrative law judge that a meeting of the minds existed on all material terms of the agreement, including an effective date, and that the Respondent violated Section 8(a)(5) and (1) of the Act when it refused to execute its collective-bargaining agreement with Ironworkers Local 522. [\[HTML\]](#) [\[PDF\]](#)

On July 8, 1998, the parties began negotiations for a successor agreement to the 1993-1998 agreement that was due to expire on August 6. At the first session, the Union proffered a complete proposal for a new agreement with an effective date of August 7. On August 5, the Respondent gave the Union a typed counterproposal of proposed changes to the existing agreement that contained no effective date. On August 6, the Union made its own handwritten counterproposal of changes that contained no effective date. The Respondent accepted the Union's counterproposal. The Union then distributed to employees a complete

version of the new agreement that contained an effective date of August 7. The employees voted on August 6 not to ratify the agreement and went on strike. On September 4, the employees voted to accept the August 6 proposal and the Union presented to the Respondent an executed copy of the ratified agreement, which included the August 7 effective date. On September 8, the Respondent sent a proposed "strike settlement agreement" to the Union, which contained numerous terms that were the subject of previous negotiations. The Union rejected it. On September 13, the Union sent a copy of the signed August 6 agreement to the International Union for its approval. The International approved the agreement on September 17, and on September 23, the Union mailed a copy of the approved agreement to the Respondent.

The judge found, and the majority agreed, that the Respondent clearly communicated its position that the Union was, at all times between August 6 and September 4, free to accept the August 6 agreement and that when the Union did so on September 4, it created a binding contract that the Respondent was required to execute. The majority rejected the Respondent's contentions that there was no meeting of the minds on an effective date and that employee ratification of the August 6 agreement did not create a binding contract because the agreement specifically required the International Union's approval before it would become binding, which did not occur until September 17 -- after it modified the agreement by proposing new terms in the form of the "strike settlement agreement." The majority found the International's approval was "merely perfunctory" and that the contract was binding on the parties before the Respondent attempted to modify it on September 8.

In dissent, Chairman Hurtgen found that there never was a meeting of the minds as to the effective date because the purported contract was based on the August 6 proposal, and that proposal contained no effective date. He also concluded that it has not been established that International action was purely ministerial.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charge filed by Ironworkers Local 522; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Cincinnati, March 1-2, 1999. Adm. Law Judge William N. Cates issued his decision May 11, 1999.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Zimmerman Plumbing and Heating Co., Inc. (Sheet Metal Workers Local 7) Kalamazoo, MI June 29, 2001. 7-CA-37323, et al.; JD-88-01, Judge Arthur J. Amchan.

Goad Company (Plumbers and Steamfitters Local 420) St. Louis, MO June 29, 2001. 14-CA-25782(E), 25793(E); JD(ATL)-44-01, Judge George Carson II.

Home Quality Management d/b/a Bayside Care Center (Food & Commercial Workers Local 400) Lexington Park, MD July 3, 2001. 5-CA-28438, et al.; JD-90-01, Judge Irwin H. Socoloff.

Lincoln Park Subacute and Rehab Center Inc., (District 1199J, AFSCME) Lincoln Park, NJ July 3, 2001. 22-CA-22284, et al.; JD(NY)-30-01, Judge Raymond P. Green.

Toll Manufacturing Company (an Individual) Daytona, OH July 5, 2001. 9-CA-37449; JD-91-01, Judge John T. Clark.

Avondale Industries, Inc. (New Orleans Metal Trades Council) Avondale, LA July 6, 2001. 15-CA-12639, et al.; JD(ATL)-08-01, Judge Philip P. McLeod.

Laborers Local 320 (an Individual) Longview, WA June 22, 2001. 36-CB-2318; JD(SF)-51-01, Judge Jay R. Pollack.

BP Exploration (Alaska), Inc. (Paper, Allied-Industrial Chemical and Energy Workers Local 8-369) Prudhoe Bay, Alaska June 26, 2001. 16-CA-26791; JD(SF)-54-01, Judge James M. Kennedy.

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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 the unfair labor practice proceeding. The case did not present any other issues.)

Saint-Gobain Industrial Ceramics, Inc. (Steelworkers Local 9436) (3-CA-22879-2; 334 NLRB No. 60) Niagara Falls, NY July 3, 2001.

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WITHDRAWAL OF ANSWER

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

Ponce de Leon Healthcare, Inc. (UNITE) (12-CA-19053; 334 NLRB No. 66) Miami, FL July 3, 2001.