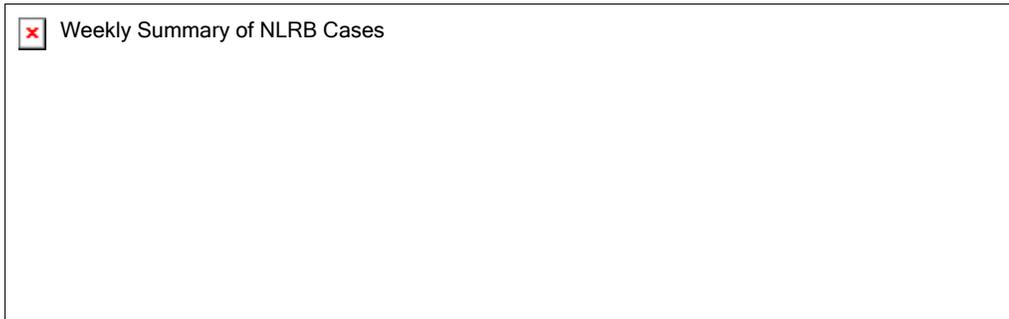


ABOUT THE WEEKLY SUMMARY

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 20, 2001

W-2800

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Heritage Container, Inc. (21-CA-32412, et al.; 334 NLRB No. 65) Riverside, CA July 6, 2001. The administrative law judge

found, with Board approval, that the Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from Teamsters Local 578. The Board agreed with the judge that the Respondent may not rely on the antiunion petition it received to withdraw recognition because it committed unfair labor practices that reasonably tended to contribute to employee disaffection from the Union. Even if the employee petition were not tainted by the Respondent's unremedied unfair labor practices, the Respondent would not be legally entitled to withdraw recognition, the Board explained, noting the judge's finding that the bargaining unit consisted of 69 employees, but only 24 unit employees signed the petition, an insufficient showing to establish a good-faith reasonable uncertainty as to the Union's continuing majority status. See *Levitz*, 333 NLRB No. 105 (2001), slip op. at 12-13, which was issued subsequent to the judge's decision. No exceptions were filed to the judge's grant of an affirmative bargaining order to remedy the Respondent's unlawful withdrawal of recognition. [\[HTML\]](#) [\[PDF\]](#)

In *Levitz*, the Board held that an employer may unilaterally withdraw recognition from an incumbent union only where the union has actually lost the support of a majority of the bargaining unit employees. The Board overruled *Celanese Corp.*, 95 NLRB 664 (1951), and other decisions that allowed employers to withdraw recognition merely by establishing an objectively based, good-faith reasonable doubt as to unions' continued majority support. It held that the new standard would only be applied prospectively; "all pending cases involving withdrawals of recognition [will be decided] under existing law: the 'good-faith uncertainty' standard as explicated by the Supreme Court" in *Allentown Mack Sales & Service v. NLRB*, 522 U.S. 359 (1998). *Id.* slip op. at 12. The Board stated that its new analysis was limited "to cases where there have been no unfair labor practices committed that tend to undermine employees' support for unions." *Id.* at fn. 1.

As Chairman Hurtgen stated in his concurring opinion in *Levitz*, he does not embrace the new rule of that case. He agreed with his colleagues that pre-*Levitz* law should be applied in the instant case. Applying that law, the Chairman affirmed the judge's finding that the Respondent could not rely on the employee petition to establish a good-faith uncertainty of the Union's majority status. He relied solely on these facts: (1) the employees who signed the petition represented substantially less than a majority of the unit; and (2) the Respondent provided no evidence, other than the petition, of the Union's loss of majority support.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charges filed by Teamsters Local 578; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Los Angeles, April 19-21, 1999. Adm. Law Judge Michael D. Stevenson issued his decision Oct. 19, 1999.

* * *

Ray Angelini, Inc. (4-CA-24904; 334 NLRB No. 61) Sewell, NJ July 5, 2001. The Board affirmed the administrative law judge's conclusion that the Respondent violated Section 8(a)(1) of the Act by filing and maintaining its unmeritorious lawsuit against Electrical Workers IBEW Local 98 in retaliation for the exercise of Section 7 rights (reporting to public officials the Respondent's prevailing-wage violations on public works projects and lobbying them to award those projects to union shop rather than to open shop contractors). The Board noted that these decisions, relied on by the judge, have subsequently been enforced: *Petrochem Insulation, Inc.*, 330 NLRB No. 10 (1999), enf. 240 F.3d 26 (D.C. Cir. 2001); and *BE & K Construction Co.*, 329 NLRB No. 68 (1999), enf. 246 F.3d 619 (6th Cir. 2001). It did not adopt the judge's reliance on the language of the Respondent's filings to the district court as discussed in sec. II, D, "Analysis and Conclusions," par. 3, last sentence and fn. 17 of her decision. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charge filed by Electrical Workers IBEW Local 98; complaint alleged violation of Section 8(a)(1). Hearing at Philadelphia on Feb. 22, 2000. Adm. Law Judge Nancy M. Sherman issued her decision Sept. 26, 2000.

* * *

Metro Detroit Valet Parking, Inc.; Greektown Casino LLC (7-CA-43633; 334 NLRB No. 71) Detroit, MI July 11, 2001. In the absence of good cause being shown for the failure of Metro Detroit Valet Parking, Inc. (Respondent Metro) to file a timely answer, the Board granted the General Counsel's motion for partial summary judgment and found that Respondent Metro

violated Section 8(a)(3) and (1) of the Act by discharging Ronnie Peter because of his activities for Teamsters Joint Council 43. The complaint alleged that Greektown Casino LLC (Respondent Casino) is the successor to Respondent Metro and is jointly liable with Respondent Metro for affirmatively remedying the alleged unfair labor practices pursuant to *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973). Respondent Casino filed an answer to the complaint and the General Counsel did not seek summary judgment against it. The Board did not pass on whether Respondent Casino is liable for Respondent's Metro's unfair labor practices. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charge filed by Teamsters Joint Council 43; complaint alleged violation of Section 8(a)(1) and (3). General Counsel filed motion for partial summary judgment May 18, 2001.

* * *

Public Service Co. of Oklahoma (PSO) (17-CA-18967, et al.; 334 NLRB No. 68) Tulsa, OK July 12, 2001. The Board affirmed the administrative law judge's finding that the Respondent unlawfully failed to bargain in good faith with the Union for a successor collective-bargaining agreement in 1996. The Board pointed out that judge had found "the Respondent unlawfully insisted on proposals that granted it unilateral control over virtually all significant terms and conditions of employment during the life of the contract, thereby leaving the Union and the employees with far fewer rights than they would possess without any contract." [\[HTML\]](#) [\[PDF\]](#)

(Members Liebman, Truesdale, and Walsh participated.)

Charges filed by Electrical Workers Local 1002 [IBEW]; complaint alleged violation of Section 8(a)(5) and (1). Hearing in Tulsa, 9 days of trial in March 1998. Adm. Law Judge Clifford H. Anderson issued his decision Oct. 30, 1998.

* * *

Bartlett Collins Co. (17-RC-11953; 334 NLRB No. 76) Sapulpa, OK July 11, 2001. The Board concluded, contrary to the Regional Director, that the smallest appropriate unit encompassing the mold repair employees must also include the Employer's mold-cleaning employees. The Regional Director's Decision and Direction of Election on March 26, 2001, had found appropriate the petitioned-for unit of mold makers, machinists, senior machinist, and lead man (mold repair employees) at the Employer's Sapulpa, Oklahoma facility. The Employer had argued the petitioned-for unit did not constitute a craft unit or a functionally distinct group, and that only a wall-to-wall unit is appropriate for purposes of collective bargaining. [\[HTML\]](#) [\[PDF\]](#)

(Members Liebman, Truesdale, and Walsh participated.)

* * *

Miller Waste Mills, Inc., d/b/a RTP Co. (18-CA-14768; 334 NLRB No. 69) Winona, MN July 11, 2001. Affirming the administrative law judge, the Board held the Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union on February 26, 1998 and thereafter dealing directly with employees -- based upon receipt the day before of a notice that a majority of employees had signed a petition stating they no longer wanted to be represented by the Union. The Board explained the sequence of events and the Respondent's unfair labor practices leading up to the employee petition and its withdrawal of recognition as follows: [\[HTML\]](#) [\[PDF\]](#)

The Respondent began protesting the Union's representative status immediately after the February 11, 1996 affiliation election. On February 20, 1997, the Board ordered the Respondent to recognize and bargain with the Union. Bargaining commenced in late August 1997. After only seven sessions of Board-ordered bargaining for an initial contract, the Respondent, starting on January 2, 1998, acted to influence its employees away from union representation by blaming the Union for preventing an employee wage increase and by dealing directly with employees regarding significant terms and conditions of employment.

As a remedy, the Board ordered an affirmative bargaining order, since "it is only by restoring the status quo ante and requiring the Respondent to bargain with the Union for a reasonable period of time that employees will be able to fairly decide for themselves whether they wish to continue to be represented by the Union or adopt some other arrangement."

(Members Liebman, Truesdale, and Walsh participated.)

Charge filed by Auto Workers [UAW]; complaint alleged violation of Section 8(a)(1) and (5). Hearing in Minneapolis, June 16-19 and July 7 and 8, 1998. Adm. Law Judge Arthur J. Amchan issued his decision Sept. 22, 1998.

* * *

Food & Commercial Workers Local 1776 (4-CC-2210; 334 NLRB No. 73) Norristown, PA July 12, 2001. The Board majority of Members Liebman and Truesdale, agreeing with the administrative law judge's finding, dismissed a complaint against the Respondent Union alleging it violated Section 8(b)(4)(i) and (ii)(B) of the Act by picketing a July 16, 1998 meeting of the Metropolitan Regional Council of Carpenters (the Council), a neutral employer, with an object of forcing or requiring the Council "and other persons to cease using, selling, handling, transporting, or otherwise dealing in the services of the [Carpenters Health & Welfare] Fund [(the Fund)], and to cease doing business with the Fund." Relying on *DeBartolo Corp. v. Florida Gulf Coast Trades Council*, 485 U.S. 568 (1988), the Board held that the two elements necessary to find such a violation -- unlawful conduct and an unlawful object--were absent here. [\[HTML\]](#) [\[PDF\]](#)

Dissenting Member Hurtgen pointed out that DeBartolo drew a distinction between handbilling and picketing, and held that handbilling without picketing does not coerce secondary employers. He would find a Section 8(b)(4)(ii)(B) violation against the Union, maintaining "in the instant case, picketing of a neutral in order to accomplish a labor objective elsewhere is unlawful."

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charge filed by Carpenters Metropolitan Regional Council of Philadelphia and Vicinity; complaint alleged violation of Section 8(b)(4)(i) and (ii)(B). Hearing in Philadelphia, Dec. 16, 1998. Adm. Law Judge James L. Rose issued his decision Feb. 2, 1999.

* * *

Wyndham Palmas Del Mar Resort and Villas (24-CA-7798; 334 NLRB No. 70) Humacao, PR July 13, 2001. The Board majority of Members Liebman and Walsh concluded that the Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union on the basis of an antiunion petition signed by employees during the 60-day notice-posting period prescribed by a settlement agreement resolving various unfair labor practice charges. [\[HTML\]](#) [\[PDF\]](#)

On September 5, 1997, the Respondent was presented with a petition in which 183 (of 255) unit employees clearly stated that they did not wish to be represented by the Union. Employees had signed the petition on dates between July 10 and August 3. The majority, analyzing the case under *Master Slack*, 271 NLRB 78, agreed with the General Counsel's contention that the employee petition was tainted by unremedied unfair labor practices because the signatures on the petition were collected during the 60-day notice-posting period of the settlement agreement (in Case 24-CA-7642). The majority found "the Respondent's conduct covered by the settlement agreement would reasonably have led to employee disaffection from the Union and would have undermined the Union's support among employees. Under these circumstances...the Respondent could not lawfully challenge the Union's majority status on the basis of the antiunion petition that was signed during 60-day posting period."

In a dissenting opinion, Member Hurtgen said *Master Slack* was inapposite since it is used where proven unfair labor practices are followed by an employee disaffection from the Union. He stated: "The *Master Slack* analysis determines whether the unfair labor practices caused the disaffection. In the instant case, *there are no proven unfair labor practices*. There is only an informal settlement agreement with a non-admission clause. Thus, *Master Slack* has no relevance. Obviously, one cannot show that unlawful conduct has caused a disaffection if no unlawful conduct is shown."

Member Hurtgen further observed there was no showing that the Respondent had any responsibility for the decertification effort. "Yet, the majority extends the holding in *Master Slack* to cover a situation where the Respondent has not been found to violate the Act," he said.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charge filed by HEREIU Local 610; complaint alleged violation of Section 8(a)(1) and (5). Parties waived their right to a hearing before an administrative law judge.

* * *

Bo-Ty Plus, Inc. (11-CA-18574; 334 NLRB No. 74) Greenville, SC July 13, 2001. The Board adopted the administrative law judge's finding that the Respondent unlawfully refused to hire Lisa Johnson, Ronald Bowlin, and Linda Wood due to its belief that they had engaged in protected concerted activity (complaints relating to statutory benefits). The Board had severed Case 11-CB-3052, *Stage Employees IATSE (Bo-Ty Plus)*, 333 NLRB No. 54 (2001), from this case. In the earlier case, the Board found the Respondent Union unlawfully refused to refer Johnson, Bowlin, and Wood to work because of their involvement in filing and supporting internal union charges. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charge filed by Linda Wood, an individual; complaint alleged violation of Section 8(a)(1). Hearing in Greenville, Jan. 29-30, 2001. Adm. Law Judge George Carson II issued his decision April 23, 2001.

* * *

Onan Corp., a Wholly-Owned Subsidiary of Cummins, Inc. (18-RC-16729; 334 NLRB No. 80) Fridley, MN July 13, 2001. The Board ordered a second election in this case based in part on finding merit to the Union's objection that the Employer interfered with the election by offering to address employees' longstanding concern over a pension "offset" as part of a settlement of a separate class-action lawsuit filed by the employees. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Hurtgen and Members Liebman and Walsh participated.)

* * *

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

McGuire Plumbing and Heating, Inc. (Plumbers Local 176) Springfield, MO June 29, 2001. 17-CA-19698, 19698-2; JD(SF)-56-01, Judge William L. Schmidt.

Mercury Repair, Restoration and Fabrication, Inc., d/b/a Mercury Metals (Sheet Metal Workers Local 104) Watsonville, CA June 27, 2001. 32-CA-18145-1; JD(SF)-55-01, Judge Gerald A. Wacknov.

BP Exploration (Alaska), Inc. (Paper, Allied-Industrial Chemical and Energy Workers Local 8-369) Prudhoe Bay, AK June 26, 2001. 19-CA-26791; JD(SF)-54-01, Judge James M. Kennedy.

BCE Construction, Inc. (Carpenters Local 978) Overland Park, KS July 9, 2001. 17-CA-18556, et al.; JD(ATL)-45-01, Judge Pargen Robertson.

P & W Electric, Inc. d/b/a Pollari Electric (Electrical Workers [IBEW] Local 25) Brooklyn, NY July 10, 2001. 29-CA-23527, et al.; JD(NY)-31-01, Judge Jesse Kleiman.

Phelps Dodge Specialty Copper Products Co. (Electrical Workers Local 441 [IUE]) Elizabeth, NJ July 10, 2001. 22-CA-

24104; JD(NY)-32-01, Judge Raymond P. Green.

Trilogy Communications, Inc. (Electrical Workers Fifth District [IBEW]) Pearl, MS July 10, 2001. 15-CA-15926-1; JD(ATL)-46-01, Judge Keltner W. Locke.

American Postal Workers Charlotte Area Local (an Individual) Charlotte, NC July 10, 2001. 11-CB-3069(P); JD(ATL)-47-01, Judge Keltner W. Locke.