**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

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August 31, 2001 W-2806

## CASES SUMMARIZED

**SUMMARIES CONTAIN LINKS TO FULL TEXT**



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*Teamsters Local 122* (August A. Busch & Co.) (1-CB-8563, 8597, 1-CC-8727-2, et al.; 334 NLRB No. 137) Medford, MA Aug. 20, 2001. The Board upheld the administrative law judge's findings that: (1) the Respondent violated Section 8(b)(1)(A) and 8(b)(4)(i) and (ii)(B) of the Act by its conduct inside the Pour House, a Boston restaurant, on December 8, 1995, during a demonstration, including shouting slogans, destroying prizes, and intimidating customers; (2) the Respondent violated Section 8(b)(4)(i) and (ii)(B) by its conduct at Woody's Liquors in Boston on May 3 and 10, 1996 in appealing to prospective customers not to patronize Woody's Liquors, interfering with access of prospective customers to Woody's and its parking spaces, and intimidating Woody's customers by opening their shopping bags without consent and entering their vehicles without consent; and (3) the Respondent violated Section 8(b)(3) by its conduct during negotiations with August A. Busch for new collective-bargaining agreements between October 13, 1994 and September 11, 1996, which included refusing to provide Busch with relevant and necessary information and failing to meet with Busch at reasonable times. [HTML] [PDF]

The Board found, contrary to the judge, that the Respondent did not violate Section 8(b)(4)(i)(B) by its conduct outside the Poor House on December 8. On that evening, the Respondent held a joint promotion with radio station WZLX-FM. As Chris Paquin, general sales manager for WZLX arrived at the Pour House, the 8 to 10 picketers outside its front door urged him not to enter the premises, asked him why he wanted to go in, and told him to boycott Bud. Kathleen Nunnery, an account executive at WZLX, had a similar experience when she entered the Pour House. Susan Alexander, the WZLX account executive who had the Busch account, heard a picket should "Boycott Bud and WZLX" as she left the Pour House that evening.

Treating Paquin, Nunnery, and Alexander as employees of WZLX, the judge found that the Respondent violated Section 8(b)(4)(i)(B) through the picketers' statements. The Board reversed, finding that the picketers' conduct in calling on Paquin, Nunnery, and Alexander to boycott Busch and not to patronize the Pour House was not designed to induce or encourage them, in their status as employees of a secondary employer, to withhold their services from WZLX.

The judge found that the Respondent had a proclivity to violate Section 8(b)(4)(B) and that a broad cease-and-desist order was required to enjoin the Respondent from engaging in future secondary activity proscribed by Section 8(b)(4). He relied on the Respondent's conduct on three occasions during the course of its consumer boycott campaign that warranted the issuance of injunctions under Section 10(l) of the Act. Two of the incidents involved conduct, which was part of the allegations in this case (at the Pour House and Woody's Liquors), and the third, which involved "group shopping" allegations, was settled after 4 days of trial.

The Board declined to issue a broad cease-and-desist order and substituted a narrow remedial order since the preliminary injunctions and the formal settlement agreement do not establish that the Respondent has, in fact, committed violations of the Act. In so doing, it noted well-settled law that neither preliminary injunctions issued pursuant to Section 10(l) nor formal settlement agreements which include a nonadmissions clause establish that a respondent has actually committed violations of the Act. The Board adopted the judge's order, as part of the remedy for the 8(b)(3) violations, that the Respondent pay the General Counsel's and Busch's litigation costs for that portion of the trial in which the surface bargaining allegations were litigated. Contrary to the judge, the Board found Busch should be awarded its negotiation expenses.

(Chairman Hurtgen and Members Truesdale and Walsh participated.)

Charges filed by August A. Busch & Co. of Massachusetts; complaint alleged violation of Section 8(b)(1)(A) and 8(b)(4)(i) and (ii)(B), and Section 8(b)(3). Hearing at Boston, June 3-6, Aug. 5-9, Sept. 16, Oct. 1-3 and 7-10, Nov. 12-15 and 18-20, 1996, Jan. 21-23, Feb. 25 and March 3, 1997. Adm. Law Judge Wallace H. Nations issued his decision Jan. 16, 1998.

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*Intrepid Museum Foundation, Inc.* (2-CA-30347; 335 NLRB No. 1) New York, NY Aug. 22, 2001. Affirming the

administrative law judge's findings, Chairman Hurtgen and Member Truesdale held that the Respondent's reissuance of its drug testing policy on January 27, 1997 constituted notification to its employees of an existing policy, and thus it did not constitute a change in unit employees' terms and conditions of employment, and that the Respondent did not violate the Act by reissuing the policy or by discharging employee James Harty for failing the drug test administered pursuant to the reissued policy. Chairman Hurtgen and Member Truesdale, finding that the policy and the decision were based on the Respondent's reasonable belief that the employees were using drugs, agreed with the judge that the Respondent did not unilaterally change the 1990 drug testing policy by its decision to administer drug tests to unit employees on February 12, 1997, pursuant to the republication. The Respondent's announcement of random testing of bargaining unit employees-pursuant to its February 5 memo-constituted a unilateral change of the 1990 policy, in violation of Section 8(a)(5), they held in agreement with the judge. [HTML] [PDF]

Member Liebman, dissenting in part, would find that the Respondent violated Section 8(a)(5) and (1) not only by unilaterally changing its drug testing policy on February 5, 1997, without notifying and bargaining with Longshoreman's Local 1909, but also by "reissuing" its drug testing policy on January 27, 1997, and by discharging Harty on February 20. She would also find, therefore, that the drug test of all unit employees on February 12, 1997, was unlawful as a result of the unlawful changes in the drug testing policy. Member Liebman said "that by failing to implement the 1990 drug testing policy and by allowing it to lay dormant for more than 6 years, the Respondent established a practice of nonenforcement. Consequently, the Respondent had an obligation to notify and bargain with the Union before it reissued the drug testing policy and conducted the drug tests in 1997."

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charge filed by Longshoreman's Local 1909; complaint alleged violation of Section 8(a)(1) and (5). Hearing at New York, May 11-12, 1998. Adm. Law Judge Steven Fish issued his decision Nov. 12, 1998.

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*TCI Cablevision of Montana, Inc. d/b/a AT&T Broadband* (19-CA-26874; 335 NLRB No. 2) Missoula, MT Aug. 24, 2001. The Board upheld the administrative law judge's decision that the Respondent violated Section 8(a)(1) of the Act by suspending and discharging shop steward Benny Murphy because of his protected concerted activity. In defense, the Respondent claimed that it discharged Murphy for threatening employee Jim Hudson, then a union member, when he phoned Hudson at home about the nascent decertification movement and its adverse impact on the negotiations then underway. The judge found that the Respondent did not show that it had a good faith belief that Murphy engaged in serious misconduct during the course of his discussion with Hudson, stating: "I find that Respondent deliberately distorted Murphy's remarks to Hudson in order to rid itself of a 'passionate' and effective union steward disliked by management because he had become a formidable protagonist of the union cause." The Board, agreeing with the judge that Murphy's "marked man" expression was not a threat of death or bodily harm, noted the record does not indicate that the Respondent had any reason to believe that Murphy, a longtime employee, would have engaged in violent behavior. [HTML] [PDF]

(Members Liebman, Truesdale, and Walsh participated.)

Charge filed by Electrical Workers IBEW Local 44; complaint alleged violation of Section 8(a)(1). Hearing at Missoula on Oct. 24, 2000. Adm. Law Judge William L. Schmidt issued his decision Feb. 28, 2001.

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*Vallow Floor Coverings, Inc. and Vallow Carpet Installation, Inc., Alter Egos* (14-CA-24602; 335 NLRB No. 7) Edwardsville, IL Aug. 23, 2001. Members Liebman and Truesdale affirmed the administrative law judge's findings that Vallow Floor Coverings, Inc. (VFC), and Vallow Carpet Installation, Inc. (VCI) (together the Respondent) are alter egos; and that the Respondent violated Section 8(a)(5) of the Act by refusing, since March 14, 1991, to apply the terms of its collective-bargaining agreement with Carpenters Southern Illinois District Council to all bargaining unit employees. They also agreed with the judge's rejection of the Respondent's argument that the complaint is time-barred by Section 10(b) of the Act because the Union knew of the alleged violations as much as 6 years before it filed its charge. The judge found that the Union first

discovered that there were two Vallow companies performing the work, one of which (VFC) was not complying with the collective-bargaining agreement in early 1997 and, therefore, the original charge, which was filed June 4, 1997, was timely. [HTML] [PDF]

Members Liebman and Truesdale said central to their assessment of the judge's findings is the distinction the Board drew in *A&L Underground,* 302 NLRB 467, 469 (1991), between a simple failure to abide by the terms of a collective-bargaining agreement and an outright repudiation of the agreement itself. They agreed with the judge that the correct remedy is to require the Respondent to comply retroactively with its contracts commencing March 14, 1991, and to make employees whole from that date.

Chairman Hurtgen, concurring, agreed with the conclusion reached by his colleagues. He does not agree however that "an outright repudiation" of the agreement is the only event that will trigger the 10(b) period, holding: "Rather, a failure to apply the contract terms can amount to a de facto repudiation, provided that the union has actual or constructive knowledge of that failure. In the instant case, Respondent failed to adduce sufficient evidence that the Union had actual or constructive knowledge of such a repudiation or failure to apply the contract." The Chairman noted his agreement that VFC and VCI are alter egos. Although this case may not meet the standards of "fraudulent concealment," he said it is sufficiently close to warrant the application of that doctrine's remedial principles and, thus, he agreed to extend the remedy back to 1991.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charge filed by Carpenters Southern Illinois District Council; complaint alleged violation of Section 8(a)(1) and (5). Hearing at St. Louis, Nov. 18-19, 1997. Adm. Law Judge Irwin H. Socoloff issued his decision Nov. 2, 1998.

* * *

*Glendale Associates, Ltd., Glendale II Associates Limited Partnership, Glendale Orbach's Associates, and Donahue Schriber* (31-CA-22759; 335 NLRB No. 8) Los Angeles, CA Aug. 23, 2001. In agreement with the administrative law judge, the Board found that the Respondents violated Section 8(a)(1) of the Act by maintaining and enforcing a rule that prohibited union handbillers from identifying by name any tenant at the Respondents' facility. It adopted the judge's finding that the Respondents did not violate the Act by maintaining another rule requiring the Union to furnish in advance the names of all prospective handbillers. The judge's dismissal of Respondent Glendale Orbach's Associates from this proceeding on jurisdictional grounds was also affirmed in the absence of exceptions. [HTML] [PDF]

The Union handbilled near the Disney Store at the Respondents' retail shopping center in Glendale, CA, known as the Glendale Galleria. After commencing handbilling, union officials were informed of the rules regulating handbilling and were given an application and a packet of materials explaining what was necessary for compliance. The Union submitted an application that contained several deficiencies including the failure to furnish to the Respondents the names of those expected to participate and the failure to remove reference to the "Disney Store" on the handbills. The Union complied with the former request but declined to remove reference to the "Disney Store" from the handbills.

Relying on *Pruneyard Shopping Center v. Robins,* 447 U.S. 74 (1980), the Board stated that California law permits the exercise of speech and petitioning in private shopping centers, subject to reasonable time, place, and manner regulations by the property owner. It agreed with the judge that the removal of the reference to the "Disney Store" on the handbills appears to be essentially a content-based restriction and not a "time, place and manner" restriction permitted under State law. The Respondents' rule requiring advance identification of handbillers by name does not violate Section 8(a)(1), the Board said. In contrast to the content-based rule prohibiting identification of a tenant on the handbill, the rule requiring advance notice of prospective handbillers is consistent with legitimate time, place, and manner purposes under State law. Under California law, the rule allows identification of persons who may previously have caused injury or damage to the shopping center and facilitates verification, for liability purposes, of the identity of those authorized on the handbill.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charge filed by Broadcast Employees (NABET) and Cable Television Workers (CWA); complaint alleged violation of Section

8(a)(1). Hearing at Los Angeles on Nov. 2, 1998. Adm. Law Judge Michael D. Stevenson issued his decision Marchj 4, 1999.

* * *

*J.B. Hunt Transport, Inc.* (4-CA-29035; 335 NLRB No. 14) Philadelphia, PA Aug. 23, 2001. The Board upheld the administrative law judge's finding that the Respondent violated Section 8(a)(1) and (3) of the Act by discharging employee Gregory Griffin because of his union or other protected concerted activities. The Board found that when Griffin was discharged, the Respondent was clearly aware of his union activity because he was a spokesperson for other employees at roundtable meetings with management. [HTML] [PDF]

On March 1, 1999, Operations Manager Albert Rivera terminated Griffin over the phone for failure to report an accident and follow procedure. Respondent claimed that even if anti-union animus were present, Griffin would have been terminated because it believed that Griffin had engaged in "serious" misconduct. The Respondent based this conclusion on its contentions

> (1) that Griffin failed to report the accident in which he was involved to the Respondent's corporate safety office, his dispatcher, or any other official, (2) that as a result of the accident, he had damaged the prison's property, caused damage to the tail light assembly and a mud flat on his vehicle and failed to report either the incident itself or any of this damage, (3) that the Respondent strictly enforced its policy regarding the automatic termination of drivers for failing to report involvement in an accident, and (4) that Griffin's discharge was in accordance with this policy.

Agreeing with the judge, the Board found that although the Respondent showed the existence of possible legitimate reasons for terminating Griffin, when viewed in light of its overall conduct and the demonstrated union animosity, these reasons were not persuasive.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charge filed by Teamsters Local 17; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Philadelphia, Dec. 7 and 8, 2000. Adm. Law Judge Richard H. Beddow Jr. issued his decision March 21, 2001.

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*Mt. Clemens General Hospital* (7-CA-42498(1)(2), et al.; 335 NLRB No. 13) Mt. Clemens, MI Aug. 23, 2001. The Board agreed with the administrative law judge that the Respondent violated Section 8(a)(1) of the Act by discriminatorily requiring employees to remove overtime protest buttons from their nurses' uniforms, confiscating the buttons, and enforcing an overly broad prohibition of the wearing of insignia. The Respondent excepted only to the judge's conclusions that it violated Section 8 (a)(1) in these respects. The Board also found violations of Section 8(a)(1) and (5) by Respondent's refusing to furnish and delaying in providing requested information relevant to the Union's performance of its duties as exclusive collective-bargaining representative. [HTML] [PDF]

Chairman Hurtgen agreed with his colleagues that the application of the rule against the buttons was overly broad and was thus unlawful. He said "A hospital may enforce such a rule in patient areas, provided that the employer makes it clear that it is enforcing the rule *because it is a patient care area.* In the instant case, the evidence indicates that Respondent enforced the rule, without reference to whether the area was a patient care area or not."

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charges filed by RN Staff Council, Office Employees Local 40; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Detroit on Aug. 28, 29, and 30, 2000. Adm. Law Judge Bruce D. Rosenstein issued his decision Nov. 15, 2000.

* * *

*Mohawk Industries, Inc.* (10-CA-29489, 29582; 334 NLRB No. 135) Calhoun, GA Aug. 20, 2001. Members Truesdale and

Walsh affirmed the judge's finding that the Respondent violated Section 8(a)(1) of the Act by soliciting the revocation of union authorization cards. Relying on *Vestal Nursing Center,* 328 NLRB No. 16 (1999), they said that the Board, in the context of unfair labor practices including interrogation and serious threats, found an employer's advice to employees that they had the right to withdraw their signatures from authorization cards or petitions on behalf of a union to be unlawful. Here, the Respondent committed numerous and substantial unfair labor practices (unlawfully threatening plant closure or relocation, discharge, loss of jobs and benefits, and unspecified reprisals) close in time to the solicitation to employees to revoke cards. In these circumstances, they stated "there can be no question under settled case law that the Respondent's solicitation of employees to revoke authorization cards was an independent unfair labor practice." They also agreed with the judge that the Respondent, by issuing Brenda Furry a verbal warning because she posted union literature, violated the Act. [HTML] [PDF]

In the absence of exceptions, the Board adopted the administrative law judge's findings that the Respondent committed numerous violations of Section 8(a)(1) and (3), including, among others, interrogating employees concerning their union sympathies, activities, and support of the Union; creating the impression of surveillance of its employee' union activities; threatening employees with plant closure or relocation, discharge, loss of jobs and benefits; enforcing an invalid bulletin board policy; restricting the posting and distribution of prounion literature in nonwork areas while posting and/or permitting the posting and distribution of antiunion literature; and issuing verbal and written warnings and discharging and constructively discharging union supporters.

Contrary to Chairman Hurtgen, Members Truesdale and Walsh do not find the Respondent's solicitation of revocation to be merely "ministerial" and therefore distinguishable from the solicitation in *Vestal Nursing Center,* supra. They found that the manner and number of times the employer in *Vestal Nursing Center* advised employees and offered assistance differed from the manner and number in the instant case. Members Truesdale and Walsh said the cases are similar in a key respect: in both, the employer's conduct in advising employees that they may revoke their cards and offering its assistance, in the context of its numerous unfair labor practices, unlawfully created an atmosphere in which employees would tend to feel peril in refraining from revoking their cards.

Dissenting in part, Chairman Hurtgen would not find that the Respondent violated Section 8(a)(1) by soliciting the revocation of union authorization cards. He contended that Vestal is distinguishable from the instant case because the Respondent simply told its employees about the revocation forms. The Chairman finds the aid rendered by the Respondent in this regard can, in his view, fairly be described as ministerial. He contends that the Respondent's activities were more similar to those of *Mid-Mountain Foods,* 332 NLRB No. 19 (2000), where there was no finding that the Respondent tracked whether employees availed themselves of their right to revoke their cards and the employees were not required to go to their supervisors to obtain revocation forms.

Although his colleagues found it unnecessary to pass on the judge's findings that the Respondent, through supervisor Clata Crider, unlawfully threatened and interrogated employee Billy Rapp because they would be cumulative, Chairman Hurtgen would dismiss these allegations.

(Chairman Hurtgen and Members Truesdale and Walsh participated.)

Charges filed by Needletrades Employees (UNITE); complaint alleged violation of Section 8(a)(1) and (3). Hearing at Calhoun on Jan. 21, 22, and 23, 1997. Adm. Law Judge Lawrence W. Cullen issued his decision May 29, 1998.

* * *

*Walker Stainless, Inc.* (30-CA-14842, 14905; 334 NLRB No. 131) New Lisbon and Elroy, WI Aug. 21, 2001. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(3) of the Act by telling applicants Jeff Bechard and Todd Blair they could not take weld tests because they were from the Union and not bona fide applicants and failing to consider Bechard and Blair for hire on August 19, 1999. The Board left to compliance an evaluation of the remedial consequences of the Respondent's alleged post-violation efforts to contact the organizers, and its subsequent hiring of Bechard. [HTML] [PDF]

Contrary to the judge, the Board held that the Respondent did not violate Section 8(a)(3) and (1) when it discharged employee

Dennis Brockman. The Board found that the Respondent would have discharged Brockman even in the absence of his protected union activities for signing a yellow tag (signifying that the steel incorporated into a stainless steel vessel met the appropriate standards) without following the critical quality control assurance procedures. It concluded that the Respondent lawfully discharged Brockman because of his serious breach of its quality control procedures and its belief that it would have to spend a great deal of time and money to rework the vessel.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charges filed by Sheet Metal Workers Local #18; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Mauston, WI on Feb. 28 and 29, 2000. Adm. Law Judge John H. West issued his decision Jan. 26, 2001.

* * *

*Brede, Inc. and Food and Commercial Workers Local 653* (18-CA-13968, et al., 18-CB-3724; 335 NLRB No. 3) Minneapolis, MN Aug. 24, 2001. The Board affirmed the administrative law judge's findings that Respondent Brede violated Section 8(a)(5) and (1) of the Act by implementing changes in its procedures for hiring unit employees without prior notice to Steelworkers Local 17U and by unilaterally taking the referral system back in-house without affording Local 17U notice or an opportunity to bargain. The Board reversed the judge's finding that Brede violated Section 8(a)(2) by executing a Letter of Understanding with Respondent UFCW Local 653 stating that it was taking hiring back in-house. Member Truesdale dissents from his colleagues' dismissal of this allegation. Chairman Hurtgen, dissenting in part, found that Brede did not violate Section 8(a)(5) by taking the hiring system back in-house. [HTML] [PDF]

The Board also affirmed the judge's findings that Local 653 violated Section 8(b)(1)(A) by referring employees to Freeman Decorating Company without regard to objective standards or criteria, and violated Section 8(b)(2) by refusing to refer four named discriminatees for employment because they supported Local 17U and/or complained about Local 653's operation of its referral system.

No exceptions were filed to the judge's findings that the Respondent violated Section 8(a)(5) and (1) by: (1) substantially increasing its reliance on sources of unit employees other than its traditional list of on-call employees; (2) substantially increasing its use of nonunit employees to perform unit work; and (3) refusing to treat an employee as a unit member and using that employee, rather than senior unit employees, to perform unit work at lower wages than those paid unit employees.

Brede is engaged generally in supplying decorator labor to trade show and convention promoters, and employs approximately 25 "regular decorators." When the number of decorators needed on a show exceeds Brede's pool of "regulars," it hires "extras." Local 653 represents Brede's "regulars." Local 653 does not represent the "extras," but previously negotiated their wage rate into the regulars' contract. For over 30 years, Brede hired extras in-house. However, during the 1991 contract negotiations, Brede agreed to let Local 653 establish and operate a referral system for extras. During subsequent negotiations for a successor contract, the extras sought union representation. On September 18, 1995, Local 17U was certified as the extras' exclusive bargaining representative.

Contrary to Chairman Hurtgen, Members Liebman and Truesdale held that the parties' temporary delay in negotiations sought by Local 17U while it resolved an internal union jurisdictional dispute, is not a "license" to make unilateral changes in terms and conditions of employment, explaining: "Even assuming that Brede's concern over the referral system increased during the hiatus in negotiations, Brede never attempted to find out if Local 17U could bargain. Brede simply acted unilaterally, and in our view unlawfully, by taking the referral system in-house." Members Liebman and Truesdale granted Brede's exception and amended the judge's remedy by ordering Brede, on the request of Local 17U, to revoke the unlawful changes that it made (including taking the system in-house), and to bargain on request with Local 17U for any changes that Local 17U might seek (including who is to operate the hall).

Chairman Hurtgen found Brede's reversion of its longstanding, historical practice of hiring in-house was not unlawful given these "unique" circumstances of this case. Local 17U's inability to bargain because of its jurisdictional issue; Brede's continuing need to hire extras; a situation where Local 653 had been bargaining without being their bargaining representative; allegations by Local 17U that Local 653's operation of the referral system was discriminatory; customer complaints about the

quality of employees being referred by Local 653; and a certified bargaining representative, Local 17U, unable to bargain, which had simultaneously proposed operating the referral system itself while opposing its continued operation through Local 653.

Because he believes the reversion to in-house hiring was not unlawful, Chairman Hurtgen would not require Brede to rescind that particular change as part of the remedy. Accepting arguendo his colleagues' view that there is a violation, he agreed that the judge's proposed remedy overstepped the Board's remedial bounds (by giving the referral system to Local 17U), and that Brede must, on request, bargain with Local 17U over how referrals will be handled. In his view, the lawful status quo, pending bargaining, is that Brede has control of the system and that status quo should continue pending negotiations.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charges filed by Dan Brady, an individual; complaint alleged violation of Section 8(a)(1), (2), and (5) and Section 8(b)(1)(A) and Section 8(b)(2). Hearing at Minneapolis, March 17-20, 1998. Adm. Law Judge John H. West issued his decision Aug. 14, 1998.

* * *

*Freeman Decorating Co., Brede, Inc., and UFCW Local 653* (18-CA-14810, et al., 18-CB-3847, et al.; 335 NLRB No. 4) Des Moines, IA Aug. 24, 2001. In this companion case to *Brede, Inc.,* 335 NLRB No. 3, the Board held, in agreement with the administrative law judge, that Respondent UFCW Local 653 violated Section 8(b)(1)(A) of the Act by demanding and accepting recognition from Respondent Brede, with knowledge that there existed unremedied unfair labor practices which prevented employees from making an uncoerced choice of a collective-bargaining representative. The judge specifically noted that Local 653 was aware of the unfair labor practices, having been a party to Brede, supra. Chairman Hurtgen does not presume a causal nexus in cases that do not involve a complete refusal to recognize and bargain. See his dissent in *Priority One Services, Inc.,* 331 NLRB No. 167 (2000). Nonetheless, he agreed that, in this case, there is a causal nexus between unremedied violations and employee disaffection from Steelworkers Local 17U. [HTML] [PDF]

The judge found, and the Board agreed, that Respondent Freeman violated Section 8(a)(5) when using Chicago Carpenter foremen to perform unit work. The Board denied the General Counsel's exception seeking an order requiring Freeman to cease and desist from unilaterally reassigning Local 17U bargaining unit work to nonunit employees because the complaint allegation is the hiring of unit employees from sources other than Local 17U, and because the "unilateral reassignment" allegations was neither properly pled nor fully litigated.

In the absence of exceptions, the Board adopted the judge's conclusions that: (1) Freeman violated: (a) Section 8(a)(5) and (1) by obtaining extras from sources other than Local 17U and applying to those extras terms and conditions of employment inconsistent with those specified in the Freeman/17U contract; and (b) Section 8(a)(1) by threatening to subcontract its Minneapolis work to Brede unless unfair labor practices charges were withdrawn; (2) Brede violated: (a) Section 8(b)(2) by granting recognition to Local 653 on the basis of a card count at a time when Local 17U was still the authorized and lawful bargaining representative, and (b) Section 8(a)(5) by withdrawing recognition from Local 17U and refusing to bargain with Local 17U over terms and conditions of employment of extras referred to Brede by the Stagehands Union; and (3) Local 653 violated Section 8(b)(1)(A) and (2) by refusing to refer Local 17U Chairperson Dan Brady to work because he support Local 17U.

The judge interpreted the identically worded language of the Brede/17U and Freeman/17U certified bargaining units and found that the unit description language was not ambiguous, and interpreted the language to mean that "all" extras are included in the unit and that "all *other* employees" (emphasis added) are excluded. The Board said "[t]he judge then went beyond this essential interpretation, adding dicta to the effect that: (1) employees ineligible for unit inclusion when the election agreement was signed may never be included in the unit, even if they later satisfy the unit criteria; (2) new employees may not be eligible for unit inclusion; and (3) employees who fail to satisfy the unit criteria remain represented by Local 653." Finding merit to the General Counsel's argument in an exception that the judge's dicta misconstrued the eligibility standard by setting substantive limitations on unit scope, the Board disavowed the judge's analysis to the extent that: (1) he suggests that the unit is limited in scope to only those employees eligible for inclusion when the unit description was signed; and (2) he found that the unit

description preserves for Local 653 representation of extras who failed to meet the "minimum time" standards. It left to compliance the determination of whether individual employees meet the unit criteria for remedial purposes.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charges filed by Dan Brady; complaint alleged violation of Section 8(a)(1), (2), and (5) and Section 8(b)(1)(A) and (2). Hearing at Minneapolis, Feb. 22-24, April 5-8, 1999. Adm. Law Judge William J. Pannier III issued his decision Aug. 9, 1999.

* * *

*AC Management, Inc. d/b/a Mayfield Holiday Inn, et al.* (8-CA-28382-1, et al.; 335 NLRB No. 9) Beachwood and Willoughby Hills, OH Aug. 23, 2001. The Board affirmed the administrative law judge's findings that Respondent AC Management, Inc. (AC), Respondent 3750 Orange Place Limited Partnership d/b/a Beachwood Holiday Inn (Orange Place), Respondent Snavely Development Co., Inc., a/k/a Snavely Management Services (Management Services), and its wholly owned subsidiary, Snavely Hotel Services, LLC (Hotel Services), violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with Service Employees Local 47; and that AC, Orange Place, and Hotel Services also violated Section 8(a)(5) and (1) by failing to provide the Union with relevant and necessary information. [HTML] [PDF]

The historical unit consisted of housekeeping employees at Mayfield Holiday Inn (HIM) and Beachwood Holiday Inn (HIB) in one unit under common ownership. Early in 1996, HIM and HIB were sold to separate owners. Shortly thereafter, the Union requested bargaining on behalf of housekeeping employees with each of the two separate owners, thereby seeking to continue the bargaining relationship in two separate units.

The General Counsel alleged that the two new owners were Burns successors obligated to recognize and bargain with the Union in two separate units both of which are appropriate bargaining units. The Respondent argued that, following the sale of the hotels and the reorganization of the housekeeping departments, the only appropriate units would comprise not only housekeepers/maids and housemen, but also laundresses and inspectresses. The judge rejected this argument and ordered, with Board approval, the Respondents to bargain in separate units of housekeeping employees located at HIM and HIB respectively. In so doing, he said the "former single multi-location bargaining unit[]" continued to be appropriate. While the "overall" units of all categories of workers may be appropriate, the units sought by the Union of housekeepers/maids and housemen were appropriate as well. The Board agreed, finding the judge's bargaining orders correctly reflect the units sought by the Union -the original unit divided into two, one for each hotel, comprising the same categories of workers as the original unit.

Chairman Hurtgen agreed that, in this case, a single bargaining unit can no longer be appropriate, noting that the HIM unit is owned by one employer, and the HIB unit by another. A two-employer unit is inappropriate, absent the agreement of the employers, he added. The current units are single locations units which are presumptively appropriate and that presumption has not been rebutted.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charges filed by SEIU Local 47; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Cleveland, Jan. 19-20, 1999. Adm. Law Judge Bruce D. Rosenstein issued his decision April 29, 1999.

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*Ferguson Electric Co., Inc.* (34-CA-7875-2, et al.; 335 NLRB No. 15) Plainville, CT Aug. 24, 2001. The Board amended its standard remedial order requiring the production of records to calculate backpay awards in this and all subsequent cases to require that respondents: [HTML] [PDF]

> Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms

of this Order.

The Board affirmed the administrative law judge's findings in this case, including that the Respondent violated Section 8(a)(1) and (3) of the Act by discharging employee Robert Gauvin. The judge's recommended Order contained the Board's standard remedial provisions requiring the Respondent to reinstate Gauvin and make him whole and, within 14 days of a request, to "make available to the Board or its agents . . . all payroll records . . . necessary to analyze the amount of backpay due under the terms of this Order." In his limited cross-exceptions, the General Counsel requested the Board to amend its standard backpay order to require respondents to "provide" the documents "at the office designated by the Board or its agents." The Board invited supplemental briefs regarding the issues raised by the General Counsel's limited cross-exception. The General Counsel and amicus curaie AFL-CIO filed briefs in support of the General Counsel's motion; and amici curiae the Associated Builders and Contractors, Inc., LPA, Inc. and Society for Human Resource Management filed a joint brief in opposition.

Granting the General Counsel's request, the Board decided, in conferring on the Regional Director the authority to designate the place for production of records, to "require that the place designated by the Regional Director for production of records be a reasonable place, which could be the Regional offices of the Board, the respondent's facilities, or other designated location. If a respondent disagrees with the Regional Director's choice, the burden will be on the respondent to show that the production of records at the designated location is unduly burdensome."

As requested by the General Counsel, the Board retained its current 14-day time limit for providing records, stating: "We established this time in 1996 to expedite compliance with Board orders, and it has proven generally to be a reasonable period." Recognizing, however, that its newly amended remedial order could make that time limit unreasonably difficult to meet in cases that present usual constraints, the Board granted discretion to the Regional Director to extend the time limit upon request by respondent and a showing of good cause. The Board wrote in announcing its new approach:

> Apart from generally improving remedial efficiency, amending the standard order will tend to discourage those respondents who might otherwise be inclined to withhold cooperation from the Board's agents, increasing the delay and expense of litigation. Moreover, this change furthers sound public policy favoring the imposition of the costs of compliance on the violator who is responsible for them, rather than on the general public. There is nothing punitive in allocating costs-which must be paid by someone-to the wrongdoer, whether or not he ultimately chooses to cooperate in remedying his wrong. Significantly, the change comes at a time when developments in recordkeeping and document-reproduction technology, as well as the speed and ease of document delivery services, undeniably have made the production of records at a designated location a much simpler task than it was 50 years ago. As the General Counsel points out, the current 'make records available' order provision arguably permits a respondent to direct a Board agent to a warehouse filled with boxes of undifferentiated documents and to prevent him from either using the respondent's photocopying equipment or removing the records for copying. There is no good reason to permit this possibility.

The Board cautioned that it does not intend that the Regional Director, in exercising the authority to designate a reasonable place for production of backpay-related records, invariably require records to be delivered to the Board's offices, stating:

> The Board's cumulative experience under the Act shows that a high degree of compliance traditionally has been achieved through the cooperation of the majority of respondents who have voluntarily 'made records available' at locations agreed upon in consultation with the Board's Regional Offices. It is our expectation that these cooperative efforts between the respondents and regional offices will continue. Our purpose in this case is not to create an inflexible rule regarding the location for production of records, but rather to promote timely and effective compliance with Board orders.

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

Charges filed by Electrical Workers IBEW Local 90; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Hartford, April 21-23 and May 21, 1998. Adm. Law Judge Michael A. Marcionese issued his decision Sept. 24, 1998.

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## LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

*Holy Cross Hospital, Inc.* (Service Employees Local 1991) Fort Lauderdale, FL August 20, 2001. 12-CA-21069-2, 21079; JD (ATL)-55-01, Judge Margaret G. Brakebusch.

*American Federation of Musicians & its Atlanta Local 148-462* (an Individual) Atlanta, GA August 22, 2001. 10-CB-7335(E); JD(ATL)-57-01, Judge Jane Vandeventer.

*R.J. Corman Railroad Construction, L.L.C.* (Operating Engineers Local 150) Bedford Park, IL August 22, 2001. 13-CA-38807-1; JD-111-01; Judge William G. Kocol.

*Retail, Wholesale, Warehouse and Production Employees Union* (UNITE Loca 169.) New York, NY August 24, 2001. 2-CB-18015, 18020; JD(NY)-40-01, Judge Raymond P. Green.

*Federacion Central De Trabajadores Local 481* (Individual) San Juan, PR August 22, 2001. 24-CA-8297, 8420; JD(NY)-42-01, Judge D. Barry Morris.

*Golden State Foods Corp.* (an Individual) Portland, OR August 14, 2001. 36-CA-8426; JD(SF)-60-01, Judge Thomas Michael Patton.

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## 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.)*

*Linko Plumbing and Heating, Inc.* (an Individual) (4-CA-24652; 335 NLRB No. 5) Scranton, PA August 22, 2001.