

## 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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W-2809

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*Staunton Fuel & Material, Inc., and Marilyn Mengelkamp d/b/a Central Illinois Construction* (14-CA-24132, et al.; 335 NLRB No. 59) Staunton, IL Aug. 27, 2001. The Board declined to adopt the administrative law judge's finding that the Respondent unlawfully refused to bargain with the Union upon the expiration on July 31, 1996 of a prehire agreement. While the judge found that a Section 9(a) relationship was established, the Board held the language in the 1993-1996 contract did not state that the Respondent's recognition was based on a contemporaneous showing, or offer by the Union to show, that the Union had majority support. [\[HTML\]](#) [\[PDF\]](#)

Addressing the question of how a union in the construction industry can acquire the status of majority bargaining representative under Section 9(a), the Board concluded:

We hold that a written agreement will establish a Section 9(a) relationship if its language unequivocally indicates that the union requested recognition as majority representative, the employer recognized the union as majority representative, and the employer's recognition was based on the union's having shown, or having offered to show, an evidentiary basis of its majority support.

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

Charges filed by Operating Engineers Local 520; complaint alleged violation of Section 8(a)(1), (3) and (5). Hearing at St. Louis, Oct. 14-17, 1997. Adm. Law Judge Nancy M. Sherman issued her decision Dec. 17, 1998.

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*Ormet Aluminum Mill Products Corp. and Ormet Primary Aluminum Corp.* (8-CA-28811, 30299; 335 NLRB No. 65) Hannibal, OH Aug. 27, 2001. The Board adopted the administrative law judge's findings that Ormet Aluminum Mill Products Corp. (Ormet Mill) and Ormet Primary Aluminum Products Corp. (Ormet Primary) constitute a single employer (the Respondent) and that the Respondent violated Section 8(a)(5) and (1) of the Act through Ormet Mill's failure to furnish certain information to Steelworkers Local 5760 and the Steelworkers International Union. However, Chairman Hurtgen dissented from Members Truesdale and Walsh in adopting the judge's further finding that the Respondent also violated Section 8(a)(5) and (1) through Ormet Primary's failure to furnish Steelworkers Local 5724 and the Steelworkers International Union (the Union) information the Union requested in its August 28, 1998 letter and attached questionnaires relating to certain contracting out notifications. He said "the information sought by the Union amounts to a classic request for pretrial discovery. The Union is essentially asking the Respondent to set forth in writing its claims and the evidence for them." [\[HTML\]](#) [\[PDF\]](#)

In finding the Respondent's failure to furnish the information requested by the Union was unlawful, however, the majority stated:

The simple fact is that the Union made the information requests at the third step of the grievance procedure, and obviously, before the grievances had been denied and referred to arbitration. Thus, since the grievances were not pending arbitration when the Union made its information requests, it cannot be said that the Union is, in effect, seeking pretrial discovery through them--and our dissenting colleague's labeling the information requests as 'interrogatories' does not make it otherwise. Simply put, the Respondent was obligated to furnish the requested information to the Union at the third step of the grievance procedure and, as the judge found, it violated Section 8(a)(5) by refusing to provide the requested information.

(Chairman Hurtgen and Members Truesdale and Walsh participated.)

Charges filed by Steelworkers Local 5724; complaint alleged violation of Section 8(a)(5) and (1). Hearing at Bellaire, April 21 and 22, 1999. Adm. Law Judge Eric M. Fine issued his decision June 24, 1999.

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*Beverly Health and Rehabilitation Services, Inc., et al.* (6-CA-27873, et al.; 335 NLRB No. 54) Fort Smith, AR Aug. 27, 2001. The Board majority of Members Liebman and Walsh, affirming the administrative law judge's supplemental decision of Nov. 30, 1999, held that the Respondent committed numerous unfair labor practices. As a remedy, the majority modified the judge's recommended corporatewide order to require the posting of two versions of a notice to employees--one at each of the 20 Pennsylvania nursing homes involved in this proceeding and at those of the Respondent's separate offices which oversee those facilities; and a second to be posted at each of the Respondent's other facilities and offices nationwide. Chairman Hurtgen dissented. [\[HTML\]](#) [\[PDF\]](#)

This Respondent has been involved in litigation in various cases before the Board for many years. The Board's decisions include *Beverly California Corp. (Beverly III)*, 326 NLRB 232 (1998), enfd. in part and remanded 227 F.3d 817 (7th Cir. 2000); *Beverly California Corp. (Beverly II)*, 326 NLRB 153 (1998), enfd. 227 F.3d 817 (7th Cir. 2000); *Beverly Enterprises (Beverly I)*, 310 NLRB 222 (1993), enf. denied in relevant part sub nom. On May 1, 1997, the judge issued an order bifurcating this proceeding and deferring litigation of remedial issues pending his determination of whether, and to what extent, the Respondent committed the unfair labor practices alleged in the General Counsel's complaint. On Nov. 26, 1997, the judge issued his initial decision, finding that the Respondent had committed most of the unlawful actions alleged.

Among the violations found by the Board were: laying off employees without adequate prior notice to the Union; unilaterally reducing employees' hours of work, overtime and benefits after the parties' collective-bargaining agreements expired; threatening employees; and failing to reinstate hundreds of employees who engaged in a 3-day strike starting on April 1, 1997, when they attempted to return to work.

In finding that the Respondent's unilateral changes were unlawful, the majority agreed with the judge that the management-rights clause in the contracts, which the Respondent cited as authority for making these changes, did not survive the contracts' expiration. In his dissent, however, Chairman Hurtgen would find the Respondent's unilateral changes were permissible "business decisions" even if the clause did not survive since the changes were of the type [e.g., such as reduction in hours] that were made under the clause while the contract was in effect.

Chairman Hurtgen disagreed with the majority's finding that the Respondent violated Section 8(a)(1) of the Act by advertising for replacement employees at two of its facilities at a rate of pay higher than that paid to unit employees at those facilities. He stated:

As the Board recently reiterated in *Detroit Newspapers*, 327 NLRB 871 (1999), an employer need not bargain with a union with regard to the terms and conditions of employment for replacements hired during a strike, and accordingly may unilaterally set different terms and conditions for such replacements.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charges filed by Service Employees District 1199P; complaint alleged violation of Section 8(a)(5) and (1). Hearing at six locations in Pennsylvania, July 15, 1996 - May 6, 1997. Adm. Law Judge Robert T. Wallace issued his initial decision Nov. 26, 1997 and his supplemental decision Nov. 30, 1999.

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*Teamsters National Automobile Transporters Industry Negotiating Committee* (16-CE-22; 335 NLRB No. 68) San Antonio, TX Aug. 27, 2001. Members Liebman and Truesdale, applying *NLRB v. Longshoremens ILA*, 447 U.S. 490 (1980), found, contrary to the administrative law judge, that the work-preservation agreement between Teamsters and Active Transportation (the Agreement) is not unlawful on its face because it expresses an intention to preserve bargaining work for unit employees and because, by its terms, it restricts only the work of entities over which Active exercises a right of control. Under the analysis of General Teamsters Local 982 (*J.K. Barker Trucking Co.*), 181 NLRB 515 (1970), affd. 450 F.2d 1322 (D.C. Cir. 1971), Members Liebman and Truesdale said "we 'interpret [the Agreement] to require no more than what is allowed by law.'" They found that Teamsters did not violate Section 8(e) of the Act, as alleged, and dismissed the complaint. The judge had found the agreement violated Section 8(e) because it restricts the work of another company, Safety Carrier, over which he found Active has no right of control, and thus, it requires Active to cease doing business with another entity. [\[HTML\]](#) [\[PDF\]](#)

Chairman Hurtgen, dissenting, disagreed with his colleagues that the clause is unlawful on its face, noting that it regulates the labor relations of a separate employer and it is not restricted to unit work, i.e., work performed by Active's employees. He pointed out that the agreement is between Active and the Union and, in relevant part, pertains to the work practices of another entity, Safety. "Of course, if Active and Safety are a single employer, there would not be two separate employers, and thus there would not be a Section 8(e) violation." The Chairman found that the clause, on its face, is not restricted to the "single employer" situation, noting "at the very least, the clause is unclear, and the extrinsic evidence shows that, in fact, Active and Safety are not a single Employer. The judge so found, I agree, and my colleagues do not disagree."

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charge filed by the Machinists; complaint alleged violation of Section 8(e). Hearing at Houston, Feb. 16-17 and April 19-20, 1999. Adm. Law Judge Pargen Robertson issued his decision Aug. 3, 1999.

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*Carpenters Metropolitan Regional Council of Philadelphia* (4-CB-8315, 4-CC-2245, et al.; 335 NLRB No. 67) Philadelphia, PA Aug. 27, 2001. Reversing the administrative law judge, Chairman Hurtgen and Member Truesdale found that the Respondent violated Section 8(b)(1)(A) of the Act by videotaping and photographing the employees of nonunion Smucker Company as they crossed the Respondent's picket line to work at the Society Hill Towers condominium complex. They found that the Respondent's actions went beyond what the judge viewed as simple harassment and concluded that the Respondent actually intended to intimidate the Smucker employees and to provoke their fear of retribution for working behind the picket line. See e.g., *Culinary Workers Local 226 (Casino Royale, Inc.)*, 323 NLRB at 1611. [\[HTML\]](#) [\[PDF\]](#)

Chairman Hurtgen found that the videotaping and photographing of the Smucker employees additionally violated Section 8(b)(1)(A) because the Respondent took pictures of them while they were engaged in Section 7 activities without offering the employees a benign explanation for that conduct and that the employees reasonably would fear that the Respondent was making a permanent record of their images for purposes of future retribution.

Member Walsh, dissenting on this issue, agreed with the judge that the General Counsel simply failed to meet his burden of proving that the picture-taking activity would reasonably tend to restrain or coerce employees in the exercise of their statutory rights.

The Board upheld the judge's findings that the Respondent violated Section 8(b)(4)(ii)(B) by threatening the Society Hill Towers Owners' Association and the Versailles Affiliates by using a sound system at excessive volume levels to broadcast its protest message with an object of forcing or requiring them to cease doing business with Smucker Company or Nytech; and using a sound system or other amplification method to broadcast its message at the Society Hill Towers at volume levels which exceeded the limits specified by the Philadelphia Department of Public Health, Board of Health and at or in the immediate vicinity of the Society Hill Towers complex (between the hours of 9 p.m. and 7 a.m. on weekdays, or between the hours of 4 p.m. and 11 a.m. on Saturdays or Sundays) with an object of forcing or requiring Society Hill Towers to cease doing business with Smucker Company.

(Chairman Hurtgen and Members Truesdale and Walsh participated.)

Charges filed by Society Hill Towers Owners' Association and Nytech; complaint alleged violation of Section 8(b)(1)(A) and Section 8(b)(4)(i)(ii)(B). Hearing at Philadelphia, Nov. 2-3, 1999. Adm. Law Judge David L. Evans issued his decision March 17, 2000.

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*Teamsters Local 277* (29-CE-110; 335 NLRB No. 81) Maspeth, NY Aug. 27, 2001. Agreeing with the administrative law judge, Chairman Hurtgen and Member Truesdale held that the Respondent violated Section 8(e) of the Act on or about June 11, 1999, pursuant to an arbitration award which reaffirmed or interpreted contractual provision (Article 30) because it required Charging Party J & J Farms Creamery Co., Inc. to subcontract work only to an employer who is a signatory to a

collective-bargaining agreement with the Respondent. They held "[s]uch a 'union signatory' clause is secondary in character and, therefore, violates Section 8(e)," citing *Retail Clerks Local 1288 (Nickel's Pay-Less Stores)*, 163 NLRB 817, 819 (1967). In finding the 8(e) violation, Member Truesdale relied solely on the arbitrator's interpretation of Article 30, as the complaint alleges. He found it unnecessary to pass on the judge's finding that Article 30 on its face violates Section 8(e). Chairman Hurtgen also took this position. [\[HTML\]](#) [\[PDF\]](#)

If the provision were sequentially reversed, i.e., providing that the subcontractor would hire the employees and then cover them with the union contract, the result should be the same. The Union may have a legitimate interest in securing jobs for the signatory's employees. And, the Union may have an interest in protecting its economic standards after the subcontractor hires employees. However, the Union has no legitimate interest in imposing a union contract on the subcontractor, a separate employer. Phrased differently, under the arbitral award, a subcontractor would not be eligible even if he hired the unit employees and applied to them the Union's economic standards. In order to be eligible, the subcontractor would have to be signatory to a union contract. That is, classically a union-signatory requirement proscribed by Section 8(e).

The Chairman does not adopt the judge's comment at fn. 2 of his decision that an award of damages for a violation of Section 8(e) is beyond the remedial scope of the Act.

Member Liebman, dissenting, would find that the arbitration award does not violate Section 8(e) because the primary effect of the award is the preservation of existing bargaining unit jobs. The majority disagreed that the effect of Article 30, as interpreted by the arbitrator, is limited to the preservation of bargaining unit work.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charge filed by J & J Farms Creamery Co., Inc.; complaint alleged violation of Section 8(e). Hearing at Brooklyn on Nov. 3, 1999. Adm. Law Judge Howard Edelman issued his decision Feb. 25, 2000.

\* \* \*

*ITT Federal Services Corp. and Lockheed Martin Services, Inc.* (24-CA-7658, 7659; 335 NLRB No. 79) Ceiba, PR Aug. 27, 2001. The Board agreed with the administrative law judge that Respondent Lockheed Martin Services, Inc. (LMSI) did not violate the Act by blacklisting Richard Rinehart, Peter Torrens, and Harry Wessel, who worked for LMSI and its predecessors, and who were, since the inception of the union movement in 1993, union activists; or by causing or attempting to cause Respondent ITT Federal Services Corp. (ITT) to fail and refuse to hire the three individuals as alleged in the complaint. Contrary to the judge, the Board concluded that ITT did not violate Section 8(a)(3) by refusing to hire Torrens and Rhinehart in February 1997. Applying *FES*, 331 NLRB No. 20 (2000), it found the Respondent was hiring at the time Rhinehart and Torrens applied for jobs with ITT in February 1997, that Torrens and Rhinehart were amply qualified for unit work, and, contrary to the judge, that there is insufficient proof that antiunion animus contributed to ITT's refusal to hire them. The General Counsel thus failed to establish that antiunion animus contributed to ITT's decision not to hire Torrens and Rhinehart in February 1997, the Board held. [\[HTML\]](#) [\[PDF\]](#)

Members Liebman and Truesdale, with Chairman Hurtgen dissenting, agreed with the judge that ITT violated Section 8(a)(1) through ITT Manager Cabral by threatening employee Roberto Candelario with unspecified reprisals for engaging in union activity.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charges filed by Seafarers International; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at San Juan, March 31, April-2, 28 and 30, 1998. Adm. Law Judge Leonard M. Wagman issued his decision April 19, 1999.

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*Eldorado, Inc. and its successor employer J.C. Media Group, Inc.* (30-CA-13784, 13895; 335 NLRB No. 76) New Berlin, WI

Aug. 27, 2001. Members Liebman and Truesdale upheld the administrative law judge's findings that: 1) J.C. Media Group, Inc. is the Burns successor employer of Eldorado, Inc.; 2) J.C. Media, as the successor employer, violated Section 8(a)(1) of the Act by communicating to Eldorado's employees at the outset that there would be no union at the new business; 3) that J.C. Media, as the successor employer, was not privileged to set the initial terms and conditions of employment; 4) the Union demanded recognition and bargaining after J.C. Media commenced operation on February 17, 1997; and 5) J.C. Media violated Section 8(a)(5) and (1) by refusing to recognize and bargain with the Union by unilaterally modifying unit employees' terms and conditions of employment, failing to pay into the union's benefit funds, and refusing to provide certain requested information. Members Liebman and Truesdale found, as did the judge, that J.C. Media is liable under *Golden State Bottling v. NLRB*, 414 U.S. 168 (1973), for remedying the unfair labor practices of its predecessor, Eldorado. [\[HTML\]](#) [\[PDF\]](#)

Chairman Hurtgen, dissenting in part, disagreed with his colleagues in four respects. First, he disagreed that J.C. Media, a successor to Eldorado, violated Section 8(a)(1) by telling employees on February 15, 1997 that there was not going to be a union at the new company. Second, he found that Respondent Media was privileged to set initial terms and conditions of employment, and did not violate Section 8(a)(5) when it did so without first bargaining with the Union. Third, the Chairman did not find that, in a letter it addressed to Eldorado on February 28, 1997, the Union presented the Respondent with a demand for recognition. He found that the Respondent thus did not unlawfully deny recognition at that time. Fourth, the Respondent did not violate Section 8(a)(5) by failing to furnish information to the Union in February, Chairman Hurtgen found, stating in the absence of a bargaining obligation at that time, it had no duty to furnish the same.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charges filed by Graphic Communications Local 577-M; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Milwaukee, March 23, 1998 and Jan. 11-14, 1999. Adm. Law Judge C. Richard Miserendino issued his decision Jan. 14, 1999.

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*Natomi Hospitals of California, Inc., d/b/a Good Samaritan Hospital, San Jose Medical Center, and South Valley Hospital* (32-CA-16219, et al.; 335 NLRB No. 73) San Jose, CA Aug. 27, 2001. The Board held, contrary to the administrative law judge, that the management-rights clause of the parties' collective-bargaining agreement operated as a clear and unmistakable waiver of the Union's right to bargain over the Respondent's decision to implement new staffing matrices for bargaining unit employees in all five hospital units at issue, and that the Respondent's refusal to bargain with the California Nurses Association about that decision was lawful. The staffing matrix essentially determines the number of employees to be used on a shift based on the patient census of a particular unit. [\[HTML\]](#) [\[PDF\]](#)

The Board found, however, that there was no waiver of the Respondent's obligation to bargain about the effects of its decision to implement new staffing matrices. While it agreed with the judge that the Respondent violated Section 8(a)(5) by refusing to bargain with the Union about the effects of its decision in the medical/oncology and medical/surgery unit, it found that the Respondent also committed an "effects" bargaining violation in the rehabilitation unit.

In a separate opinion, Chairman Hurtgen said he does not agree that the judge correctly framed the inquiry as involving the question whether the contractual language constituted a clear and unmistakable waiver of the Union's right to bargain. For the reasons stated in his separate opinion in *Dorsey Trailers, Inc.*, 327 NLRB 835 (1999), the Chairman would apply the "contract coverage" analysis set forth by the D.C. Circuit in *NLRB v. Postal Service*, 8 F.3d 832 (1993), to determine the legality of the Respondent's actions. He agreed that there was a waiver even under the Board's current "clear and unmistakable" standard.

Member Walsh, dissenting in part, agreed that the implementation of staffing matrices is encompassed by the language of section 1 of the management-rights clause, but he does not agree that the Union clearly and unmistakably waived its right to bargain over the enumerated rights contained in section 1. He would find that the Respondent's unilateral implementation of new staffing matrices thus violated Section 8(a)(5) and (1).

The judge found, with Board approval, that the Respondent committed a separate 8(a)(5) violation by unilaterally changing the job duties and responsibilities of the registered nurses who work as charge nurses in the transitional care unit. There was no claim that the charge nurses had supervisory authority within the meaning of Section 2(11). The judge also found that the

Union failed to request bargaining about the effects of its staffing matrix change for the mother-baby unit at Good Samaritan Hospital and for the transitional case unit at the San Jose Medical Center. Absent exceptions, the Board adopted pro forma, the judge's dismissal of the allegation that the Respondent violated Section 8(a)(5) by failing to engage in effects bargaining for these units.

(Chairman Hurtgen and Members Truesdale and Walsh participated.)

Charges filed by the California Nurses Association; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Oakland, March 23-27 and April 9-10, 1998. Adm. Law Judge Burton Litvack issued his decision May 4, 1999.

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*Americlean Restoration and Maintenance Corp., d/b/a Americlean* (3-CA-21350; 335 NLRB No. 83) Glen Falls, NY Aug. 27, 2001. Members Liebman and Truesdale, in light of *FES (A Division of Thermo Power)*, 331 NLRB No. 20 (2000), adopted the administrative law judge's finding that the Respondent violated Section 8(a)(1) and (3) of the Act by failing to hire Philip Tucker, Austin Devine, James Chmielewsky, Nancy Devine, John McLean, William O'Learly and Carl because of their membership in, and support for the Union. The majority held that the Respondent was hiring and had job openings for the seven applicants, that the applicants had experience and qualifications to perform these jobs, and that the Respondent's antiunion animus contributed to the decision not to hire these applicants. [\[HTML\]](#) [\[PDF\]](#)

Dissenting in part, Chairman Hurtgen finds that the Respondent did not violate Section 8(a)(3) and (1) by refusing to hire applicants Philip Tucker and Nancy Devine. Unlike his colleagues, he said that the General Counsel has not satisfied the burden under FES to show that Tucker and Devine possessed the necessary experience to qualify for employment by the Respondent as painters and has not established a prima facie case of a discriminatory refusal to hire.

The Board, in June 2000, applying the standard set forth in FES, had remanded to the judge for further consideration, the issue of whether antiunion animus contributed to the Respondent's refusal to hire the 7 applicants.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charge filed by Painters Local 466; complaint alleged violation of 8(a)(1) and (3). Adm. Law Judge Joel P. Biblowitz issued his decision and supplemental decision on April 22, 1999 and March 27, 2001, respectively.

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*Bridgestone/Firestone, Inc.* (6-CA-30899; 335 NLRB No. 75) Bethel Park, PA Aug. 27, 2001. Chairman Hurtgen and Member Truesdale affirmed the administrative law judge's finding that the Respondent did not violate Section 8(a)(1) and (5) of the Act by refusing to bargain with and withdrawing recognition from Teamsters Local 926 as of September 23, 1999. [\[HTML\]](#) [\[PDF\]](#)

Employee Richard DelBusse having transferred to Respondent's Bethel Park location from one of Respondent's non-union stores initiated contact with the Respondent and asked "if there was any way that [he] could get out of being in the union." He added that he "was never in a union before" and "figured [he]'d just keep it like that." The majority said a fair interpretation of DelBusse's request was that he wished to continue in the status he enjoyed before his transfer, that is, without a union as his representative and without being obligated to pay dues or agency fees. The Respondent provided ministerial aid to DelBusse in drafting a decertification petition, the majority said, and the petition was untainted by Respondent's ministerial involvement in its drafting. Accordingly, Chairman Hurtgen and Member Truesdale found that the Respondent's reliance on that petition to withdraw recognition from the Union was lawful.

Dissenting in part, Member Liebman believed, contrary to her colleagues, that the Respondent's involvement with the employee petition disavowing support for the Union violated Section 8(a)(1). She found that the Respondent interfered with employee free choice in connection with the petition and because the petition was both tainted and integral to the Respondent's withdrawal of recognition from the Union, the Respondent violated Section 8(a)(5).

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charge filed by Teamsters Local 926; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Pittsburgh on May 4, 2000. Adm. Law Judge Paul Bogas issued his decision July 5, 2000.

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*Ken-Crest Services* (4-RC-19759; 335 NLRB No. 63) Plymouth Meeting, PA Aug. 27, 2001. The Board majority of Members Liebman and Truesdale agreed with the hearing officer's finding that the Employer's 33 program managers are not supervisors within the meaning of Section 2(11) of the Act. In so doing, the majority concluded that the Employer has failed to establish that the program managers are statutory supervisors because they can issue verbal (i.e., oral) warnings, and adjust minor grievances. The tally of ballots showed 55 for and 58 against the Petitioner, with 32 challenged ballots, a number sufficient to affect the results of the election. In view of its finding that program managers are not supervisors, the majority directed the Regional Director to open and count their ballots. [\[HTML\]](#) [\[PDF\]](#)

Dissenting in part, Member Hurtgen asserted that program managers are statutory supervisors because they exercise independent judgment, in the interest of the Employer, to discipline employees and to adjust their grievances. In his view, verbal warnings clearly establish that there is a linkage between the early stages of the Employer's progressive disciplinary system and the later stages of that system, i.e., the issuance of the verbal warnings may result in job consequences.

Chairman Hurtgen said that because the program managers have the authority to adjust grievances, he agrees with the Third Circuit that "the adjustment of even minor grievances is enough to support a finding of supervisory authority." *NLRB v. Attleboro Nursing & Rehabilitation Center*, 176 F.3d 154, at 166 (3d Cir. 1999), quoting *Passavant Retirement & Health Center v. NLRB*, 149 F.3d 243, 248 (3d Cir. 1998). He said "Section 2(11) does not distinguish between major and minor grievances" and in resolving "minor" grievances, the program managers must use independent judgment to settle these grievances before they become "major" grievances that are set out in writing and pass through the Employer's formal grievances process.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

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*Albis Plastics* (16-CA-19615, et al.; 335 NLRB No. 74) Rosenberg, TX Aug. 27, 2001. Unlike the administrative law judge who found that the Respondent violated Section 8(a)(1) of the Act by instructing employees to remove union stickers from their safety helmets, or "bump caps" and violated Section 8(a)(3) and (1) by issuing a disciplinary warning and suspension to employee William Hall in February 1999, the Board dismissed these allegations of the complaint. [\[HTML\]](#) [\[PDF\]](#)

Citing *Standard Oil of California*, 168 NLRB 153 (1967) and *Andrews Wire*, 189 NLRB 108 (1971), affd. 79 LRRM 2164 (4th Cir. 1971), the Board held the Respondent has shown its safety concerns are warranted, its ban on union insignia is a legitimate of its strategy to promote plant safety, and unauthorized stickers could interfere with the readily visibility of the bump caps and authorized stickers. It found that "special circumstances" justify the Respondent's ban on union stickers on employees' bump caps and dismissed this allegation. Regarding Hall's disciplinary warning and suspension, the Board stated that the Respondent's warning and suspension of Hall for repeating conduct previously pointed out as deficient is consistent with progressive discipline, and that documentation of Hall's performance issues as set out in his appraisals in the warnings he received supports the Respondent's assertion that it would have disciplined him in the absence of his union activity.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charges filed by Steelworkers District #12; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Houston, TX, May 17-19, 1999. Adm. Law Judge Keltner W. Locke issued his bench decision May 20, 1999.

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*Western Golf and Country Club* (7-CA-40879, et al.; 335 NLRB No. 48) Redford, MI Sept. 12, 2001. The Board agreed with the administrative law judge that the Respondent violated Section 8(a)(5) and (1) of the Act by changing the manner in which overtime work was assigned without first giving the Union an opportunity to bargain and by unilaterally terminating payments made to employees in lieu of health care coverage. [\[HTML\]](#) [\[PDF\]](#)

The Respondent, in its exceptions, argued that the judge erred for two reasons in finding that it unlawfully changed the manner of assigning overtime work: (1) the existing practice of assigning overtime work to steady employees on the basis of seniority was not "committed to writing and signed by" both parties as required by Section 20 of the relevant collective-bargaining agreement and (2) the Respondent had a legitimate reason for assigning work to extra employees, and denying it to steady employees, in order "to avoid paying overtime which it is specifically allowed to do under the efficiency clause of Section 51b" of the collective-bargaining agreement. These arguments were rejected by the Board.

In the absence of exceptions, the Board affirmed the judge's finding that the Respondent violated Section 8(a)(1) by creating the impression of surveillance of employees' union activities, by indicating to employees that it would be futile for them to support the Union, and by offering employees inducements to resign their Union membership, and violated Section 8(a)(5) by refusing to furnish certain information that the Union had requested. It also found that the Respondent did not violate Section 8(a)(1) by coercively interrogating employees.

(Members Liebman, Truesdale, and Walsh participated.)

Charges filed by Hotel and Restaurant Employees Local 24; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Detroit on Feb. 1, 2000. Adm. Law Judge William G. Kocol issued his decision March 28, 2000.

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#### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

*The Boeing Company* (Southern California Professional Engineering Association) Long Beach and Huntington Beach, CA September 5, 2001. 21-CA-33549; JD(SF)-69-01, Judge Lana H. Parke.

*Saint Joseph News-Press* (Teamsters Local 460) Overland Park, KS September 6 2001. 17-CA-20534, et al.; JD(SF)-68-01, Judge Albert A. Metz.

*The Concrete Company* (Teamsters Local 991) Mobile, AL September 11, 2001. 15-CA-16039, 16096; JD(ATL)-61-01, Judge George Carson II.

*Precision Millwork, Inc.* (Carpenters New England Regional Council) Portland, ME September 10, 2001. 1-CA-37354; JD-127-01, Judge Richard H. Beddow, Jr.

*Control Building Services, Inc.* (Service Employees Local 32B-32J) Lake Grove, NY September 10, 2001. 29-CA-23217-1; JD(NY)-47-01, Judge D. Barry Morris.

*E.C. Waste, Inc., d/b/a Waste Management de Puerto Rico* (Union de Tronquistas de Puerto Rico Local 901) Humacao, PR September 10, 2001. 24-CA-8786, 24-RC-8138; JD(ATL)-59-01, Judge William N. Cates.

*Demco New York Corp.* (Electrical Workers IBEW Local 910) Syracuse, NY September 10, 2001. 3-CA-22798; JD(NY)-45-01, Judge Jesse Kleiman.