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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September 28, 2001 W-2810

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Accurate Tool & Manufacturing Inc., d/b/a Accurate Wire Harness (9-CA-36910, 37007; 335 NLRB No. 91) Springboro, OH Sept. 19, 2001. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by threatening to discharge, and discharging, 12 employees for engaging in a protected concerted walkout on July 9, 1999 and by suspending and discharging employee Tammy Jackson for allegedly threatening a coworker with bodily harm if she did not participate in the walkout. [HTML] [PDF]

Respondent's president, Nestor Fernandez, told employees immediately after they walked out that if they did not return within 2 minutes, the Respondent would accept it as a resignation. The Board agreed with the judge that these statements constituted unlawful threats to discharge the employees if they engaged in a protected strike. *Conair Corp.,* 261 NLRB 1189 (1982). Relying on *Pink Supply Corp.,* 249 NLRB 674 (1980), the Respondent argued that the employees were not discharged. Unlike the employer in Pink Supply where the Board found that the employees had not been discharged, the Board said "the Respondent in this case expressed no uncertainty to the employees about how it would treat those who walked out. Rather, the Respondent twice told the employees unequivocally that it would treat the walkout as a resignation."

Regarding the suspension and discharge of Jackson, the Board agreed with the judge's conclusion that under *NLRB v. Burnup & Sims, Inc.,* 379 U.S. 21 (1964), which governs discharges for alleged misconduct arising out of protected concerted activity, the Respondent lacked an honest belief that Jackson threatened employee Jamie Jewell if she did not participate in the walkout.

(Members Liebman, Truesdale, and Walsh participated.)

Charges filed by Tammy Jackson, an individual; complaint alleged violation of Section 8(a)(1) and (4). Hearing at Cincinnati on January 11, February 29 and March 1 and 2, 2000. Adm. Law Judge Nancy M. Sherman issued her decision June 30, 2000.

* * *

Gormac Custom Manufacturing, Inc. (8-CA-29599; 335 NLRB No. 94) Lima, OH Sept. 20, 2001. On remand, the administrative law judge, with Board approval, concluded that the Respondent has not met its burden of establishing that the conduct set forth in its objections occurred, denied the objections, and held that the Respondent violated Section 8(a)(1) and (5) of the Act by refusing on and after December 31, 1997, to bargain with the Union as the exclusive collective-bargaining representative of the employees in the bargaining unit. The election of June 14, 1996 showed that 19 votes were cast for the Union, 16 against, 1 void ballot, and 4 challenged ballots. A revised tally of ballots issued on October 8, 1997 revealed that 20 were cast for the Union, with 16 against, rendering the 3 remaining challenged ballots as insufficient to affect the results of the election. In the decision reported at 324 NLRB 423 (1997), the Board certified the Union as the exclusive representative of the unit employees. [HTML] [PDF]

In a subsequent decision, 325 NLRB No. 103 (1998) (not reported in Board volumes), the Board granted the General Counsel's motion for summary judgment, finding that the Respondent's refusal to bargain in violation of Section 8(a)(5). On September 3, 1999, the United States Court of Appeals for the Sixth Circuit reversed the Board's decision and remanded this proceeding for an evidentiary hearing on the Respondent's election objections. The court majority cited the closeness of the election and stated that "[t]wo things are apparent from this outcome: (1) a switch of several votes would affect the outcome of this close contest, and (2) for some unexplained reason, six of forty-five eligible voters did not vote-some thirteen percent. Had just half of these absentees voted, the outcome might have been different." The court also noted that "[w]e are not concerned in this opinion with the legality of the challenge; we confine ourselves to Gormac's request for a hearing on the fairness of the

election itself."

(Members Liebman, Truesdale, and Walsh participated.)

Hearing at Cleveland, June 15, 2000. Adm. Law Judge Eric M. Fine issued his decision Oct. 18, 2000.

* * *

Alpine Log Homes, Inc. (19-CA-26004, et al.; 335 NLRB No. 71) Victor, MT Aug. 27, 2001. Affirming the administrative law judge, the Board found that the Respondent violated Section 8(a)(1) and (3) of the Act by promulgating and enforcing an unlawful no-solicitation and no-distribution rule and by disciplining, laying off, and discharging employees for violating said rule and for engaging in union activity. [HTML] [PDF]

Members Liebman and Truesdale, unlike Chairman Hurtgen, agreed with the judge's finding that Steven Lehman was constructively discharged. They said "[t]he Board has held that a significant reduction in income for an indefinite period of time, causing an employee to quit and seek alternative employment, when a motive for such treatment was protected activity, will establish constructive discharge. See *Consec Security,* 325 NLRB 453 (1998), and cases cited therein, enfd. mem. 185 F.3d 862 (3d Cir. 1999)." In a footnote, Members Liebman and Truesdale also said ". . . an employee's voluntary quit will be considered a constructive discharge when an employer conditions an employee's continued employment on the employee's abandonment of his or her Sec. 7 rights and the employee quits rather than comply with the condition. Here, Member Liebman finds that, by issuing Lehman two disciplinary notices and twice suspending him for his union activity, Respondent led Lehman to reasonably believe that he was compelled to choose between abandoning his union activity or being terminated."

While he does not subscribe to the "constructive discharge" analysis of his colleagues, Chairman Hurgten concurred in the 8(a)(3) result. He asserted that Lehman was actually discharged. He stated:

> The evidence shows that Respondent unlawfully suspended Lehman on February 17. The suspension notice said that Lehman would be discharged if he continued solicitation activities. After the suspension, Lehman returned on February 25 and resumed his solicitation activities. On March 2 or 3, Respondent suspended Lehman "indefinitely." Lehman was supposed to call Respondent on March 9 to discuss the matter. Lehman did not call on March 9, but did call on March 10. He said that, if he still had a job, he was giving 2 weeks' notice of resignation. Respondent called back 10 minutes later and said that Lehman did not have a job because he failed to call on March 9.
>
> In my view, Respondent discharged Lehman on March 10. Respondent told him that he no longer had a job. Respondent thereby fulfilled its threat to terminate Lehman if he persisted in solicitation activity. Respondent's reliance on Lehman's 1-day tardiness in calling Respondent was a pretext that was seized upon by Respondent to mask its unlawful reason for terminating Lehman.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charges filed by Laborers Montana District and Steven E. Lehman, an individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Hamilton, MT on Sept. 28 and 29, 1999. Adm. Law Judge Gerald A. Wacknov issued his decision Jan. 28, 2000.

* * *

Dobbs International Services, Inc. and Hotel Employees and Restaurant Employees Local 69 (22-CA-21477, 21580, 22-CB-8289, 8386; 335 NLRB No. 78) Newark, NJ Aug. 27, 2001. The Board upheld the administrative law judge's findings of Section 8(a)(1), (2), and (3), and Section 8((b)(1)(A) violations in this case involving a struggle for employee support between incumbent union, Hotel Employees and Restaurant Employees Local 69, and a rival outside union Industrial, Service, Transport and Health Employees District 6. Specifically, the judge found that Respondent Dobbs violated Section 8(a)(2) and/or (1) by assisting District 6 in its attempt to organize Dobbs' employees and assisting Local 69 in repelling District 6's

organizing drive; that Dobbs violated Section 8(a)(3) and (1) by suspending an employee who supported District 6; and that Local 69 violated Section 8(b)(1)(A) in several instances in its attempts to convince employees not to support District 6. [HTML] [PDF]

Chairman Hurtgen, dissenting in part, would reverse the judge and find that Dobbs did not violate Section 8(a)(2) by rendering unlawful assistance to District 6 by permitting District 6 to hold a meeting on its property and permitting District 6 representatives to distribute literature on its property. The Chairman concluded that Dobbs did not knowingly permit District 6 to hold meetings or to distribute literature on its property.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charges filed by Industrial, Service, Transport and Health Employees District 6 and Hotel Employees and Restaurant Employees Local 69; complaint alleged violation of Section 8(a)(1), (2), and (3), and Section 8((b)(1)(A). Adm. Law Judge Robert T. Snyder issued his decision June 23, 1998.

* * *

Easton Hospital (4-CA-27704; 335 NLRB No. 85) Easton, PA Sept. 19, 2001. Affirming the administrative law judge's recommended Order, the Board dismissed the complaint which alleged that the Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the United Independent Union, NFIU/LIUNA, as the exclusive collective-bargaining representative of a unit of the Hospital's registered nurses working in certain specialized assignments. The Board agreed with the judge that, under the standards of *Allentown Mack Sales & Service v. NLRB,* 522 U.S. 359 (1998), the Respondent had a good-faith uncertainty as to the continued majority support of the Union based on a November 24, 1998 letter signed by 7 of the 14 unit employees that stated: [HTML] [PDF]

> We feel that we have been misrepresented and therefore would like an immediate opportunity to revote to determine whether we want the union to continue its representation of our needs with Easton Hospital.

In *Levitz Furniture Co. of the Pacific,* 333 NLRB No. 105 (2001), which issued while this case was pending before the Board, the Board held that "an employer may unilaterally withdraw recognition from an incumbent union only where the union has actually lost the support of the majority of the bargaining unit employees." Id., slip op. at 1. The Board also held the Levitz analysis would be applied only prospectively and that all pending cases involving withdrawals of recognition will be decided under existing law-the "good-faith uncertainty" standard in Allentown Mack. In this case, the Board decided that the employees' use of the phrase "we feel that we have been misrepresented" suggests dissatisfaction with union representation and the expression of dissatisfaction coupled with their request for a vote, constituted sufficient evidence to establish a good-faith uncertainty as to the Union's majority status under Allentown Mack. Member Walsh stressed that in the future, in all cases arising after the Levitz decision, this type of evidence may be sufficient to support an employer's request for an election, but will no longer be sufficient to justify a withdrawal of recognition.

(Chairman Hurtgen and Members Truesdale and Walsh participated.)

Charge filed by United Independent Union, NFIU/LIUNA; complaint alleged violation Section 8(a)(1) and (5). Hearing at Philadelphia, July 20, 1999. Adm. Law Judge Martin J. Linsky issued his decision Sept. 1, 1999.

* * *

Performance Friction Corp. (11-CA-16040, 18044; 335 NLRB No. 86) Clover, SC Sept. 20, 2001. The Board found, contrary to the administrative law judge, that the Respondent violated Section 8(a)(1) of the Act by coercively interrogating employee Merri Rowe about union support or activities. The judge found that (1) Team Leader Hamacher was the Respondent's agent: thus, Respondent was responsible for his actions and (2) that Hamacher's question to Rowe: "Merri, you're not going to start the union stuff up again?" did not violate Section 8(a)(1). The General Counsel and Charging Party UAW, excepted to the judge's failure to find a violation. [HTML] [PDF]

The Board remanded the proceeding to the Regional Director to issue a new backpay specification recalculating the backpay owed by the Respondent to Martha Hinson, Manuel Mantecon, Jerry Kennedy, and Merri Rowe in accordance with its modifications to the judge's findings. The judge adopted the Region's gross backpay formula, finding that it employed a reasonable methodology and was reasonably designed to closely approximate the amount of backpay due the four discriminatees (two of the six discriminatees settled out at the commencement of the hearing). The Region's formula is predicated on the hours and earnings of 18 comparable employees employed through the liability period. The Board affirmed the judge's finding that the comparable or representative employee approach is an accepted methodology, and appropriate here. It found merit in the Respondent's specific exceptions to the Region's methodology as it relates to: (1) the average rate of pay level advancement, and (2) absenteeism. The Board ordered:

> Specifically, in accordance with our modifications to the judge's findings, the Region is directed to revise the backpay formula both to calculate (or to verify the Respondent's calculations) the average intervals between pay levels and to account for 'average' employee absenteeism of the comparable employees. The revised formula must then be applied to each of the four discriminatees. Additionally, the backpay period must be adjusted (shortened) for both Hinson and Rowe (Rowe's first backpay period only) to reflect our finding that their backpay period closed on the Respondent's good-faith attempt to communicate its 1996 offers of reinstatement to them at their last-known addresses. Kennedy's backpay must be reduced for the period he was incarcerated. Finally, the Respondent's backpay obligation to Rowe continues until the Respondent makes Rowe a valid offer of reinstatement.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charge filed by the UAW; complaint alleged violation of Section 8(a)(1). Hearing at Clover for 13 days between Nov. 30, 1998 and May 6, 1999, and by phone on June 10, 1999. Adm. Law Judge Richard J. Linton issued his decision October 28, 1999.

* * *

The Brookdale University Hospital (29-CA-22466; 335 NLRB No. 89) Brooklyn, NY Sept. 19, 2001. The Respondent violated Section 8(a)(1) of the Act by informing employee Stanley Rohlehr in February 1999 that it would be monitoring his work more closely because of his activities for Service Employees Local 1199, the Board held in agreement with the administrative law judge. [HTML] [PDF]

(Members Liebman, Truesdale, and Walsh participated.)

Charge filed by Stanley Rohlehr, an individual; complaint alleged violation of Section 8(a)(1). Hearing at Brooklyn on Sept. 15, 1999. Adm. Law Judge D. Barry Morris issued his decision Nov. 2, 1999.

* * *

American Medical Response, Inc. and EMTS & Paramedics International and its Local 1 (1-CA-35553, et al., 1-CB-9098, et al.; 335 NLRB No. 90) Natick and Quincy, MA Sept. 20, 2001. The Board upheld the administrative law judge's findings that following the merger of two companies into Respondent American Medical Response (AMR), certain employees were and others were not properly accreted into the bargaining unit of AMR employees represented by Respondent EMTS & Paramedics International (IAEP); and that AMR violated Section 8(a)(1), (2), and (3) and IAEP violated Section 8(b)(1)(A) and (2) of the Act to the extent that they entered into a recognition agreement and applied their existing collective-bargaining agreement to the new employees who were not properly accreted. Contrary to the judge, the Board held that Respondent IAEP Local 1 violated the Act in the same manner as IAEP because they were joint collective-bargaining representatives. No exceptions were filed by AMR and IAEP to the violations found by the judge. [HTML] [PDF]

AMR operates emergency medical service (EMS) trucks nationwide. In February 1997, a series of mergers dating back to 1995 culminated in AMR's absorption of two Massachusetts EMS nonunion companies, Med-Trans Ambulance Co. and Brewster Ambulance Co. AMR had a preexisting collective-bargaining relationship with the Union (IAEP and Local 1). Their most

recent collective-bargaining agreement was effective by its terms from July 6, 1996 to July 5, 2000. The contract included a union-security provision and the contractual unit consisted primarily of AMR's paramedics, emergency medical technicians, and wheelchair car drivers in Maine, New Hampshire, Rhode Island, and eastern Massachusetts, including the Worcester area.

After Februrary, AMR integrated the Med-Trans and Brewster operations into its own. Two new, managerially autonomous divisions were formed. Newly constituted Division 12 was coextensive with the geographic scope of the contractual bargaining unit, except for the exclusion of the Worcester area. For business reasons, Worcester was placed in a new Division 13, which also included western Massachusetts, Connecticut, and New York. On July 20, AMR and the Union signed an agreement providing for recognition of the Union as the collective-bargaining representative of the former Med-Trans and Brewster employees who worked within the scope of the contractual bargaining unit, regardless of whether they were assigned to Division 12 or Division 13.

The Board affirmed the judge's findings that the Med-Trans and Brewster employees in Division 12 were properly accreted into the contractual unit. Contrary to the General Counsel, it found that the judge's overall analysis applies the appropriate accretion factors and is consistent with the goal of balancing two competing statutory interests: the right of employees to choose their collective-bargaining representative, and the maintenance of stable collective-bargaining relationships. The Board however clarified two aspects of the judge's analysis.

First, it found that he erred by effectively creating a new bargaining unit rather than relying on the existing unit defined by the parties' collective-bargaining agreement. The former Med-Trans and Brewster employees who work within Division 12 were legitimately accreted into the existing contractual unit based on the level of their community of interest with the unit employees, the Board held. And, those former employees of Med-Trans working in the Worcester area of Division 13 were improperly accreted into the contractual unit because they lacked a sufficient community of interest with the employees in the contractual unit, the vast majority of who worked in Division 12.

Second, the Board noted the judge's accretion analysis did not distinguish between events before and after AMR's July 29 recognition of the Union. It agreed with the General Counsel that the question whether the Med-Trans and Brewster employees constituted an appropriate accretion to the AMR bargaining unit must be determined on the facts that existed on the date of the recognition of the Union.

(Members Liebman, Truesdale and Walsh participated.)

Charges filed by Allen Bryer, Charles Williams, and George Gardiner, Jr., individuals; complaint alleged violation of Section 8(a)(1), (2), and (3) and Section 8(b)(1)(A) and (2). Hearing at Boston, May 18-21 and June 24, 1998. Adm. Law Judge Bruce D. Rosenstein issued his decision Oct. 30, 1998.

* * *

Triangle Electric Co. and General Motors Corp. (7-CA-39041, 40075; 335 NLRB No. 82) Hamtramck, MI Aug. 27, 2001. Reversing the administrative law judge, Members Liebman and Truesdale held that Respondent GM requested Respondent Triangle to remove Triangle employee Lucinda Darrah from work she had been performing at GM's Hamtramck, MI plant because of her exercise of protected concerted activities (the distribution and solicitation of the Detroit Sunday Journal, a publication by six striking Detroit newspaper unions), and that Triangle terminated Darrah pursuant to such request, in violation of Section 8(a)(1) of the Act. [HTML] [PDF]

Members Liebman and Truesdale found that the Respondents were aware of the concerted nature of the activity, and there is no dispute that her discharge was, in fact, attributable to that activity. They wrote:

> We recognize, as our colleague points out, that a newspaper typically is, in part, a commercial product that can be sold for personal remuneration by a vendor who may, or may not have any personal interest in 'supporting' the newspaper itself. In the present case, however, Darrah engaged in solicitation/distribution activities directed at other employees, in nonwork areas during nonwork time and at her site of employment, of a specialized 'strike' periodical. Although the strike newspaper had a listed price on its cover and Darrah raised money for the strikers,

this does not render Darrah akin to a 'newsboy or newsgirl on the street,' as the dissent suggests. Rather, Darrah's activities are essentially no different than the protected activities of any employees who, in a group effort, concertedly distributes or solicits leaflets, circulars, or other group material, and or raises money for the group, at his or her place of employment during nonwork time and in nonwork areas. In these circumstances, we cannot agree with our colleague that the Respondents were unaware of the group nature of Darrah's activities.

Chairman Hurtgen, in dissent, agreed with the judge that these allegations should be dismissed. He noted these facts. Darrah acted alone, her conduct consisted of selling and distributing a commercial newspaper, she sold and distributed the newspaper to employees of employers who were not directly involved in the Detroit newspaper strike, and the Respondents knew only that Darrah was selling a strike newspaper and had no knowledge of her motive in selling them. The Chairman found, as did the judge, that the use of the adjective "strike"' to describe what is essentially a commercial newspaper did not suffice to put Respondent GM on notice that Darrah's sale and distribution of the Sunday Journal was concerted activity and that the General Counsel thus failed to meet his burden of showing that the Respondents knew, or should have known, that Darrah was engaged in concerted activity.

No exceptions were filed to the judge's finding that GM violated Section 8(a)(1) by maintaining unlawfully broad no-solicitation and no-distribution rules.

(Chairman Hurtgen and Members Liebman and Truesdale participated.)

Charges filed by Lucinda Darrah, an individual; complaint alleged violation of Section 8(a)(1). Hearing at Detroit on Aug. 12, 1998. Adm. Law Judge Thomas R. Wilks issued his decision May 11, 1999.

* * *

World SS, Inc. (30-CA-13549, 13622; 335 NLRB No. 95) Pleasant Prairie, WI Sept. 20, 2001. Agreeing with the administrative law judge, the Board found that the Respondent violated Section 8(a)(1) of the Act by informing employee Christine Holloway that it had transferred employees from another facility in order to defeat Teamsters Local 143 in a Board election and that the Respondent violated Section 8(a)(3) and (1) by discharging Holloway because of her union activities. [HTML] [PDF]

Finding merit in the General Counsel's exceptions, the Board reversed the judge and held that the Respondent violated Section 8(a)(3) and (1) by discharging employees John Catalanello and Floyd Matthews for conduct that occurred while they were on unlawful suspension. It agreed with the judge that the General Counsel satisfied his evidentiary burden of establishing that the two employees' union activities were a motivating factor in their discharges and rejected his finding that the Respondent would have discharged Catalanello and Matthews because of their purported disloyalty in performing unloading work and acting as the Respondent's business competitors. The Board found *Crystal Linen Service,* 274 NLRB 946, 948-949 (1985), and *Associated Advertising Specialists,* 232 NLRB 50, 54 (1977), cited by the judge in dismissing the 8(a)(3) allegation are inapposite here.

No exceptions were filed to the judge's findings that: (1) Dock Supervisor Arthur Harding is a statutory supervisor; (2) the Respondent violated Section 8(a)(1) by interrogating employees, warning them that they could "leave" if they were unhappy on the job, implying to employees that it would be futile for them to organize the Respondent; and suspending Catalanello and Matthews; and (3) the Respondent, by Harding, did not unlawfully interrogate Matthews by questioning him about wanting to go union, and the Respondent did not violate Section 8(a)(3) and (1) by suspending Catalanello and Matthews.

(Members Liebman, Truesdale, and Walsh participated.)

Charges filed by Teamsters Local 43 and Christine Holloway, an individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Milwaukee, Dec. 2-3 and 23, 1996. Adm. Law Judge C. Richard Miserendino issued his decision Sept. 21, 1998.

* * *

Can-Am Plumbing, Inc. (32-CA-16097; 335 NLRB No. 93) Pleasanton, CA Sept. 21, 2001. The Board affirmed the administrative law judge's conclusion that the Respondent violated Section 8(a)(1) of the Act by maintaining and prosecuting a state court lawsuit that is preempted by the NLRA against competitor employer L.J. Kruse Company for accepting job targeting program funds from Plumbers Local 324 for work on the Ascend Communications project. [HTML] [PDF]

The Union established the job targeting program to subsidize the wage rates paid by targeted employers so they could bid on projects against nonunion contractors and thereby expand job opportunities for employees working under the Union's collective-bargaining agreements. Kruse is a plumbing and heating contractor whose plumbers, pipefitters, apprentices, and welders are represented by the Union. In May 1996, Kruse bid for work on the Ascend Communications Project and the Respondent, a nonunion contractor, was one of its competitors. It was not a public works project and was not governed by Davis-Bacon prevailing wage regulations. Ascend awarded the work to Kruse, which requested and received job targeting funds.

The Board decided the holding in *Kingston Constructors,* 332 NLRB No. 161 (2000), that unions may not lawfully exact dues from employees working on Davis-Bacon projects to support job targeting programs, does not require a different result. The Ascend Communications project is not a Davis-Bacon project and there was no evidence that Kruse has ever worked on such a project. At most only 2 to 3 percent of the funds collected for the Union's job targeting program came from Federal or State prevailing wage jobs, and the moneys are not directly traceable to Kruse. Under Board precedent that was specifically reaffirmed in Kingston Constructors, the Board found that the job targeting program in this case is thus protected by Section 7 of the Act. Id., slip op at 5, citing *Manno Electric,* 321 NLRB 278, 298 (1996), enfd. mem. 127 F.3d 34 (5th Cir. 1997); *Associated Builders & Contractors,* 331 NLRB No. 5, slip op. at l fn. 1 (2000), vacated in part not relevant here pursuant to a settlement 333 NLRB No. 116 (2001). The Board wrote:

> Consequently, the Respondent's lawsuit, which broadly attacks the entire job targeting program and Kruse's participation in it as unlawful under State law is preempted by the Act. Manno Electric, supra, Associated Builders, supra.
>
> A preempted lawsuit 'enjoys no special protection under Bill Johnson's' and can be condemned as an unfair labor practice if it is unlawful under traditional NLRA principles. Under settled law, a violation of Section 8(a)(1) is established if it is shown that the employer's conduct has a tendency to interfere with the free exercise of a Section 7 right. Here, it is clear that the Respondent's lawsuit tends to interfere with (indeed it is designed to stop) conduct that is protected by Section 7 (the job targeting program).
>
> (Members Liebman, Truesdale, and Walsh participated.)

Charge filed by Plumbers Local 342; complaint alleged violation of Section 8(a)(1). Hearing at Oakland on April 16, 1998. Adm. Law Judge Mary Miller Cracraft issued her decision Jan. 29, 1999.

* * *

Adair Express L.L.C. (31-CA-24291, 24484; 335 NLRB No. 96) Van Nuys, CA Sept. 21, 2001. The Board agreed with the administrative law judge that the Respondent is a Burns successor to Assured Transportation & Delivery that violated Section 8(a)(5) and (1) of the Act by failing to recognize and bargain with Teamsters Local 396 as the exclusive collective-bargaining representative of its drivers and setting their initial terms and conditions of employment without bargaining with the Union; and violated Section 8(a)(3) and (1) by failing and refusing to hire applicants because of their union affiliation. The Respondent did not file any exceptions. The Board, finding merit in the General Counsel exceptions, modified the judge's recommended Order and the notice for posting in certain respects. It found without merit the Charging Party's exception to the absence of an affirmative bargaining order as the judge's recommended Order includes one. [HTML] [PDF]

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charges filed by Teamsters Local 396; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Los Angeles, Aug. 21-23 and Sept. 15, 2000. Adm. Law Judge Karl H. Buschmann issued his decision June 18, 2001.

* * *

Marion Hospital Corporation d/b/a Marion Memorial Hospital (14-CA-25287, 25341; 335 NLRB No. 80) Marion, IL Aug. 27, 2001. Members Liebman, Truesdale, and Walsh agreed with the administrative law judge that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with Laborers Local 508 on September 11, 1998, withdrawing recognition from the Union on October 28, 1998, and making unilateral changes in employee terms and conditions of employment. The majority entered an affirmative bargaining order, saying it is the appropriate remedy for the Respondent's unlawful withdrawal of recognition from the Union. Chairman Hurtgen, dissenting in part, concluded that the withdrawal of recognition on October 28 was lawful. [HTML] [PDF]

On October 20, employee Joy Woods, the Petitioner in Case 14-RD-1617, gave Respondent a letter stating in pertinent part: "We have 50% plus 1 signatures and we no longer wish to be represented by Laborer's Union Local 508." Attached were petitions signed by 82 employees bearing the language, "We, the undersigned employees of [the Respondent] no longer wish to be represented by [the Union] or any other union and hereby request decertification of this union." Based on this letter and the attached petitions, on October 28 the Respondent's chief executive officer told employees that the Respondent would no longer recognize the Union, would deal directly with them, and would grant a wage increase and begin conducting employee evaluations that would lead to merit increases. In November, the Respondent unilaterally implemented certain changes to the employees' terms and conditions of employment.

Applying *Allentown Mack Sales & Service v. NLRB,* 522 U.S. 359 (1998), the majority found that the Respondent did not have a reasonable, good-faith uncertainty about the Union's majority status on September 11 and that the Respondent's asserted objective considerations, either individually or in combination, do not establish reasonable uncertainty. Turning to the Respondent's withdrawal of recognition from the Union on October 28, the majority disagreed with the judge's finding that the signatures on the antiunion petitions the Respondent received on October 20 were tainted by the Respondent's September 11 unlawful refusal to bargain. In this respect, the majority noted that only employee signatures dated after September 11 are presumptively tainted by the unlawful refusal to bargain and no such presumption of unlawful taint attaches to those employee signatures dated before September 11. See *Lee Lumber & Building Material Corp.,* 322 NLRB 175, 178 (1996), affd. in relevant part and remanded 117 F.3d 1454 (D.C. Cir. 1997), decision on remand 334 NLRB No. 62 (2001).

The majority then considered whether, under Allentown Mack, the Respondent established a reasonable, good-faith uncertainty about the Union's majority status. It found that the bargaining unit consisted of 157 employees on October 28, but only 69 employee signatures on the antiunion petitions can be counted or l0 short of a majority, an insufficient showing to establish a good-faith reasonable uncertainty as to the Union's continuing majority status. See *Levitz Furniture Co.,* 333 NLRB No. 105 (2001). The majority wrote: "Aside from the petitions, the record contains no other evidence that might establish uncertainty as to the Union's continuing majority status. Furthermore, even if the Respondent had presented additional evidence of employee disaffection arising at the time it received the antiunion petitions, the *Lee Lumber* presumption of unlawful taint would apply. Because the presumption has not been rebutted, any such evidence would not be probative of a good-faith reasonable uncertainty."

Chairman Hurtgen, concluding the Respondent acted lawfully when it withdrew recognition on October 28, found the 69 signatures on the decertification petition, coupled with employee resignations from union membership, reasonably created "uncertainty" in the Respondent's mind as to whether the Union had the support of a majority of the employees. The Chairman noted that there were 157 employees in the unit, and 82 signatures on the decertification petition. Further, 7 signators were no longer employees on October 28, and 6 had signed after the September 11 refusal to bargain. He assumed arguendo that these signatures were tainted. That leaves 69 signatures. Sixty-one employees resigned from the Union (only 10 occurred after September 11). Six of the 61 resignees were in addition to the decertification signers (only one occurred after September 11). Although Chairman Hurtgen agrees with his colleagues who cited the well-settled proposition that "non-membership in a union does not *establish* that those employees do no want the Union to be their representative," he believes that resignations from membership are a relevant factor to be considered.

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

Charges filed by Laborers Local 508; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Marion on January 26

and 27, 1999. Adm. Law Judge Lawrence W. Cullen issued his decision April 29, 1999.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Network Dynamics Cabling, Inc. (Electrical Workers IBEW Local 98) Westchester, PA September 17, 2001. 4-CA-27102, et al.; JD-123-01, Judge George Alemán.

Jacobs Heating and Air Conditioning (Sheet Metal Workers Local 19) Glenside, PA September 18, 2001. 4-CA-28122, 28143; JD-128-01, Judge Benjamin Schlesinger.

Personnel Hygiene Services, Inc. (Individuals) Woburn, MA September 18, 2001. 1-CA-38609, et al.; JD-129-01, Judge David L. Evans.

La Gloria Oil and Gas Company (PACE Local 4-202) Tyler, TX September 19, 2001. 16-CA-20461, et al.; JD(ATL)-60-01, Judge Margaret Brakebusch.

Elevator Constructors Local 2 (an Individual) Chicago, IL September 21, 2001. 13-CB-16499-1; JD-130-01, Judge Jerry M. Hermele.

Aero Ambulance Service Inc. (Teamsters Local 617) Hackensack, NJ September 21, 2001. 22-CA-20950; JD(NY)-48-01, Judge Raymond P. Green.

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TEST OF CERTIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the ground that the Respondent has not raised any representation issue that is litigable in this unfair labor practice proceeding. The case did not present any other issues.)

Chardon Rubber Company (Steelworkers) (8-CA-32420; 335 NLRB No. 92) Alliance, OH September 20, 2001.

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ADMISSION OF ALLEGATIONS

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's admission in its answers to the allegations of the complaint and compliance specification.)

Heritage Services, Inc. (Security Workers Health and Welfare Fund) (5-CA-28938; 335 NLRB No. 84) Baltimore, MD September 19, 2001.