

## 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.



[Index of Back Issues Online](#)

November 30, 2001

W-2819

**CASES SUMMARIZED**

SUMMARIES CONTAIN LINKS TO FULL TEXT

[Aiken Underground Utility Services](#), Aiken, SC  
[Laborers District Council of Chicago and Operating Engineers Local 150 \(Henkels & McCoy\)](#), Chicago, IL  
[Mercy General Hospital](#), Rancho Cordova, CA  
[Tri-Clover, Inc.](#), Kenosha, WI

**OTHER CONTENTS**

[List of Decisions of Administrative Law Judges](#)

[List of No Answer to Complaint Cases](#)

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*Mercy Healthcare Sacramento d/b/a Mercy General Hospital, et al.* (20-RC-17563; 17564; 336 NLRB No. 109) Rancho Cordova, CA Nov. 20, 2001. By direction of the Board, the Associate Executive Secretary granted the Petitioner's motion and vacated the Board's Decision and Direction of Second Elections reported at 334 NLRB No. 13 (2001). Based upon the parties' settlement agreement containing a labor relations accord, the Petitioner withdrew its petitions in this matter. See *Caterpillar, Inc.*, 332 NLRB No. 101 (2000). [\[HTML\]](#) [\[PDF\]](#)

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*William Lawrence, Darnell Price, James Simons, Clifton S. Key, and Joe Davis, individually and as partners d/b/a Aiken Underground Utility Services* (11-CA-16393; 336 NLRB No. 102) Aiken, SC Nov. 20, 2001. The Board ordered William Lawrence, Darnell Price, and Joe Davis, individually and as partners d/b/a Aiken Underground Utility Services, to pay Zerretta Cave and Mildred Sanders backpay totaling \$17,850 and \$11,574, respectively; and that Clifton S. Key and James Simons, as partners, are liable only to the extent of their partnership property. In 1997, the Board found that Lawrence, Price, and Davis, individually and as partners d/b/a Aiken violated Section 8(a)(4) and (1) of the Act by denying employment to Cave and Sanders. 324 NLRB 187. The Board ruled that Simons did not receive the necessary notice of the unfair labor practice proceeding to impose derivative liability on him in this supplemental compliance proceeding, stating: [\[HTML\]](#) [\[PDF\]](#)

[I]t is undisputed that Simons was no longer a partner at the time of the underlying unfair labor practice proceeding or at the time the complaint was served. Nor does the General Counsel allege that there was an alter ego, successor, or single employer relationship between Simons and the partnership. Accordingly, we find that service on the named Respondents [Lawrence, Price, and David] in the underlying proceeding was insufficient notice to Simons, and that he is therefore not derivatively liable, individually or jointly and severally, for the backpay remedy.

Our finding that Simons is not liable, however, does not shield any extant partnership property in which he may have an interest. Here, Davis and Price were found-after notice and opportunity to be heard-to be among the parties liable for violating Section 8(a)(1) and (4). These unlawful acts were undertaken in the ordinary course of the partnership business, in October 1994, when Davis and Price were partners with Simons. The liability of Davis and Price is therefore directly imputable to the partnership of Simons, Price and Davis et al., and Simons is thus liable for the backpay remedy to the extent of his partnership property.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Hearing at Aiken on May 1, 2000. Adm. Law Judge Keltner W. Locke issued his decision June 22, 2000.

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*Laborers District Council of Chicago and Operating Engineers Local 150 (Henkels & McCoy)* (13-CD-604-1, 607-1; 336 NLRB No. 108) Chicago, IL Nov. 16, 2001. Relying on employer assignment and preference, area and industry practice, relative skills and training, and economy and efficiency of operations, the Board awarded the work in dispute to employees of Henkels & McCoy, Inc., represented by the Laborers District Council of Chicago and Operating Engineers Local 150, rather than those represented by Electrical Workers IBEW Local 196. The disputed work involves underground conduit and manhole work, including operation of backhoes and all heavy construction equipment, and excavating and placing of multi-way duct banks and manholes throughout Excelon Corp.'s northern region of Illinois, mostly in the Chicago area. [\[HTML\]](#) [\[PDF\]](#)

The Employer has collective-bargaining agreements with all three Unions covering the disputed work, but it assigned the work to employees represented by the Laborers and Operating Engineers Local 150. IBEW Local 196 filed a grievance seeking reassignment of the work to members of its bargaining unit. Operating Engineers Local 150 and the Laborers each threatened to strike the Employer to protect their jurisdiction, unless the Employer withdrew from the grievance proceeding.

Most contractors in both the Northern Illinois region and the Chicago area assign underground work (UG work) to operating engineers and laborers. Employees represented by the Laborers and Local 150 have complete extensive training dealing specifically with UG work. Employees represented by IBEW Local 196 do not receive any formal training to perform such work and are expected to learn "on the job." Local 196 maintained that members of its bargaining unit should be awarded the work because the ductwork will ultimately house electrical cables. The Board noted however that the UG work is a significant step in the process and precedes the actual laying of the electrical cable and may not fairly be characterized as "incidental" to laying electrical cables.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

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*Tri-Clover, Inc.* (30-CA-15004, et al.; 336 NLRB No. 110) Kenosha, WI Nov. 20, 2001. The Board granted the Respondent's motion to dismiss the complaint allegations that it violated Section 8(a)(3) and (1) of the Act by giving verbal disciplinary warnings to, and ultimately laying off, employee Steve Kurta for engaging in protected concerted activities and Section 8(a)(5) and (1) by unilaterally transferring at least two unit positions outside the unit, eliminating at least three unit positions and laying off the employees holding those positions, and subcontracting unit work to a laid-off employee. The Board agreed with the Respondent that the unfair labor practice allegations should be deferred to the grievance-arbitration procedure of the parties' collective bargaining agreement. [\[HTML\]](#) [\[PDF\]](#)

The General Counsel contended that the matter is not appropriate for deferral because the contractual grievance procedure is not final and binding in view of the provisions reserving to the parties the right to strike or lockout if the other party does not implement the arbitral award within 30 days. The Board, however, agreed with the Respondent that the arbitration procedure provided under the collective-bargaining agreement is final and binding despite the strike and lockout provisions.

Paragraph 23(d) of the parties' agreement explicitly states that the decision of the arbitrator shall be "final and binding," the Board noted, adding: "This clear language is not rendered inoperative, as the General Counsel suggests, by the language in paragraph 23(f) allowing the prevailing party to strike or lockout in the event of the other party's noncompliance with the arbitration decision. Paragraph 23(f) merely reinforces the finality of the arbitration procedure by adding another means of enforcing compliance, if necessary." The Board noted further that noncompliance with an arbitral award under the contract would also violate Wisconsin State statutory provisions prohibiting the violation of the terms of a collective-bargaining agreement and the refusal to accept the final determination of a tribunal having jurisdiction over a matter. See Wis. Stat. § 111.06; see also *T & J Komp Electric*, WERC Decision No. 26660-A (March 26, 1991).

The Order dismissing the complaint provided that: the Board retains jurisdiction of this proceeding for the limited purpose of entertaining an appropriate and timely motion for further consideration upon a proper showing that either (a) the dispute has not, with reasonable promptness after the issuance of this Order, either been resolved by amicable settlement in the grievance procedure or submitted promptly to arbitration, or (b) the grievance or arbitration procedures have not been fair and regular or have reached a result that is repugnant to the Act.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charges filed by Professional & Technical Engineers Local 92; complaint alleged violation of Section 8(a)(1), (3) and (5).

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### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

*Wild Oats Markets, Inc.* (Food & Commercial Workers Local 371) Norwalk, CT November 20, 2001. 34-CA-9243, 9278; JD (NY)-58-01, Judge Michael A. Marcionese.

*Golden Stevedoring, Inc.* (Longshoremen South Atlantic and Gulf Coast District) Mobile, AL November 21, 2001. 15-CA-13334(E) et al.; JD(ATL)-74-01, Judge Keltner W. Locke.

*Tejas Electrical Services, Inc.* (Electrical Workers [IBEW] Local 716) Houston, TX November 21, 2001. 16-CA-20937; JD (ATL)-73-01, Judge Keltner W. Locke.

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### NO ANSWER TO COMPLAINT

*(In the following cases, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)*

*Criss Bros., Inc.* (Iron Workers Local 486) (5-CA-29480; 336 NLRB No. 107) Bladensburg, MD November 19, 2001.

*International Chemical Workers Union Council/UFCW, Local 9c* (PQ Corporation) (4-CB-8631; 336 NLRB No. 105) Chester, PA November 19, 2001.

*Longshore & Warehouse Local 6* (an Individual) (20-CB-11486-1; 336 NLRB No. 104) Santa Clara and San Francisco, CA November 19, 2001.