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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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C A S E S S U M M A R I Z E D

SUMMARIES CONTAIN LINKS TO FULL TEXT

O T H E R C O N T E N T S

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Dejana Industries, Inc. (22-RC-12005; 336 NLRB No. 127) Newark, NJ Dec. 10, 2001. The Board reversed the Acting

Regional Director and held that, under precedent, the Petitioner's showing of interest is tainted due to Supervisor Troy Carter's direct solicitation of the authorization cards and dismissed the representation petition filed by Teamsters Local 408. The Board has long held that if a supervisor directly solicits authorization cards, those cards are tainted and may not be counted for the showing of interest. See *National Gypsum Co.,* 215 NLRB 74 (1974); *Southeastern Newspapers, Inc.,* 129 NLRB 311 (1960); and *The Toledo Stamping & Mfacturing. Co.,* 55 NLRB 865, 867 (1944). In this decision, the Board wrote: [HTML] [PDF]

> [W]e recognize that applying this bright-line rule of excluding all cards directly solicited by a supervisor may seem unduly harsh in situations in which employees and petitioning unions may not be fully aware that the card solicitor possesses any of the indicia of statutory supervisory status. However, we find this possible disadvantage is outweighed by the benefits of providing the Board's Regional Directors and all parties in representation cases with clear procedural guidance. A bright-line rule also avoids possible election delays due to administrative investigations, by encouraging petitioners to gather new, untainted cards where there is any allegation that the petitioner's card solicitor possesses supervisory authority.

On March 30, 2001, the Acting Regional Director directed an election among the Employer's sweeper operators, regular seasonal payload operators, and mechanics. The Regional Director subsequently denied the Employer's request for dismissal of the petition after an administrative investigation, concluding there was insufficient evidence to establish that supervisory participation in the organizing drive tainted the showing of interest and that the showing of interest was numerically sufficient even excluding a card signed by Supervisor Troy. By order dated April 25, 2001, the Board granted the Employer's request for review of the Regional Director's determination.

In this decision on review, the Board found the Regional Director erred by applying the test set forth in *Sutter Roseville Medical Center,* 324 NLRB 218 (1997), which is used in objections cases to evaluate whether prounion supervisory conduct throughout the entire election campaign warrants setting aside an election, not in cases where, as here, the issue is solely whether the petition should be dismissed because the showing of interest has been tainted.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

* * *

U.S. Postal Service and Letter Carriers Branch 109 (34-CA-9194, 34-CB-2378; 336 NLRB No. 125) Shelton, CT Dec. 10, 2001. Affirming the administrative law judge's decision, the Board held that the Respondent Employer violated Section 8(a)(3) and (1) of the Act by reducing the seniority of letter carrier George French at the unlawful request of the Respondent Union; and that the Respondent Union violated Section 8(b)(1)(A) by threatening French with loss of job seniority and Section 8(b)(2) by causing or attempting to cause the Respondent Employer to discriminate against French by demanding a reduction in his seniority because of a personal disagreement between French and Union President Ronald Persico. [HTML] [PDF]

The Board modified the judge's recommended Order to provide that the Respondent Union send French a copy of its notification to the Respondent Employer that it has no objection to the restoration of French to his previous position on the seniority list; to provide that the Respondent Employer and Respondent Union are to jointly and severally make French whole; to include the statement that the Respondent Union's liability for backpay shall terminate 5 days after it notifies the Respondent Employer that it has no objection to the restoration of French's seniority; to require the Respondent Employer and Respondent Union to remove from their files any reference to the reduction of French's seniority and to notify French in writing that they have done so and that the reduction of his seniority will not be used against him in any way; and to require the reciprocal posting of notices.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charges filed by George French, an individual; complaint alleged violation of Section 8(a)(1) and (3) and Section 8(b)(1)(A) and (2). Hearing at Hartford, Nov. 16-17, 2000. Adm. Law Judge Margaret M. Kern issued her decision April 3, 2001.

* * *

C.S. Telecom, Inc. (4-CA-28871; 336 NLRB No. 126) Philadelphia, PA Dec. 10, 2001. Contrary to the administrative law judge, the Board found that the Respondent violated Section 8(a)(1) of the Act by coercively interrogating Bryan Galie about his union activities. It determined that the judge erred in dismissing the allegations that Company President John Yoast III and his brother, Vice President Michael Yoast unlawfully interrogated Galie in December 1999. [HTML] [PDF]

The judge dismissed the complaint allegations of unlawful interrogations on the ground that Galie's conduct, although protected, was not concerted. However, the Board found that the judge erred in two respects. It said

> First, he failed to recognize that Section 7 'defines both joining and assisting labor organizations?actions in which a single employee can engage?as concerted activities.' *NLRB v. City Disposal Systems,* 465 U.S. 822, 831 (1984). Accordingly, by definition, Galie's conduct was concerted without regard to the fact that he may have acted alone. Second, without any evidentiary support, the judge speculated that Galie's actions were 'meant to force the Respondent to recognize the Union so that the Union would stop threatening its customers.' Because there is nothing in the record indicating that Galie was a knowing participant in any threatening conduct in which the Union may have engaged, the judge's speculation must be rejected.

The Board agreed with, or found it unnecessary to pass on, the judge's dismissal of other unfair labor practice allegations. It also adopted the judge's finding that the Respondent has demonstrated it would have laid Galie off even in the absence of his protected activity.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charge filed by Electrical Workers Local 98; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Philadelphia on Nov. 28 and 29, 2000. Adm. Law Judge Joel P. Biblowitz issued his decision Feb. 27, 2001.

* * *

Ingram Barge Company (26-CA-18649; 336 NLRB No. 131) Nashville, TN Dec. 14, 2001. The Board affirmed the administrative law judge's dismissal of the complaint allegations that the Respondent violated Section 8(a)(1) and (3) of the Act by terminating barge pilots Lavon Church, David Sullivan, Tony Gurley and Rodger Sholar. It adopted the judge's finding that the Respondent's barge pilots were not statutory employees, but were supervisors within the meaning of Section 2(11) of the Act. [HTML] [PDF]

The judge determined that "the pilots' supervisory duties remain essentially as they were in 1962 when the Board decided [in] an earlier Ingram Barge case" that the Respondent's pilots were supervisors. *Local 28, Masters, Mates and Pilots (Ingram Barge Co.),* 136 NLRB 1175, 1203 (1962) (Ingram Barge I), enfd. 321 F.2d 376 (D.C. Cir. 1963). Members Liebman and Walsh agreed with Chairman Hurtgen that the judge correctly applied that precedent in recommending that the complaint be dismissed.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charge filed by Masters, Mates and Pilots ILA; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Memphis on June 21 and 22, 1999. Adm. Law Judge Pargen Robertson issued his decision Oct. 14, 1999.

* * *

MJM Studios of New York, Inc. (34-RC-1881; 336 NLRB No. 129) Rock Tavern, NY Dec. 14, 2001. The Board affirmed the Regional Director's decision to conduct an immediate election among the Employer's carpenters and welders but reversed his decision to exclude 13 carpenters and welders because they are "temporary" employees. [HTML] [PDF]

The Board, citing *Personal Products Corp.,* 114 NLRB 959, 960 (1955), said "[T]emporary employees, who are employed on the eligibility date, and whose tenure of employment remains uncertain, are eligible to vote." It held the "date certain" test, however, does not necessarily require that the employee's tenure is "certain to expire on an exact date"; it is only necessary that

the "prospect of termination [is] sufficiently finite on the eligibility date to dispel reasonable contemplation of continued employment beyond the term for which the employee was hired." *St. Thomas-St. John Cable TV,* 309 NLRB 712, 713 (1992).

The Board found the evidence is insufficient to support a "date certain" for the termination of the temporary employees or to dispel reasonable contemplation of continued employment beyond the term for which the employees were hired. *Ameritech Communications,* 297 NLRB 654 (1990). It held that the 13 employees share a sufficient community of interest to be included in the unit with the Employer's "regular" employees because there is no dispute that they work side-by-side with the regular employees, performing the same work, under the same supervision. The fact that they receive different wages and benefits than the "regular" employees does not require their exclusion from the unit.

In Chairman Hurtgen's view, if the wages and benefits of the temporary employees are different from those of the regular employees, and if the wages and benefits of the temporary employees are set by an employer who is not to be at the bargaining table, it may be well that there is no community of interests between the temporary and regular employees. See Chairman Hurtgen's dissent in *Interstate Warehousing,* 333 NLRB No. 83. Here, the Union is the entity that refers the temporary employees to the Employer, and the wages and benefits are set in discussions between the Employer and the Union. The Union, if selected, would obviously be at the bargaining table. In these circumstances, Chairman Hurtgen would include the temporary employees in the unit.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

* * *

Vallery Electric, Inc. and J. Vallery Electric, Inc., as single employer/alter ego (15-CA-14575, 15304; 336 NLRB No. 133) Monroe and West Monroe, LA Dec. 14, 2001. The administrative law judge found, and the Board agreed, that the Respondents violated Section 8(a)(5) and (1) of the Act by failing to apply the terms of the 1997-1999 labor agreements between the Quachita Vallery Chapter National Electrical Contractors Association and Electrical Workers IBEW Local 446 with respect to employees performing electrical work and withdrawing recognition from the Union. The Board affirmed the judge's finding that the Respondents, as an alter ego or single employer, entered into a 9(a) relationship with the Union. The Respondents' exceptions do not dispute the judge's 9(a) finding. Contrary to the Respondents' exceptions, the Board agreed with the judge that the appropriate bargaining unit is "all employees performing electrical work." [HTML] [PDF]

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charges filed by Electrical Workers IBEW Local 446; complaint alleged violation of Section 8(a)(1) and (5). Hearing held Oct. 6-7, 1999. Adm. Law Judge Lawrence W. Cullen issued his decision Feb. 7, 2000.

* * *

Alter Barge Lines, Inc. (26-CA-18645; 336 NLRB No. 132) Benttendorf, IA Dec. 14, 2001. Affirming the administrative law judge's finding that the Respondent's barge pilots are not statutory employees, but are supervisors within the meaning of Section 2(11) of the Act, the Board dismissed the complaint allegations that the Respondent unlawfully discharged pilots for honoring the Union's strike and unlawfully questioned and threatened pilots James York and Mike McReynolds. The Board noted the facts of this case cannot be meaningfully distinguished from those in *Ingram Barge Co.,* 336 NLRB No. 131, where it affirmed the judge's decision finding that Ingram's barge pilots were statutory supervisors. The parties were invited in June 2001 to file supplemental briefs on the impact of the Supreme Court's decision in *NLRB v. Kentucky River Community Care,* 121 S.Ct. 1861 (2001), on this case. [HTML] [PDF]

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charge filed by the Pilots Agree Association, Masters, Mates and Pilots ILA; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Memphis on April 3, 2000. Adm. Law Judge Pargen Robertson issued his decision July 12, 2000.

* * *

Alamo Rent-a-Car (20-CA-29022, et al.; 336 NLRB No. 121) Burlingame, CA Dec. 10, 2001. The Board affirmed the administrative law judge's decision that the Respondent violated Section 8(a)(4), (3), and (1) of the Act by various acts, including suspending and discharging employees because they gave an affidavit and testified in a Board proceeding; reassigning, issuing disciplinary warnings, suspending and discharging employees because of their protected concerted activities; and interrogating, threatening, and granting wage increases to employees in order to discourage them from supporting the Union. [HTML] [PDF]

Chairman Hurtgen, dissenting in part, would reverse the judge's findings that the Respondent violated the Act by soliciting employee grievances and impliedly promising to remedy them during a March 1999 employee meeting; when Respondent's City Manager Steve Raffio, impliedly threatened to discharge employee Ubaldo Reyes during a meeting between Reyes, Raffio, Assistant City Manager Nedic, and Maintenance Manager H. Singh in late March or early April; and by discharging employee Danny Elvena because he gave an affidavit in this proceeding.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charges filed by Teamsters Local 665; complaint alleged violation of Section 8(a)(1), (3), and (4). Hearing at San Francisco, Sept. 28-29, 1999 and Feb. 1, 2000. Adm. Law Judge Joan Wieder issued her decision June 1, 2000.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Hope Electrical Corp. (Electrical Workers Local 545) St. Joseph, MO December 5, 2001. 17-CA-20758, 21062; JD(SF)-98-01, Judge Gerald A. Wacknov.

JS Mechanical, Inc. (Sheet Metal Workers Local 19) Philadelphia, PA December 10, 2001. 4-CA-29973; JD-155-01, Judge Paul Bogas.

National Association of Letter Carriers (Office Employees Local 2) Washington, DC December 11, 2001. 5-CA-29669; JD-154-01, Judge Marion C. Ladwig.

Sam's Club, a division of Wal-Mart Corporation (Food & Commercial Workers and an Individual) Las Vegas, NV December 6, 2001. 28-CA-16669, et al.; JD(SF)-92-01, Judge Thomas M. Patton.

Hotel Ramada of Nevada d/b/a Tropicana Resort and Casino (Electrical Workers Local 357) Las Vegas, NV December 7, 2001. 28-CA-17161, JD(SF)-100-01, Judge Lana H. Parke.

Trade West Construction, Inc. (Carpenters Contractors) Las Vegas, NV December 7, 2001. 28-CA-17087; JD(SF)-99-01, Judge Albert A. Metz.

M & D Power Constructors, Inc. (an Individual) Birmingham, AL December 12, 2001. 10-CA-32405; JD(ATL)-65-01, Judge Philip P. McLeod.

Teamsters Local 75 (Individuals) Green Bay, WI December 12, 2001. 30-CB-3077; JD(NY)-61-01, Judge Joel P. Biblowitz.

Air Mechanical Systems, Inc. (Sheet Metal Workers Local 19) Moorestown, NJ December 14, 2001. 4-CA-28996, 4-RC-19953; JD-156-01, Judge C. Richard Miserendino.

Case Corporation (AutoWorkers [UAW]) Goodfield, IL December 14, 2001. 33-CA-12845; et al.; JD-158-01, Judge William J. Pannier III.

Wal-Mart Stores, Inc., (Food & Commercial Workers) Indianapolis, IN December 14, 2001. 25-CA-27387-1, 27389-1; JD-157-01, Judge Jerry M. Hermele.

AM-FM, Inc. d/b/a KMLE-FM and Infinity Broadcasting Corp. (an Individual) Phoenix, AZ November 5, 2001. 28-CA-16709; JD(SF)-89-01, Judge John J. McCarrick.

Longshore and Warehouse Union Local 23 (an Individual) Tacoma, WA November 7, 2001. 19-CB-8390, et al.; JD(SF)-90-01, Judge Burton Litvack.

Mercy Hospital Mercy Southwest Hospital (SEIU Nurse Alliance Local 535, California Nurses Association) Barkersfield, CA November 19, 2001. 31-CA-25139, 31-RC-7993; JD(SF)-93-01, Judge Lana H. Parke.

Recycling Industries, Inc. (Longshoremen Local 17) Sacramento, CA November 20, 2001. 20-CA-29897-1, et al.; JD(SF)-94-01, Judge Jay R. Pollack.

Take it for Granite, Inc. (an Individual) San Jose, CA November 26, 2001. 32-CA-18163-1; JD(SF)-95-01, Judge James M. Kennedy.

McKesson Corp. d/b/a McKesson Drug Co. (Longshoremen Local 26)Los Angeles, CA November 26, 2001. 21-CA-34305, 34542, JD(SF)-96-01, Judge Lana H. Parke.

* * *

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 file an answer to the complaint.)

Golden Mango Corp. (Food & Commercial Workers Local 342-50) (29-CA-24219, et al., 336 NLRB No. 128) Ozone Park, NY December 14, 2001.