

# National Labor Relations Board



# Weekly Summary of NLRB Cases

Division of Information

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*American, Inc.* (31-CA-26247; 342 NLRB No. 76) Visalia, CA July 30, 2004. Chairman Battista and Member Meisburg, with Member Liebman dissenting, agreed with the administrative law judge's dismissal of the complaint allegation that the Respondent refused to consider for hire and refused to hire nine union-affiliated applicants. The majority concluded that the General Counsel failed to satisfy his burden of showing, as to each allegation, that antiunion animus was a motivating factor in the Respondent's conduct. See *FES*, 331 NLRB 9 (2000), enfd. 301 F.3d 83 (3d Cir. 2002). They also agreed with the judge that the circumstances surrounding the Respondent's failure to hire the nine applicants, even if suspicious, are insufficient to warrant an inference that the Respondent was motivated by antiunion animus. See *Dorey Electric Co.*, 312 NLRB 150, 151 (1993). [\[HTML\]](#) [\[PDF\]](#)

Member Liebman would remand this case to the judge to make a critical credibility determination and to address record evidence at odds with the judge's dismissal of the complaint. She noted that while the General Counsel failed to prove unlawful motive, the judge found that the General Counsel established all the other necessary elements of his case, as required by *FES*: that the Respondent was hiring, that the union-affiliated applicants had the relevant experience, and that the Respondent did not seriously consider them or hire them.

(Chairman Battista and Members Liebman and Meisburg participated.)

Charge filed by Electrical Workers IBEW Local 428; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Bakersfield on Dec. 3, 2003. Adm. Law Judge Lana H. Parke issued her decision Jan. 14, 2004.

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*Boden Store Fixtures, Inc.* (36-CA-9451-1; 342 NLRB No. 68) Portland, OR July 30, 2004. Affirming the administrative law judge's recommendations, the Board held that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing the Union's (Pacific Northwest Regional Council of Carpenters) request for information relating to an August 13, 2002 grievance filed by the Union, even though the Union was not a named party to the national agreement between the Respondent and the Carpenters. [\[HTML\]](#) [\[PDF\]](#)

The Board noted that the Respondent's national agreement with the Carpenters expressly obligated the Respondent to comply with the terms of certain local agreements where it did business. This included the Union's local agreement with an Oregon contractors' association that contained a detailed grievance procedure. By agreeing to comply with this grievance procedure, the Respondent accepted the Carpenters' effective delegation of authority to the Union to enforce the local agreement. While the Union's grievance was nominally filed under the national agreement, the substance of the grievance made clear that it was based on the Respondent's alleged failure to comply with the terms of the local agreement. Accordingly, the Board found that the Respondent was obliged to provide the Union with requested information that was relevant and necessary to the Union's investigation and processing of the grievance.

(Chairman Battista and Members Liebman and Meisburg participated.)

Charge filed by Pacific Northwest Regional Council of Carpenters; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Portland on March 23, 2004. Adm. Law Judge Gerald A. Wacknov issued his decision April 28, 2004.

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*Cedars-Sinai Medical Center* (31-RC-8180; 342 NLRB No. 58) Los Angeles, CA July 28, 2004. The Board, contrary to the administrative law judge, sustained a portion of the Employer's Objection 1, set aside the election of December 11, 12, and 13, 2002 and ordered that a new election be held. The tally of ballots showed 695 for and 627 against, the Petitioner (California Nurses Association), with 10 challenged ballots, an insufficient number to affect the results. [\[HTML\]](#) [\[PDF\]](#)

The Employer filed numerous objections to the election and alleged, in its Objection 1, that the Petitioner, by its agents or supporters, made anonymous telephonic threats to antiunion bargaining unit employees Christine Foxon and Scott Barnes during the "critical period" between the filing of the petition for election and the election itself. The judge agreed and also found that these threats were disseminated to other employees in the bargaining unit. However, applying the Board's standard for party conduct set forth in *Cambridge Tool & Mfg. Co.*, 316 NLRB 716 (1995), the judge concluded that the threats did not have "the tendency to interfere with employees' freedom of choice" and that the employees in the unit had no reason to believe that the callers who had threatened Foxon and Barnes had the power to effectuate violence on a significant number of bargaining unit employees. The judge therefore recommended that the portions of Objection 1 relating to Foxon and Barnes be overruled.

Unlike the judge, the Board found that the threats to Barnes constituted objectionable conduct under the standard for party conduct. It contended that the judge erred in positing that the threats were somehow less "threatening" because they were made anonymously rather than directly. The Board wrote:

"[W]e believe that, in these circumstances, the anonymous threats were potentially even *more* menacing than a direct threat might have been, given that the callers, through some unexplained means, knew specific details about Barnes' life . . . . Threats such as these are certainly quite severe; and where, as here, they are tied to an employee's antiunion stance or activities, the threats are reasonably calculated to interfere with his freedom of choice.

In light of finding that the threats to Barnes warrant setting aside the election, Chairman Battista and Member Schaumber found it unnecessary to pass on the Employer's exceptions to the judge's recommendation to overrule Objections 2 through 19 and the portions of Objection 1 that did not relate to the threats.

Although Member Walsh agreed that the election should be set aside on the basis of the threats to Barnes, and that the threats to Foxon should be relied upon as background evidence, he would adopt, rather than find it unnecessary to pass on the judge's recommendation to overrule the remaining objections, except Objection 3, as he found that they are without merit. He joined Member Schaumber in finding it unnecessary to pass on the portions of Objection 3 relating to the vandalism of antiunion employees' vehicles. Chairman Battista would find that the vandalism of the cars of three antiunion nonunit employees was objectionable.

(Chairman Battista and Members Schaumber and Walsh participated.)

*Chugach Management Services, Inc.* (10-CA-32024; 342 NLRB No. 69) Huntsville, AL July 30, 2004. Members Liebman and Walsh agreed with the administrative law judge that the Respondent violated Section 8(a)(1) of the Act by failing and refusing to hire Anthony Jones for the position of high-voltage lineman because of his protected activities during his employment with the Respondent's predecessor, Northrop Grumman. Applying the Board's standard for assessing an allegedly discriminatory refusal-to-hire set forth in *FES*, 331 NLRB 9, 12 (2002), enfd. 301 F.3d 83 (3d Cir. 2002), the judge concluded, and the majority agreed, that the General Counsel demonstrated discriminatory motivation which the Respondent failed to rebut. [\[HTML\]](#) [\[PDF\]](#)

Member Schaumber, dissenting, would dismiss the complaint allegation. He found that the General Counsel did not meet his initial burden because he failed to show that Jones satisfied the requirements for the lineman position, which included occasional overtime work. Further even assuming that the General Counsel met that burden, the Respondent presented sufficient evidence to demonstrate that it would not have hired Jones even in the absence of any protected activity.

The majority wrote:

The dissent argues that a stated requirement for the lineman position was a willingness to work overtime, and Jones was the only applicant who refused to work overtime (or placed limitations on his willingness). The flaw in the dissent is that, according to the credited testimony, Jones did *not* refuse to work overtime, callouts or in inclement weather. Rather, he said that 'he would just go by the Red Book,' a reference to the collective bargaining agreement that governed his employment at Northrop, including its supplemental overtime agreement, which had resolved many of the overtime protests that Jones had raised.

(Members Liebman, Schaumber, and Walsh participated.)

Charge filed by Electrical Workers IBEW Local 558; complaint alleged violation of Section 8(a)(1). Adm. Law Judge Keltner W. Locke issued his initial decision July 10, 2000 and his supplemental decision Sept. 24, 2002.

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*Crittenton Hospital* (7-CA-44284; 342 NLRB No. 67) Rochester, MI July 30, 2004. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by threatening to retaliate against employee Barbara Chubb for performing her duties as a union steward. It disagreed with the judge that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to notify and bargain with Office and Professional Employees Local 40 over the change made to its dress code policy in October 2001, prohibiting the registered nurses from using acrylic or artificial nails on the job. [\[HTML\]](#) [\[PDF\]](#)

The Board did not dispute the judge's reasoning that apparel rules were a mandatory subject of bargaining under Board law. However, it contended that the General Counsel failed to show that the imposed change in the dress code policy prohibiting RNs from wearing acrylic/artificial nails was a "material, substantial and significant" one. *Fresno Bee*, 339 NLRB No. 158, slip op. at 3 (2003), citing *Peerless Food Products*, 236 NLRB 161 (1978).

(Members Schaumber, Walsh, and Meisburg participated.)

Charges filed by Office and Professional Employees Local 40; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Detroit, Feb. 19-20, 2002. Adm. Law Judge George Aleman issued his decision June 13, 2002.

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*Farmer Bros. Co.* (36-CA-9253-1; 342 NLRB No. 55) Eugene, OR July 28, 2004. Affirming the administrative law judge, the Board held that the Respondent violated Section 8(a)(3) and (1) of the Act by failing and refusing to furnish to Teamsters Local 206, pursuant to its request, copies of unit employees W-2 forms or a list of income amounts reported by each employee, which was necessary and relevant to the Union's performance of its duties as the exclusive bargaining representative. [\[HTML\]](#) [\[PDF\]](#)

(Members Liebman, Walsh, and Meisburg participated.)

Charge filed by Teamsters Local 206; complaint alleged violation of Section 8(a)(1) and (5). Parties waived a hearing before an administrative law judge. Adm. Law Judge William L. Schmidt issued his decision April 22, 2004.

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*Garcia Trucking Service, Inc.* (24-CA-9663; 342 NLRB No. 75) Carolina, PR July 30, 2004. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide Teamsters Local 901 with requested relevant information regarding both unit employees and subcontracting. [\[HTML\]](#) [\[PDF\]](#)

The Respondent asserted that the requested subcontracting information was unavailable. However, the judge found that there was no evidence indicating that the subcontracting information was unavailable at the time it was initially requested and, even if the Respondent had demonstrated that it did not have possession of the requested information, the Respondent made no effort to obtain the information from the subcontractors themselves.

Member Meisberg noted that the information requests predated the Union's invocation of the contractual grievance/arbitration mechanism and does not implicate Board precedent concerning deferral of information requests in which the requests postdate a party's invocation of the contractual grievance/arbitration procedure.

The Board modified the judge's order to specify that, with regard to the subcontracting information, the Respondent must provide the information in its possession, make a reasonable

effort to secure any unavailable information, and, if any information remains unavailable, explain and document the reasons for its continued unavailability.

(Chairman Battista and Members Liebman and Meisburg participated.)

Charge filed by Teamsters Local 901; complaint alleged violation of Section 8(a)(1) and (5). Hearing at San Juan on March 17, 2004. Adm. Law Judge William N. Cates issued his decision May 5, 2004.

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*Komatsu America Corp.* (33-CA-14021, 14088; 342 NLRB No. 62) Peoria, IL July 30, 2004. Members Schaumber and Meisburg adopted the administrative law judge's recommendation and dismissed the complaint allegation that the Respondent violated Section 8(a)(3) and (1) of the Act by failing to bargain at a meaningful time and in a meaningful manner regarding the effects of its outsourcing decision prior to its "volume-related" reduction in force on July 1, 2002. They also found that the Respondent did not violate Section 8(a)(1) by prohibiting employees from wearing a Union T-shirt protesting the outsourcing. Member Walsh did not agree with his colleagues on the T-shirt issue. [\[HTML\]](#) [\[PDF\]](#)

The T-shirts in question read: "December 7, 1941" on the front and "History Repeats Negotiate Not Intimidate" on the back. Citing *Evergreen Nursing Home and Rehabilitation Ctr., Inc.*, 198 NLRB 775, 778-779 (1972), the majority wrote: "Section 7 rights, however, may give way when 'special circumstances' override the employees' Section 7 interests and legitimize the regulation of such apparel." They noted that the Union's Pearl Harbor T-shirt directly invoked a highly charged and inflammatory comparison between the Respondent's outsourcing plans and the Japanese "sneak attack" on December 7, 1941. Members Schaumber and Meisburg contended that the comparison was especially inflammatory and offensive because the Respondent is a Japanese-owned company. In addition, they found that an employer may also legitimately be concerned about the potential disruption to the harmonious employee-management relationship caused by the provocative apparel of its employees.

In his partial dissent, Member Walsh said that a review of the record does not show any special circumstances justifying the prohibition against wearing the T-shirt. He found that the record is devoid of any evidence that wearing the T-shirts might jeopardize employee safety, erode employee discipline, cause damage to machinery or products, distract employees from work, exacerbate employee dissension, or interfere with a public image that the Respondent has established, as part of its business plan, through appearance rules for its employees.

(Members Schaumber, Walsh, and Meisburg participated.)

Charge filed by Boilermakers Local 158; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Peoria, March 5 and 6, 2003. Adm. Law Judge Marion C. Ladwig issued his decision June 26, 2003.

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*R.J. Houle Mechanical Contractors* (5-CA-31343; 342 NLRB No. 60) Rockville, MD July 29, 2004. The Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to comply with the terms of the parties' settlement agreement, which was approved by the administrative law judge, by failing to pay any moneys toward the backpay owed to Charging Party Kenneth Modlin. By the terms of the settlement agreement, the Board found that the Respondent's answers have been withdrawn and that all the allegations of the complaint and amended complaint are true. It held that the Respondent violated Section 8(a)(1) of the Act by discharging Modlin because he concertedly presented employee complaints to the Respondent regarding the Respondent's failure to pay employees overtime pay; and ordered the Respondent to immediately remit \$28,000 to the Regional Office to be disbursed to Modlin.

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(Members Liebman, Schaumber, and Meisburg participated.)

Charge filed by Kenneth Modlin; complaint alleged violation of Section 8(a)(1). General Counsel filed motion for summary judgment May 28, 2004.

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*McDonald Partners, Inc. d/b/a Rodgers & McDonald Graphics* (21-CA-32908; 342 NLRB No. 63) Carson, CA July 30, 2004. On remand from the U.S. Court of Appeals for the District of Columbia Circuit, the Board accepted the court's decision as the law of the case and dismissed the complaint. It held that the Respondent satisfied its burden of proving that it had a good-faith, reasonable uncertainty as to the Union's majority status at the time it withdrew recognition from Communications Workers Local 14904. [\[HTML\]](#) [\[PDF\]](#)

In its earlier decision reported at 336 NLRB 836 (2001), the Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Union following the expiration of the parties' 1995-1998 collective-bargaining agreement, without a good-faith, reasonable uncertainty as to the Union's continued majority status.

The court found that the Board improperly refused to consider some of the Respondent's evidence submitted in support of its claim of a good-faith reasonable doubt of the Union's majority support and that the Board improperly disregarded evidence of employee dissatisfaction with the Union arising before the execution of the parties' 1995-1998 contract. It held that the Board had misinterpreted the Supreme Court's decision in *Auciello Iron Works, Inc. v. NLRB*, 517 U.S. 781 (1996), as precluding the Respondent from relying on such evidence to establish a good-faith doubt of the Union's majority status. The court also concluded that the Board erroneously refused to consider evidence of declines in union membership and dues-checkoff authorizations during the term of the contract.

(Chairman Battista and Members Schaumber and Walsh participated.)

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*Sam's Club, A Div. of Wal-Mart Corp.* (28-CA-16669, et al.; 342 NLRB No. 57) Las Vegas, NV July 29, 2004. Members Liebman and Walsh adopted the administrative law judge's findings that the Respondent violated Section 8(a)(1) of the Act by coercively questioning employees about their concerted activities; creating the impression that the Respondent was engaging in surveillance of employees' concerted activities; imposing a requirement that an employee not use channels outside the immediate employee-employer relationship to voice employee concerns about employees' conditions of employment or the need for a union; and imposing a decisionmaking day ("D-day") disciplinary warning to employee Alan T. Peto because he engaged in protected concerted activities. Chairman Battista disagreed with certain of the majority's findings. [\[HTML\]](#) [\[PDF\]](#)

Members Liebman and Walsh, while agreeing with the judge's finding that the Respondent violated Section 8(a)(1) on June 26, 2000 by coercively interrogating Peto and creating the impression that his protected concerted activities were under surveillance, reversed his finding that the Respondent threatened Peto with unspecified reprisals for engaging in protected activity.

Chairman Battista, dissenting in part, found that the Respondent did not violate Section 8(a)(1): by issuing Peto a "D-day" disciplinary warning on July 28, 2001; by language contained in that written warning; or by allegedly creating the impression of surveillance. With respect to the "D-day" disciplinary warning, Chairman Battista found that the Respondent met its rebuttal burden of establishing that it would have issued the warning regardless of any of Peto's protected activities. While he agreed with his colleagues that the Respondent's questioning of Peto on June 26 was an unlawful interrogation, he did not agree that it conveyed an impression of surveillance.

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by Alan T. Peto, an Individual and Food & Commercial Workers; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Las Vegas, March 27 and 28, 2001. Adm. Law Judge Thomas Michael Patton issued his decision Dec. 6, 2001.

\*\*\*

*SFX Target Center Arena Management, LLC* (18-CA-15930-1; 342 NLRB No. 71) Minneapolis, MN July 30, 2004. Affirming the administrative law judge's decision, the Board held that the Respondent is a successor employer that violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain in good faith with incumbent union Theatrical Stage Employees Local 13 by unilaterally eliminating certain categories of unit employees from the historical bargaining unit. [\[HTML\]](#) [\[PDF\]](#)

This case arose in connection with event employees (stagehands) who assemble, operate, dismantle and rig facilities and equipment for various events at Target Center Arena (Arena) located in Minneapolis, MN. The judge found that there was a substantial continuity of the enterprise when the Respondent succeeded Aramark Entertainment to manage events at the Arena as previously managed by Ogden Entertainment, that there was a substantial identity of stagehands dispatched to and employed at the Arena from Ogden to Aramark to the Respondent,

and that the Respondent voluntarily recognized the Union as the exclusive representative of stagehands working for it at the Arena, but that its recognition was limited.

The Respondent argued, among others, that by deleting portions of the historical bargaining unit, it had appropriately set initial terms on which it would hire its predecessor's employees and that it had only removed particular work assignments from the unit.

Members Schaumber and Meisburg explained that a successor employer is generally permitted to set new initial terms and conditions of employment, adding: "Here, if the Respondent wished to increase its flexibility regarding the performance of certain bargaining unit work by third parties such as contractors, it could have set new initial terms and conditions permitting this. However, the Respondent did not simply set new initial terms and conditions; instead it unilaterally determined that the incumbent union would no longer have the right to bargain on behalf of certain categories of bargaining unit employees. This the Respondent could not lawfully do."

(Members Schaumber, Walsh, and Meisburg participated.)

Charge filed by Theatrical Stage Employees Local 13; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Minneapolis, on Oct. 2, 2001. Adm. Law Judge William J. Pannier III issued his decision April 9, 2002.

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*Southern California Gas Co.* (31-CA-25539; 342 NLRB No. 56) Los Angeles, CA July 29, 2004. On a stipulated record, Chairman Battista and Member Schaumber dismissed the complaint alleging that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide Utility Workers Local 483 with certain requested information. Contrary to Member Walsh, they determined that the requested information was not relevant or necessary for purposes of collective bargaining, but was sought in furtherance of the Union's pursuit of a safety complaint before a third party, the California Public Utilities Commission (CPUC), and, therefore, the Respondent was under no duty to provide the Union with the requested information. [\[HTML\]](#) [\[PDF\]](#)

By letter dated Feb. 9, 2001, the Union informed the Respondent that it was "investigating a class action grievance about work not being performed throughout the Transmission and Storage that can impact employee safety." The Union requested, among other things, a list or copies of all Maximo orders. Maximo is a work order tracking system. The Respondent requested that the Union provide it with the "specific employee safety concerns" as they relate to the requested information. The Union continued to request the information and the Respondent continued to adhere to its position for about 4 months.

The Union's information request in a letter dated Feb. 20, 2002 is the subject of the instant complaint. The Union stated that it had filed a formal safety complaint with the CPUC concerning incomplete Maximo backlog orders and deleted Maximo orders. The Union requested copies of all cancelled Maximo orders for transmission and storage for the last 2 years in order to "intelligently represent the members of the Union before the Commission."

The majority wrote in deciding that the General Counsel failed to demonstrate the relevancy of the information requested in the Union's Feb. 20 letter to the Union's duties and responsibilities as collective-bargaining representative under the Act: "This is not to say that the requested information is irrelevant to the proceedings initiated by the Union before the CPUC. We, of course, do not reach or consider that issue or whether State law makes such information available to the Union or the CPUC by compulsory process. The requested information is not, however, available to the Union through the Board."

In dissent, Member Walsh wrote:

Safety has been historically a term and condition of employment over which an employer is required to bargain. Therefore, information regarding safety is presumptively relevant to a union's role as collective bargaining representative. In this case, the Union requested from the Respondent information relating to the *safety* of represented employees. Clearly, the Respondent was obligated to provide this information.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by Utility Workers Local 483; complaint alleged violation of Section 8(a)(1) and (5). Parties waived their right to a hearing before an administrative law judge.

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*Palace Sports & Entertainment, Inc. d/b/a St. Pete Times Forum f/k/a Tampa Bay Ice Palace* (12-CA-21696, et al.; 342 NLRB No. 53) Tampa, FL July 27, 2004. The Board agreed with the administrative law judge that the Respondent violated Section 8(a)(1) of the Act by prohibiting employees from talking about the Union except on nonworking time while permitting other conversation, interrogating employees regarding their knowledge of employee union activity and directing them to report upon the union activities of their coworkers, interrogating employees regarding their communications with the Board and threatening unspecified reprisals if employees cooperated in a Board investigation, and threatening employees with discharge because of their support for the Union. It also found that the Respondent violated Section 8(a)(1) and (3) by warning Peter Mullins on July 25, 2002 and discharging him on November 3, 2002 because of his union activities. [\[HTML\]](#) [\[PDF\]](#)

The Respondent contended that it discharged Mullins because of its apprehension of potential hostile environment sexual harassment liability under Title VII of the Civil Rights Act of 1964, arising out of an encounter between Mullins and Alice Castillo, an employee of a vendor doing business on the Respondent's premises. It appeared that Mullins initiated a conversation about the merits of unionization and when Castillo expressed some skepticism, Mullins called her a "Yankee bitch." The Board agreed with the judge that Mullins' comment did not constitute a sexual advance and that the Respondent failed to show that it would have discharged Mullins even in the absence of his union activity in order to avoid the imposition of the Title VII liability.

In related Case 12-CA-23038, the Regional Director issued a complaint alleging, in part, that the Respondent violated Section 8(a)(3) and (4) by discharging employee Thomas Roberts because of his union activities and because he cooperated in the Board's investigation in this proceeding. The hearing in that case was postponed indefinitely pending the Board's decision in this case. Subsequently, the Respondent filed a request for special permission to appeal Associate Chief Judge William Cates' denial of its motion to proceed with the hearing or dismiss the complaint. Having now issued a decision, the Board granted the Respondent request for special permission to appeal and directed the Regional Director to schedule the hearing in Case 12-CA-23038.

(Members Liebman, Schaumber, and Walsh participated.)

Charges filed by Stage Employees and Thomas W. Roberts, an Individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Tampa, May 27-29, 2003. Adm. Law Judge George Carson II issued his decision July 22, 2003.

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*Syracuse Scenery & Stage Lighting Co., Inc.* (3-CA-23798-1, -2, 3-RC-11249; 342 NLRB No. 65) Liverpool, NY July 30, 2004. Chairman Battista and Member Schaumber held, contrary to the administrative law judge, that the Respondent did not violate Section 8(a)(3) and (1) of the Act by discharging four employees for leaving work early without permission on 4 consecutive days, submitting fraudulent timesheets to secure payment for hours not actually worked, and then lying about their misconduct when the Respondent confronted them. The judge found that the Respondent's primary motivation for monitoring the employees' work hours was to establish a basis for firing them in order to discourage unionization. Chairman Battista and Member Schaumber disagreed, concluding that the Respondent established that it would have discharged the four employees for their misconduct even in the absence of their union activity. [\[HTML\]](#) [\[PDF\]](#)

Accordingly, the majority sustained the challenges to the ballots cast by Jeff Bidwell, John Szusznik, Joseph Vietetta, and Michael Noga in the election held in Case 3-RC-11249 on January 6, 2003 (Theatrical Stage Employees Local 9 lost 7-4), and certified that a majority of the valid ballots were not cast for the Union.

Dissenting Member Walsh found that, consistent with the judge's decision, the evidence shows that the Respondent seized on the discriminatees' inaccurate timesheets as a pretext for ridding itself of union adherents. Agreeing with the judge that the Respondent violated Section 8(a)(3) and (1), Member Walsh would overrule the challenges to the ballots of the four discriminatees, open and count their ballots, and issue the appropriate certification.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charges filed by Theatrical Stage Employees Local 9; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Syracuse, Jan. 30-31, 2003. Adm. Law Judge Arthur J. Amchan issued his decision March 18, 2003.

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*Teamsters Local 657* (16-CB-6348; 342 NLRB No. 59) San Antonio, TX July 29, 2004. The administrative law judge concluded, and the Board agreed, that the Respondent violated Section 8(b)(2) of the Act by removing Victor De La Fuente's name from the craft referral list and Section 8(b)(1)(A) by refusing to register De La Fuente for referral and refer him for employment. The Board also agreed with the judge that the Respondent's proffered explanation for its conduct was pretextual and that De La Fuente's protected conduct in criticizing a union officer and otherwise engaging in dissident union activity was a motivating factor in his removal from the referral list. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by Victor De La Fuente, an Individual; complaint alleged violation of Section 8(b)(1)(A) and 8(b)(2). Hearing at San Antonio, January 14 and 15, 2004. Adm. Law Judge Keltner W. Locke issued his decision Feb. 23, 2004.

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#### **LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES**

*Gelock Transfer Line, Inc. and Hastings Truck Co., Inc.* (Operating Engineers Local 324, A, B, C & D) Grand Rapids, MI July 26, 2004. 7-CA-46867; JD-70-04, Judge Arthur J. Amchan.

*Guardsmark, LLC* (Service Employees Local 24/7, and an Individual) San Francisco, CA July 28, 2004. 20-CA-31495-1, 31573-1; JD(SF)-58-04, Judge Gerald A. Wacknov.

*United States Postal Service* (Postal Workers Local 739) Waco, TX July 29, 2004. 16-CA-22930; JD(ATL)-38-04, Judge John H. West.

*Calyer Architectural Woodworking Corp.* (Carpenters and an Individual) Brooklyn, NY July 30, 2004. 29-CA-24762, et al.; JD(NY)-35-04, Judge Steven Fish.

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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.)***

*Joseph E. Sucher & Sons, Inc.* (Operating Engineers Local 542) (4-CA-32861; 342 NLRB No. 52) Eddystone, PA July 27, 2004.

*Europtics, Inc. d/b/a Pearle Express* (Retail, Wholesale and Department Store Local 108, UFCW) (13-CA-41788; 342 NLRB No. 64) Naperville, IL July 30, 2004.

*Germantown Electric, Inc* (Electrical Workers [IBEW] Local 34) (33-CA-14500; 342 NLRB No. 66) East Peoria, IL July 30, 2004.

*Energy Concepts, Inc.* (Sheet Metal Workers Local 19) (4-CA-32928, et al.; 342 NLRB No. 72) Bensalem, PA July 30, 2004.

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**NO ANSWER TO COMPLIANCE SPECIFICATION**

*(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 compliance specification.)*

*Consolidated Food Services, Inc. d/b/a Express Gourmet* (Hotel and Restaurant Employees Local 24) (7-CA-44786; 342 NLRB No. 54) Southfield, MI July 27, 2004.

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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 grounds that the Respondent has not raised any representation issue that is litigable in this unfair labor practice proceeding.)*

*Honeyville Grain, Inc.* (Teamsters Local 166) (31-CA-26806; 342 NLRB No. 61) Rancho Cucamonga, CA July 30, 2004.

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**LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS  
IN REPRESENTATION CASES**

*(In the following cases, the Board considered exceptions to Reports of Regional Directors or Hearing Officers)*

*S.Q.K.F.C., Inc.*, Rosedale, NY, 29-RC-10152, July 27, 2004

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***(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)***

*First Transit, Inc.*, Marquette, MI, 19-RC-14530, July 28, 2004  
*Metrolina Plastics, Inc.*, Richmond, VA, 5-RC-15736, July 28, 2004  
*The Mount Sinai Hospital*, New York, NY, 2-RC-22844, July 28, 2004  
*Renaissance Senior Living Management, Inc.*, Irvine, CA, 32-RC-5265 July 27, 2004  
*E.C. Phillips & Sons, Inc.*, Ketchikan, AK, 19-RD-3614, July 28, 2004

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***(In the following cases, the Board granted requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)***

*Island Waste Services, Ltd*, Hicksville, NY, 29-RC-10206, July 28, 2004  
*Starbucks Coffee Company 7356*, New York, NY, 2-RC-22852, July 28, 2004  
*WGCI-FM & WGRB-AM, Clear Channel Broadcasting*, Chicago, IL, 13-RC-21207,  
July 28, 2004

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***Miscellaneous Board Orders***

**ORDER [granting Employer's request to withdraw its request for review]**

*Diebold, Inc.*, Plainsboro, NJ, 22-RC-12487, 22-RC-21178, July 27, 2004

**ORDER [granting Petitioner's request to withdraw petition]**

*Starbucks Coffee Company 7356*, New York, NY, 2-RC-22852, July 29, 2004

**ORDER [dismissing petition]**

*Magic-Brite Janitorial*, Las Vegas, NV, 28-RD-875, July 27, 2004

**ORDER REMANDING [to Regional Director for appropriate action]**

*Alpha School Bus Co.*, Brookfield, IL, 13-RC-21203, July 29, 2004

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