National Labor Relations Board



Weekly Summary of NLRB Cases

Division of Information	Washington, D.C. 20570	Tel. (202) 273-1991
August 27, 2004		W-2962
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of Elections and Orders

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constitute no part of the opinions of the Board. The Division of Information has prepared them for the

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Mammoth Mountain Ski Area (32-CA-20513-1, 20514-1; 342 NLRB No. 80) Mammoth Lakes, CA Aug. 20, 2004. The Board adopted the administrative law judge's findings and held that the Respondent violated Section 8(a)(1) of the Act by prohibiting employees from placing union stickers on lockers under pain of discipline, telling employees that union representation would result in less work for less senior employees under contract, and downgrading periodic employee evaluation scores for two employees because of their union organizing activities. [HTML] [PDF]

(Chairman Battista and Members Liebman and Meisburg participated.)

Charges filed by Operating Engineers Local 12; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Mammoth Lakes, Dec. 9-10, 2003. Adm. Law Judge James M. Kennedy issued his decision April 21, 2004.

Yellow Enterprise Systems, Inc., d/b/a Yellow Ambulance Service (25-CA-26494, et al.; 342 NLRB No. 77) Owensboro, KY Aug. 17, 2004. The Board affirmed, absent exceptions, the administrative law judge's findings that the Respondent committed numerous violations of Section 8(a)(1), (3), and (5) of the Act during and after the Union's (Professional EMTs & Paramedics) organizing campaign among its employees, which resulted in the Union's certification as exclusive bargaining representative on April 16, 1999. [HTML] [PDF]

Chairman Battista and Member Liebman rejected the Respondent's exceptions and held that the Respondent violated Section 8(a)(3) and (1) by issuing Renee McKinney two written warnings and discharging her one day prior to the representation election; discharging Roger Brumley because of his union activity; and constructively discharging Brian Kendall on about April 5, 1999 by unlawfully switching one of his 8-hour day shifts to an 8-hour overnight shift, and by refusing to rehire him in May.

Member Schaumber, dissenting in part, would find that the Respondent did not violate Section 8(a)(3) and (1) by constructively discharging Kendall. He noted that the Board stated in *Crystal Princeton Refining Co.*, 222 NLRB 1068, 1069 (1976), that two elements must be proven to establish a constructive discharge: "First, the burdens imposed upon the employee must cause, and be intended to cause, a change in his working conditions so difficult or unpleasant as to force him to resign. Second, it must be shown that those burdens were imposed because of the employee's union activities." In his view, the General Counsel failed to satisfy the first criterion.

Chairman Battista and Member Schaumber reversed the judge's finding that the Respondent constructively discharged Vicky Belcher by varying her work schedule after May 15, 1999 when she returned from maternity leave. They determined that the General Counsel failed to establish that Belcher resigned her employment. Member Liebman found it unnecessary to pass on the alleged constructive discharge because she would find that the Respondent violated the Act by altering Belcher's regular schedule in approximately May 1999 from her usual 1-day-on/2-days-off work pattern, and that this violation warrants make-whole relief.

The Board decided that the Union's request that the Respondent be required to read aloud the notice to employees was unnecessary to remedy the violations.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Professional EMTs and Paramedics; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Owensboro, Oct. 4-8, 12-14 and Nov. 1-3, 1999. Adm. Law Judge Arthur J. Amchan issued his decision Feb. 25, 2000.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

National Specialties Installations, Inc. (an Individual) Detroit, MI August 16, 2004. 7-CA-46698; JD(ATL)-40-04, Judge William N. Cates.

United States Postal Service (Letter Carriers Branch 47) Denver, CO August 13, 2004. 27-CA-18936-1; JD(SF)-64-04, Judge Gregory Z. Meyerson.

Waste Management of Arizona, Inc. (Teamsters Local 104) Phoenix, AZ August 16, 2004. 28-CA-18542, et al.; JD(SF)-62-04, Judge Albert A. Metz.

Hospital Metropolitano Yauco Dr. Tito Mattei (Unidad Laboral de Enfermeras(os)y Empleados de Salud) Yauco, PR August 18, 2004. 24-CA-9640; JD-77-04, Judge William G. Kocol.

Telefonos Publicos de Puerto Rico, Inc. (an Individual) Carolina, PR August 18,2004. 24-CA-9465; JD-79-04, Judge Earl E. Shamwell Jr.

Trinidad Logistics Company, L.P. (Teamsters Local 414) Fort Wayne, IN August 18, 2004. 25-CA-28087-1, et al.; JD-76-04, Judge Mark D. Rubin.

WSNCHS North, Inc. d/b/a New Island Hospital (New York Nurses Association) Hempstead, NY August 20, 2004. 29-CA-26162; JD(NY)-37-04, Judge D. Barry Morris.

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

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

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Asplundh Tree Expert Company, Inc., Mt. Pleasant, MI, 7-RC-22572, August 17, 2004

DECISION AND CERTIFICATION OF REPRESENTATION

Rogue River Holdings, LLC, Rogue River, OR 36-RC-6241, August 18, 2004

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND ORDER[remanding to Regional Director]

Autotote Enterprises, Inc., Windsor Locks, CT, 34-RC-2067, August 19, 2004

(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)

Herbert G. Birch Services, Inc., New York, NY, 29-RC-10227, August 19, 2004
California Pacific Medical Center, San Francisco, CA, 20-RC-17876, August 20, 2004
New York Center for Rehabilitation Care, Inc., Astoria, NY, 29-RC-9785, August 20, 2004
Special Touch Home Care Services, Inc., Brooklyn, NY, 29-RC-10233, August 19, 2004
Cessna Aircraft Company, A Textron Company, Wichita, KS, 17-RC-12276, August 19, 2004
Manor Care Health Services – Lake Shore, Cleveland, OH, 8-RC-16632, August 19, 2004

(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)

Trusery Corporation, Manchester, NH, 1-RD-1987, August 17, 2004