

# National Labor Relations Board



# Weekly Summary of NLRB Cases

Division of Information

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## CASES SUMMARIZED

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*AMF Trucking & Warehousing, Inc.* (22-CA-25263; 342 NLRB No. 116) Cateret, NJ Sept. 21, 2004. The Board considered whether the Respondent's statements during the course of negotiations effectively communicated a claim of inability to pay, such that its subsequent refusal to furnish the Auto Workers with requested information violated Section 8(a)(5) and (1) of the Act. Chairman Battista and Member Meisburg reversed the administrative law judge and held that the Respondent did not violate Section 8(a)(5) and (1) by refusing to furnish Auto Workers with the financial information requested in its letter dated April 9, 2002. Member Walsh, dissenting, concluded that the judge's finding of the violation is in accord with Board and court precedent and should be adopted. [\[HTML\]](#) [\[PDF\]](#)

During negotiation sessions, the Union proposed increasing the health insurance and pension fund benefits. When the Respondent calculated the cost of the Union's proposal to be an additional \$3 per hour per employee, it took the position that no changes should be made to health insurance or pension benefits and stated that the Union was asking for "pie in the sky," that the Respondent had purchased the Company "in distress a year and a half earlier, and that the company was still in distress," that it was "fighting to [stay] alive," and was "weaker this year" than it had been in previous years. Based on the Respondent's claims, the Union requested access to the Respondent's financial records and in response, the Respondent denied that it was claiming an inability to pay and refused to grant the Union access to its financial records.

In determining that the Respondent effectively communicated an inability to pay, the judge found the Respondent's comments to be similar to those at issue in *Lakeland Bus Lines*, 335 NLRB 322 (2001), enf. denied 347 F.3d 955 (D.C. Cir. 2003). Chairman Battista and Member Meisburg disagreed and found that the Respondent's statements in this case present a far weaker basis upon which to find a Section 8(a)(5) violation than did the statements at issue in *Lakeland Bus Lines*. Member Walsh concluded that the Respondent's negotiation statements clearly communicated to the Union that it could not afford the Union's bargaining demands and its refusal to furnish the Union with the requested financial information violated the Act.

(Chairman Battista and Members Walsh and Meisburg participated.)

Charge filed by the Auto Workers; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Newark on Jan. 15, 2003. Adm. Law Judge D. Barry Morris issued his decision May 16, 2003.

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*Amptech, Inc.* (7-CA-44416, 44638; 342 NLRB No. 117) Free Soil, MI Sept. 22, 2004. The administrative law judge found, and the Board agreed, that the Respondent committed several violations of Section 8(a)(3) and (1) the Act in response to the Auto Workers' organizing drive at the Respondent's Free Soil, MI facility in late September 2001. [\[HTML\]](#) [\[PDF\]](#)

The Respondent's misconduct included discriminatorily laying off 13 production employees—most of whom were known or suspected union supporters or associates thereof—in the wake of the organizing drive; failing and refusing to recall certain of the laid-off employees to their former positions; and issuing Kathy Reimann-Ruba a disciplinary warning notice

because of her union support and activities, all in violation of Section 8(a)(3) and (1) of the Act. In adopting the judge's conclusion that the Respondent unlawfully laid off Gayle Vallad, who was not a known union supporter, the Board did so on a different basis than that applied by the judge, who found that the Respondent laid off Vallad to conceal its unlawful motive for the other layoffs. The Board noted that the judge inferred that the Respondent laid off certain employees based on their association with known union supporters, saying: "Given that Vallad was also recognized as an associate of known union supporters and was regarded by the Respondent's management as such, an inference of discrimination on the basis of this association is also appropriate with respect to her layoff."

The Respondent also violated Section 8(a)(1) by, among others, stating to employees at a management-organized meeting that the Respondent considered the union organizing drive to be a "personal attack" and that the Respondent would "keep [its] options open"; maintaining a rule prohibiting individuals other than on-duty employees from entering the Respondent's grounds; and instituting an employee advocacy program and distributing an employee survey for the purpose of discouraging its employees from supporting the Union.

The Board modified the judge's recommended Order to conform to its findings and the Board's standard remedial language. It also modified the recommended Order and substituted a new notice, finding that a broad cease-and-desist order is not warranted under the test set forth in *Hickmont Foods*, 242 NLRB 1357 (1979). Member Schaumber relied additionally on *NLRB v. Express Publishing Co.*, 312 U.S. 426, 433 (1941). Member Walsh agreed with the judge's recommended board cease-and-desist order under *Hickmont Foods*, supra, on the grounds that the Respondent has engaged in such egregious and widespread misconduct as to demonstrate a general disregard to the fundamental statutory rights of employees.

(Members Schaumber, Walsh, and Meisburg participated.)

Charges filed by the Auto Workers; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Beulah, May 8-10, 2002. Adm. Law Judge Lawrence W. Cullen issued his decision Aug. 26, 2002.

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*Borgess Medical Center* (7-CA-44040; 342 NLRB No. 109) Kalamazoo, MI Sept. 20, 2004. Chairman Battista and Member Meisburg adopted the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to offer a reasonable accommodation to the Michigan Nurses Association concerning the Union's request to review hospital incident reports in preparation for an arbitration proceeding regarding the discharge of Registered Nurse Harry Wagner. They found that the Respondent established a legitimate confidentiality interest in the requested reports, but that it failed to adequately fulfill its duty to accommodate the Union's need. Because the Union's grievance filed on Wagner's behalf went to arbitration, and the arbitrator issued a decision in the Respondent's favor on July 18, 2001,

Chairman Battista and Member Meisburg found the Union's information request is moot and did not require the Respondent to furnish the requested incident reports, nor to bargain with the Union over an accommodation of the Union's request. [\[HTML\]](#) [\[PDF\]](#)

Dissenting in part, Member Liebman stated: "[I]n light of my colleagues' conclusion that the request is moot, their statement of the analysis that would apply absent such a finding is dicta. Because the Respondent has failed to meet its duty to bargain with the Union for an accommodation and has not, in my view, shown that its confidentiality interest outweighs the Union's need, I would order production of the incident reports here." Member Liebman believes the majority position "creates a tempting incentive for employers to refuse to provide unions with relevant information in connection with grievance proceedings; with enough delay, the request may be mooted."

(Chairman Battista and Members Liebman and Meisburg participated.)

Charge filed by the Michigan Nurses Association; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Grand Rapids on Feb. 5, 2002. Adm. Law Judge William N. Cates issued his decision March 5, 2002.

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*M & M Automotive Group, Inc., d/b/a Broadway Volkswagen* (32-CA-17424; 342 NLRB No. 128) Oakland, CA Sept. 24, 2004. The Board held that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain in good faith with the East Bay Automotive Council as the exclusive representative of unit employees; unilaterally granting wage increases and promotions without bargaining about the changes with the Union; breaching its duty to bargain in good faith by dealing directly with an employee; and failing to furnish the Union with requested information that is necessary and relevant in the performance of its duties. [\[HTML\]](#) [\[PDF\]](#)

The Board found a causal relationship between the Respondent's unfair labor practices and the employee expression of dissatisfaction with the Union on which the Respondent based its withdrawal of recognition. Citing *Caterair International*, 322 NLRB 64 (1996), it found that an affirmative bargaining order is warranted as a remedy for the Respondent's unlawful withdrawal of recognition.

Contrary to the administrative law judge, the Board determined that the allegations of unlawful unilateral wage increases (excluding O'Neill's wage increase), promotions, and direct dealing were not time barred and that the Respondent violated the Act as alleged. It also found that the Respondent unlawfully withdrew recognition from the Union. Although the Board did not pass on judge's finding that the allegation concerning O'Neil's wage increase was time barred, it found that the Respondent's unlawful promotion and direct dealing with O'Neil established that his signature on an employee petition, signed by 11 of 16 unit employees and expressing dissatisfaction with the Union, was tainted.

The Board concluded that the Respondent's unfair labor practices resulted in a sufficient number of tainted signatures on the employee petition so the Respondent could not properly rely on it to support a good-faith doubt of lack of majority support for the Union. Because the Respondent unlawfully withdrew recognition, the Board held, contrary to the judge, that the Respondent's refusal to provide the requested relevant information was also unlawful. The Board found it unnecessary to pass on the judge's finding that the Respondent did not unlawfully grant a wage increase to Jason Espinal because such a finding would be cumulative and would not affect the remedy.

(Members Liebman, Walsh, and Meisburg participated.)

Charge filed by East Bay Automotive Council, Consisting of Machinists, District Lodge 190, Local Lodge 1546, and Teamsters Local 78; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Oakland on Nov. 18, 1999. Adm. Law Judge Thomas Michael Patton issued his decision April 18, 2000.

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*Chartwells, Compass Group, USA, Inc.* (3-CA-23533; 342 NLRB No. 121) Oneonta, NY Sept. 22, 2004. The administrative law judge found, with Board approval, that the Respondent violated Section 8(a)(1) of the Act by soliciting grievances and impliedly promising to remedy the grievances; and directing employees to inform the Respondent of their union activities. In the absence of exceptions, the Board affirmed the judge's findings that the Respondent also violated Section 8(a)(1) by promulgating an overbroad no-solicitation rule orally on Feb. 8, 2002 and in writing on March 6, and by directing employees to inform the Respondent of their coworkers' union activities; and that the Respondent did not violate Section 8(a)(1) by threatening employees with a pay reduction. [\[HTML\]](#) [\[PDF\]](#)

The Board reversed the judge and held that the Respondent violated Section 8(a)(1) by distributing work rule Rule B3 prohibiting "threatening, intimidating or interfering with" fellow employees, concluding that the Respondent's motive for promulgating Rule B3 was the employees' union activity. Member Walsh did not reach the issue of the Respondent's motive for promulgating the rule and instead based his conclusion on his finding that the employees reasonably would have believed that Rule B3 prohibited protected discussion of the Union.

On the issue of whether Eileen Bramsen quit or whether the Respondent discharged her, Chairman Battista and Member Schaumber agreed with the judge that Bramsen quit her employment when the Respondent issued her a verbal warning on March 7, 2002 for violating Rule B3 after three employees complained to Director Morin that Bramsen's pronoun statements made them feel uncomfortable. During Bramsen's March 7 meeting with Morin and her boss, Regional Manager Yonkers, Morin refused Bramsen's request for the names of her accusers, stating that it would "polarize" the issues and citing confidentiality concerns. Bramsen asked "How can I defend myself if I don't know who made the complaints?" She left the office saying, "I'm out of here." Yonkers asked if she was resigning; Bramsen replied, "Yes" and angrily left

the office. The majority determined that Bramsen quit because she could not confront her accusers in an effort to show that she did not intimidate anyone, and not because of any refusal by the Respondent to permit her to engage in protected Section 7 activities.

Member Walsh, dissenting on this issue, held that Bramsen's resignation was an unlawful constructive discharge under the Board's "Hobson's choice" doctrine. He wrote that although the March 7 warning itself was not alleged to be unlawful, the Respondent caused Bramsen to reasonably believe that her continued employment was conditioned on her abandonment of her Section 7 activities, and she quit her employment rather than comply with that condition. He found that her resignation under these circumstances constitutes a constructive discharge in violation of Section 8(a)(3) and (1).

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by Civil Service Employees CSEA Local 1000; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Oneonta on Aug. 5, 2002. Adm. Law Judge Joel P. Biblowitz issued his decision Oct. 1, 2002.

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*The Courier-Journal, a Division of Gannett Kentucky Limited Partnership* (9-CA-39958; 342 NLRB No. 118) Louisville, KY Sept. 22, 2004. Chairman Battista and Member Schaumber reversed the administrative law judge's finding that the Respondent violated Section 8(a)(1) and (5) of the Act by unilaterally increasing unit employees' contributions for healthcare insurance and by failing and refusing to furnish Communications Workers Local 3310 with relevant information at the Union's request. Accordingly, they dismissed the complaint. Member Liebman dissented. [\[HTML\]](#) [\[PDF\]](#)

The majority relied on a companion case, *Courier-Journal*, 342 NLRB No. 113 (2004), (*Courier-Journal I*), in finding no violation of Section 8(a)(5) here. They wrote that there, as with the instant case, the Respondent's collective-bargaining agreement (with a different union) authorized the Respondent to change the costs and benefits of the health care plan for bargaining unit employees unilaterally, on the same basis as for unrepresented employees, and that the Respondent made numerous unilateral changes in the health care plan, both during the term of the agreement and during the hiatus periods between contracts, without opposition from the Union. Chairman Battista and Member Schaumber found that the Respondent's practice has become an established term and condition of employment and therefore the Respondent did not violate Section 8(a)(5) when it acted consistently with that practice by making further unilateral changes.

In dissent, Member Liebman, relying on her dissent in *Courier-Journal I*, agreed with the judge that the Union did not waive its right to bargain over postcontract expiration changes in employee health benefits and costs, and therefore the Respondent's unilateral changes in those conditions violated Section 8(a)(5). She also found that the Respondent violated Section 8(a)(5)

by failing to provide the Union with information it requested on October 23, 2002, including descriptions of the Respondent's technology and news departments and job descriptions for the technology, news, and circulation departments. Member Liebman agreed with the judge that the information was relevant and necessary for the Union to evaluate employment options available to employees in the composing room when their current jobs are eliminated.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Communications Workers Local 3310; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Louisville on July 16, 2003. Adm. Law Judge William N. Cates issued his decision Sept. 10, 2003.

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*Doane Pet Care, DPC* (17-CA-22346, 17-RC-12220; 342 NLRB No. 115) Miami, OK Sept. 20, 2004. In agreement with the administrative law judge, the Board found that the Respondent violated Section 8(a)(1) of the Act by maintaining and enforcing a rule that prohibited employees at its Miami, Oklahoma plant from entering the premises during nonworking hours without permission, or failing to leave the premises within 30 minutes after the end of the shift, insofar as it prohibits access to property other than company buildings and working areas; soliciting employee grievances and making implied promises to remedy them during a union campaign; and announcing at an employee meeting shortly before a representation election that a new bonus or incentive program was being considered. The Board granted UFCW Local 1000's motion to withdraw its objections to the election in Case 17-RC-12220 in order to file a new petition and, accordingly, severed and remanded Case 17-RC-12220 to the Regional Director for further appropriate action. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Liebman and Meisburg participated.)

Charge filed by UFCW Local 1000; complaint alleged violation of Section 8(a)(1). Hearing at Miami on Dec. 9, 2003. Adm. Law Judge Thomas M. Patton issued his decision April 21, 2004.

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*Ingham Regional Medical Center* (7-CA-46380, 46549; 342 NLRB No. 129) Lansing, MI, Sept. 24, 2004. The Board adopted the recommendations of the administrative law judge and dismissed the complaint allegations that the Respondent violated Section 8(a)(5) of the Act by failing and refusing to provide information to Office and Professional Employees Local 459 and by subcontracting bargaining unit work and laying off employees without notice to the Union or an opportunity for bargaining over the decision and its effects. [\[HTML\]](#) [\[PDF\]](#)

The judge found that the Union waived its right to bargain about the decision to subcontract the coding work by virtue of language in the parties' collective-bargaining agreement. In so finding, the judge applied the Board's "clear and unmistakable" waiver

standard. *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983). No party excepted to the judge's finding that the "clear and unmistakable" analysis is applicable.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charges filed by Office and Professional Employees Local 459; complaint alleged violation of Section 8(a)(5). Hearing at Lansing on Jan. 28, 2004. Adm. Law Judge Jane Vandeventer issued her decision April 7, 2004.

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*K. W. Electric, Inc.* (9-CA-40422; 342 NLRB No. 126) Fayetteville, WV Sept. 24, 2004. The Board affirmed the administrative law judge's findings that the Respondent violated Section 8(a)(1) of the Act by telling employees that the Respondent would rather close than go union, that the Respondent would remain nonunion, and that employees who wanted Electrical Workers IBEW Local 466 should work for another company; and violated Section 8(a)(3) and (1) by discharging Joe Farley because of his union activities. [\[HTML\]](#) [\[PDF\]](#)

Members Liebman and Walsh found, contrary to the judge, that the Respondent violated Section 8(a)(3) and (1) by discharging Michael McLean and violated Section 8(a)(1) when Owner Michael Woodson told McLean that he was selected for layoff because he planned to seek union employment.

Dissenting in part, Chairman Battista would adopt the judge's finding that the Respondent did not violate the Act by terminating Michael McLean. In his view, the Respondent established that McLean would have been selected for layoff even if he had not engaged in union activity. He agreed with the judge that the Respondent selected for layoff an employee who expressed his intention to leave over other employees with an interest in continued employment with the Respondent.

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Electrical Workers IBEW Local 466; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Oak Hill on March 23, 2004. Adm. Law Judge Michael A. Marcionese issued his decision May 18, 2004.

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*MEMC Electronic Materials, Inc.* (14-CA-27036, 27251; 342 NLRB No. 119) Saint Peters, MO Sept. 23, 2004. Members Liebman and Walsh affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by implementing wage restorations on two occasions prior to union elections. They concluded that the Respondent failed to explain its wage restorations based on factors unrelated to the union campaign and that the implementation of the two wage increases was motivated by the desire to induce employees not to vote for the Machinists International in the upcoming election. Members Liebman and Walsh found it

unnecessary to pass on the judge's finding that the implementation also violated Section 8(a)(3) because it would not materially affect the remedy in this case. [\[HTML\]](#) [\[PDF\]](#)

Members Liebman and Walsh affirmed the judge's findings that the Respondent also violated Section 8(a)(1), through the comments of CEO Nabeel Gareeb, by soliciting and promising to remedy employee grievances, and threatening employees with loss of benefits if they selected the Union. They found that the judge's recommended bargaining order was not necessary and deleted paragraph 2(a) from his recommended Order because in *NLRB v. MEMC Electronic Materials, Inc.*, 363 F.3d 705 (8th Cir. 2004), the Eighth Circuit enforced the Board's bargaining order against the Respondent in 338 NLRB No. 142 (2003).

Chairman Battista, dissenting in part, found that the Respondent did not violate the Act when it restored wage cuts to hourly employees at its Saint Peters facility. He explained that the majority's finding of an 8(a)(1) violation is procedurally improper because it is based on Section 8(a)(1) as an *independent* violation, as distinguished from the General Counsel's theory of the case alleging the 8(a)(1) violation only as a *derivative* of the alleged Section 8(a)(3) violation. Assuming *arguendo* that an independent 8(a)(1) allegation alleging interference with the election is properly before the Board, Chairman Battista found it without merit, disagreeing with the finding that the decision to restore the wage cuts was for the purpose of interfering with the election. In this regard, he found that the General Counsel failed to prove by a preponderance of the evidence that there was an improper motive in the Respondent's conduct and therefore did not establish a violation.

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by the Machinists International; complaint alleged violation of Section 8(a)(1) and (3). Hearing at St. Louis, April 28-30 and May 1, 2003. Adm. Law Judge Paul Bogas issued his decision Aug. 28, 2003.

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*Northwest Protective Service, Inc. and SEIU Local 24/7* (19-CA-28124, 19-CP-526, 19-CB-8856; 342 NLRB No. 120) Seattle, WA Sept. 23, 2004. The administrative law judge found that Respondent SEIU Local 24/7 (Local 24/7) violated Section 8(b)(7)(A) and (C) of the Act by threatening Respondent Northwest Protective Service (Northwest) with picketing, and violated Section 8(b)(1)(A) and (2) by accepting recognition from Northwest and entering into a June 30, 2002 contract extension. The Board affirmed the judge's findings, except his finding that Local 24/7 violated Section 8(b)(7)(A). Absent exceptions, it adopted the judge's findings that Northwest violated Section 8(a)(1), (2), (3), and (5) by withdrawing recognition from Charging Party Security, Police and Fire Professionals (SPFP), recognizing Local 24/7 on June 30, and signing the June 30 contract extension, which contained a union-security clause. [\[HTML\]](#) [\[PDF\]](#)

This case arose out of competition between Local 24/7, a mixed-guard union, and SPFP, a pure-guard union, to represent the same unit of guards employed by Northwest. For about 30

years, the Security Officers International (IUSO), a pure-guard union, represented Northwest's guard employees. Northwest and IUSO were parties to a series of collective-bargaining agreements, including one effective Aug. 1, 2000 through June 30, 2002 (the 2000 Agreement). On March 5, 2002, IUSO merged with Local 24/7, a/w SEIU thereby making Local 24/7 a mixed guard union since SEIU represents employees other than guards. Local 24/7 notified Northwest of the merger and affiliation and requested recognition and a meeting. Northwest agreed to meet, but reserved the right not to recognize any union other than IUSO and the right under Section 9(b)(3) to recognize only a pure-guard union. The parties met on May 31.

On June 25, 2002, SPFP advised Northwest that it had sufficient support among the unit employees to become their representative and requested voluntary recognition. Northwest initially refused, but it later advised SPFP by letter dated June 27, "if SPFP is interested in voluntary recognition, NW Protective Service would only do so after a card check." SPFP agreed to a card check. Based on a card check, Northwest and SPFP executed a recognition agreement. Northwest notified Local 24/7 and SEIU on June 28 that it had agreed to recognize SPFP effective July 1. SEIU representative Baratz warned Northwest's attorney, James Shore, "this isn't over," and made clear to Shore that the only way Northwest could avoid picketing was to recognize Local 24/7 and extend the 2000 Agreement.

The Board found that Northwest lawfully withdrew recognition from Local 24/7 on July 1, 2002, and not on June 27, as found by the judge. Because Northwest did not recognize SPFP until July 1, or after the expiration of the 2000 Agreement, the Board reversed the judge's finding that Local 24/7 violated Section 8(b)(7)(A), which makes it unlawful for a union to threaten to picket an employer for recognition where the employer has lawfully recognized another union. It noted that Baratz's picketing threat was made on June 29, prior to the July 1 effective date of Northwest's recognition of SPFP and that there was no violation of Section 8(b)(7)(A) on or after July 1 because, although Local 24/7's threat was still outstanding, Northwest reneged, albeit unlawfully, on its agreement to recognize SPFP. Chairman Battista did not pass on the judge's 8(b)(7)(A) finding.

The judge imposed joint-and-several liability on Northwest and Local 24/7 for reimbursement of all dues collected pursuant to the unlawful June 30 contract extension. The Board found merit in Northwest's argument that Local 24/7 should be primarily responsible for reimbursing the employees because Northwest only signed the extension under duress of Local 24/7's unlawful threat of picketing, and in Northwest's and Local 24/7's argument that they should not be liable for reimbursing dues paid by employees who already were members of Local 24/7 prior to June 30. It modified the judge's order accordingly.

(Chairman Battista and Members Liebman and Meisburg participated.)

Charges filed by Security, Police and Fire Professionals; complaint alleged violation of Section 8(a)(1), (2), (3), and (5), Section 8(b)(1)(A) and (2), and Section 8(b)(7)(A) and (C). Hearing at Seattle, March 3-5, 2003. Adm. Law Judge Jay R. Pollack issued his decision June 10, 2003.

*Tri-County Paving, Inc.* (30-CA-15275; 342 NLRB No. 122) DeForest, WI Sept. 23, 2004. The administrative law judge found, and the Board agreed, that the Respondent violated Section 8(a)(3) and (1) of the Act by failing to hire or consider for hire job applicants for the positions of grader operator, lowboy driver, and dump truck driver because they were members of Operating Engineers Local 139. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Liebman and Meisburg participated.)

Charge filed by Operating Engineers Local 139; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Madison, Aug. 22-23, 2001. Adm. Law Judge Richard H. Beddow, Jr. issued his decision Oct. 26, 2001.

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*Webasto Sunroofs, Inc.* (7-CA-43470; 342 NLRB No. 124) Livonia, MI Sept. 23, 2004. The Board held, contrary to the administrative law judge, that the Respondent violated Section 8(a)(1) of the Act by distributing a memo to foreign-born employees containing a provision entitled "Accepting NO for an answer" with two bullets stating: (1) Colleagues will not try to negotiate policies and decisions; and (2) Colleagues will understand that "no means no" and will drop issues even when they don't get the answer they want. The Board concluded that "the Respondent's prohibition on employees' speaking as a group to management and questioning management policies would serve as a roadblock to classic concerted activity." [\[HTML\]](#) [\[PDF\]](#)

The Board adopted, absent exceptions, the judge's finding that the Respondent violated Section 8(a)(1) by telling temporary employees from May through August 2000, that they would not be hired as permanent employees during the Auto Workers' organizing campaign.

Chairman Battista and Member Schaumber, in affirming the judge's finding that the Respondent did not violate Section 8(a)(1) and (3) by refusing to change temporary employees to full-time permanent status during the union organizing effort, applied the Board's *Wright Line* test, rather than *FES*, 331 NLRB 66 (2002), as applied by the judge. They found that the General Counsel met his initial evidentiary burden and that the Respondent proved a meritorious rebuttal, including the fact that the decrease in conversions began before the Union's campaign. Member Liebman, dissenting in part, found that the Respondent failed to establish its *Wright Line* defense, noting that the Respondent suspended this hiring practice as soon as the Union campaign began and expressly resumed it because the Union withdrew. She concluded that the only real issue is how many temps would have been made permanent, an issue she would remand to the judge.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by the UAW; complaint alleged violation of Section 8(a)(1) and (3).  
Hearing at Detroit, April 23-24, 2001. Adm. Law Judge Jerry M. Hermele issued his decision  
July 26, 2001.

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**LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES**

*Center Construction Co., Inc. d/b/a Center Service System Division* (Plumbers Local 370)  
Flint, MI September 21, 2004. 7-CA-46490, et al.; JD-93-04, Judge Joseph Gontram.

*Goodrich Corp., Landing Gear Division, Cleveland Plating Operations* (Auto Workers)  
Cleveland, OH September 21, 2004. 8-CA-33598-1; JD-92-04, Judge Eric M. Fine.

*MEMC Electric Materials, Inc.* (Machinists) September 20, 2004. 14-CA-27688;  
JD(ATL)-47-04, Judge Lawrence W. Cullen.

*Valley Crest Landscape Development, Inc. and Construction and General Laborers Local 2*  
(Operating Engineers Local 150) Chicago, IL September 20, 2004. 13-CA-41405-1,  
13-CB-17555; JD-91-04, Judge Joseph Gontram.

*Mountaire Farms of Delaware, Inc.* (Food & Commercial Workers Local 27)  
Millsboro, DE September 23, 2004. 5-CA-31689; JD-94-04, Judge Richard A. Scully.

*John T. Jones Construction Co., Inc.* (Carpenters' District Council of Kansas City)  
Springfield, MO September 24, 2004. 17-CA-22607, et al.; JD(ATL)-50-04, Judge Margaret G.  
Brakebusch.

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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.)***

*Club Deportivo de Ponce, Inc.* (Union de Trabajadores de la Industria Gastronomica de Puerto  
Rico, Local 610 HEREIU) (24-CA-9840; 342 NLRB No. 114) Ponce, PR September 20, 2004.

*Myers Investigative and Security Services, Inc.* (Industrial, Technical and Professional  
Employees) (5-CA-31808; 342 NLRB No. 123) Alexandria, VA September 23, 2004.

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**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 DIRECTION[that Regional Director  
open and count ballots]**

*GMT Corporation, Waverly, IA, 18-RC-17232, September 22, 2004*  
*APL Logistics Americas, Ltd., Los Alamitos, CA, 21-RC-20698, September 23, 2004*  
*Stand! Against Domestic Violence, Contra Costa County, CA, 32-RC-5007,*  
*September 24, 2004*

**DECISION AND CERTIFICATION OF REPRESENTATIVE**

*Francis Day and Sons, Showlow, St. John's, and Springerville, AZ, 28-RC-6249*  
*September 22, 2004*  
*New School University, New York, NY, 2-RC-22697, September 22, 2004*  
*Sebert Landscaping, Inc., Barlett, IL, 13-RC-21096, September 24, 2004*

**DECISION AND CERTIFICATION OF RESULTS OF ELECTION**

*Ameriform Manufacturing, Inc., Carrollton, KY, 9-RD-2059, September 22, 2004*  
*Republic Windows & Doors, Inc., Chicago, IL, 13-UD-475, September 22, 2004*

**DECISION AND DIRECTION OF SECOND ELECTION**

*A-1 Preferred Sources, Inc., Columbus, OH, 9-RC-17896, September 22, 2004*  
*Charleston Transitional Facility, Chicago, IL, 13-RC-21149, September 24, 2004*

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

**DECISION AND DIRECTION[that Regional Director  
open and count ballots]**

*Inland Paperboard & Packaging, Inc., Toughkenamon, PA, 4-RC-20804, September 20, 2004*  
*Nationwide Erectors, Inc., Hampshire, IL, 13-RC-21052, September 21, 2004*  
*Parkside Meadows, Incorporated, St. Charles, MI, 14-UD-278, September 24, 2004*

**DECISION AND CERTIFICATE OF RESULTS OF ELECTION**

*Laidlaw Transit, Inc.*, Batavia, IL, 13-UD-474, September 21, 2004

**DECISION AND CERTIFICATION OF RESULTS OF ELECTION**

*Case Farms of Ohio, Inc.*, Winesburg, OH, 8-RC-16587, September, 24, 2004

*New Enterprise Stone & Lime Co., Inc.*, Tyrone, PA, 6-RC-12334, September 24, 2004

**DECISION AND CERTIFICATION OF REPRESENTATIVE**

*Marietta Nursing and Rehabilitation Center*, Marietta, OH, 8-RC-16595, September 23, 2004

*Pro Caribe*, Baltimore, MD, 24-RC-8380, September 24, 2004

**DECISION AND DIRECTION OF SECOND ELECTION**

*Advanced Fire Technology, LLC*, Kalamazoo, MI, 7-RC-22462, September 24, 2004

**DECISION AND ORDER[remanding to Regional Director  
for appropriate action]**

*Earthgrains Redding French Bakery*, Redding, CA, 20-RC-17679, September 23, 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)*

*American Red Cross Blood Services, Northern Ohio Region*, Cleveland, OH, 8-RC-16640,  
September 22, 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)*

*South Mountain Healthcare and Rehabilitation Center*, Vaux Hall, NJ, 22-RC-12461,  
September 22, 2004

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*Miscellaneous Board Orders*

**DECISION ON REVIEW AND ORDER[remanding to Regional Director  
for further consideration consistent with *Premier Plastering,  
Inc.*, 342 NLRB No. 111 (2004)]**

*Competitive Interiors, Inc.*, Ravenna, OH, 8-RC-16340, September 20, 2004

*Roger Kreps Drywall and Plastering, Inc.*, Youngstown, OH, 8-RC-16339, September 20, 2004

**ORDER DENYING MOTION FOR RECONSIDERATION**

*Kennecott Utah Cooper Corporation*, Bingham Canyon, UT, 27-UC-212, September 22, 2004

**ORDER REOPENING RECORD AND REMANDING PROCEEDING  
FOR FURTHER HEARING**

*Trus Joist*, Albany, OR, 36-RD-1642, September 23, 2004

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