

National Labor Relations Board



Weekly Summary of NLRB Cases

Division of Information

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CASES SUMMARIZED
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Press Releases ([R-2544](#)): NLRB General Counsel Arthur Rosenfeld Issues Report On Recent Case Developments

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California Newspapers Partnership d/b/a ANG Newspapers (32-CA-20008; 343 NLRB No. 69) Fremont and Pleasanton, CA Nov. 9, 2004. The Board dismissed the complaint, reversing the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by telling Tom Anderson, a bargaining unit member and a reporter for the Employer's *Fremont Angus*, that he created the appearance of a conflict of interest by appearing before the Fremont City Council to seek support for the Union's efforts to negotiate a contract. Even assuming that the Respondent's conversation with Anderson interfered with Section 7 rights, the Board found that the Respondent demonstrated a substantial business justification to protect its newspaper against the appearance of conflicts of interest that could damage the paper's credibility which outweighed the adverse affect on Anderson's Section 7 rights. [\[HTML\]](#) [\[PDF\]](#)

Anderson attended a city council meeting on Oct. 22, 2002 while off duty. He identified himself as a business reporter for the Respondent, asked the council to pass a resolution supporting the Union's efforts to negotiate a contract, and told the council that he would not promise more favorable news coverage in return. At that time, Anderson did not regularly attend city council meetings or report on the city council. He had interviewed city officials, including the mayor and one city council member.

The judge found that the Respondent violated Section 8(a)(1) relying on both *Peerless Publications*, 283 NLRB 334 (1987), which involved an alleged violation of Section 8(a)(5), and the Board's 8(a)(1) standard. The Board, finding it more appropriate to examine this case under 8(a)(1) principles, concluded that the Respondent had the right to discuss with Anderson the possibility that his city council address created the appearance of a conflict of interest and that its justification outweighed the minimal restraint on Anderson's Section 7 rights. It wrote:

Anderson was not disciplined. The Respondent made it clear that Anderson was free to engage in union activity. . . . The Respondent refrained from meeting with Anderson about his city council appearance until the Respondent learned that Anderson was writing an article about the city. If not for that article, it is not even clear whether the Respondent would have called Anderson in to discuss the issue.

The Board pointed out that it would reach the same result even if it were to apply the *Peerless* principles. First, it would find that maintaining the credibility and integrity of the newspaper is one of the core purposes of the Respondent's enterprises and that its discussion with Anderson goes to the protection of that core principle. Second, the Board concluded, contrary to the judge, that the conversation with Anderson was narrowly tailored, and it was neither vague nor ambiguous. Third, it noted that the conversation was "appropriately limited in its applicability to affected employees to accomplish the necessarily limited objectives." *Id.* at 355.

(Chairman Battista and Members Schaumber and Meisburg participated.)

Charge filed by Northern California Media Workers Guild/Typographical Local 39521, TNG-CWA; complaint alleged violation of Section 8(a)(1). Hearing at Oakland, July 24-25, 2003. Adm. Law Judge Mary Miller Cracraft issued her decision Nov. 6, 2003.

Ceridian Corp. (18-CA-17123; 343 NLRB No. 70) Eagan, MN Nov. 12, 2004. The administrative law judge found, and the Board agreed, that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to grant unpaid leave to employee members of the Union's bargaining committee for the purpose of attending bargaining sessions and insisting that they use their personal days off for time spent at negotiations and refusing to meet at times when the Union's bargaining committee was not scheduled to work. [\[HTML\]](#) [\[PDF\]](#)

In a footnote, Member Meisburg noted that if an employer is concerned about the loss of employee services because of the employee's presence in negotiations, the employer may insist on a reasonable alternative; however, it cannot simultaneously demand that bargaining take place during work hours and refuse reasonable unpaid leave requests. See *Milwhite Co.*, 290 NLRB 1150, 1152 (1988). He observed that in this case the six employee-members are from different work groups and departments among the Respondent's 130 unit employees, which minimizes the impact of their absence from work during negotiations. Member Meisburg also noted that the Respondent's witness admitted that the Respondent never discussed with the Union whether there were times when all negotiators could be present and acknowledged the possibility that all employee-members could have been present without any impact on their work schedules during weekend days, when the Respondent refused to meet.

(Members Liebman, Walsh, and Meisburg participated.)

Charge filed by Service Employees Local 113; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Minneapolis on June 15, 2004. Adm. Law Judge William N. Cates issued his decision Aug. 5, 2004.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Chicago District Council of Carpenters (PRS Construction, LLC) St. Charles, IL November 9, 2004. 13-CC-2504, JD(ATL)-58-04, Judge Keltner W. Locke.

Gale Plumbing and Hydronics, Inc. (West Michigan Plumbers Local 174) Wyoming, MI 7-CA-47512; JD-110-04, Judge David L. Evans.

Parts Depot, Inc. (UNITE) Miami, FL 12-CA-16449, 16741; JD-11-04, Judge Ira Sandron.

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 REPRESENTATIVE

Schuetz Container Systems, Inc., Perrysburg, OH, 8-RC-16623, Nov. 9, 2004
(Members Liebman, Schaumber, and Walsh)

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

St. Mary's Hospital of Blue Springs-Carondelet Health, Blue Springs, MO, 17-RD-1688,
Nov. 9, 2004 (Chairman Battista and Members Schaumber and Walsh)

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

DECISION AND CERTIFICATION OF REPRESENTATIVE

Medical Facilities of America, Warsaw, VA, 5-RD-1329, Nov. 9, 2004
(Chairman Battista and Members Liebman and Schaumber)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Dynamic Cooking Systems, Inc., Huntington Beach, CA, 21-RC-20676, Nov. 9, 2004
(Chairman Battista and Members Liebman and Schaumber)
Work Services Corp., Wichita Falls, TX, 16-RD-1522, Nov. 9, 2004
(Chairman Battista and Members Liebman and Schaumber)
Specialized Developments, Ltd., Champaign, IL, 13-RC-21150, Nov. 10, 2004
(Chairman Battista and Members Liebman and Schaumber)

***(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)***

Kelly Williamson Co., Rockford, IL, 33-RC-4890, Nov. 10, 2004
(Chairman Battista and Members Liebman and Schaumber)

Miscellaneous Board Orders

**ORDER [granting request for review of Regional Director's decision and
direction of election with respect to joint employer issue under *M.B. Sturgis*,
331 NLRB 1298 (2000), and denying request in other respects]**

*Res-Care, Inc. d/b/a Treasure Island Job Corps Center and ALUTIIQ Professional Services,
LLC*, San Francisco, CA, 20-RC-17984, Nov. 10, 2004 (Chairman Battista, Member
Schaumber concurring, Member Liebman dissenting)
