ABOUT THE WEEKLY SUMMARY

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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March 28, 2003 W-2888

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Clock Electric, Inc. and Congress of Independent Unions (8-CA-31671, 31812, 8-CB-9165; (338 NLRB No. 110) Cleveland, OH March 18, 2003. The Board affirmed the administrative law judge's findings that Respondent Clock Electric committed numerous unfair labor practices in violation of Section 8(a)(1), (2), and (3) of the Act and specifically Section 8(a)(3) and (1) by granting wage increases to William Skiba and Brian Lufkin. The Board also agreed with the judge's finding that Respondent Congress of Independent Unions (CIU) violated Section 8(b)(1)(A) and (2) of the Act by unlawfully receiving support from Clock Electric and by accepting recognition and thereafter entering into a collective-bargaining agreement with Clock Electric containing a union-security clause. [HTML] [PDF]

Clock Electric contended that the Union, IBEW Local 38, was not really organizing its employees when it gave the raises and that it had no desire to discourage support for Local 38, but that it simply wanted to keep Skiba and Lufkin, both valuable employees, from defecting to higher-paying employment with Local 38 signatories. The Board found no merit in Clock Electric's claim and determined that the evidence warrants the inference that a motive in granting the wages increases was to discourage Skiba and Lufkin from supporting Local 38's organizational campaign.

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by Electrical Workers (IBEW) Local 38; complaint alleged violation of Section 8(a)(1), (2), and (3) and Section 8(b)(1)(A) and (2). Hearing at Cleveland, OH, March 12-14, 2001. Adm. Law Judge Eric M. Fine issued his decision July 17, 2001.

* * *

The Earthgrains Co. (10-CA-33181; 338 NLRB No. 118) Fort Payne, AL March 20, 2003. The Board, on the recommendation of the administrative law judge, dismissed the complaint allegations that the Respondent violated Section 8(a)(1) and (3) of the Act by discharging Richard C. Jenkins on or about July 20, 2001 because he joined and assisted the Union and engaged in concerted activities. The judge found the evidence supported the conclusion that the Resondent discharged Jenkins because he was away from the plant while on the clock July 8, 2001. [HTML] [PDF]

The General Counsel did not file exceptions and the Charging Party excepted to some of the judge's credibility findings. The Board found no basis for reversing the judge's credibility findings. No exceptions were filed to the judge's finding that the evidence failed to establish that the Respondent harbored animus toward Jenkins because of his union or other protected activities.

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Richard C. Jenkins, an Individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Birmingham, AL, June 13 and 14, 2002. Adm. Law Judge Margaret G. Brakebusch issued her decision Sept. 11, 2002.

* * *

Lee's Summit Hospital and Health Midwest (17-CA-21072, 21220; 338 NLRB No. 116) Kansas City, MO March 20, 2003. The Board upheld the administrative law judge's finding that the Respondent violated Section 8(a)(1) and (5) of the Act by unilaterally withholding the 2000 annual wage adjustment from unit employees. It agreed with the judge's finding that the wage adjustment had become an established pattern and practice over many years, and therefore constituted a condition of employment that the Respondent was not free to change unilaterally. [HTML] [PDF]

While agreeing with his colleagues, Chairman Battista noted, however, that Respondent was not necessarily bound to give a wage increase and to bargain from that point. He stated that when the Union was certified in April 2000 to represent the employees at Lee's Summit, the Respondent could have proposed that the past practice be discontinued at Lee's Summit because wages were to be collectively bargained there. Assuming that impasse on this proposal had been reached by September (during bargaining negotiations), he said it would have been lawful for the Respondent to discontinue the practice as to Lee's Summit at that time.

The Board approved the judge's dismissal of the allegation that the Respondent unlawfully threatened massive layoffs and closure of the hospital in the event of a strike, relying solely on the ground that the General Counsel did not meet his burden of proving the allegation by a preponderance of the evidence.

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by Nurses United for Improved Patient Care and Mary Nash, an Individual; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Overland Park, KS on Aug. 14, 2001. Adm. Law Judge Gerald A. Wacknov issued his decision Sept. 28, 2001.

* * *

Nurses United for Improved Patient Healthcare, AFT (17-CB-5596, 17-RC-12040; 338 NLRB No. 113) Kansas City, MO March 20, 2003. The Board adopted the recommended order of the administrative law judge and dismissed the complaint allegations that the Respondent violated Section 8(b)(1)(A) of the Act by threatening employees with reprisals for refusing to support the Union. It ordered that VNA Corp.'s objection to the election conducted in Case 17-RC-12040 be overruled, that the challenges to 3 ballots be overruled, and that Case 17-RC-12040 be severed from Case 17-CB-5596 and remanded to the Regional Director to open and count the ballots of Marsha O'Roark, Catherine Burrows, and Patricia Habiger. [HTML] [PDF]

(Members Schaumber, Walsh, and Acosta participated.)

Charge filed by VNA Corp. d/b/a Visiting Nurse Services of Health Midwest; complaint alleged violation of Section 8(b)(1)(A). Hearing at Overland Park, KS, May 7 and 8, 2002. Adm. Law Judge James L. Rose issued his decision July 25, 2002.

* * *

Quest International, A Business Unit of Indopco, Inc. (5-RC-15417; 338 NLRB No. 123) Owings Mills, MD March 20, 2003. The Board overruled the Union's objection alleging that "immediately prior to and during the election, the Employer stationed security guards and guard dogs on the Employer's premises when neither had been so stationed prior to the filing of the petition for representation" and certified the results of the election. The tally of ballots showed 13 votes for and 33 against Teamsters Local 570, with one challenged ballot, which was not sufficient to affect the results of the election. [HTML] [PDF]

The hearing officer found, in recommending that the Union's objection to the election be sustained, that the unprecedented posting of uniformed security guards and security dogs for 10 days before the election was likely to cause fear among the employees and that the employees would understand the Employer's message to be that a vote for unionization was a vote for a workplace characterized by violence, in which guards and dogs would be necessary to keep the peace. The Board disagreed, concluding, contrary to the hearing officer, "that the Union failed to carry its burden of establishing that the Employer's implementation of security measures . . . had a reasonable tendency to interfere with the employees' free and uncoerced choice in the election."

(Chairman Battista and Members Schaumber and Walsh participated.)

* * *

Taylor Machine Products, Inc. (7-CA-33135, et al.; 338 NLRB No. 117) Taylor, MI March 18, 2003. The Board, in this supplemental decision and order, adopted the administrative law judge's recommendation and ordered that the Respondent, Taylor Machine Products, make whole employees James Howells, Vernadette Bader, Ruth Cecil, Josephine Mallia, Floria Russell, Rosemary Smith, and Bonnie Warren the amounts set forth opposite their names for a total of $188,273.54 plus interest. [HTML] [PDF]

In its prior order reported at 335 NLRB No. 56 (2001), the Board granted the General Counsel's motion for partial summary judgment relating to the calculation of the gross backpay of the six discriminates and remanded for hearing the remaining issues related to interim earnings, medical expenses, and the job searches of the discrminatees.

(Chairman Battista and Members Liebman and Acosta participated.)

Hearing at Detroit, Feb. 4 and 5, 2002. Adm. Law Judge George Carson II issued his second supplemental decision March 21, 2002.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Eastern Summit Development, Inc. (Operating Engineers Locals 17-17A-17B-17C-17D-17RA-17S) Buffalo, NY March 17, 2003. 3-CA-23610; JD-31-03, Judge Eric M. Fine.

Unifirst Corp. (Laundry Workers [UNITE] Local 66L) Indian Orchard, MA March 18, 2003. 1-CA-39267, 39321; JD-22-03, Judge Wallace H. Nations.

Omahaline Hydraulics Co., a division of Prince Manufacturing Co. (Machinists District 7) Sioux City, IA March 18, 2003. 18-CA-16552; JD-16-03, Judge Paul Buxbaum.

Syracuse Scenery & Stage Lightning Co., Inc. (Stage Employees Local 9) Liverpool, NY March 18, 2003. 3-CA-23798-1&2, 3-RC-11249; JD-32-03, Judge Arthur J. Amchan.

Vintage Pharmaceuticals, Inc. (an Individual) Huntsville, AL March 19, 2003. 10-CA-33427, 33920; JD(ATL)-21-03, Judge Pargen Robertson.

Brawley Beef, LLC (Individuals) El Centro, CA March 18, 2003. 21-CA-35031-1, -2; JD(SF)-21-03, Judge James L. Rose.

Marshall Engineered Products Co., LLC (Auto Workers Local 893, Unit 7) Marshalltown, IA March 21, 2003. 18-CA-16303; JD-34-02, Judge Benjamin Schlesinger.

Diverse Steel, Inc. and Pinnacle Steel, Inc., Alter Egos (Iron Workers Local 321) Roland and Little Rock, AR March 21, 2003. 26-CA-20799; JD(ATL)-23-03, Judge Margaret G. Brakebusch.

CTA Acoustics, Inc. (Steelworkers) Corbin, KY March 21, 2003. 9-CA-39411-1,-2,-3,-4; JD-35-03, Judge John T. Clark.

Alaska Ship and Drydock, Inc. (Carpenters Local 2520) Ketchikan, AK March 14, 2003. 19-CA-27490, et al.; JD(SF)-20-03, Judge William L. Schmidt.

Fred Meyer, Inc. (Food & Commercial Workers Local 367) Portland, OR March 14, 2003. 19-CA-28236; JD(SF)-22-03, Judge Gerald A. Wacknov.

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TEST OF CERTIFICATION

(In the following cases, the Board granted the General Counsel's motion for summary judgment on the ground that the Respondent has not raised any representation issues that are litigable in the unfair labor practice proceeding.)

Paulstra CRC Corp. (Steelworkers) (7-CA-45527; 338 NLRB No. 120) Ithaca, MI March 18, 2003.

La Gloria Oil and Gas Co. (PACE Local 4-202) (16-CA-22313, 22316; 338 NLRB No. 122) Tyler, TX March 21, 2003.

* * *

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.)

Guild Electric Colorado LLC (Electrical Workers [IBEW] Local 68) (27-CA-18011-1; 338 NLRB No. 121) Englewood, CO March 19, 2003. (Guard Local 80) (16-CA-21440; 337 NLRB No. 70) Houston, TX May 7, 2002.