

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.



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April 11, 2003

W-2890

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St. Vincent Medical Center, A Division of Catholic Healthcare West, Southern California (31-CA-24325; 338 NLRB No. 130) Los Angeles, CA March 31, 2003. Adopting the administrative law judge's recommendations, the Board dismissed the complaint allegations that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employees in its respiratory care department and subcontracting out their work shortly before a representation election involving these employees. [\[HTML\]](#) [\[PDF\]](#)

The General Counsel contended that antiunion animus was a motivating factor in the Respondent's decision to subcontract the respiratory care department. However, the Board noted that the Respondent has established that it implemented its subcontracting decision within the 30-to-60 day timeframe it announced prior to the filing of the petition for a representation election.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charges filed by Healthcare Employees (SEIU) Local 399; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Los Angeles, June 26-30, 2000. Adm. Law Judge Frederick C. Herzog issued his decision Dec. 11, 2000.

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Bergensons Property Services, Inc. (21-CA-34528; 338 NLRB No. 127) San Diego, CA March 31, 2003. In the absence of exceptions, the Board adopted the administrative law judge's findings that the Respondent violated Section 8(a)(1) of the Act by threatening employees with loss of benefits and discharge because they engaged in union activity and Section 8(a)(3) and (1) by discharging employee Alejandra Rodriguez because of her support for the union. The Board provided formal "Conclusions of Law" which the judge failed to include in his decision for the violations that he found. [\[HTML\]](#) [\[PDF\]](#)

The Board found merit in the General Counsel's exceptions to the judge's failure to provide for notices to employees in both Spanish and English in view of the fact that a majority of the Respondent's employees are primarily Spanish-speaking and also to the General Counsel's request that the notice be mailed to the last known addresses of Respondent's employees who were employed since the date that the unfair labor practices occurred.

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Service Employees Local 2028; complaint alleged violation of Section 8(a)(1) and (3). Hearing at San Diego, Dec. 3 and 4, 2001. Adm. Law Judge James L. Rose issued his decision Feb. 11, 2002.

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Dilling Mechanical, Inc. (25-CA-28171-2, 28185-1; 338 NLRB No. 136) Morristown, IN April 4, 2003. The Board, on the recommendation of the administrative law judge, dismissed the complaint allegations that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging James Michael Colvin on May 10, 2002 and Section 8(a)(1) by prohibiting employees from leaving union literature in break areas, threatening employees with unspecified reprisals if they engaged in union activities, and prohibiting employees from talking about the Union during break times and from discussing the Union on company property. [\[HTML\]](#) [\[PDF\]](#)

The judge held that the General Counsel failed to establish any of the violations alleged in the complaint and failed to make a prima facie case in regard to any of them. With regard to the alleged 8(a)(3) and (1) violation, the judge said "it is incumbent on the General Counsel to prove, as an element of his case, that James Michael Colvin engaged in protected activity prior to time that Respondent requested his removal from the jobsite and that Respondent was, by that time, aware of such activity. The General Counsel has failed to establish these essential elements of its case either through direct or circumstantial evidence."

(Members Schaumber, Walsh, and Acosta participated.)

Charges filed by Indiana State Pipe Trades Association and Plumbers Local 440; complaint alleged violations of Section 8(a)(1) and (3). Hearing at Indianapolis, Oct. 17-18, 2002. Adm. Law Judge Arthur J. Amchan issued his decision Dec. 23, 2002.

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Teamsters Local 557 (General Motors) (5-CC-1247; 338 NLRB No. 133) Baltimore, MD March 31, 2003. The Board affirmed the administrative law judge's conclusion that the Respondent's picketing at General Motors (GM) on December 4, 2001, was coercive and for an unlawful object, and violated Section 8(b)(4)(ii)(B) of the Act. [\[HTML\]](#) [\[PDF\]](#)

GM decided to shift its car-hauling contract from Leaseway Auto Carriers (Leaseway), which recognized Local 557, to New Concept Solutions (NCS), which did not. Before the change took effect, Leaseway employees and their families picketed at the GM facility. NCS was not present on the site at the time of the picketing. The day after the picketing, the Respondent requested recognition from NCS. The judge found that the object of the picketing was to force GM to cease doing business with NCS and/or to force NCS to recognize Local 557. He rejected the Respondent's assertion that GM is not a neutral employer, saying GM remained a neutral employer despite the fact that it terminated its business with Leaseway.

Member Liebman, in her concurring opinion, agreed with her colleagues that current law compels the result reached but wrote separately to highlight how strained the concept of "neutrality" is, as applied to certain labor disputes. In her view, "the concept of 'neutrality,' as it has been applied, turns on a legal fiction. It shields from legitimate concerted activity employers who are by no real definition neutral to a labor dispute. A secondary employer will be treated as a 'neutral' and protected from picketing, regardless of its actual involvement in a labor dispute, its involvement in determining employees' terms and conditions of employment through contracting decisions, or its demonstrated antiunion animus." Although she joined in the finding that the Respondent's picket line was unlawful, she said she does so only because the Respondent was unable to establish that GM shifted its car-hauling contract from Leaseway to NCS with antiunion animus.

In his concurring opinion, Member Acosta addressed the concerns raised by Member Liebman and said that the thrust of her concerns is that the concept of neutrality as it has been applied in Section 8(b)(4) parlance has been strained and distorted. He stated that the view of "neutrality" that Member Liebman disputes is nearly as longstanding as Section 8(b)(4) itself. See *NLRB v. Denver Building Trades Council*, 341 U.S. 675 (1951), one of the Supreme Court's first decisions involving the then-recently enacted Section 8(b)(4). He said that the instant decision is consistent with the original interpretation of the secondary boycott provisions of the Act.

(Chairman Battista and Members Liebman and Acosta participated.)

Charge filed by General Motors; complaint alleged violation of Section 8(b)(4)(ii)(B). Hearing at Baltimore, June 19 and 20, 2002. Adm. Law Judge William G. Kocol issued his decision July 18, 2002.

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Trumbull Memorial Hospital and Western Reserve Personnel, Inc. (8-RC-16381; 338 NLRB No. 132) Warren, OH April 3, 2003. The Board concluded, contrary to the Regional Director, that Trumbull Answering Service (TAS) telephone operators do not share a sufficient community of interest with the Trumbull Memorial Hospital (TMH) business group employees to warrant their inclusion in an existing TMH business office unit already represented by the Petitioner (Service Employees Local 627). The Regional Director, finding that the TAS employees constituted an appropriate voting group, directed an election to determine their inclusion in the existing unit. The Board dismissed the petition. [\[HTML\]](#) [\[PDF\]](#)

TMH is an acute care facility. The Petitioner and TMH are parties to a collective-bargaining agreement in which TMH recognizes the Petitioner as the exclusive representative of its business clerical employees, including those who work in information technology, accounting, and as telephone operators. TMH created TAS in 1989 as an answering service for its doctors, and TAS has taken on other clients since then. TAS has never directly hired the employees who work for it and initially was staffed by TMH employees employed through Home Healthcare, a division of TMH. TMH later decided to staff TAS with employees supplied by Western Reserve Personnel (WRP).

The Regional Director found that TMH and WRP were joint employees of the petitioned-for employees. No party filed a request for review of this finding. Applying *M.B. Sturgis, Inc.*, 331 NLRB 1298 (2000), the Regional Director held that the petitioned-for TAS operators share a sufficient community of interest with the TMH telephone operators to warrant their

inclusion in the existing unit. He relied principally on his finding that Karen Brooks was the "key supervisor" with respect to both groups of operators; that the two groups of employees have similar skills and work in close proximity to each other; that there is some interchange between the two groups; and that the employees share certain privileges and wear TMH-issued pagers and the same type of identification badges.

In the Board's view, the Regional Director's findings are outweighed by others; e.g. the principal factor relied on by the Regional Director, that of common supervision, is not supported by the record; that the two groups of employees receive dissimilar wages and benefits; and the TAS employees are not covered by TMH's retirement plan, hospitalization plan, vacation policies, disciplinary rules, seniority rules, or job posting rules. The Board further noted the two groups of employees do not serve the same clientele--TMH operators serve primarily the hospital and its patients and employees and TAS employees serve doctors on the hospital staff and other clients not connected to the hospital. It also noted TMH's general policy against employees working for both TMH and TAS.

(Chairman Battista and Members Schaumber and Walsh participated.)

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Amveco Magnetics, Inc. (16-RC-10443; 338 NLRB No. 137) Houston, TX April 4, 2003. The Board reversed the hearing officer and overruled Sheet Metal Workers' (Petitioner) Objection 5 alleging that a 1-page document entitled "Thought for the Day or Don't Be a Chump," which the Employer posted on a bulletin board, contained an implied threat to eliminate bonuses and overtime work if the Petitioner won the election, and certified the results of the election. In the absence of exceptions, it adopted the hearing officer's recommendations to overrule the Petitioner's remaining objections. The tally of ballots showed 21 ballots cast for and 40 ballots cast against the Petitioner, with one void ballot and no challenged ballots. [\[HTML\]](#) [\[PDF\]](#)

The hearing officer found merit to Objection 5 and recommended that the election be set aside and a new election conducted. The Board noted that the Petitioner lost the election by a nearly 2-1 margin and in the absence of sufficient evidence that posting the document would have affected the results of the election, saw no basis for overturning the election.

(Members Liebman, Schaumber, and Acosta participated.)

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Ambassador Wheelchair Services, Inc. (Auto Workers [UAW] Local 376) Rocky Hill, CT April 1, 2003. 34-CA-10176, et al., 34-RC-1970; JD(NY)-16-03, Judge Raymond P. Green.

Huron Casting, Inc. (Steelworkers) Pigeon, MI April 4, 2003. 7-CA-44761, et al.; JD-39-03, Judge Wallace H. Nations.

Johnstown America Corp. (Steelworkers and an Individual) Johnstown, PA April 4, 2003. 6-CA-32504, et al.; JD-40-03, Judge David L. Evans.

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TEST OF CERTIFICATION

(In the following case, 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.)

Producer's Dairy Foods, Inc. (Teamsters Local 853) (32-CA-20253-1; 338 NLRB No. 131) San Leandro, CA April 2, 2003.