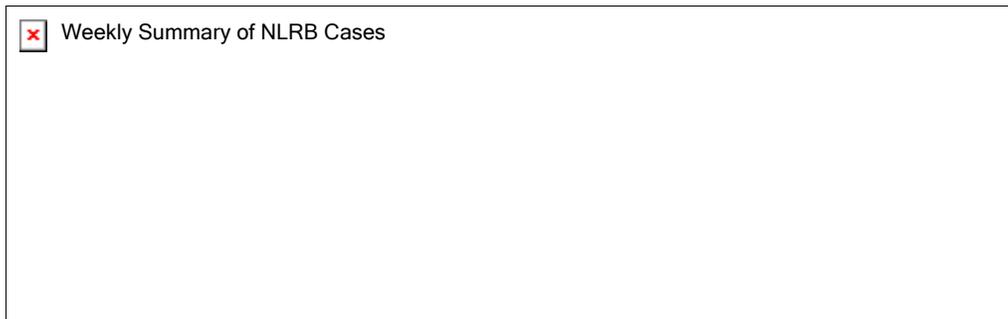


ABOUT THE WEEKLY SUMMARY

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 18, 2003

W-2891

CASES SUMMARIZED

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[Brad Snodgrass, Inc.](#), Indianapolis, IN
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Kankakee Valley Rural Electric Membership Corp. (25-CA-28011-1; 338 NLRB No. 135) Wanatah, IN April 7, 2003. No exceptions to the administrative law judge's recommendations having been filed, the Board affirmed the judge's findings that the Respondent violated Section 8(a)(1), (3), and (5) of the Act by failing and refusing to bargain in good faith with the Union by unilaterally failing and refusing to grant, since January 1, 2002 (1) annual wage increases to employees in the unit; (2) biannual wage increases to apprentice linemen and groundmen who are employees in the unit; and (3) matching 401(k)

retirement plan contributions to employees in the unit, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to any changes in terms and conditions of employment. [\[HTML\]](#) [\[PDF\]](#)

The Board modified the recommended Order to reflect all the violations found and substituted a new notice to conform to the Order and to provide that the 1-year extension of the Union's initial year of certification shall begin on the date that the Respondent commences to bargain in good faith with the Union.

(Members Schaumber, Walsh, and Acosta participated.)

Charge filed by Electrical Workers (IBEW) Local 1393; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Valpraiso, IN, Aug. 12 and 13, 2002. Adm. Law Judge John T. Clark issued his decision Dec. 18, 2002.

* * *

Brad Snodgrass, Inc. (25-CA-27500-1; 338 NLRB No. 138) Indianapolis, IN April 9, 2003. The administrative law judge found, and the Board agreed, that the Respondent violated Section 8(a)(1) of the Act by: (a) informing employees and their union representatives that employees were being laid off because Sheet Metal Workers Local 20 filed grievances; (b) threatening employees with loss of jobs because Local 20 raised complaints about wages; and (c) instructing employees to request that Local 20 withdraw its grievances and promising employees that they would be recalled to work if Local 20 withdrew those grievances. It also agreed with the judge that the Respondent violated Section 8(a)(1) and (3) by laying off 13 employees on January 31, 2001 because Local 20 filed contractual grievances on their behalf. [\[HTML\]](#) [\[PDF\]](#)

In the absence of exceptions, the Board adopted the judge's finding that the Respondent violated Section 8(a)(1) by sending to a union representative two letters, in response to the Union's filing of grievances on the employees' behalf, which threatened loss of employment for bargaining unit members because of the representative's protected activity.

(Members Liebman, Schaumber, and Acosta participated.)

Charge filed by Sheet Metal Workers Local 20; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Ft. Wayne, IN, Oct. 9 and 10, 2001. Adm. Law Judge Eric M. Fine issued his decision March 1, 2002.

* * *

Onan Corp., a wholly owned subsidiary of Cummins, Inc. (18-RC-16729; 338 NLRB No. 139) Fridley, MN April 7, 2003. Contrary to the hearing officer, a Board majority of Chairman Battista and Member Acosta overruled the Petitioner's (Auto Workers) objection alleging that the Employer interfered with the rerun election by informing bargaining unit employees, shortly before the rerun election, it had settled certain employee-initiated litigation regarding its pension plan; and certified the election results. The tally of ballots showed 296 for and 413 against the Petitioner, with 6 challenged ballots, an insufficient number to affect the results. [\[HTML\]](#) [\[PDF\]](#)

The majority stated that the Board has held that during a union organizing campaign, employers must act as they would in the absence of a union campaign. *Waste Management of Palm Beach*, 329 NLRB 198 (1999); *American Sunroof Corp.*, 248 NLRB 748 (1980). The majority found that the Employer showed that it would have announced the settlement of the pension litigation regardless of the ongoing union organizing campaign. Chairman Battista and Member Acosta concluded that the record evidence shows that the Employer had a pattern of announcing developments in the pension litigation to its employees as they occurred, answered employees' questions about the litigation during employee meetings, and under Board precedent, this is all that the Employer was required to show.

Member Liebman, dissenting, found that the Employer failed to establish that the timing of the announcement of the proposed settlement was unrelated to the impending rerun election. Member Liebman held that it was the Employer's burden to establish a legitimate explanation for the time of its announcement. Because the Employer has failed to rebut the inference that its real motive here was^{3/4}as it was prior to the initial election^{3/4}to influence the outcome of the pending rerun election, she would adopt the hearing officer's recommendation to set aside the election and direct a second rerun election.

In an earlier decision reported at 334 NLRB 531 (2001), the Board set aside the first election partly because of the announcement, 6 days before the election, of the Employer's willingness to seek a settlement of the class action litigation. This conduct was found to be objectionable as an ill-timed offer of benefit.

(Chairman Battista and Members Liebman and Acosta participated.)

* * *

Cibao Meat Products (2-CA-32811; 338 NLRB No. 134) Bronx, NY April 11, 2003. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by suspending employee Mario Mendez for 1 day on January 17, 2000. The judge concluded that Mendez was engaged in protected concerted activity when he spoke up to protest a new company policy at an employee meeting called by Respondent on January 17, and that he was admittedly suspended for such activity. The Respondent argued that Mendez' actions were unprotected insubordination. The Board reversed the judge's finding that the Respondent constructively discharged Mendez, who did not return to work after his unlawful suspension, since the contention was never alleged in the complaint and was not fully or fairly litigated. [\[HTML\]](#) [\[PDF\]](#)

The judge found, with Board approval, that the Respondent unlawfully discharged Jose Luis Mendez, Cayetano Flores, and Modesto Flores because the Respondent's owner believed that they might protest the unlawful suspension of Mario Mendez. Member Acosta would hold that the judge improperly relied on Wright Line, which is properly used in resolving cases alleging violations where the respondent's motivation for taking the allegedly unlawful action is undisputed, saying it is undisputed that the Respondent discharged the three employees because it "believed they would act concertedly in the protected endeavor of protesting Mario Mendez' unlawful suspension. See *Felix Industries*, 331 NLRB 144, 146 (2000)."

(Members Schaumber, Walsh, and Acosta participated.)

Charge filed by UNITE Local 169; complaint alleged violation of Section 8(a)(1) and (3). Hearing at New York on May 21 and 22, 2001. Adm. Law Judge Howard Edelman issued his decision Aug. 17, 2001.

* * *

Torch Operating Co. (31-CA-20895; 338 NLRB No. 143) Santa Maria and Lompoc, CA April 11, 2003. The Board reconsidered its earlier decision, 322 NLRB 939 (1997), the record in light of the Supreme Court's decision in *Allentown Mack Sales and Service v. NLRB*, 522 U.S. 359, and the parties' statements of position, and dismissed the complaint. [\[HTML\]](#) [\[PDF\]](#)

The Board, in its initial decision, affirmed the administrative law judge's findings that the Respondent was a successor employer to Unocal with respect to certain Lompoc, CA facilities and that it violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Petroleum and Industrial Workers International as the exclusive bargaining representative of the unit employees. The judge found that statements relied on by the Respondent were not sufficient to raise a good-faith doubt as to employees' support for the Union and rejected the Respondent's good-faith doubt defense. Thereafter, the Respondent filed a petition for review with the U.S. Court of Appeals for the Fifth Circuit.

Prior to the court's issuance of its opinion, the Supreme Court issued its decision in *Allentown Mack*, holding that the Board's "good-faith doubt" standard must be interpreted to permit an employer to withdraw recognition of a union when the employer has "reasonable uncertainty" of the union's majority status. The Supreme Court clarified the good-faith doubt standard as meaning only a good-faith uncertainty, rather than disbelief, as to whether a union bargaining representative has the support of a majority of the unit employees and repudiated the approach used by the judge, and by the Board generally, to analyze the sufficiency of certain kinds of employee statements as objective proof of a good-faith doubt.

At the Board's request, the Fifth Circuit remanded the instant case without prejudice for further consideration in light of *Allentown Mack* and the Board invited the parties to submit statements of position.

(Members Schaumber, Walsh, and Acosta participated.)

* * *

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Stevens Construction Corp. (Carpenters Milwaukee and Southern Wisconsin Regional Council, Carpenters Northern Wisconsin Regional Council, and Laborers Local 464) Madison, WI April 7, 2003. 30-CA-15489, et al.; JD-41-03, Judge Bruce D. Rosenstein.

Austal USA, L.L.C. (Sheet Metal Workers Local 441) Mobile, AL April 7, 2003. 15-CA-16552, et al., 15-RC-8394; JD(ATL)-25-03, Judge George Carson II.

Anderson C & E, Inc. d/b/a Anderson Construction (Plasterers Local 518) Kirksville, MO April 9, 2003. 17-CA-21981; JD (SF)-25-03, Judge Jay R. Pollack.

Butera Finer Foods (UFCW Unions and Employers Midwest Pension Fund) Elgin, IL April 9, 2003. 13-CA-40246-1; JD-42-03, Judge Karl H. Buschmann.

Network Dynamics Cabling, Inc. (Electrical Workers [IBEW] Local 98) West Chester, PA April 10, 2003. 4-CA-30474, et al.; JD-44-03, Judge Arthur J. Amchan.

Providence Journal Co. (Providence Newspaper Guild Local 31041) Providence, RI April 11, 2003. 1-CA-39430; JD-43-03, Judge William G. Kocol.

* * *

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.)

Malik Roofing Corp. (Sheet Metal Workers Local 18) (30-CA-16097-1; 338 NLRB No. 141) Whitewater, WI April 10, 2003.

* * *

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.)

MEMC Electronic Materials, Inc. (Machinists) (14-CA-27224; 338 NLRB No. 142) St. Peters, MO April 10, 2003.