

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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May 2, 2003

W-2893

CASES SUMMARIZED

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[\(R-2487\) Richard Ahearn Named Regional Director of NLRB's Seattle Regional Office](#)

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Waste Management of Maryland, Inc. (5-RD-1309; 338 NLRB No. 155) White Plains, MD April 25, 2003. The Board, finding that the parties' exchange of written materials is insufficient for contract bar purposes, reversed the Regional Director's

conclusion that an existing contract between the Employer and Intervenor Teamsters Local 639 barred the decertification petition. It reinstated the petition and remanded the case to the Regional Director for further appropriate action. [\[HTML\]](#) [\[PDF\]](#)

Teamsters Local 639 was certified on September 18, 2001, to represent the Employer's drivers, helpers, and mechanics at its White Plains, MD site and, thereafter, the parties began negotiations for a first contract.

The Regional Director found that the parties entered into a collective-bargaining agreement on September 18, 2002, which barred the decertification petition filed on September 19, 2002, relying on (1) the Employer's July 15, 2002 written contract proposal, (2) the Employer's signature from the July 15 cover letter, and (3) the Union's September 18, 2002 acceptance letter. He found that the three documents, taken together, satisfied the Board's longstanding requirements under *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958).

The Board disagreed, saying the parties' exchange of letters "leaves much doubt as to the terms of the alleged contract." Given this ambiguity, "we cannot ascertain the exact terms the Union accepted on September 18" and "the parties' exchange of letters cannot serve as a bar to the decertification election." *Branch Cheese*, 307 NLRB 239 (1992).

(Members Liebman, Schaumber, and Walsh participated.)

* * *

Laborers Local 79 (DNA Contracting, LLC) (2-CD-1053; 338 NLRB No. 153) New York, NY April 25, 2003. The Board decided that employees of DNA Contracting, LLC (DNA), represented by Bricklayers Local 1, are entitled to perform demolition work, brick and window cleaning, and the cleaning of mortar droppings at the facade restoration project at 150 West 51st Street, New York, NY. [\[HTML\]](#) [\[PDF\]](#)

The Board agreed with DNA and Local 1 that the dispute is jurisdictional and not representational as Local 79 contended. It noted that Local 79 expressly claimed the disputed work as "its work" and also demanded that DNA sign a contract that contained a union-security clause, even though employees represented by Local 1 were already performing the work under a collective-bargaining agreement between DNA and Local 1. The Board explained:

"Had DNA signed that contract, Local 79 could have insisted that DNA fire any current employees who resisted joining Local 79, thus effectively taking the disputed work away from employees represented by Local 1 and giving it to employees represented by Local 79. In nearly identical circumstances, the Board has found disputes to be jurisdictional, even though the unions attempting to acquire the disputed work framed their demands in representational terms. *Parkersburg Building & Construction Trades Council*, 119 NLRB 1384 (1958); *International Hod Carriers' Local 1149*, 125 NLRB 753 (1959)."

Member Schaumber added that Local 79's assertion that the dispute "was over which union should represent the workers employed by DNA, the Bricklayers or Local 79" raised a different set of concerns. "If Local 79 had indeed signed a collective-bargaining agreement with DNA covering the very unit employees already represented by Local 1, thus resulting in DNA repudiating the agreement with Local 1, a question would be raised as to whether both DNA and Local 79 had violated the Act. See *Finiz & Scission, Inc.*, 207 NLRB 752 (1973), *enfd. mem.* 506 F.2d 1404 (7th Cir. 1974)."

(Members Liebman, Schaumber, and Acosta participated.)

* * *

Performance Friction Corp. (11-CA-16040, 18044; 338 NLRB No. 145) Clover, SC April 22, 2003. The Board granted the General Counsel's motion for summary judgment and ordered that the Respondent pay Martha Hinson \$26,973, Jerry Kennedy \$11,738, and Manuel Mantecon \$5,438, as stated in the third amended compliance specification, plus interest and minus tax withholdings required by Federal and State laws. [\[HTML\]](#) [\[PDF\]](#)

The Board in 2001 remanded this proceeding to the Regional Director for the issuance of a new backpay specification recalculating the backpay for Hinson, Kennedy, and Mantecon in accordance with specific instructions. 335 NLRB No. 86.

The Regional Director issued a third amended compliance specification on August 16, 2002. The Respondent, in its answer, admitted that the recalculated backpay in the third amended compliance specification was consistent with the Board's instructions, but it expressly denied that Hinson, Kennedy, and Mantecon were entitled to any backpay relying on its positions litigated in the hearing on the first amended compliance specification and rejected by the Board in its 2001 supplemental decision.

The Board found that the Respondent's arguments were directed toward relitigating issues previously litigated and decided in the initial phase of this compliance proceeding. It rejected this effort, noting it is well settled that issues litigated and decided in an earlier phase of a backpay proceeding cannot be relitigated in a later phase. The Board deemed admitted all paragraphs of the third amended compliance specification not specifically admitted by the Respondent, concluded that the net backpay due the three discriminates is as stated in the third amended compliance specification, and ordered the Respondent to pay those amounts.

(Chairman Battista and Members Liebman and Acosta participated.)

General Counsel filed motion for summary judgment Sept. 13, 2002.

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Micro Pacific Development, Inc. d/b/a Saipan Grand Hotel (37-CA-4979, 37-RC-3720; 338 NLRB No. 152) Suspue, Saipan, CNMI April 23, 2003. The Board vacated its decision and order in Case 37-CA-4979 (326 NLRB 80 (1998)), denied the General Counsel's motion for summary judgment in that case, and dismissed the complaint. It also revoked the decision and certification of representative in Case 37-RC-3720 and remanded the case to the Regional Director to conduct a second election. [\[HTML\]](#) [\[PDF\]](#)

In the earlier decision, the Board found that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with Hotel & Restaurant Employees Local 5 and refusing to provide the Union with requested information necessary for collective bargaining. Thereafter, the Respondent petitioned the U.S. Circuit Court of Appeals for the District of Columbia for review, contending that the Board erred in affirming the administrative law judge's finding in Case 37-RC-3720 that housekeeping supervisor, Edwin Melon, was not a supervisor within the meaning of Section 2(11) of the Act. The court reversed the Board's finding that Melon was not a statutory supervisor and remanded the case for a determination of whether Melon's prounion conduct constituted objectionable conduct warranting a second election.

The Board accepted the court's remand and its determination that Melon was a statutory supervisor as the law of the case. As no exceptions were filed to the judge's alternative finding that, if Melon was found to be a statutory supervisor, his prounion conduct was objectionable, the Board concluded that Melon engaged in objectionable conduct warranting setting aside the election.

(Chairman Battista and Members Liebman and Walsh participated.)

* * *

National Association of Letter Carriers (5-CA-29667; 338 NLRB No. 151) Washington, DC April 23, 2003. Members Liebman and Walsh, after review of the administrative law judge's decision dismissing the complaint, and the record in light of the exceptions and briefs, remanded the case to the judge to provide further analysis. [\[HTML\]](#) [\[PDF\]](#)

The majority held that the judge did not clearly explain his reasoning, beyond observing that the Board decisions cited by the General Counsel and the Charging Party Union (Office Employees Local 2) did not apply to the circumstances of this case. Members Liebman and Walsh said that on remand the judge should set forth a complete legal analysis, including relevant case law, on the issue of whether the Respondent lawfully prohibited employees from (1) wearing large fluorescent poster-board signs in its national headquarters office, and (2) displaying the same signs on the exterior walls of the employees' workplace cubicles.

Chairman Battista, dissenting, disagreed with his colleagues' decision to remand. He believes that the record facts, plus the judge's decision and the briefs of the parties, provide an adequate basis for the Board to now perform any supplementary legal analysis and to decide this case.

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Office Employees Local 2; complaint alleged violation of Section 8(a)(1). Hearing at Washington, D.C., Oct. 18, 2001. Adm. Law Judge Marion C. Ladwig issued his decision Dec. 11, 2001.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Willamette Industries, Inc. and Weyerhaeuser Co. (PACE) Fort Smith, AR April 21, 2003. 26-CA-19667, et al.; JD(ATL)-27-03, Judge Pargen Robertson.

Wal-Mart Stores, Inc. (an Individual) Boone, NC April 21, 2003. 11-CA-18629, 18636; JD(ATL)-28-03, Judge Margaret G. Brakebusch.

Communications Workers Local 13000 (Individuals) Pittsburgh, PA April 21, 2003. 6-CB-10814, 10830; JD-22-03, Judge Marion C. Ladwig.

Pirelli Cable Corporation (an Individual and Electrical Workers [IBEW] Local 2343) Colusa, CA April 21, 2003. 20-CA-30624-1, 30687-1; JD(SF)-26-03, Judge James M. Kennedy.

Toll Manufacturing Co. (an Individual) Dayton, OH April 23, 2003. 9-CA-37499; JD-48-03, Judge John T. Clark.

Electrical Workers [IBEW] Local 15 (Commonwealth Edison Co.) Chicago, IL April 23, 2003. 13-CB-17070; JD-46-03, Judge Martin J. Linsky.

Goya Foods of Florida (UNITE) Miami, FL April 24, 2003. 12-CA-21168, et al.; JD(ATL)-29-03, Judge George Carson II.

Palace Arena Football, LLC, a/k/a Detroit Fury (Arena Football League Players Association) Auburn Hills, MI April 22, 2003. 7-CA-45132; JD-47-03, Judge Arthur J. Amchan.

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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.)

SS & E Electric, Inc. (Electrical Workers [IBEW] Local 26) (5-CA-29814; 338 NLRB No. 149) Accokeek, MD April 21, 2003.

CAC Services, Inc. (Teamsters Local 710) (13-CA-40139-1; 338 NLRB No. 150) Chicago Heights, IL April 25, 2003.

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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.)

Evergreen America Corp. (Longshoremen ILA) (22-CA-25542; 338 NLRB No. 156) Morristown, NJ April 25, 2003.