

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 9, 2003

W-2894

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Teddi of California (21-CA-34494; 338 NLRB No. 157) Rancho Dominguez, CA April 28, 2003. The Board modified the administrative law judge's recommended order to include a finding that the Respondent violated Section 8(a)(1) of the Act by telling employees who were engaged in union activities to look for jobs elsewhere if they were dissatisfied with their current jobs. The judge explicitly found the violation in the body of his decision, but did not include the finding in his Conclusions of Law section. The General Counsel excepted to the judge's omission and the Respondent, in its answering brief, belatedly contested the substance of the finding. In the absence of a timely exception, the Board modified the judge's recommended Order to include the violation. [\[HTML\]](#) [\[PDF\]](#)

Chairman Battista, concurring in the result, would reach the merits, rather than decide the issue on procedural grounds. He found that the statement was made, and that it was unlawful.

The Board in January 1993 severed and remanded to the Regional Director an alleged violation of Section 8(a)(3) by the Respondent. The remaining issues are the Respondent's alleged violations of Section 8(a)(1). There were no exceptions to the judge's findings that the Respondent unlawfully interrogated employees concerning their own or others' union activities; impliedly promised employees unspecified benefits to discourage their support for the Union; created the impression among its employees that their union activities were under surveillance; threatened employees with discharge, deportation, or other adverse action to discourage them from supporting the Union; and, told employees that if they were dissatisfied with their jobs they should look for work elsewhere.

(Chairman Battista and Members Liebman and Acosta participated.)

Charge filed by Industrial Workers Local 24; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Los Angeles, Dec. 3-4, 2001. Adm. Law Judge Gregory Z. Meyerson issued his decision Feb. 8, 2002.

* * *

Cardinal Home Products, Inc. (6-CA-31665, et al., 6-RC-11868; 338 NLRB No. 154) Linesville, PA April 28, 2003. The Board affirmed in part and reversed in part the administrative law judge's unfair labor practice findings and held, contrary to the judge, that a *Gissel* bargaining order is not warranted and instead directed a second election. *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). Having found that a *Gissel* bargaining order is not necessary, the Board reversed the judge's finding that the Respondent violated Section 8(a)(5) by refusing to bargain with the Steelworkers. The Board wrote: [\[HTML\]](#) [\[PDF\]](#)

Although the Respondent's unfair labor practices in this case were serious, the record shows that they did not impact a significant portion of the bargaining unit, and thus, they are not likely to have so lasting an effect that traditional remedies would not be inadequate to ensure a fair rerun election. With the exception of the Respondent's maintenance of no-solicitation/no-distribution rules, none of the Respondent's unfair labor practices occurred on a unit-wide basis, nor in a setting where a significant portion of the employee complement was gathered. Rather, virtually all of the unfair labor practices committed by the Respondent occurred in one-on-one situations between an employee and supervisor. The record shows that the Respondent's unfair labor practices, other than the Respondent's unlawful rules, directly affected approximately nine

employees out of a bargaining unit of approximately sixty eligible voters. This is not a case where the Respondent's serious unfair labor practices directly affected all or a significant portion of the bargaining unit.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charges filed by the Steelworkers; complaint alleged violation of Section 8(a)(1), (3), (4), and (5). Hearing at Meadville and Linesville, July 30-Aug. 1 and Aug. 21-23, 2001. Adm. Law Judge Benjamin Schlesinger issued his decision Feb. 5, 2002.

* * *

Dean & Deluca of New York, Inc. (2-RC-22427; 338 NLRB No. 159) New York, NY April 28, 2003. The Board overruled the challenges to the ballots of Michael Scibilia and Mustafizer Kahn and directed that the Regional Director open and count their ballots along with 17 other ballots and issue a revised tally. In the event the Intervenor received a majority of the valid ballots cast, the Regional Director shall certify the Intervenor as exclusive representative of the unit employees. If the Intervenor does not receive a majority of the valid votes, the Regional Director shall take further appropriate action. [\[HTML\]](#) [\[PDF\]](#)

The tally of ballots for the election held September 7, 2001 shows 1 for the Petitioner (IUISTHE District 6), 57 for the Intervenor (Food and Commercial Workers Locals 1500 & 342-50), 53 against the participating labor organizations, and 32 challenged ballots, a sufficient number to affect the results. The Region is holding the Intervenor's objections in abeyance pending resolution of the challenges at issue here.

The Board found merit in the Employer's exceptions to the administrative law judge's findings that Scibilia and Kahn are statutory supervisors and that the Intervenor's challenges to their ballots should be sustained. It found that the judge incorrectly applied a burden-shifting evidentiary standard, noting the burden of proving supervisory status rests on the party asserting that such status exists. Applying the correct evidentiary standard, the Board concluded that the Intervenor failed to establish that Scibilia and Kahn are statutory supervisors and overruled the challenges to their ballots.

The Board rejected the Employer's exceptions to the judge's recommendations to sustain the challenges to the ballots of the individuals who work in the sushi and flower departments located on the Employer's premises. The judge found, and the Board agreed, that the companies which operate the sushi and flower departments are solely the employers of the individuals who work in those departments.

(Members Schaumber, Walsh, and Acosta participated.)

* * *

U.S. Postal Service (28-CA-16082(P), 16325(P); 338 NLRB No. 160) Phoenix, AZ April 28, 2003. Affirming the administrative law judge's decision, the Board held that the Respondent violated Section 8(a)(3) and (4) of the Act by placing Patricia Williamson on unpaid administrative leave and reassigning her work duties because of her union or other protected activity or because she filed charges with the Board. It also agreed that the Respondent lawfully suspended Williamson for 2 weeks in April 2000 for pushing another employee, given its policy of zero tolerance on workplace threats and violence. [\[HTML\]](#) [\[PDF\]](#)

No exceptions were filed to the judge's finding that the Respondent violated Section 8(a)(1) by threatening Williamson with unspecified reprisals if she refused to relinquish her position as shop steward.

(Chairman Battista and Members Walsh and Acosta participated.)

Charges filed by Patricia A. Williamson, an individual; complaint alleged violation of Section 8(a)(1), (3), and (4). Hearing at Phoenix on various dates between Oct. 10-18, 2000. Adm. Law Judge James L. Rose issued his decision Jan. 23, 2001.

* * *

JHP & Associates, LLC d/b/a Metta Electric (14-CA-25885; 338 NLRB No. 161) St. Charles, MO April 30, 2003. The Board affirmed the administrative law judge's findings that the Respondent violated Section 8(a)(5), (3), and (1) of the Act by making unilateral changes in unit employees' terms and conditions of employment without prior notice to and affording Electrical Workers IBEW Local 1 an opportunity to bargain, failing to provide requested information to the Union, discharging employee Michael P. Thompson, and interrogating and threatening employees. [\[HTML\]](#) [\[PDF\]](#)

The General Counsel requested that the Board reject the Respondent's exceptions and brief because they do not comply with Section 102.46 of the Board's Rules and Regulations. The Respondent did not oppose the request.

Members Liebman and Acosta explained that they would be justified in rejecting the Respondent's documents for noncompliance, but "in the interest of judicial economy, to the extent that the brief has made discernible arguments that cite the record and the law, we have considered those arguments and find no merit in them." Chairman Battista would grant the General Counsel's request, noting that the Respondent did not oppose it. However, he does not disagree with his colleague's disposition of the merits, except that in agreeing that the Respondent violated Section 8(a)(1) by asking employees who supported the Union, "why don't you quit," he would not characterize the statement as a threat of discharge.

(Chairman Battista and Members Liebman and Acosta participated.)

Charge filed by Electrical Workers IBEW Local 1; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at St. Louis on Nov. 27, 2001. Adm. Law Judge John T. Clark issued his decision July 10, 2002.

* * *

Boddy Construction Co. (7-CA-44065, 44215; 338 NLRB No. 165) Marysville, MI April 30, 2003. The Board, in agreeing with the administrative law judge that the General Counsel proved by the preponderance of the relevant evidence that the Respondent violated Section 8(a)(3) and (1) of the Act by laying off Karl Ernest and discharging Gerald Bowie for their union support and activities, discussed three aspects of the judge's decision as it pertained to Bowie's discharge. [\[HTML\]](#) [\[PDF\]](#)

First, the Board noted that the judge found that the Respondent's president, Dave Boddy, referred to Bowie as an "instigator" during a discussion about the Respondent's attempt to pack the bargaining unit with truckdrivers who would vote against the Union in a decertification election. It wrote: "Given the context in which this characterization was made and other record evidence, including Bowie's role in the successful 1997 union election, we believe that the judge reasonably inferred that the Respondent considered Bowie to be a disruptive influence because of his union support and activities and that the term 'instigator' was a euphemism for Bowie's prounion sentiments." See *James Julian Inc. of Delaware*, 325 NLRB 1109 (1998). Member Acosta found it unnecessary to rely on the citation to *James Julian*.

Second, the Board did not rely on the judge's rationale in finding to be pretextual the Respondent's argument that it discharged Bowie because, immediately before the decertification election, he threatened employees Keith Glover and Samuel Wilcox with adverse financial consequences if they did not vote in favor of the Union. Although the judge speculated that Glover probably did not fear Bowie's threat to turn Glover in for collecting ill-gotten unemployment benefits, the Board did not find Glover's fear, or lack thereof, of Bowie was material.

Third, the Board concluded that the judge failed to properly address the seriousness of Bowie's threats to Glover and Wilcox. In so doing, the Board found merit in the Respondent's exception claiming that Bowie engaged in coercive, unprotected conduct, but it agreed with the judge that the Respondent failed to prove that it relied on this conduct in discharging Bowie. Member Walsh found it unnecessary to assess the character of Bowie's threats because he found, in agreement with his colleagues, that the Respondent did not discharge Bowie because of his threats.

(Members Schaumber, Walsh, and Acosta participated.)

Charges filed by Gerald R. Bowie and Karl W. Ernest, individuals; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Port Huron on Nov. 8, 2001. Adm. Law Judge John T. Clark issued his decision March 6, 2002.

* * *

The Iowa Packing Co. (18-CA-16289-1; 338 NLRB No. 176) Des Moines, IA April 30, 2003. The administrative law judge found, and the Board agreed, that the Respondent violated Section 8(a)(1) of the Act by maintaining a rule banning work stoppages protected by Section 7 of the Act, threatening employees with discharge by telling them that they would be considered as having voluntarily quit if they engaged in a work stoppage and that bad things will happen to them if they engaged in a protected concerted work stoppage, and discharging ten employees because they engaged in protected concerted activity. [\[HTML\]](#) [\[PDF\]](#)

Chairman Battista agreed with the judge's conclusion that the Respondent unlawfully threatened employees with discharge by telling them that they would be considered as having voluntarily quit if they engaged in a work stoppage. He found it unnecessary to pass on whether the Respondent additionally threatened employees with discharge by telling them that "it might be bad for them" if they engaged in a work stoppage because this additional finding is cumulative and does not affect the remedy.

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Joseph L. Walsh, an attorney with Hedberg, Owens & Hedberg; complaint alleged violation of Section 8(a)(1). Hearing at Des Moines on Aug. 13, 2002. Adm. Law Judge William L. Schmidt issued his decision Dec. 19, 2002.

* * *

Chicago and Northeast Illinois District Council of Carpenters (13-CD-653; 338 NLRB No. 170) Bensenville, IL April 30, 2003. Relying on collective-bargaining agreements, Employer preference, current assignment, past practice, and economy and efficiency of operations, the Board decided that employees of Prime Scaffold, Inc., represented by Construction and General Laborers' District Council of Chicago, rather than those represented by Chicago and Northeast Illinois District Council of Carpenters, are entitled to erect and dismantle platforms and scaffolding at the SkyBridge located at 1 North Halsted, Chicago, Illinois. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Schaumber and Walsh participated.)

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Bricklayers Local 20 (Altounian Builders, Inc.) (13-CD-637-1; 338 NLRB No. 169) Lake Villa, IL April 30, 2003. Members Liebman and Walsh quashed the notice of hearing after finding that Bricklayers Local 20's actions do not establish reasonable cause to believe that Section 8(b)(4)(D) has been violated and, accordingly, the Board does not have authority to determine the merits of the 10(k) dispute. [\[HTML\]](#) [\[PDF\]](#)

Chairman Battista, dissenting, would not quash the notice of hearing and would reach the merits of the dispute. On the merits, he would award the work to employees represented by the Carpenters based on the factors of employer preference and assignment, employer past practice, and economy and efficiency of operations.

The disputed work involves the installation of precast, aerated autoclave concrete (PAAC) on the Employer's Allendale School project site in Lake Villa, Illinois.

Members Liebman and Walsh concluded that the Bricklayers' stated intentions to file a grievance over the disputed work under its collective-bargaining agreement with the Employer and its filing and pursuit of that grievance, are not unlawful coercion under Section 8(b)(4)(D). They also found insufficient to establish reasonable cause the only other record evidence cited by the Carpenters—the testimony of Employer vice president, Todd Altounian, that Bricklayers' Business Manager Gagliardo answered in the affirmative when Altounian asked if the Bricklayers intended that its grievance close down the Allendale School project.

Chairman Battista agreed with his colleagues that Section 8(b)(4)(D) does not proscribe the filing of a grievance, or the threat to do so. He wrote: "However, where, as here, success on the grievance will result in a shut down of the job, and the union

confirms that this is so, there is at least an arguable basis for finding a Section 8(b)(4)(D) threat and at this juncture of the proceeding that is our only mandate. Finally, I am not basing my view on Altounian's subjective understanding of Gagliardo's affirmative response to Altounian's question. Rather, I am evaluating the reasonable understanding of the two conversations between the two men."

(Chairman Battista and Members Liebman and Walsh participated.)

* * *

Electrical Workers IBEW Local 98 (Lucent Technologies) (4-CD-1032; 338 NLRB No. 173) Philadelphia, PA April 30, 2003. The Board decided that employees of Lucent Technologies, Inc., represented by the Communications Workers of America, and not Electrical Workers IBEW Local 98, are entitled to install PCS CDMA minicell equipment and related wiring by Lucent, wherever the geographical jurisdiction of Local 98 and CWA coincide. [\[HTML\]](#) [\[PDF\]](#)

The Employer has a contract with Sprint Communications to install PCS CDMA minicell equipment for Sprint's customers. Sprint purchases the minicell equipment from the Employer. During the summer of 2000, the Employer was scheduled to install minicell equipment at a Sprint project at the First Union Center, a large convention hall in Philadelphia, Pennsylvania. The Employer assigned the minicell installation work to its communication equipment installers who are represented by CWA.

The Board found that there is reasonable cause to believe that Local 98 violated Section 8(b)(4)(D) of the Act, after concluding that CWA representative Davis' testimony provides reasonable cause to believe that Local 98 Business Agent Larry DelSpechio threatened that Local 98 would put up a picket line if its members were not given the minicell installation work. It also found reasonable cause to believe that First Union Center Building Manager Chu heard DelSpechio's threat.

In issuing an award broad enough to encompass the geographical area in which the Employer does business and in which the jurisdictions of the two unions coincide, the Board noted that there is a continuing controversy between CWA and Local 98 regarding the Employer's installation of various forms of telecommunications equipment and that Local 98 has demonstrated a proclivity to engage in unlawful conduct in order to obtain work in dispute performed by the Employer. See *Electrical Workers Local 98 (Lucent Technologies)*, 324 NLRB 226 (1997), and *Electrical Workers Local 98 (Lucent Technologies)*, 324 NLRB 230 (1997), where the Board found reasonable cause to believe that Local 98 violated Section 8(b)(4)(D) with regard to disputes between Local 98 and CWA concerning, respectively, the Employer's installation of telecommunications wiring and its installation of telephone switching systems. In both cases, Local 98 claimed the work in dispute and picketed to prevent the Employer's CWA-represented employees from performing that work.

(Members Schaumber, Walsh, and Acosta participated.)

* * *

Postal Workers Madison Area Local (U.S. Postal Service) (30-CB-4355(P); 338 NLRB No.164) Madison, WI April 30, 2003. Members Walsh and Acosta affirmed the administrative law judge's conclusion that the Respondent did not unlawfully select or encourage certain employees to file grievances to the exclusion of other employees who were similarly situated to the grievants, and dismissed complaint allegations that the Respondent violated Section 8(b)(1)(A) of the Act. They found that "the Respondent proffered a reasonable explanation for filing individual grievances rather than an all-inclusive blanket grievance-the reasonably anticipated persuasive impact that numerous individual grievances would have on management." [\[HTML\]](#) [\[PDF\]](#)

Chairman Battista, concurring in the result, believes the Respondent offered a reasonable explanation as to why it chose to have many individual grievances, rather than one blanket grievance. He said it was arguably unlawful for the Union to affirmatively ask members, rather than nonmembers, to file grievances, but he agreed that there is no violation. "There is no evidence that nonmembers were precluded from filing individual grievances, and no evidence that the Union would refuse to process any such grievances," the Chairman explained.

Members Walsh and Acosta disagreed with the Chairman's implication that the Respondent encouraged its members, but not

nonmembers, to file individual grievances. They noted that while none of the approximately 76 employees who filed grievances were nonunion members, unit employees were overwhelmingly union members and only 5 percent were not, and that of the approximately 80 affected employees who did not file grievances, only a small portion were nonunion members. Members Walsh and Acosta wrote: "It is not reasonable to believe that the Respondent would somehow intentionally subvert or circumvent the opportunity of many of its members to file grievances just to make certain that a few nonmembers also did not get such an opportunity, particularly were, as here, there was at the time in question no certainty that any of the grievances would be resolved favorably to the grievants."

(Chairman Battista and Members Walsh and Acosta participated.)

Charge filed by Patrick T. Wall, an individual; complaint alleged violation of Section 8(b)(1)(A). Hearing at Madison, April 30 and May 1, 2001. Adm. Law Judge William N. Cates issued his decision May 25, 2001.

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F.H.E. Services, Inc., a wholly owned subsidiary of KONE, Inc. (29-CA-23753; 338 NLRB No. 168) Brooklyn, NY April 30, 2003. The Board upheld the administrative law judge's dismissal of a complaint based on unfair labor practice charges filed by Electrical Workers IBEW Local 3 alleging that the Respondent's recognition of Elevator Constructors Local 1 as the exclusive bargaining representative violated Section 8(a)(2) and (3) of the Act. It found that the Respondent is primarily engaged in the building and construction industry within the meaning of Section 8(f), and therefore is entitled to recognize any labor organization, even absent a showing of majority status. [\[HTML\]](#) [\[PDF\]](#)

The charges were precipitated by Respondent KONE's plans to consolidate previously separate operations, creating a single KONE enterprise in New York. As stated by the Board:

We also find that, when Respondent KONE merged the previously separate bargaining units, the result was the formation of a new operation and the creation of a new bargaining unit. The old bargaining units no longer survived, nor did Local 3's role as bargaining representative of one of those units. Thus, notwithstanding that Local 3 was at one time the 9(a) representative of certain employees of F.H.E., because the September 1, 2000 merger created a new entity primarily engaged in the building and construction industry, the Respondent was entitled, pursuant to Section 8(f), to recognize any labor organization, even absent a showing of majority status. *Central Illinois Construction*, 335 NLRB No. 59 (2001).

(Chairman Battista and Members Liebman and Acosta participated.)

Charge filed by Electrical Workers IBEW Local 3; complaint alleged violation of Section 8(a)(1), (2), and (3). Hearing at Brooklyn, April 24-25, 2001. Adm. Law Judge Howard Edelman issued his decision July 20, 2001.

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SCA Tissue North America, LLC (28-CA-17548; 338 NLRB No. 175) Bellemont, AZ April 30, 2003. The Board upheld the administrative law judge's finding that the Respondent discharged employee Frederick Sanoval on September 24, 2001, because of his activities on behalf of the Union, PACE. The Respondent had contended that the employee was discharged for cause - leaving work early without permission on September 19-20, 2001. The Board relied on the following evidence of animus: [\[HTML\]](#) [\[PDF\]](#)

(1) Plant Manager Graverson's warning to all employees that they could not talk about the Union on the shop floor, when no such restriction existed for other topics; (2) Supervisor Stievo's order to Sandoval to remove his union button because it violated the Respondent's 'no jewelry' policy, which had never been enforced; (3) Stievo's direction to Sandoval to cover up his union t-shirt with his jacket while he was walking across the shop floor; and (4) Stievo's parting comment to Sandoval about his 'attitude.'

(Chairman Battista and Members Liebman and Acosta participated.)

Charge filed by PACE; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Flagstaff, April 4-5 and May 22-24, 2002. Adm. Law Judge Gregory Z. Meyerson issued his decision Aug. 22, 2002.

* * *

Comcast Cablevision-Taylor (7-CA-42054, 7-RC-21365; 338 NLRB No. 166) Taylor, MI April 30, 2003. In a supplemental decision, the Board ordered a second election in the underlying representation proceeding, Case 7-RC-21365, and vacated the decision and order in Case 7-CA-42054 (328 NLRB No. 160 (1999)). The instant case is in response to a decision by the U. S. Court of Appeals for the Sixth Circuit, *Comcast Cablevision-Taylor v. NLRB*, 232 F.3d 490 (6th Cir. 2000), which granted the Respondent's petition for review and denied enforcement of the Board's prior order. The court agreed with the Respondent's contention and found that the Union impermissibly interfered with the election by offering to employees, during the critical period, a free weekend trip to Chicago (which cost the Union approximately \$50 for each of the employees who attended) on the weekend following the election. Accordingly, the court concluded that the Board erred in not setting aside the election held on August 27, 1998, which was won by the Union. The decision is by Members Liebman, Walsh, and Acosta. [\[HTML\]](#) [\[PDF\]](#)

In a concurring opinion, Member Acosta stated in part:

Our Supplemental Decision...is based on law of the case, and does not consider whether precedent inconsistent with Owens-Illinois remains good law, or, for that matter, whether Owens-Illinois remains good law. (Broward County Health Corp., 320 NLRB 212, 213 fn. 7 (1995) ("Chairman Gould would not rely [on Owens-Illinois] because he believes that the opinion in that case does not withstand scrutiny.")) This confusion may provide a basis for courts of appeals to deny enforcement in the future. The Board should address and reconcile case law on this issue.

(Members Liebman, Walsh, and Acosta participated.)

* * *

Jam Productions, Ltd. (13-RC-20697; 338 NLRB No. 172) Chicago, IL April 30, 2003. The Board agreed with the hearing officer's recommendation to overrule the Employer's challenges to the ballots of three determinative votes in a mail ballot election held between February 8-21, 2002. The panel rejected the Employer's contention that its loss of potential business following the December 14, 2001 representation hearing has resulted in the regular part-time unit employees becoming casual employees. In its previous denial of review of the Acting Regional Director's Decision and Direction of Election in this case (in which Member Schaumber noted he did not participate), the Board found that these employees were regular part-time unit employees. In the instant case, the Board directed the Regional Director to open and count all the ballots in this election, serve on the parties a tally of ballots, and issue the appropriate certification. [\[HTML\]](#) [\[PDF\]](#)

(Members Liebman, Schaumber, and Walsh participated.)

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Pepsi Bottling Group, Inc. (1-CA-38036; 338 NLRB No. 174) Allston, MA and Cranston, RI April 30, 2003. The Board reversed the administrative law judge's unfair labor practice finding and dismissed the complaint. The judge found that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing the terms and conditions of employment of unit employees working at the Respondent's Allston, MA and Cranston, RI facilities by implementing a new 401(k) matching contribution for the Respondent's unrepresented employees without giving the Union notice and opportunity to bargain for the benefit as to the unit employees. The Board found that the unilateral change violation found by the judge was not alleged in the complaint or litigated at the hearing and that the General Counsel failed to prove the violation alleged in the complaint and litigated by the parties-the repudiation of a contractual obligation to provide the 401(k) matching contribution to unit employees. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by New England Joint Board, R.W.D.S.U. Local 513; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Boston on April 10, 2001. Adm. Law Judge Richard H. Beddow issued his decision June 15, 2001.

* * *

Lance Investigation Service (2-CA-33579; 338 NLRB No. 171) Bronx, NY April 30, 2003. Chairman Battista and Member Schaumber reversed the administrative law judge's finding that the Respondent discharged Robert Smith in violation of Section 8(a)(1) of the Act and dismissed the complaint, agreeing with the Respondent that Smith was not discharged, but rather abandoned his employment. Member Walsh dissented. [\[HTML\]](#) [\[PDF\]](#)

Smith made several inquiries about his vacation pay for the week of Dec. 17, 2000, including phone calls to the office of Keith Johnson, the Respondent's vice president of finance and operations in charge of payroll. On January 24, 2001, Smith left a message for Johnson with a secretary, asking, "What do I have to do to get my vacation pay, get a lawyer?" Johnson returned Smith's call and informed him that his vacation check was at the office and he could pick it up. Johnson also stated to Smith, "[Y]ou're that wise guy who threatened me with a lawyer," and "we'll see how long you're working for me at that site, wise guy." The next day, Smith's supervisor Headen told him to come to the office and when Smith got there, Headen told Smith to punch out and go home; he was "off the schedule."

The judge found that the Respondent's action in removing Smith from the schedule, in the context of the conversation Smith had with Johnson the previous day, would reasonably have led Smith to believe that he had been terminated. He found that any ambiguity in Smith's status should be resolved against the Respondent. Member Walsh agreed. Chairman Battista and Member Schaumber disagreed, saying, "the Respondent's conduct would not logically lead a reasonable person to conclude that he had been discharged." Even if there was an ambiguity as to whether Smith was discharged, Smith could have easily cleared the matter up, they held, noting that the Respondent twice invited Smith to meet with Johnson to clarify Smith's employment status, but Smith failed to do so. "The ambiguity in Smith's employment status existed because he failed to act on the Respondent's invitations," the majority held.

Member Walsh believes the majority applied the wrong burden of proof and, consequently, reached the wrong result when it stated "the Respondent twice offered Smith the opportunity to clarify his status, but he failed to do so." He said, "it was not Smith's burden, but the Respondent's burden, to clarify any ambiguity caused by its actions that would have reasonably caused Smith to believe that his employment status was questionable."

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by Robert Smith, an individual; complaint alleged violation of Section 8(a)(1). Hearing at New York on Nov. 15, 2001. Adm. Law Judge Michael A. Marcionese issued his decision Feb. 12, 2002.

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Food and Commercial Workers Local 1996 (Visiting Nurse Health System, Inc.) (10-CC-1335; 338 NLRB No. 163) Atlanta, GA April 30, 2003. The Board denied, as untimely, the motion for reconsideration filed by the Charging Party VNHS, formerly known as Visiting Nurse Association of Metropolitan Atlanta, Inc., on January 23, 2003, more than 15 months after the Board's September 28, 2001 decision and order (336 NLRB No. 35). Section 102.48(d)(2) of the Board's Rules and Regulations requires the filing of motions for reconsideration within 28 days after service of the Board's decision and Section 102.48(d) provides that the Board, in its discretion, may extend the 28-day period. The Board wrote: [\[HTML\]](#) [\[PDF\]](#)

In the instant case, the Charging Party has failed to make a showing of excusable neglect and lack of prejudice to support of the filing of a motion for reconsideration beyond the 28-day period, much less a showing as to why that period should be extended 14 months beyond the 28 days. Accordingly, the Board will not accept the motion. In any case, the Charging Party has cited no 'extraordinary circumstances' within the meaning of Section 102.48(d) (2) that would support its motion, even if it has been timely made. Insofar as Charging Party cites changes in the composition of the Board since the issuance of the decision, it relied on an inappropriate ground for reconsideration. See *Iron Workers Local 471 (Wagner Iron Works)*, 108 NLRB 1237, 1239 (1954).

Although Chairman Battista agreed with this disposition, he noted his "grave doubts" about the legal correctness of the Board's underlying decision and that he would reconsider it if an appropriate case is brought before the Board.

Members Schaumber and Acosta did not participate in the underlying case and expressed no view regarding the merits of the Board's decision.

In the underlying case, the Board addressed an issue of first impression: whether Section 8(b)(4)(B) of the Act prohibits a union from engaging in picketing of one employer in order to pressure another employer to recognize and bargain with the union as the certified representative of that employer's employees. Members Liebman and Walsh, with Chairman Hurtgen dissenting, concluded that Section 8(b)(4)(B) does not proscribe secondary activity by a union for the purpose of enforcing its certification by the Board as the exclusive collective-bargaining representative of the primary employer's employees.

Accordingly, the majority found that the Respondent Union did not violate Section 8(b)(4)(ii)(B) by threatening to picket, picketing, and leafleting the United Way of Metropolitan Atlanta, a neutral, because an object of those actions was to enforce the Union's certification by the Board as the exclusive collective-bargaining representative of a unit of the Employer VNHS's employees.

(Full Board participated.)

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

United Rentals, Inc. (Operating Engineers Local 953) Las Cruces, NM April 24, 2003. 28-CA-17881-1-2, 18245; JD(SF)-27-03, Judge James L. Rose.

Systems West LLC (Pacific Northwest Regional Council of Carpenters, Local 770) Yakima, WA April 25, 2003. 19-CA-27902, 27953, 19-RC-14200; JD(SF)-28-03, Judge Burton Litvack.

Air 2, LLC (Electrical Workers [IBEW] Local 222) Miami, FL April 28, 2003. 12-CA-21946, et al., 12-RC-8721; JD(NY)-18-03, Judge Raymond P. Green.

Cincinnati Coca-Cola Bottling Co., a Div. of Coca-Cola Enterprises Inc. (Teamsters Local 1199) Cincinnati, OH April 30, 2003. 9-CA-39507, 39623, 9-CB-10751; JD-49-03, Judge Ira Sandron.

High Point Construction Group, LLC (Carpenters Mid-Atlantic Regional Council) Buckhannon, WV April 28, 2003. 6-CA-32853-1; JD-50-03, Judge Benjamin Schlesinger.

Restoreworks, LLC (Teamsters Local 522) Brooklyn, NY May 1, 2003. 29-CA-25366, 25465; JD(NY)-19-03, Judge Michael A. Marcionese.

CSX Hotels, Inc. (Operating Engineers Local 132) White Sulphur Springs, WV May 2, 2003. 11-CA-19537; JD-51-03, Judge Benjamin Schlesinger.

* * *

NO TIMELY 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 a timely answer to the complaint.)

Black's Railroad Transit Service (an Individual) (33-CA-13903-1; 338 NLRB No. 177) Galesburg, IL April 30, 2003.

Sage Professional Painting Co. (Carpenters Southwest Regional Council) (28-CA-17975, 18080; 338 NLRB No. 162) Las Vegas, NV April 30, 2003.

Rick's Painting and Drywall (an Individual) (30-CA-15309-1; 338 NLRB No. 167) Eagle River, WI April 30, 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.)

Stanford Hospital and Clinics (Service Employees Local 715) (32-CA-20138-1; 338 NLRB No. 158) Palo Alto, CA April 28, 2003.