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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May 23, 2003 W-2896

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Trade West Construction, Inc. (28-CA-17087; 339 NLRB No. 7) Mesquite, NV May 14, 2003. Affirming the administrative law judge's decision, the Board held that the Respondent violated Section 8(a)(1) of the Act by: interrogating and threatening employees, creating the impression that their protected concerted activities were under surveillance, and discharging Daniel

Santos and Louis Brito because of their protected concerted activities in discussing their pay with Juan Gonzalez, a representative of Charging Party Carpenters Contractors Cooperation Committee (Quad C). Quad C is an organization that is funded by construction contractors and monitors nonunion contractors to insure that they pay prevailing wages. [HTML] [PDF]

Chairman Battista did not pass on the judge's finding that Santos was engaged in "concerted" protected activity when he discussed wages one-on-one with Gonzalez (a nonemployee) on the jobsite on September 25, 2001. Even if the conversation between Gonzalez and Santos was not itself concerted, the Respondent believed that it was, the Chairman reasoned, noting that Respondent, through crew chief Linge, saw Gonzalez talking to other employees. Thus, the Respondent believed that the conversation between Gonzalez and Santos was part and parcel of conversations between Gonzalez and other employees' concerted activity and the Respondent's subsequent interrogation and threats to Santos were violations of Section 8(a)(1), Chairman Battista held.

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Carpenters Contractors Cooperation Committee; complaint alleged violation of Section 8(a)(1). Hearing at Las Vegas, Oct. 4-5, 2001. Adm. Law Judge Albert A. Metz issued his decision Dec. 7, 2001.

* * *

Preferred Transportation, Inc., d/b/a Supershuttle of Orange County, Inc. (21-CA-33407; 339 NLRB No. 2) Anaheim, CA May 14, 2003. Members Liebman and Walsh affirmed the administrative law judge's findings-as to which there were no exceptions-that the Respondent did not violate the Act by giving driver John Petrichella a verbal warning in June 1999. They also affirmed the judge's finding that the Respondent unlawfully suspended Petrichella in July 1999 and found, contrary to the judge, that the Respondent unlawfully discharged Petrichella in August 1999 because of his protected union activities and/or because he filed charges with the Board and testified at a representation hearing. [HTML] [PDF]

Members Liebman and Walsh disagreed with the judge's finding that the Respondent rebutted the prima facie case by establishing that it would have discharged Petrichella even in the absence of his protected activities because he filed two incident reports containing false statements. They relied on the fact that Petrichella's false statements were elicited by the Respondent as a result of its antiunion animus toward him, saying that "animus led to the investigation and, in turn, to the incident reports. Petrichella's false statements in those reports constituted misconduct only in the context of Respondent's investigation. Such bad faith by an employer cannot create good cause for the discharge of an employee."

Chairman Battista, concurring in part and dissenting in part, would affirm the judge's finding that the Respondent lawfully discharged Petrichella. In this regard, he agreed that animus has been shown and that Petrichella's suspensions were unlawful, relying on the judge's finding of disparate treatment, rather than on the evidence cited in the first paragraph of the "Analysis" section of the judge's decision. He also relied on the unlawful suspension to establish animus. However, Chairman Battista said in concluding that the prima case as to the discharge was rebutted: "I assume arguendo that the investigation was discriminatorily motivated. However, that assumed fact does not give a license to an employee to lie to his employer. Nor does it mean that the lie is immune from discipline."

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Teamsters Local 952; complaint alleged violation of Section 8(a)(1), (3), and (4). Hearing at Los Angeles, June 12-14, 2000. Adm. Law Judge Karl H. Buschmann issued his decision Feb. 20, 2001.

* * *

Verizon New York, Inc. (3-CA-22987, 23257; 339 NLRB No. 6) New York, NY May 16, 2003. The Board held, in agreement with the administrative law judge, that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally rescinding its longstanding practice of allowing employees to participate in blood drives during paid worktime. The judge found, with Board approval, that the change involved a mandatory subject of bargaining and therefore that the Respondent unlawfully failed to

bargain with Communications Workers Local 1103 regarding the change. The Board found it unnecessary to pass on the judge's finding that the Respondent presented the change to the Union as a fait accompli because it found that the Union made an appropriate bargaining request. [HTML] [PDF]

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by Communications Workers Local 1103; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Albany, Jan. 16-17, 2002. Adm. Law Judge Joel P. Biblowitz issued his decision March 19, 2002.

* * *

American Medical Response (28-RC-6057; 339 NLRB No. 1) Las Vegas, NV May 16, 2003. The Board certified Service Employees Local 1107, winner of an election held on May 22, 2002 by a 77-52 vote, as the exclusive representative of all paramedics, EMT-I's and EMT's employed by the Employer at its Las Vegas, Nevada facility. [HTML] [PDF]

In the absence of exceptions, the Board adopted the hearing officer's recommendation to overrule Objection 1, alleging that the mailing of a postcard of support for the Union from the Las Vegas Police Protective Association to employees at their homes interfered with the election.

The Board agreed with the hearing officer that (1) the affixing of the prounion poster on election day to a tree on the Employer's property approximately 100 feet away from the polling area, not visible from the polling room, was not improper electioneering under *Peerless Plywood Co.,* 107 NLRB 427 (1953); and (2) the election day distribution of prounion flyers to employees 50 to 80 feet from the polling area was not improper electioneering under *Milchem, Inc.,* 170 NLRB 362 (1968). The Board pointed out that neither of the activities constituted improper electioneering under the test of *Boston Insulated Wire & Cable Co.,* 259 NLRB 1118, 1119 (1982), enfd. 703 F.2d 876 (5th Cir. 1983) (to determine impermissible electioneering, Board considers: (1) whether the conduct occurred within or near the polling place; (2) the nature and extent of the alleged electioneering; (3) whether it is conducted by a party to the election or by employees; and (4) whether the electioneering is conducted within a designated "no electioneering" area or contrary to the instructions of the Board agent).

(Chairman Battista and Members Schaumber and Walsh participated.)

* * *

Earthgrains Baking Companies, Inc., a wholly owned subsidiary of Sara Lee Baking Group, Inc., d/b/a Redding French Bakery (20-CA-30575; 339 NLRB No. 4) Redding, CA May 16, 2003. The Board held, in agreement with the administrative law judge, that the Respondent violated Section 8(a)(1) of the Act by informing its employees that an anticipated wage increase had been delayed because of Charging Party Bakery Workers Local 85. No exceptions were filed to the judge's dismissal of the allegation that the Respondent violated the Act by promising to implement wage increases the next day if employees voted against the Union. [HTML] [PDF]

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Bakery Workers Local 85; complaint alleged violation of Section 8(a)(1). Hearing at Redding, Aug. 13 and Oct. 2, 2002. Adm. Law Judge Burton Litvack issued his decision Feb. 24, 2003.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

National Association of Letter Carriers (Office Employees Local 2) Washington, DC May 12, 2003. 5-CA-29667; JD-55-03, Judge Marion C. Ladwig.

McClendon Electrical Services, Inc. (Electrical Workers [IBEW] Local 520) Round Rock, TX May 13, 2003. 16-CA-22434;

JD(ATL)-32-03, Judge William N. Cates.

Superior Emerald Park Landfill, LLC (Operating Engineers Local 139) Milwaukee, WI May 13, 2003. 30-CA-16148, 30-RC-6488; JD-27-03, Judge Paul Buxbaum.

TNT Logistics of North America, Inc. (an Individual) Cape Coral, FL May 13, 2003. 12-CA-22309; JD(ATL)-33-03, Judge Keltner W. Locke.

Music Express East Inc. (Teamsters Local 805) Elmwood Park, NJ May 14, 2003. 22-CA-25174; JD(NY)-22-03, Judge Steven Fish.

AM Property Holding Corp., et al. (Service Employees Local 32BJ) New York, NY May 13, 2003. 2-CA-33146-1, et al.; JD (NY)-20-03, Judge Steven Davis.

Dynasteel Corp. (Boilermakers) Millington, TN and Iuka, MS May 14, 2003. 26-CA-20558; JD(ATL)-31-03, Judge Lawrence W. Cullen.

The Kroger Co. (Food and Commercial Workers Local 1059) Groveport, OH May 14, 2003. 9-CA-39712, 9-RC-17712; JD-56-03, Judge Arthur J. Amchan.

Doriel Scaffolding, Inc. (Carpenters) Brooklyn, NY May 15, 2003. 29-CA-25391; JD(NY)-21-03, Judge Raymond P. Green.

AMF Trucking & Warehousing, Inc. (Auto Workers [UAW]) Carteret, NJ May 16, 2003. 22-CA-25263; JD(NY)-24-03, Judge D. Barry Morris.

Cast-Matic Corp. d/b/a Intermet Stevensville (Auto Workers [UAW]) Stevensville, MI May 16, 2003. 7-CA-44878, et al.; JD-54-03, Judge C. Richard Miserendino.

* * *

NO TIMELY 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 a timely answer to the complaint.)

Associated Interior Contractors, Inc. (Advance Interior Contractors, Inc. and New England Council of Carpenters) (34-CA-9885, 9976; 339 NLRB No. 3) Vernon, CT May 15, 2003.