

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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July 4, 2003

W-2902

CASES SUMMARIZED

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Press Release: [\(R-2498\)](#) Joseph Barker Named Regional Attorney in NLRB's Detroit, MI Regional Office



Aesthetic Designs, LLC (30-RC-6380; 339 NLRB No. 55) Slinger, WI June 27, 2003. The Board affirmed the hearing officer's findings that Bryant Lanting was an ineligible voter because he is a statutory supervisor and lacks a community of interest with other unit employees since he enjoys special working conditions and his interests are aligned with management. Member Schaumber agreed that Lanting is a statutory supervisor and did not pass on the hearing officer's other findings; Member Acosta did not pass on Lanting's alleged supervisory status. In the absence of exceptions, the Board adopted the hearing officer's recommendation sustaining the challenge to the ballot of Brandon Frakes. [\[HTML\]](#) [\[PDF\]](#)

The tally of ballots for the mail ballot election held on April 29, 2002 showed 5 for and 5 against the Petitioner, with 2 challenged ballots and 1 void ballot.

Members Liebman and Acosta, with Member Schaumber dissenting, agreed with the hearing officer that a "yes" vote cast on the sample ballot provided in the official election kit rather than on an official ballot, should be counted and included in the tally. Accordingly, they certified Plasterers Local 599 as the exclusive collective-bargaining representative of the employees in the appropriate bargaining unit. Relying on *Daimler-Chrysler*, 338 NLRB No. 148 (2003), where the Board outlined the principles guiding the Board's treatment of irregularly marked ballots, Members Liebman and Acosta held that the voter clearly evinced an intention to participate in the election by casting a vote and registering a preference and that the Board need not engage in any speculation regarding the voter's intent. They found no persuasive reason not to count the sample ballot.

In his dissenting opinion, Member Schaumber wrote that his colleagues' reliance on *Daimler-Chrysler* is misplaced because in *Daimler-Chrysler* the issue was whether the voter's intent expressed on an official ballot was clear or ambiguous. Citing numerous cases, Member Schaumber held that election rules require the voter to use the official ballot and that the sample ballot used in this case, while part of a larger Board form, was not an official ballot and should not be counted. He further found that the Board's longstanding policy, as set forth in its Casehandling Manual, does not regard the sample ballot from the notice of election as an acceptable substitute for the official ballot.

(Members Liebman, Schaumber, and Acosta participated.)

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Alle-Kiski Medical Center (6-CA-32356(1)(2); 339 NLRB No. 44) Natrona Heights, PA June 23, 2003. The Board agreed with the administrative law judge that the Respondent violated Section 8(a)(1) of the Act by maintaining and enforcing an overly broad no-solicitation/no-distribution rule, discriminatorily issuing written warnings to employees for violating the rule, confiscating union literature from employees, and monitoring, photographing, videotaping, and engaging in surveillance of employees engaged in union activity. There were no exceptions to the judge's findings on the merits. [\[HTML\]](#) [\[PDF\]](#)

Noting that the language in certain paragraphs of the judge's recommended Order were not part of the standard remedy for the violations found, the Board deleted paragraphs 1(e), 2(b), 2(d), and 2(e). See *The Cooper Health System*, 327 NLRB 1159, 1165 (1999) (confiscation of union literature); *St. Joseph Hospital*, 337 NLRB No. 12, slip op. at 2 (Dec. 20, 2001) (written warning). It revised the judge's recommended Order and notice to include the Board's standard language requiring the Respondent to rescind the unlawful written warning and modified the Order in accordance with the decision in *Excel Container*, 325 NLRB 17 (1997).

Relying on *The Cooper Health System*, the Board denied the General Counsel's request to include in the notice a paragraph stating that the Respondent will allow lawful solicitations and distribution on its property, finding that it is not a standard remedy for maintaining and enforcing an overly-broad no-solicitation/no-distribution rule.

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by Food & Commercial Workers Local 23; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Pittsburgh on March 13, 2002. Adm. Law Judge Earl E. Shamwell Jr. issued his decision Sept. 24, 2002.

* * *

Armored Transport, Inc. (31-CA-23889, et al.; 339 NLRB No. 50) Sacramento, Oakland, and Ventura, CA June 26, 2003. On a stipulated record, the Board held that the Respondent violated Section 8(a)(1) and (5) of the Act by soliciting union decertification and interference with the Plant Guard Workers Local 100's established internal processes for ratification and execution of collective-bargaining agreements. [\[HTML\]](#) [\[PDF\]](#)

At issue is whether the Respondent, by letters to its unit employees, unlawfully dealt directly with its employees, solicited decertification, and interfered with internal union processes. On March 3, 1999, the Respondent sent to all its unit employees letters stating that the Respondent "is extremely frustrated over the circumstances that we have gone over 17 months now without a new signed collective bargaining agreement" and suggested five courses of action the employees could take. On April 27, May 10, and June 10, the Respondent distributed followup letters restating the five points and stressing that the

Union still had not signed the contract despite the increased wages it provided.

The Respondent contended that it had presented an essentially identical proposal, "exclusive of compensation" to the Union three months prior to March 3; and had afforded the Union an opportunity to bargain about the substance of the agreement. The Respondent further stated that the letters are protected speech, contain no promise of benefit or threats of reprisal, and cannot be the basis for any finding that it unlawfully solicited union decertification or interfered with internal union processes.

The Board held that the Respondent, through its letters, sought to disparage the Union and to drive a wedge between the Union and the employees. Members Liebman and Walsh found that the Respondent sought to undermine the Union by urging that the employees insist that the Union sign the contract and that employees be permitted to vote on the matter, thereby interjecting itself into an internal union matter. Chairman Battista would not find a separate violation based on the alleged intrusion into the Union's internal affairs and believes that this conduct is adequately addressed by the other violations found and remedied. Phrased differently, he does not believe that, apart from those violations, an employer is forbidden from expressing an opinion about the internal affairs of a union.

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by Plant Guard Workers and its Amalgamated Local 100; complaint alleged violation of Section 8(a)(1) and (5). Parties waived their right to a hearing before an administrative law judge.

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St. Mary Medical Center (31-CA-25739; 339 NLRB No. 51) Apple Valley, CA June 27, 2003. The Board affirmed the administrative law judge's findings that the Respondent violated Section 8(a)(1) and (3) of the Act by, among others, suspending and discharging Betty Melendez and Paul Rodriguez and giving written warnings to Carlos David. The Board reversed the judge's finding that the Respondent, through relief supervisor Flora Lee, attempted to engage in surveillance of employees' activity at a union meeting. Deeming that the conduct attributed to Lee was not unlawful, it found it unnecessary to pass on Lee's status as a supervisor. [\[HTML\]](#) [\[PDF\]](#)

In agreeing with his colleagues' affirmation of the judge's finding that by promulgating an overly-broad no-solicitation rule the Respondent violated Section 8(a)(1), Member Walsh noted that, in addition to the judge's reasoning about the written warning, Food Services Director Paces' oral admonition to David was overly broad because it was not even limited to any particular time, and instead on its face unlawfully prohibited solicitation at any time on the Respondent's grounds.

(Members Schaumber, Walsh, and Acosta participated.)

Charge filed by CNA/USWA Health Care Workers Alliance; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Los Angeles, Oct. 1-2, 2002. Adm. Law Judge James L. Rose issued his decision Jan. 21, 2003.

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USF Red Star, Inc. (5-CA-28985; 339 NLRB No. 54) Richmond, VA June 27, 2003. The Board affirmed the administrative law judge's conclusions that the Respondent violated Section 8(a)(1) of the Act when it told employees Daniel Turner and Bruce Richard to remove a Teamsters button that read Overnite Contract in '99 Shut Overnite Management Down or 100,000 Teamsters will; and when it issued a written warning to Turner for refusing to do so. [\[HTML\]](#) [\[PDF\]](#)

In a reversal of judge, the Board found that the Respondent also violated Section 8(a)(3), as alleged, by issuing the written warning to Turner for refusing to remove the Overnite button. The judge found that the Respondent disciplined Turner to prevent him from wearing the button at customer locations *away* from the Respondent's Richmond, VA, and that special circumstances justified an away-from-the terminal prohibition, but not an at-the-terminal ban. The Board held that the 8(a)(1) conduct was directed against the wearing of the Overnite button at the Richmond terminal and it agreed with the judge that there is no evidence of special circumstances justifying a ban on wearing union insignia at the terminal. Accordingly, without passing on whether special circumstances might have existed that justified a ban on wearing union insignia away from the

terminal, it found that the Respondent violated Section 8(a)(1) and (3) as alleged.

(Members Schaumber, Walsh, and Acosta participated.)

Charge filed by Teamsters Local 592; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Richmond on Dec. 4, 2000. Adm. Law Judge Marion C. Ladwig issued his decision Aug. 1, 2001.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Rotor Clip Co., Inc. (an Individual), Somerset, NJ June 25, 2003. 22-CA-25418; JD(NY)-33-03, Judge Joel P. Biblowitz.

Komatsu America Corp. (Boilermakers Local 158) Peoria, IL June 26, 2003. 33- CA-14021, 14088; JD-62-03, Judge Marion C. Ladwig.

The Champlin Co. (an Individual) Hartford, CT June 26, 2003. 34-CA-9635; JD(NY)-34-03, Judge Raymond P. Green.

Wallace International de Puerto Rico, Inc. (Congreso Uniones de Industriales de Puerto Rico) San German, PR June 27, 2003. 24-CA-8858; JD-68-03, Judge Karl H. Buschmann.

J.A. Croson Co. (an Individual and Plumbers Local 189) Columbus, OH June 27, 2003. 9-CA-35163-1, -2; JD-69-03, Judge Robert A. Giannasi.

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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.)

U.S. Electric, Inc. (Electrical Workers [IBEW] Local 58) (7-CA-45239; 339 NLRB No. 52) Clinton Township, MI June 27, 2003.

Electra-Cal Contractors (Electrical Workers [IBEW] Local 441) (21-CA-33342; 339 NLRB No. 45) Pocomo, CA June 23, 2003.

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WITHDRAWAL OF ANSWER CASE

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the withdrawal of the Respondent's answer to the complaint.)

Ancotech, Inc. (UAW) (7-CA-45077; 339 NLRB No. 49) Dearborn Heights, MI June 27, 2003.