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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U.S. Postal Service (16-CA-21217, et al.; 339 NLRB No. 53) Amarillo, TX June 30, 2003. The administrative law judge found, with Board approval, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to timely provide Letter Carriers Branch 1037 with requested information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees. In the absence of exceptions, the Board adopted the judge's findings that the Respondent violated Section 8(a)(5) and (1) by failing to deal with designated Union Representative James Lantham and failing to bargain over overtime by failing to follow through with its equitable overtime grievance settlement with the Union. [HTML] [PDF]

The Board denied the General Counsel's motion to strike the Respondent's cross-exceptions. It modified the judge's recommended Order, among others, to reflect its agreement with the General Counsel that backpay due employees as a result of the Respondent's illegal failure to bargain should be calculated according to the standard in *Ogle Protection Service,* 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), rather than computed on a quarterly basis according to the standard in *F.W. Woolworth Co.,* 90 NLRB 289 (1950), as recommended by the judge.

(Chairman Battista and Members Walsh and Acosta participated.)

Charges filed by Letter Carriers Branch 1037; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Amarillo on May 15, 2002. Adm. Law Judge Lawrence W. Cullen issued his decision July 25, 2002.

* * *

Guess?, Inc. (21-CA-33132; 339 NLRB No. 61) Los Angeles, CA June 30, 2003. Members Liebman and Walsh, with Chairman Battista dissenting, reversed the administrative law judge and held that the Respondent violated Section 8(a)(1) of the Act by asking employee Maria Perez, during a deposition in a workers' compensation case, for the names of other employees who attended union meetings. [HTML] [PDF]

Perez filed a workers' compensation claim against the Respondent relating to injuries to her hand and shoulder. Dennis Hershewe, Respondent's insurance counsel, contended that he questioned Perez about her activities at the union hall in order to discover whether she sustained the injuries while performing union activities and whether she engaged in any physical activities that were inconsistent with her alleged injuries. He asserted that he needed the names of other employees in attendance at the union hall to identify potential witnesses.

The majority held that the proper analysis has three parts: 1) the questioning must be relevant; 2) if the questioning is relevant, it must not have an illegal objective; and 3) if the questioning is relevant and does not have an illegal objective, the employer's interest in obtaining the information must outweigh the employees' confidentiality interests under Section 7. The judge considered the first two questions only, which he answered in the Respondent's favor.

The majority found it unnecessary to address the questions, saying: "Assuming arguendo that the questioning was relevant and lacked an illegal objective, we find that the questioning violates Section 8(a)(1) because, under the third part of the analysis, the employees' confidentiality interests under Section 7 outweigh the Respondent's need for this information." In this regard, the majority found that the relevance was only marginal and the questioning was so broad in scope that the employees' Section 7 rights outweigh the Respondent's discovery rights under California State law and thus discovery is preempted by the Act.

Chairman Battista agreed with the judge that the Respondent's questioning was relevant to its defense in the workers' compensation case, it did not have an illegal objective under the Act, and the Respondent's need for the information outweighed the employee's confidentiality interest. He noted that the California statute "does not distinguish between degrees of relevance. To the contrary, California's discovery rules are to be applied liberally in favor of discovery. What matters is whether the inquiry is 'reasonably calculated to lead to discovery of admissible evidence.' As shown, the information sought clearly meets this standard."

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by UNITE; complaint alleged violation of Section 8(a)(1). Parties filed a Motion to Submit Case on Stipulation and Stipulation of Facts with the judge on May 10, 2000. Adm. Law Judge Michael A. Marcionese issued his decision July 6,

2000.

* * *

Diamond Detective Agency (9-CA-38569; 339 NLRB No. 62) Jeffersonville, IN June 30, 2003. Reversing the administrative law judge, the Board dismissed the complaint allegation that the Respondent violated Section 8(a)(3) of the Act by refusing to hire Eddie Dunn, the president of the local union, who had been unlawfully discharged by the Respondent's predecessor. In defense, the Respondent submitted that it did not hire Dunn because he was not on the predecessor's payroll at the time the Respondent assumed operations and because Dunn applied for a position for which it had no opening. The Board agreed with the Respondent that the judge erred in rejecting its defense. Even assuming that the General Counsel established that Dunn's status as union president was a motivating factor in the Respondent's decision not to hire him, the Board found that the Respondent showed that it would not have hired Dunn even in the absence of his union status. [HTML] [PDF]

The Board affirmed the judge's rulings, findings, and conclusions concerning the Respondent's refusal to bargain with the Union in violation of Section 8(a) (5).

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by the International Guards Union of America; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Louisville, KY on Dec. 11, 2001. Adm. Law Judge Martin J. Linsky issued his decision March 5, 2002.

* * *

Morgan Services, Inc. (13-RD-2390; 339 NLRB No. 66) Chicago, IL June 30, 2003. Members Liebman and Acosta held in abeyance a decision on the Union's objections to a decertification election, pending an arbitrator's decision on whether the Employer violated the parties' collective-bargaining agreement by restricting the Union's access to its facility, and the General Counsel's decision on the deferred unfair labor practice charge in Case 13-CA-39599, alleging that the restrictions violated Section 8(a)(5). Chairman Battista dissented. [HTML] [PDF]

The hearing officer recommended overruling the Union's objections and certifying the results of the Union's (UNITE Local 969) 33 to 29 loss. The Union claimed that the hearing officer erred in failing to consider whether, as alleged in Case 13-CA-39599, the Employer unlawfully altered past practice concerning implementation of a contractual provision that granted Union access to the Employer's facility to police the collective-bargaining agreement. The Union claimed that the unlawful change and its resulting denial of access throughout the critical period, created an impression in the minds of employees that selection of the Union as bargaining representative was meaningless. The parties stipulated at the hearing that an arbitrator had taken testimony on the alleged breach of contract and was then considering the grievance. The Regional Director deferred the charge in Case 13-CA-39599 alleging that the change violated Section 8(a)(5) pending its arbitration.

The majority held that "[c]onsidering the arbitrator's decision along with the Union's election objections may avoid inconsistent outcomes and would respect the parties' decision to resolve disputes through the arbitration machinery." It ordered that the Union and the Employer file a report as to (1) the current status of the arbitration and (2) the Union's deferred unfair labor practice charge. If the arbitrator has not yet issued a decision, the Union and the Employer shall file such status reports with the Board every 90 days until the arbitrator does so. When the arbitrator issues a decision, the parties shall forward to the Board a copy of that decision and a copy of any action the General Counsel has taken on the Union's deferred unfair labor practice charge. If the arbitrator fails to issue a decision after a reasonable period, the parties may apply to the Board for further review of this proceeding.

Chairman Battista would not hold the Union's objections in abeyance. He said that even if the arbitrator were to hold that the restrictions were in breach of contract, and even if that holding supported a finding of an 8(a)(5) unilateral change violation, it would not result in the setting aside of the election since the change in access occurred before the critical period and simply continued into the critical period. "Under settled law, that conduct within the critical period is not subject to attack," the Chairman held.

(Chairman Battista and Members Liebman and Acosta participated.)

* * *

Jon Bohnenkemper, d/b/a South State Builders and its alter ego/successor South State Builders, Inc. (25-CA-27989-1; 339 NLRB No. 67) Jasper, IN June 30, 2003. The Board adopted, in the absence of exceptions, the administrative law judge's findings that the Respondent violated Section 8(a)(3) and (1) of the Act by laying off Vernon Stonestreet and Jeffrey Bullington on October 9, 2001, and that the Respondent violated Section 8(a)(1) by making remarks that interfered with, restrained, and coerced Stonestreet and Bullington in the exercise of their rights guaranteed in Section 7 of the Act. [HTML] [PDF]

The General Counsel excepted to: the judge's failure to list each of the 8(a) (1) violations in the Conclusions of Law, and to include a remedy for the violations in the Order and notice; and the judge's failure to order the Respondent to post the notice in addition to mailing it to the employees. The Respondent did not oppose these exceptions. The Board modified the Conclusions of Law, Order, and notice to correct the omissions.

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Sheet Metal Workers Local 20; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Jasper, Aug. 12-13, 2002. Adm. Law Judge Arthur J. Amchan issued his decision Oct. 2, 2002.

* * *

Mid-South Drywall Co. (26-CA-19287, et al., 26-RC-8099; 339 NLRB No. 70) Little Rock, AR June 30, 2003. Members Liebman and Walsh agreed with the administrative law judge that the interrogation of employees Tony Draper and Clifford Loy by Owner Charles Butler, and leadman Steve Campbell's statement to employees Draper and Loy, during a lunchtime conversation, violated Section 8(a) (1) of the Act and constituted objectionable conduct that interfered with the election held in Case 26-RC-8099. Campbell, while expressing his opposition to the Union, told the employees that if it were his business, he would close it. The majority agreed with the judge that Campbell is an agent of the Respondent and that his statement is coercive. It set aside the election held on August 19, 1999 (Carpenters Arkansas Regional Council lost 16-9) and directed a new election. [HTML] [PDF]

Chairman Battista, dissenting, would not find Campbell's statement was unlawful or objectionable. He assumed that Campbell was an agent for the purposes of communicating management directives to employees, but he disagreed with the majority's conclusion that employees would reasonably consider his comments here to reflect the views of management. He found instead that Campbell's statement reflected his own opinion and not that of management. Although the Chairman agreed with his colleagues that Butler's questioning of Draper and Loy violated Section 8(a)(1), he found that Butler's interrogation would not, by itself, warrant setting aside the election.

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by Carpenters Arkansas Regional Council; complaint alleged violation of Section 8(a)(1). Hearing at Little Rock on Dec. 13, 1999. Adm. Law Judge Keltner W. Locke issued his decision Feb. 2, 2000.

* * *

Pep Boys--Manny, Moe and Jack (10-RC-15342; 339 NLRB No. 58) Chattanooga, TN June 30, 2003. The Board reversed the hearing officer's recommendation to sustain the challenge to the ballot of Aaron Dishman and directed that the Regional Director open and count his ballot and issue a revised tally of ballots and the appropriate certification. The tally of ballots showed 5 for and 4 against the Petitioner (Machinists International), with 1 challenged ballot. [HTML] [PDF]

The hearing officer characterized Dishman's bargaining unit work during the eligibility period as "orientation and preliminaries" in preparation for the installer job which began the following week and determined he was ineligible to vote.

Citing *Dyncorp/Dynair Services,* 320 NLRB 120 (1995), the Board held that in order to be eligible to vote an individual must be "employed and working" in the bargaining unit on the established eligibility date, unless absent for certain specified reasons. It determined that the credited evidence established that during the eligibility period Dishman performed actual unit work in his on- the-job training, finding that Dishman was not engaged in mere "orientation and preliminaries," but was "employed and working" in the unit during the eligibility period.

(Chairman Battista and Members Schaumber and Walsh participated.)

* * *

Turner Construction Co. (19-CA-27478-1, -2; 339 NLRB No. 63) Seattle, WA June 30, 2003. The Board, on the recommendation of the administrative law judge, dismissed the complaint allegation that the Respondent violated Section 8(a)(1) and (3) of the Act by discharging Nicholas Fabrizio and Robert Faria on March 14, 2001, for refusing to submit to a drug test. The issue is whether the Respondent violated the employees' statutory rights, including their alleged right to a union representative during an investigatory interview in which the Respondent allegedly demanded that they submit to drug testing. [HTML] [PDF]

Under the criteria and burden of proof set forth in *Olin Corp.,* 268 NLRB 544 (1984), the Board agreed with the judge's conclusion that deferral to the arbitration award is warranted. The Board held that the General Counsel failed to show that the contract issue is not factually parallel to the unfair labor practice issue, or that the arbitration panel was not presented with the facts relevant to resolving the unfair labor practice issue. The contract issue was whether the Respondent's treatment of Fabrizio and Faria violated contractual provisions, including Appendix 6 (Substance Abuse Policy), relating to drug testing under certain circumstances. The Board decided that the issues can both be resolved by the same set of facts, i.e., the actions of the Respondent's supervisors, Fabrizio, and Faria on the morning of March 14, when the Respondent began investigating a report that the two employees had been smoking marijuana in a car near one of the Respondent's projects.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charges filed by Nicholas Fabrizio and Robert Faria, Individuals; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Seattle, Dec. 20-21, 2001. Adm. Law Judge Thomas M. Patton issued his decision Sept. 13, 2002.

* * *

Convergence Communications, Inc. (13-CA-40308-1, 40481-1; 339 NLRB No. 56) Cleveland, OH June 30, 2003. In the absence of exceptions to the administrative law judge's findings, the Board held that the Respondent violated Section 8(a) (5), (3), and (1) of the Act by failing to recognize and bargain in good faith with Electrical Workers IBEW Local 21 regarding a successor collective- bargaining agreement, failing to continue in effect all the terms of its then- existing collective-bargaining agreement with the Union, unilaterally changing unit employees' working conditions without first notifying the Union and affording it an opportunity to bargain about the changes, and constructively discharging employee Greg Miller because of his union activity and support. [HTML] [PDF]

In response to the General Counsel's exception to the judge's failure to provide the standard remedies for the violations he found, the Board modified the judge's recommended Order and notice accordingly.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charges filed by Electrical Workers IBEW Local 21; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Chicago on Feb. 6, 2003. Adm. Law Judge Joseph Gontram issued his decision March 24, 2003.

* * *

Landmark Installations, Inc. (12-CA-21376, 21441; 339 NLRB No. 59) Pompano Beach, FL June 30, 2003. The Board upheld the administrative law judge's findings, to which no exceptions were filed, that the Respondent violated Section 8(a)(1) of the

Act by interrogating employees, informing them that it would be futile for them to select the Union as their collective-bargaining representative, and threatening employees with plant closure, layoffs, discharge, and unspecified reprisals if they selected the Union as their collective-bargaining representative or engaged in union activities; and Section 8(a)(3) and (1) by discharging employee Adolfo Gonzalez and laying off five employees and refusing to consider them for recall and/or to recall them. [HTML] [PDF]

The General Counsel, in its exceptions, argued that the judge inadvertently failed to direct the Respondent to mail the notice to employees to all of its employees and requested that the notices be mailed because the employees work at different construction jobsites outside the office and employees who were employed at the time of Respondent's unlawful conduct may not be currently employed. The Board modified the Order and directed the Respondent to mail a copy of the notice to all current and former employees employed by the Respondent at any time since March 2001.

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by Iron Workers Local 272; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Miami, Oct. 9 and 11, 2001. Adm. Law Judge Lawrence W. Cullen issued his decision Jan. 22, 2002.

* * *

Stevens Graphics, Inc. (10-CA-33719; 339 NLRB No. 64) Birmingham, AL June 30, 2003. Adopting the administrative law judge's recommendations, the Board dismissed the complaint allegations that the Respondent violated Section 8(a)(5) and (1) of the Act by prohibiting Graphic Communications Local 121C from posting material on the union-designated bulletin board located in the Respondent's pressroom. [HTML] [PDF]

The Respondent contended that there is no statutory Section 7 right to post union-related notices on the bulletin board and that any such right must be negotiated by the parties or established by their past practice. The Respondent contended that when it established bulletin boards for the Union's and Company's use in 1988, it updated operating instructions relative to bulletin boards and retained the right to monitor postings in order to limit controversial material or material that degrades the Company.

The judge found that the Respondent lawfully restricted the Union's posting of documents that clearly are controversial and inflammatory and that the General Counsel failed to establish that there was a past practice of permitting the Union to post whatever it desires without the Respondent's scrutiny.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Graphic Communications Workers Local 121C; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Birmingham on Sept. 25, 2002. Adm. Law Judge Lawrence W. Cullen issued his decision Dec. 11, 2002.

* * *

Brawley Beef, L.L.C. (21-CA-35031-1, -2; 339 NLRB No. 69) El Centro, CA June 30, 2003. The Board affirmed the administrative law judge's findings that the Respondent violated Section 8(a)(1) of the Act by discharging Martha Marquez and Lorena Rivas because they concertedly complained about the heaviness of the product they were required to lift. The Respondent asserted that it discharged the employees because they refused to do their assigned work. The Board affirmed the judge's related credibility findings in favor of Marquez and Rivas and found that the evidence established that the employees did not refuse to do work. [HTML] [PDF]

(Chairman Battista and Members Liebman and Acosta participated.)

Charges filed by Martha Marquez and Lorena Rivas, individuals; complaint alleged violation of Section 8(a)(1). Hearing at El Centro on Jan. 22, 2003. Adm. Law Judge James L. Rose issued his decision March 18, 2003.

* * *

TMC Contractors, Inc. (13-CA-40398; 339 NLRB No. 60) Chicago, IL June 30, 2003. The Board found that the Respondent's January 6, 2003 fax, submitted in response to the Region's request to file an answer, constituted a sufficient answer to the complaint's 8(a)(3) allegation that the Respondent discharged Tim Timmons for his union activity. Because the Respondent has sufficiently answered the 8(a)(3) allegation, the Board denied the General Counsel's motion for summary judgment as to complaint paragraphs 6 and 8 and remanded this proceeding to the Regional Director to schedule a hearing limited to those allegations. [HTML] [PDF]

The complaint also alleges that the Respondent violated Section 8(a)(1) by interrogating employees about their protected activity and by threatening employees with loss of employment because they signed union cards. The Respondent's January 6 fax did not refer to either allegation and the Respondent did not submit any other document referring to them. Accordingly, the Board granted the motion for summary judgment as to complaint paragraphs 5 and 7 because these allegations have not been answered.

(Chairman Battista and Members Liebman and Acosta participated.)

Charge filed by Cement Masons' Rock Asphalt and Composition Floor Finishers' Local 502; complaint alleged violation of Section 8(a)(1) and (3). General Counsel filed motion for summary judgment March 5, 2003.

* * *

Electrical Workers IBEW Local 98 (4-CD-1071-1; 339 NLRB No. 68) Philadelphia, PA June 30, 2003. The Board affirmed the administrative law judge's findings, in the absence of exceptions, that the Respondent violated Section 8(b)(4)(ii) (D) of the Act by engaging in coercive conduct with an object of forcing General Dynamics Government Systems Corp. and/or Total Cabling Specialists, Inc. to reassign voice and data cable work to employees represented by the Respondent. The Board agreed that a broad cease-and-desist order against the Respondent is warranted based on its violations and conduct in the prior Section 10(k) cases relied on by the judge. It did not rely on the judge's discussion of the judge's decision in *Electrical Workers Local 98 (MCF Services, Inc.),* JD-52-00 (2000), which is pending before the Board. [HTML] [PDF]

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Communications Workers Local 13000; complaint alleged violation of Section 8(b)(4)(i) and (ii)(D). Hearing at Philadelphia on Jan. 27, 2003. Adm. Law Judge Joel P. Biblowitz issued his decision March 6, 2003.

* * *

Pacific Design Center (31-CA-25082; 339 NLRB No. 57) Los Angeles, CA June 30, 2003. The Board adopted the administrative law judge's recommendations and found that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Lorenzo J. Sauno because of his activities for Service Employees Local 1877 and/or concerted protected activity and to discourage employees from engaging in such activities and by threatening Sauno with retaliation for engaging in union and/or other concerted protected activity. [HTML] [PDF]

Member Schaumber does not rely on certain reasons provided by the judge in support of her finding of pretext which are: 1) her finding of pretext because Sauno's termination was "unexpected and abrupt" and 2) the Respondent's failure to recall Sauno as evidence of pretext because there is no evidence that Respondent had a policy of recalling employees who are laid off.

As to the first reason, the judge observed that even though the remodeling of the building in which Sauno worked had been taking place for several months prior to his discharge, Respondent never informed employees that the construction could result in an employee cutback. Member Schaumber noted that while it is a "fair practice" to do so, the judge found the Respondent was under no obligation to notify employees of impending personnel actions and Respondent does not have a policy or follow a procedure regarding such employee notifications. Moreover, he found the judge's finding is not supported by the record. As to the second reason, Member Schaumber pointed out there is no evidence that Respondent had a policy of recalling employees

who are laid off. He held that while the judge is correct that the Respondent hired other janitorial employees after Sauno's discharge, two of these three employees were hired at least 6 months following his termination, and the third employee was hired on an unspecified date.

Writing that they believe each of the reasons cited by the judge supported her finding of pretext, Members Liebman and Walsh would adopt the judge's finding even if they were to rely only on the reasons endorsed by Member Schaumber.

(Members Liebman, Schaumber, and Walsh participated.)

Charge filed by Lorenzo J. Sauno, an individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Los Angeles on Nov. 13, 2001. Adm. Law Judge Lana H. Parke issued her decision Jan. 4, 2002.

* * *

LBT, Inc. (17-CA-20235, 20300; 339 NLRB No. 72) Omaha, NE June 30, 2003. The Board found that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to provide the Union with an unredacted list of the 1997 employee rankings used by the Respondent in selecting employees for layoff, and that the Respondent did not violate Section 8(a)(5) and (1) by failing to pay striking employees vacation/shutdown pay for the summer of 1999. The administrative law judge recommended dismissal of both allegations. [HTML] [PDF]

The Respondent and Union have been parties to a series of collective- bargaining agreements since February 1994. There was no agreement in effect from June 12 through August 8, 1999, and the unit employees were on strike. The parties entered into a new contract on August 9, 1999, ending the strike. During a bargaining session on July 13, 1999, the Respondent's employee relations manager informed the Union that, because of business lost during the strike, a layoff of unit employees might be imminent. The Union requested information regarding the Respondent's layoff selection criteria and their application. The Respondent provided documentation about its procedures, which were similar to those used in a 1997 layoff, including a redacted version of employee evaluations it had compiled and used in selecting employees for the 1997 layoff. The Union requested an unredacted copy, explaining it needed to (1) test check the validity of the 1999 evaluations; (2) formulate a layoff proposal for the new contract; and (3) determine the validity of the methodology of assigning points.

The Board found that the 1997 employee evaluations requested by the Union were presumptively relevant, even in 1999. It wrote: "Assuming in the alternative that the 1997 evaluations were no longer presumptively relevant in 1999 because of the passage of time or intervening changes in the employees' skills, we would conclude that the information's continuing relevance was demonstrated. Contrary to the judge, we find that the Union offered at least two reasons for requesting the information that established its relevance: to determine the

validity of the Company's methodology of assigning points, and to formulate a layoff proposal for the new contract." Member Acosta agreed that the General Counsel has demonstrated the relevance of the information that the Union sought and therefore he found it unnecessary to decide whether the 1997 evaluations were presumptively relevant when sought in 1999.

In the absence of exceptions, the Board adopted the judge's finding that vacation pay was not an established term or condition of employment, and his conclusion that the Respondent did not violate Section 8(a)(5) by failing to pay vacation pay to the strikers. Even if the Union or the General Counsel had properly excepted to the judge's dismissal of this allegation, the Board said it would affirm, on the merits, the judge's conclusion that the employees were not entitled to vacation pay. Member Liebman agreed that the issue has not been raised in exceptions. She found it unnecessary to decide on the merits whether vacation pay was an established term or condition of employment in 1999 or whether the Respondent's failure to pay vacation pay to the striking employees constituted a unilateral change in violation of Section 8(a)(5).

(Members Liebman, Schaumber, and Acosta participated.)

Charges filed by Paper, Allied-Industrial, Chemical and Energy Workers Local 5-0699; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Omaha on Jan. 9, 2001. Adm. Law Judge George Carson II issued his decision Feb. 23, 2001.

* * *

Gem Management Co. (7-CA-44509; 339 NLRB No. 71) Clare, MI June 30, 2003. The Board affirmed the administrative law judge's findings that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to apply the 2000 Architectural Contractors Trade Association (ACT) agreement since on about May 1, 2001, to its jobsites; and Section 8(a)(2) and (1) by paying fringe benefits to Bricklayers Local 9's benefit funds and soliciting Bricklayers Local 9 to sign up employees for work at the Extended Stay America Hotel jobsite, a location covered by the Plasterers Local 67's agreement. There were no exceptions to the judge's unfair labor practice findings and conclusions. [HTML] [PDF]

The General Counsel excepted to the judge's findings that the Respondent was not bound by the June 1999 and November 2000 amendments to, respectively, the 1997 and 2000 collective-bargaining agreements between ACT and Plasterers Local 67. The Board found it unnecessary to pass on whether the Respondent was bound by the June 1999 amendment to the ACT agreement because resolution of that question would not affect the remedy.

Chairman Battista and Member Schaumber agreed with the judge that the Respondent was not bound by the November 2000 amendment to the 2000 ACT agreement and found that the judge correctly interpreted the language in the Respondent's October 1999 "Agreement for Non-Association Members" (the "me-too" agreement) as not encompassing the November 2000 amendment. They noted by its letter agreement of October 1999, the Respondent became bound to the then-extant 1997-2000 contract and that a reading of the language is that it binds the 12

Respondent to changes to the 1997-2000 contract, and to the 2000 contract, but not to changes to the 2000 contract.

Contrary to Member Walsh, Chairman Battista and Member Schaumber found that the proper inquiry is whether the language of the me-too agreement clearly established that non-member signatories were bound to amendments to or modifications of succeeding ACT agreements and agreed with the judge that it did not. They do not agree with Member Walsh's views that the test if whether a "reasonable inference" can be drawn that the Respondent bound itself to modifications of later contracts or that the contractual language in the 2000 ACT agreement compels a different result.

Member Walsh, asserting that the Respondent was bound by the November 2000 amendment to the 2000 ACT agreement, held that the language in the October 1999 "me-too" agreement encompasses any future agreements negotiated by ACT and Plasterers Local 67 in the collective-bargaining context¾specifically here, the negotiated and agreed-upon November 2000 amendment to the 2000 ACT agreement. Member Walsh noted that the 2000 ACT agreement contains a provision, in Article VI, which expressly contemplates that such amendments could be negotiated by the parties: "This Agreement may only be modified, in writing, by the mutual consent of the parties.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by Plasterers Local 67; complaint alleged violation of Section 8(a) (1), (2), and (5). Hearing at Detroit on June 5, 2002. Adm. Law Judge Eric M. Fine issued his decision Nov. 1, 2002.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Wonder Meats, Inc. (Food and Commercial Workers Local 174), Newark, NJ July 2, 2003. 22-CA-21258, et al.; JD(NY)-35-03, Judge Howard Edelman.

George P. Bailey & Sons, Inc. (Electrical Workers [IBEW] Local 269) Philadelphia, PA July 2, 2003. 4-CA-31620; JD-72-03, Judge Eric M. Fine.

* * *

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.)

Hawk One Security, Inc. (Government Security Officers Local 21) (5-CA-30856; 339 NLRB No. 65) Washington, DC June 30, 2003.